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, public gatherings of 10 or more are generally not permitted without adequate social distancing. Should anyone wish to listen, observe or participate in the City Council meeting above, please join by way of the Zoom app (re: Meeting ID 801-559-1126, password 03082021). Should the meeting be interrupted for any reason, meeting attendees, participants and presenters should contact the City at city@mtnbrook.org for instructions.

1. Approval of the minutes of the February 22, 2021, regular meeting of the City Council.

2. Consideration: Resolution authorizing the execution of a professional services agreement between the City and Skipper Consulting regarding their design of a left turn arrow from Oakdale Drive into the high school complex.

3. Consideration: Resolution authoring the execution of a contractor agreement between the City and Stone & Sons Electrical Contractors with respect to the installation of a RRFB for the pedestrian crossing at the intersection of Church Street and West Jackson Boulevard.

4. Consideration: Resolution awarding the bid for the purchase of night vision monocular units for the Police Department.

5. Consideration: Resolution authorizing the execution of a contractor agreement between the City and Alabama Guardrail for the installation of a guardrail along Montevallo Road at Crestview Drive.

6. Consideration: Resolution authorizing the execution of the Second Amendment to the Tower Site Sublease Agreement and related Memorandum of Lease between the City and American Tower Asset Sub, LLC with respect to the tower located at the Athletic Complex.

7. Consideration: Resolution authorizing the execution of the revised funding agreement between ALDOT and the City with respect to the close-out of Project STPBH-CN (907) Jemison Trail/Shades Creek Greenway Connector-Jemison Park to Brookwood Village.


9. Consideration: Ordinance amending Chapter 14 of the City Code with respect to fees associated with small cell antenna installations.

10. Comments from residents and online attendees.

11. Announcement: The next regular meeting of the City Council is March 22, 2021, at 7:00 p.m. (means and location to be announced).

12. Adjourn.
Pursuant to a proclamation issued by Governor Kay Ivey on March 18, 2020, elected officials are allowed to meet remotely by means of Internet video or telephone conference and the public was invited to listen to, observe, or participate in the meeting by such means. The elected officials met by way of Internet video conference and allowed the public to listen, observe and participate by the same means.

The City Council of the City of Mountain Brook, Alabama met informally by way of Internet video conference at 5:45 p.m. on the 22nd day of February, 2021. 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  
Lloyd C. Shelton  
Alice B. Womack  
Stewart Welch III, Mayor

Absent: Gerald A. Garner

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

1. AGENDA

1. Lane Parke Update—John Evans

- It is contemplated that building permits will be pulled next week
- Hoar crews should be on site this week
- Except for one tenant which is on the formal meeting agenda, all pre-leasing obligations have been satisfied
- Construction should start around March 1st and will last approximately 14 months
- The first phase (70,000 square feet) is completely leased with the most recent tenant ("X4", fitness services) to commence operations around the end of May
- Phase 2 is approximately 50,000 square feet

Mary Beyer with the leasing consultant

- Views the fitness and salon (if approved) tenants as complimentary to the other offerings and expects them to generate increased activity and interest in the overall development

2. Traffic study for Oakdale/Bethune to determine feasibility of adding a turn arrow—Richard Caudle of Skipper Consultants and Mary Ellen DeBardeleben (Resolution No. 2021-028 was added to the formal meeting agenda.)

DeBardeleben:

- This matter came up previously in January 2020 at which time a one-day traffic study conducted in 2016 was discussed. The discussion led to a timing adjustment of the traffic signal.
- It came up again in November 2020 which led to another observation by the traffic consultant that revealed the traffic queue was much worse than observed in 2016. The Council declined to take any action as the high school was providing a security guard to manually control the light during peak periods.
- It came up again in January 2021 but no action was taken
• Ms. DeBardelebe solicited comments from affected residents and identified 27 others who
  were in favor or studying the intersection
• The guard controls the light but not the flow of traffic
• At times, motorists are unable to turn from Oakdale left into the campus even with assistance
  from the guard controlling the light
• This is not only an issue about traffic flow but also safety
• The requested traffic study will cost about $2,500

Caudle:
• The problem is not isolated to Oakdale Drive but also Bethune Drive
• The last observation showed a queue on Oakdale of approximately 2,000 feet and on Bethune
  of 1,500 feet
• There are other turn arrows in the City where there is no turn lane, however, in those
  instances there was only queuing on one of the approaching streets
• This study is needed to be certain that whatever is done to improve conditions along Oakdale
  does not worsen the condition of Bethune
• The study will involve about 30 minutes of traffic counts, preparing a computer simulation
  and modeling alternatives to see their effects
• If the traffic study is approved tonight, the results and a recommendation should be ready for
  Council review on or before the next meeting
• Other questions that need to be addressed is what modifications can be made within the
  existing traffic controller cabinet and possible signal head modifications

3. Custom Police phone app—Chief Cook (Resolution No. 2021-029 was added to the formal
   meeting agenda.)

Cook:
• This customized app will allow the Police Department to better push information out
  information to those persons who install the app and do not block notifications
• The Police Department is currently using Facebook, Twitter and now Instagram
• The cost will be just below $10,000 which can be covered within the current budget
• There will be ongoing maintenance costs needed for the developers to maintain app
  functionality as the mobile telephone service provider’s upgrade their operating systems

4. Conditional Use application for a nail salon in Lane Parke, Phase 2 at 330 Rele Street—Dana
   Hazen (Resolution No. 2021-030 was added to the formal meeting agenda.)

Mary Beyer (30:20):
• The proposed tenant is Base Coat on Fifth
• The social media reviews shown are very favorable
• The interior finishes are upscale, pretty and nothing else like it is offered in the over-the-
  mountain area
• It is expected that this salon will become a destination and lead to spill over shopping
• This development is considered an high-end development
• When marketing to prospective, high-end businesses, having tenants like Base Coat of Fifth is
  viewed as a positive as it attracts women to the development who are viewed by prospective
  tenants as most likely to shop adjoining spaces

Sam Heidi:
• In September 2020, Walker prepared a shared parking analysis
• The 2020 parking study included the projected tenant mix
• The parking study indicated that there are 1,001 available parking spaces
• During the December peak demand season, there 64 excess parking spaces available (capacity
  during the rest of the year is greater than 64 spaces)
• The proposed tenant will be 1,500 square feet with 20 chairs
• The September 2020 parking study was updated to incorporate Base Coat on Fifth. The new tenant is projected to increase demand weekdays by 31 spaces and weekends by 24 spaces still leaving excess parking capacity.
• With the nail salon, it is projected there will be excess parking spaces of 33 on weekdays and 40 on weekends in Lane Parke
• The landlord can require all tenants to require their employees to park outside the retail area
• The salon is slated to be in space D5 next to the bank
• The development maintains an aggressive parking control plan and a dedicated property manager to oversee it

Dana Hazen:
• The developers’ [parking] numbers are somewhat different that the City’s but the conclusions are consistent
• There is a surplus of parking for the entire project even during peak seasons
• If Base Coat on Fifth leaves the development, unless their successor salon occupies the same space with 20 chairs, the conditional use and parking study will have to be approved by the City Council
• There are provisions in the Code for the successor a tenant to be approved administratively. However, if there are any questions about the application, the conditional use (and updated parking study) will come before the Council for approval.

Jim Corbett, parking consultant:
• The boutique salon demands fewer parking spaces that other types of salons

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

2. EXECUTIVE SESSION AND ADJOURNMENT

The being no further topics for discussion, Council President Pro Tempore Pritchard made a motion that the City Council convene in executive session to discuss a real estate matter and that the City Council shall reconvene at approximately 7 p.m. upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive session pursuant to Alabama Law. The motion was seconded by Council member Womack. 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
Lloyd C. Shelton
Alice B. Womack

Nays: None

Council President Smith thereupon declared that motion passed by a vote of 4—0 and then adjourned the pre-meeting at approximately 6:40 p.m.

3. 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 by way of Internet videoconference on February 22, 2021, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk, Approved by
City Council March 8, 2021
MINUTES OF THE REGULAR OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
FEBRUARY 22, 2021

[Pursuant to a proclamation issued by Governor Kay Ivey on March 18, 2020, elected officials are allowed to meet remotely by means of Internet or telephone conference and the public was invited to listen to, observe, or participate in the meeting by such means. The elected officials met by way of Internet video conference and allowed the public to listen, observe and participate by the same means.]

The City Council of the City of Mountain Brook, Alabama met by way of Internet video conference at 7:00 p.m. on the 22nd day of February, 2021. The Council President called the meeting to order and the roll was called with the following results:

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

Absent: Gerald A. Garner

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

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

1. CONSENT AGENDA

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

Approval of the minutes of the February 8, 2021, regular meeting of the City Council

2021-023 Designate City Manager Sam Gaston as the City’s Principal Executive Officer and “Administrator” associated to the “Hagood Street” site in the Alabama Environmental Permitting and Compliance System (AEPACS) Exhibit 1, Appendix 1

2021-024 Authorize the execution of a professional services agreement between the City and Skipper Consulting for their provision of traffic engineering services to a traffic control device designed for the pedestrian-actuated flashing beacon for the crosswalk crossing Church Street at West Jackson Boulevard Exhibit 2, Appendix 2

2021-025 Authorize the execution of a contractor agreement for the replacement/modification of the interior glass curtain in the O’Neal Library atrium Exhibit 3, Appendix 3

2021-027 Amend/clarify the City’s holiday leave policy (and Employee Handbook) Exhibit 4
2021-028 Authorize the execution of a professional service agreement between the City and Skipper Consulting, Inc., for their provision of traffic consulting services for the intersection of Bethune Drive at Oakdale

2021-029 Authorize the purchase and configuration of a social media application for the police department of the City

2021-030 Approve the conditional use application submitted by Evson, Inc., for a nail salon at 330 Rele Street in accordance with the parking analysis dated January 20, 2021 by Walker Parking Consultants

Thereupon, the foregoing minutes and resolutions (Nos. 2021-023 through 2021-025 and 2021-027 through 2021-030) were introduced by Council President Smith and a motion for their immediate adoption made by Council President Pro Tempore Pritchard. The minutes and resolutions were then considered by the City Council. Council member Womack seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

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

Nays: None

Abstained: None

Council President Smith thereupon declared that said minutes and resolutions (Nos. 2021-023 through 2021-025 and 2021-027 through 2021-030) were adopted by a vote of 4—0 that and as evidence thereof she signed the same.

2. ANNOUNCEMENT: MAYORAL [RE]APPOINTMENT (NO. 2021-026) TO THE PLANNING COMMISSION

Mayor Welch announced that he has reappointed Luther Barner ("Barney") Lanier to serve on the Planning Commission to serve without compensation through March 9, 2027.

3. CONSIDERATION OF AN ORDINANCE AMENDING THE CITY’S SMALL CELL REGULATIONS (ORDINANCE NO. 1948 ADOPTED ON JANUARY 11, 2016 (EXHIBIT 8, APPENDIX 7)

Council President Smith introduced the ordinance in writing and announced that tonight will be the first reading of the ordinance. There being no further comments or discussion, President Smith moved on to the next business matter.

4. CONSIDERATION OF AN ORDINANCE AMENDING CHAPTER 14 OF THE CITY CODE WITH RESPECT TO FEES ASSOCIATED WITH SMALL CELL ANTENNA INSTALLATIONS (EXHIBIT 9)

Council President Smith introduced the ordinance in writing and announced that tonight will be the first reading of the ordinance. There being no further comments or discussion, President Smith moved on to the announcements.
5. ANNOUNCEMENT

The next regular meeting of the City Council is scheduled for March 8, 2021; at 7:00 p.m. with a pre-meeting beforehand (time means to be announced).

ADJOURNMENT

There being no further business or other matters for discussion, Council President Smith adjourned the meeting at approximately 7:05 p.m.

7. CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama by Internet videoconference on February 22, 2021, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

City Clerk Approved by
City Council March 8, 2021

EXHIBIT 1

RESOLUTION NO. 2021-023

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby designates City Manager Sam Gaston as the City’s Principal Executive Officer and “Administrator” associated to the “Hagood Street” site in the Alabama Environmental Permitting and Compliance System (AEPACS).

APPENDIX 1

EXHIBIT 2

RESOLUTION NO. 2021-024

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby ratifies the execution of a professional service agreement between the City and Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, for their provision of traffic engineering services to a traffic control device designed for the pedestrian-actuated flashing beacon for the crosswalk crossing Church Street at West Jackson Boulevard.

APPENDIX 2

EXHIBIT 3

RESOLUTION NO. 2021-025

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contractor agreement between the City and Rives Construction, in the form as attached hereto as Exhibit A, with respect to the installation of interior glass in the atrium of the O’Neal Library.
RESOLUTION NO. 2021-031

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 service agreement between the City and Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, for their design of a left turn arrow for the intersection of Oakdale Drive at Bethune Drive.

ADOPTED: This 8th day of March, 2021.

________________________________________
Council President

APPROVED: This 8th day of March, 2021.

________________________________________
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on March 8, 2021, as same appears in the minutes of record of said meeting.

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

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

WHEREAS, the Client requests that the Consultant perform professional traffic engineering services related to a traffic signal modification design for the intersection of Oakdale Drive at Bethune Drive/MBHS in the City of Mountain Brook (the "Project" or "Services");

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

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

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

   SEE SCOPE OF WORK SET FORTH ON EXHIBIT "A"

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

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

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

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

3. COMPENSATION/ BILLING/ PAYMENT: Skipper Consulting Inc. will undertake and perform the work and Services outlined in Exhibit "A" for a fixed fee (inclusive of all expenses) for a fixed fee in the following amounts:

   Traffic Signal Modification Design – Oakdale Drive at Bethune Drive/MBHS $ 2,000.00

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

   If complications or other unforeseen factors cause a change in the scope of Work outlined in Exhibit "A", the Consultant will notify the Client in writing of the changes and any adjustments to the fee required by such change. If the Client wishes to undertake tasks that are identified as being outside the proposed
scope of services, the Consultant will submit a proposal for the additional work. No additional work or services other than those contemplated herein shall be performed without the written approval of the Client.

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

4. STANDARD TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

Consultant shall secure and maintain such insurance as is reflected on the Addendum.
Client shall provide Consultant access to the Project site necessary for the Consultant to provide the services outlined.

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

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

CLIENT: CITY OF MOUNTAIN BROOK, AL

By: ____________________________
Printed Name: ____________________________
Title: ____________________________
Date: ____________________________

CONSULTANT: SKIPPER CONSULTING INC.

By: ____________________________
Printed Name: Richard L. Caudle, P.E.
Title: Senior Traffic Engineer
Date: February 24, 2021
EXHIBIT “A”
SCOPE OF WORK

The Consultant shall perform the following scope of work in relation to preparing a traffic signal modification design for the intersection of Oakdale Drive at Bethune Drive/MBHS in the City of Mountain Brook.

Flash Warning Beacon Design – Church Street at West Jackson Boulevard Crosswalk

Based on the recommendations contained in a February 23, 2021 report for the intersection of Oakdale Drive at Bethune Drive/MBHS issued by the Consultant, the Consultant will prepare traffic signal modification plans for construction of the recommended improvements. It is anticipated that construction efforts would be less than $50,000, and thus could be performed under Public Works bid law. The Consultant will assist the City in selection of a contractor, reviewing equipment submittals, performing an inspection of contractor work, and programming and observing operation of the traffic operations at the intersection following completion of construction.

Schedule

The Consultant will perform the scope of work described above, up to and including issuing a design for contractor pricing, within a period of one (1) week from notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.
ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY
OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. – TRAFFIC
ENGINEERING SERVICES (Oakdale Drive at Bethune Drive Signal)

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

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

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

   A. **“The City”** refers to and includes the City of Mountain Brook, Alabama, and its constituent departments, boards, and agencies. The City may also be referenced in the Agreement as the “Client.”

   B. **“The (this) Agreement”** refers to the principal contract, agreement, proposal, quotation, or other document that sets forth the basic terms and conditions under which the Contractor is engaged to provide goods, materials, or services to the City, including the payment or other consideration to be provided by the City in exchange therefor.

   C. **“The Contractor”** refers to the person, firm, or other legal entity that enters the Agreement with the City to provide goods, materials, or services to the City, and includes vendors and suppliers providing goods, materials, and services to the City with or without a formal contract as well as the Contractor’s vendors, suppliers, and subcontractors. The Contractor may also be referenced in the Agreement as the “Consultant.”

2. **Dispute Resolution.** If a disagreement, claim, issue or disagreement arises between the parties with respect to the performance of this Agreement or the failure of a Party to perform their respective rights or obligations hereunder (a “Dispute”), the parties will use reasonable efforts to resolve any Dispute at the designated representative level. If the parties are unable to amicably resolve any Dispute at that level, each agree to escalate that matter to senior managers or senior officials for consideration by and potential resolution by them. If the Dispute is not resolved at the senior level, the dispute resolution mechanism shall be litigation in a court with competent jurisdiction that is located in Jefferson County, Alabama.
3. **Attorney's Fees; Court Costs; Litigation Expenses.** The City shall not be liable for attorney’s fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor.

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

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

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

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

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

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

   .1 **Comprehensive General Liability:** This insurance shall cover all operations performed by or on behalf of Contractor, and provide coverage for bodily injury and
property damage with a combined single limit of not less than $500,000 per occurrence.

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

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

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

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

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

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

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

10. *Indemnification for Claims by Third Parties.* The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (collectively hereinafter the “Indemnitees”) from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages, collectively hereinafter "Claim(s)") that are made against the City by any third parties (including any employee, agent or representative of the Contractor, collectively "Third Parties") to the extent that such Claims are caused or allegedly caused by the negligence of the Consultant in the performance of its Services, its work on the Project described in the Agreement or its failure to perform its obligations in the Agreement.
11. EXCLUSION OF CONSEQUENTIAL DAMAGES. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT THAT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH. THE CONTRACTOR FURTHER ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT ENTERED INTO THIS AGREEMENT WITHOUT INCLUDING THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS. NOTHING IN THIS PROVISION IS INTENDED TO IMPACT, MODIFY, AMEND OR LIMIT THE TERMS OR APPLICATION OF THE INDEMNIFICATION PROVISION IN THE PROVISION ABOVE THAT PERTAINS TO CONTRACTOR’S OBLIGATIONS TO INDEMNIFY THE CITY FOR CLAIMS MADE AGAINST THE CITY BY THIRD PARTIES.

CITY: CITY OF MOUNTAIN BROOK

By: ________________________________

Printed Name: ________________________________

Title: ________________________________

Date: ________________________________

CONTRACTOR: SKIPPER CONSULTING INC.

By: ________________________________

Printed Name: Richard L. Caudle, P.E.

Title: Senior Traffic Engineer

Date: February 24, 2021
RESOLUTION NO. 2021-032

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contractor agreement between the City and Stone & Sons Electrical Contractors, Inc., in the form as attached hereto as Exhibit A, with respect to the installation of a RRFB for the pedestrian crosswalk at the intersection of Church Street and West Jackson Boulevard.

ADOPTED: This 8th day of March, 2021.

__________________________________________
Council President

APPROVED: This 8th day of March, 2021.

__________________________________________
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on March 8, 2021, as same appears in the minutes of record of said meeting.

__________________________________________
City Clerk
AGREEMENT TO INSTALL CROSSWALK EQUIPMENT

STONE & SONS ELECTRICAL CONTRACTORS, INC. (hereinafter referred to as the “Contractor”) enters into this Agreement to Install Crosswalk Equipment (“Agreement”) with the CITY OF MOUNTAIN BROOK, ALABAMA, a municipal corporation (“City”) effective as of the date last executed by a party below (the “Effective Date”).

1. Scope of Project. The Contractor will provide and furnish all labor, materials, equipment, and services necessary to perform the following project (the “Project”) in accordance with the terms, conditions and specifications set forth herein:

- Install a Rapid Rectangular Flashing Beacon (RRFB) system for the crosswalk located at the intersection of Church Street at West Jackson Boulevard in the City of Mountain Brook. Contractor’s operations generally include installation of two (2) 13 foot aluminum poles with transformer bases and concrete foundations, and each pole to be equipped with two (2) RRFB light bars, a controller cabinet, time clock, pedestrian pushbutton and sign assembly, pedestrian crossing sign. Contactor is required to construct a power service and arrange for power with local power service provider, in conjunction with the City.
- Contractor shall provide and install all materials and equipment to be according to the plans prepared by Skipper Consulting, Inc. dated February 19, 2021, which are attached and incorporated herein as Exhibit A; and
- Contractor shall be responsible for utility location and traffic control during construction.

All of the operations to be performed by Contractor on the Project collectively may be referenced herein as the “Work.”

2. Project Schedule. Contractor will order the materials and equipment needed for the Work as soon as possible after the Effective Date. The parties understand that approximately eight (8) weeks may be required before these materials are delivered to the Contractor. Contractor agrees to perform the Work and finish the Project within thirty (30) days after its receipt of the required materials.

3. Termination. The City may terminate this Agreement if the Contractor defaults on a material obligation to the City hereunder (a “Default”), and, following the City’s provision of written notice of Default to Contractor, the Contractor fails to correct or remedy the Default within seven (7) days after receipt of notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available by law.

Additionally and notwithstanding any other provision herein, the City, effective upon provision of written notice to Contractor, may terminate this Agreement without
any liability, penalty or obligation to make payment for services or Work rendered after the effective date of termination if its governing body does not appropriate or allocate funds for payment of the Project. In the event of such termination for non-appropriation, the City shall remain obligated to pay for services or Work furnished prior to termination.

4. **Warranties of Contractor.** The Contractor warrants each of the following with respect to its Work and the Project:

   (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;

   (b) that it, and all of its employees or subcontractors, will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;

   (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, “Licensing”). Contractor further agrees to maintain that Licensing throughout the performance of the Project;

   (d) that it has inspected the locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those sites is reasonably suitable for Contractor to complete the Work;

   (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;

   (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of completion of the Project; and

   (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of the Contractor is authorized to execute this Agreement.
5. Insurance/Safety/Indemnification.

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

(i) Comprehensive General Liability: One Million Dollars ($1,000,000), combined single limit and aggregate for bodily injury and property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than One Million Dollars ($1,000,000) combined single limit and aggregate for bodily injury and property damage; and

(iii) Workers Compensation: Workers’ Compensation as required by statute.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name the City, and its officials and employees, as additional insureds on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b) Safety. Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Work sites, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work sites or adjacent thereto.

(c) Indemnification. The Contractor agrees to defend, indemnify, and hold harmless the City, and its agents, employees and officials (hereinafter the “Indemnitees”) from and against all demands, actions, liabilities, expenses (including reasonable attorney’s fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a “Contractor Representative”) that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall
obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

(d). Waiver of Consequential Damages. In no event may Contractor recover from the City 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 City’s breach of its obligations hereunder.

6. Compensation to Contractor. The total lump sum amount payable by the City to the Contractor for the Work (inclusive of any material and equipment to be supplied by it) shall be Thirty Seven Thousand One Hundred Three & 00/100 Dollars ($37,103.00, hereinafter the “Contractor Charge”).

Upon certification from the City Project Representative that Contractor has successfully completed the Project, Contractor will submit an invoice for the entire Contractor Charge, and the City will remit payment for any undisputed amount of that Charge within thirty (30) days after receipt of that invoice.

7. Project Representative. The parties appoint the following respective representative who shall coordinate with the other party on all matters related to the performance of the Work and the administration of this Agreement (the “Project Representative”):

City Project Representative:

Richard Caudle, P.E.
Skipper Consulting, Inc.
3644 Vann Road Suite 100
Birmingham, Alabama 35235
Email: richard@skipperinc.com
Office (205) 655-8855 fax (205) 655-8825

Contractor Project Representative:

J. Mark Roupe
Project Manager
2530 Queenstown Road
Birmingham, AL 35210
Email: mrouve@stoneandsons.com
Office (205) 833-8494 fax (205) 833-9390

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.

a. This Agreement sets forth the entire understanding between the parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between the parties prior to acceptance and signing of this Agreement are deemed to have merged herein. This Agreement may not be modified or amended except in a writing that is signed by all parties.

b. 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.

c. Any forbearance or delay on the part of the City 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.

d. The Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of the City, which consent may be withheld for any reason.

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

f. Contractor is an independent contractor of the City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the City and Contractor. Further, the City retains no control or authority with respect to its means and methods in which the Contractor (or any of its employees or representatives) performs the Work.

g. Immigration Law Compliance. The Contractor represents and warrants to the City 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 will enroll in the E-Verify program prior to performing any work 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 Contractor 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. The Contractor 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 Contractor 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.

(Signature Page Follows)
IN WITNESS WHEREOF the undersigned, duly authorized representatives of the parties have executed this Agreement on behalf of their respective organization.

STONE & SONS ELECTRICAL CONTRACTORS, INC.

By: __________________________

Its: __________________________

Date: __________________________

CITY OF MOUNTAIN BROOK, ALABAMA

By: __________________________

Its: Mayor

Date: __________________________
See attached.
CONSTRUCTION NOTES

1. PAVEMENT MARKING SHOWN FOR ILLUSTRATIVE PURPOSES ONLY UNLESS OTHERWISE NOTED.

2. EQUIVALENT EQUIPMENT FROM OTHER MANUFACTURERS OF RFBF TECHNOLOGY MAY BE SUBMITTED FOR APPROVAL TO THE CITY.

3. THE FOLLOWING EQUIPMENT SHALL BE PAINTED "MOUNTAIN BROOK" GREEN POCIES, POLE CAPS, CABINETS, AND TRANSFORMER Bases. PAINT COUES APPROVED FOR USE INCLUDE RAL 6012, FEDERAL STANDARD 595A, OR HDX COLOR CODE 343X40.

4. ALL EQUIPMENT REMOVED SHALL BE DELIVERED TO A LOCATION SPECIFIED BY THE CITY OF MOUNTAIN BROOK.

5. INSTALLER TO VERIFY POLE LOCATIONS WILL MEET ADA REQUIREMENTS FOR SHADOWING BEAK PRIOR TO INSTALLATION OF FOUNDATIONS.

6. INSTALLER IS RESPONSIBLE FOR LOCATING UTILITIES PRIOR TO EXCAVATION.

7. FLASH DURATION SHALL BE INITIALLY PROGRAMMED FOR 15 SECONDS USING 180 MM S. FLASH PATTERN AND 50 MM S. FLASH RATE.

8. INSTALLER TO PROVIDE EQUIPMENT SUBMITTALS TO THE CITY FOR APPROVAL PRIOR TO ORDERING EQUIPMENT.

9. INSTALLER TO PROVIDE TRAFFIC CONTROL AS PER MUTCD PAR 6 DURING CONSTRUCTION ACTIVITIES.

10. TIME CLOCK SHALL BE INSTALLED AND PROGRAMMED TO FLASH ALL BEACONS CONTINUALLY FROM 7:30-7:30 AM AND 2:45-2:55 PM MONDAY-FRIDAY FROM AUGUST 8 TO MAY 28 EVERY YEAR.

EXISTING REQUIRED LEGEND

- SIGN ON U-CHANNEL POST
- T EMPLE ASSEMBLY
- JUNCTION BOX
- POWER POLE
- POWER SERVICE POLE
- DIRECTIONAL BORE
- CONDUIT

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* EQUIPMENT AND MATERIALS SHOWN ARE ESTIMATES. THE CONTRACTOR IS RESPONSIBLE FOR DETERMINING ALL EQUIPMENT AND MATERIALS REQUIRED TO INSTALL A COMPLETE TRAFFIC SIGNAL INSTALLATION.
RAPID RECTANGULAR FLASHING BEACON ASSEMBLY
March 4, 2021

City of Mountain Brook
C/O Skipper Consulting

RE: RRFB Church @ W. Jackson Blvd

Attn: Richard Caudle

Richard,

Our price for the RRFB for Church @ W. Jackson Blvd based on your drawings dated 2/19/21 will be as follows:

$37,103.00

Best Regards,

J. Mark Roupe
Project Manager
RESOLUTION NO. 2021-033

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby awards the bid for the purchase of night vision monocular units for the City’s Police Department to Gulf States Distributors having submitted the best bid and having determined that the units satisfy the expressed specifications.

ADOPTED: This 8th day of March, 2021.

__________________________________________
Council President

APPROVED: This 8th day of March, 2021.

__________________________________________
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on March 8, 2021, as same appears in the minutes of record of said meeting.

__________________________________________
City Clerk
BID TABULATION AND RECOMMENDATION

BID NUMBER B-20201125-703

CITY OF MOUNTAIN BROOK

PVS 14 Night Vision Monocular

Four bids were received on March 1, 2021 by 2:00 pm at the Mountain Brook City Hall for the purchase of fifteen PVS 14 Night Vision Monocular units.

Gulf States Distributors $64,110.00
TNVC Inc. $60,180.00
Dana Safety Supply $68,685.00
Precision Delta $69,750.00

It is my recommendation to award the bid to and/or choose to purchase the product from Gulf States Distributors (Montgomery, AL) as Gulf State Distributors is the lowest responsible bidder, taking into consideration the qualities of the items proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges, and the dates of delivery.

The bid from TNVC was lower; however, it will take approximately 20-24 weeks from the time of purchase for the product to be shipped from TNVC Inc. The time it would take for TNVC to ship the product (20-24 weeks) could cause the delivery and payment to not fall within the current fiscal budget. Moreover, the equipment is needed by the MBPD more immediately and, a 5 to 6 month delivery time is excessive, especially when compared to the delivery times in other bids. In the Invitation to Bid, the City reserved the right to purchase units from other bidders in the event that products could not be supplied within thirty (30) days of order. TNVC has indicated that they cannot supply the products within such time.

The second lowest bid was by Gulf States Distributors. The EOTech night vision unit specified by Gulf States Distributors was in stock at the time of receiving the
bids and is available for expedited delivery; therefore, the police department would receive the product much sooner. It, like all of the products included in the bids, met technical specifications. The products provided by all four of the companies have generation 3 white phosphor light intensifier tubes made by L3 Harris; therefore, the products are similar in nature.

The Tactical Team was also able to test and evaluate an EOTech PVS 14 night vision unit from Precision Delta. It fully met the Team’s expectations. This unit is the same product that is provided by Gulf States Distributors. I was unable to test and evaluate the PVS-14 night vision unit provided by TNVC.

Despite meeting all other specifications, the EOTech night vision unit does not come with a 5 year warranty, which is not to the warranty specification called for.

Nonetheless, given all the facts and circumstances, I submit that the lowest responsible bidder is Gulf States Distributors. Although the warranty of the item specified has a shorter term than that requested, the time of delivery is an essential factor and the more immediate delivery terms of Gulf States simply outweighs the longer warranty and slightly lower unit cost of TNVC.

The bids by Dana Safety Supply and Precision Delta were too expensive to consider.

Sgt. Cory Towns

Mountain Brook Police Department

Patrol Division
RESOLUTION NO. 2021-034

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of a contractor agreement between the City and Alabama Guardrail, Inc., in the form as attached hereto as Exhibit A, with respect to the installation of guardrail on Montevallo Road at Crestview Drive.

ADOPTED: This 8th day of March, 2021.

____________________________________
Council President

APPROVED: This 8th day of March, 2021.

____________________________________
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on March 8, 2021, as same appears in the minutes of record of said meeting.

____________________________________
City Clerk
CONTRACTOR AGREEMENT

Alabama Guardrail, Inc. (hereinafter the “Contractor”) enters this Contractor Agreement (“Agreement”) with the City of Mountain Brook, Alabama, a municipal corporation (“City”), effective as of the date last executed by a party below (the “Effective Date”). Contractor and City may be individually referenced herein as “Party” or collectively as “Parties.”

1. Project. Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the “Work”) Montevallo Road at Crestview Dr. (the site”) in accordance with the terms, conditions, and specifications in this Agreement and on Exhibit A (the “Project”)

2. Term/Termination. The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for six (6) months (the “Term”). The period in which Contractor will complete the Project is set forth on Exhibit A.

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a “Default”); and (b) following the City’s provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to City under law or in equity.

3. Contract Price/Invoice/Certification. As stated on Contractor’s December 21, 2020 Quote Sheet that is attached to Exhibit A (the “December 21, 2020 Contractor Proposal”), Contractor estimates Nine Thousand One Hundred Twenty-Five Dollars ($9,125.00) is the total amount it will be paid to perform the work (the “Contract Price”). Notwithstanding, City agrees to compensate Contractor based on actual quantities installed at the Per Unit Price set forth on December 21, 2020 Contractor Proposal.

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Total amount it determines is payable by the City for the entirety of the work. With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.
4. **Warranties of Contractor.** The Contractor warrants each of the following with respect to its Work:

(a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;

(b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;

(c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;

(d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;

(e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;

(f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of acceptance of the Project; and

(g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

5. **Insurance/Safety/Indemnification.**

(a) Insurance. For the duration of this Agreement and for limits not less than stated below, Contractor, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:
(i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars ($750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars ($750,000.00) combined single limit and aggregate for bodily injury and property damage;

(iii) 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.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name City as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

(b). Safety. Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard at the Site or other locations on City property that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c). Indemnification. Contractor agrees to defend, indemnify, and hold harmless City and its agents, employees and officials (hereinafter collectively, the “Indemnitees”) from and against all demands, actions, liabilities, expenses (including reasonable attorney’s fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a “Contractor Representative”) that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.
(d). Limitation of Liability. In no event may Contractor recover from the City 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 City's breach of its obligations hereunder.

7. Project Representative. Each Party shall appoint and indicate on Exhibit A its representative who shall coordinate with the other Party on all matters related to the performance of the Work 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.


a. This Agreement (which includes Exhibit A) is comprised of this instrument, and the December 21, 2020 Contractor Proposal. These instruments sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (including Exhibit A); and (2) the December 21, 2020 Contractor Proposal.

b. 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.

c. Any forbearance or delay on the part of City 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.

d. Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of City, which consent may be withheld for any reason.

e. 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.

f. Contractor is an independent contractor of City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Parties.
Further, City retains no control or authority with respect to its means and methods in which Contractor (or any of its employees or representatives) performs the Work.

h. Immigration Law Compliance. Contractor represents and warrants to the City 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 will enroll in the E-Verify program prior to performing any work 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 Contractor 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. Contractor 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 Contractor 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.

i. Amendment. Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Scope, Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

j. Delayed Performance/Force Majeure Events. Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement 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.

k. This Agreement shall be governed by, and construed 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

By: ________________________________

Its: Mayor: ____________________________

Date: ________________________________

ALABAMA GUARDRAIL, INC

By: ________________________________

Its: ________________________________

Date: ________________________________
EXHIBIT A – SPECIFICATIONS

1. **Scope of Work.**

   Install 135 feet of Cor-Ten guardrail along Montevallo Road starting at Crestview Drive. (the"Scope")

If Contractor desires or is required to perform services on the Project that fall outside the Scope ("Additional Operations"), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same.

2. **Project Schedule.** Contractor will commence performing the Work within two (2) days after the City issues a Notice to Proceed, and successfully complete the Project within thirty (30) days following its receipt of that notice.

3. **Project Representatives.**

   City Project Representative:  
   Daniel Davis  
   3579 East Street  
   Mountain Brook, Al 35243  
   Email: davisda@mtnbrook.org  
   Day Tel #: 205-802-3869

   Contractor Project Representative:  
   Keith Dillard  
   PO Box 126  
   Cleveland, Al 35048  
   Email: lneel@guardrail.com  
   Day Tel #205-625-3880

4. **Special Conditions.**

   Contractor shall be responsible for all traffic control.
ALABAMA GUARDRAIL, INC.  
P O BOX 126  
CLEVELAND, ALABAMA 35049  
TE LE PHONE (205) 625-3880  
FACSIMILE (205) 625-3879  

QUOTE SHEET  

TO:  
Daniel Davis  

FROM:  
KEITH DILLARD  

COMPANY:  
City of Mountain Brook  

DATE:  
December 21, 2020  

FAX/EMAIL:  
davis@mtnbrook.org  

TOTAL NO. OF PAGES INCLUDING COVER:  
1  

PHONE NUMBER:  
205-802-3869  

RE:  
YOUR REFERENCE NUMBER:  

QUOTE: CITY OF MOUNTAIN BROOK - COR-TEN GUARDRAIL  

We respectfully submit the following quote for guardrail material and installation, as per your request, on your project: Montevallo Rd at Crestview Drive  

<table>
<thead>
<tr>
<th>ITEM DESCRIPTION</th>
<th>QUANTITY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>EXTENDED PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steel Beam Guardrail Class A Type 2</td>
<td>135</td>
<td>LF</td>
<td>$ 65.00</td>
<td>$ 8,775.00</td>
</tr>
<tr>
<td>Guardrail End Treatment (1 half Round)</td>
<td>2</td>
<td>EA</td>
<td>$ 175.00</td>
<td>$ 350.00</td>
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<td></td>
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<td></td>
<td></td>
<td>TOTAL QUOTE AMOUNT: $ 9,125.00</td>
</tr>
</tbody>
</table>

- All quotes are based on customer provided quantities.  
- Payment is due on actual quantities installed. Quote is approximate quantities  
- Alabama Guardrail, Inc. is not responsible for utilities.  
- Presence of any existing utilities will need to be relocated before installation.  
- Price is good for 60 days.  
- Request contract be issued Per Unit Price, lump sum contract not acceptable.  
- Quote based on the assumption there will be normal working conditions.  
- Quote assumes rock will not be encountered.  

We are pleased to submit this quote for consideration. If approved, a Purchase Order, Work Agreement or Contract will be required prior to scheduling the work to be done. Thank you for thinking of us for your guardrail needs.  

Keith Dillard  
Keith Dillard, President
Below in red are the terms I suggested to American Tower. The last black bullet Mr. Felder suggested to help sell these terms to his management. His notes say there is no additional space available. I told him I was not sure if there was due to the terrain but that if he can squeeze out another 1,000 to 1,200 SF I doubt the Council will object considering the site cannot be used for anything else. He stated that Verizon generally likes additional space to co-locate. He understands that these terms are just me and him talking and that the City Council will have to review and approve.

The next steps will be for Mr. Felder to seek preliminary approval from his management. If they agree, they will either send back a formal amendment for your consideration or an informal consent to the terms.

If any of you object to any of these proposed terms, let me know now before I send back to American Tower for their review.

"Following are the terms I will circulate to my elected officials if agreeable to your counterparties to the lease.

- Term would remain unchanged **Am. Tower Proposed $24882 rent (50%)**
- Reduce the annual base rent by 50% Reduce from $49,764 to $40,000 (~ 20%)
- Reduce term escalator on rent from 20% to 12% ever five years **Am. Tower sought to reduce escalator to 10%**
- Guarantee rent to the landlord for the next 10 years $40,000 plus 12% escalations every 5-years?
- $10,000 consideration to renegotiate the terms.
- City to consider expanding the footprint of the leased space by 1,000 to 1,200 square feet, if feasible, to accommodate other carriers subject to sublease terms of the lease agreement.

--

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
SECOND AMENDMENT TO TOWER SITE SUBLEASE AGREEMENT

This Second Amendment to Tower Site Sublease Agreement (this “Amendment”) is made effective as of the latter signature date hereof (the “Effective Date”) by and between City of Mountain Brook, Alabama, an Alabama municipal corporation (“Landlord”) and American Tower Asset Sub, LLC, a Delaware limited liability company (“Tenant”) (Landlord and Tenant being collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, the Board of Education of the City of Mountain Brook ("Board") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on Exhibit A attached hereto and by this reference made a part hereof (the “Parent Parcel”) and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 26, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama; and

WHEREAS, Landlord and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (the “Original Lease”) as amended by that certain The First Amendment to Tower Site Sublease Agreement (the "First Amendment"; the Original Lease and the First Amendment, collectively, the “Lease”), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the “Leased Premises”), which Leased Premises are also described on Exhibit A; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of Ten Thousand and No/100 Dollars ($10,000.00), payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant’s receipt of this Amendment executed by Landlord, on or before December 1, 2020; (b) Tenant’s confirmation that Landlord’s statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord’s right to sublease the Leased Premises to Tenant; (c) Tenant’s receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein.

2. **Memorandum of Lease.** The Landlord hereby agrees to execute and return to Tenant an original recordable Memorandum of Lease in the form and of the substance attached hereto as Exhibit B and by this reference made a part hereof (the “Memorandum”) executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. **Rent and Escalation.** Commencing with the second rental payment due following the Effective Date, the rent payable from Tenant to Landlord is hereby reduced to Forty Thousand and No/100 Dollars ($40,000.00) per year (the “Rent”). Commencing on December 1, 2022 and on the beginning of each renewal term thereafter, Rent due under the Lease, as amended hereby, shall increase by an amount equal to twelve percent (12%) of the then current Rent. In the event of any overpayment of Rent or additional rent (as described in Section 11 of the Original Lease) prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the
overpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to the CITY OF MOUNTAIN BROOK ALABAMA. The escalations in this Section shall be the only escalations to the Rent and any/all rental escalations otherwise contained in the Lease are hereby null and void and are of no further force and effect.

4. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. In the event there is a conflict between the Lease and this Amendment, this Amendment shall control. The Parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant’s activities at and uses of the site prior to the Effective Date, Landlord’s execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent and/or approval from, or to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant’s interest in this Lease, as modified by this Amendment. Tenant and Tenant’s sublessees and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way on a 24 hours per day, 7 days per week basis, together with utilities services to the Leased Premises from a public right of way. Tenant shall fully comply with all municipal ordinances governing its operations, including but not limited to zoning, telecommunication and building code ordinances. To the extent approval is necessary from governmental agencies other than the City of Mountain Brook, Landlord authorizes Tenant, its subtenants and licensees, and their agents to file applications or seek approval with other such authorities or agencies for Tenant’s intended use of the Leased Premises. Upon request by Tenant and at Tenant’s sole cost and expense but without additional consideration owed to Landlord, Landlord hereby consents to, and agrees to promptly execute and return to Tenant applications and other forms and documents, including a memorandum of lease or any appeals related to the value of the Leased Premises, as required for the approval or use of the Leased Premises by Tenant and/or Tenant’s customers, licensees, and sublessees. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.

5. **Termination and Removal.** Within 120 days of the expiration or termination of the Lease, Tenant shall remove all of its above-ground communications equipment and other personal property from the Leased Premises, but not including underground utilities, if any, and restore the Leased Premises to its original condition, reasonable wear and tear excepted.

6. **Tenant’s Right to Expand Leased Premises.** For good and valuable consideration, the receipt adequacy and sufficiency of which are hereby acknowledged, Landlord hereby grants to Tenant an irrevocable option to expand the Leased Premises to include an additional one thousand two hundred (1,200) square feet contiguous to the Leased Premises, the shape and location of which shall be mutually agreed upon by the Parties (the “Expansion Area”). Tenant may, by written notice to Landlord, exercise said option, in Tenant’s sole and absolute discretion, at any time during the term of the Lease (as the same may be extended from time to time). In connection with this option to expand, Tenant, its agents, employees and independent contractors, shall have the right to enter upon that portion of the Parent Parcel lying beyond the Leased Premises at any time for purposes of evaluating the land and to perform (or cause to be performed) test borings of the soil, environmental audits, engineering studies and to conduct a boundary, as-built or similar survey of all (or any portion of) the Expansion Area to be prepared by a surveyor duly licensed under the laws of the state in which the Expansion Area is located. Said right of Tenant shall include, without limitation, the right to clear trees, brush and other obstructions which may interfere, in Tenant’s sole discretion, with Tenant’s ability to conduct such evaluation activities. Landlord
agrees to execute an amendment to the Lease to reflect the addition of the Expansion Area to the Leased Premises, within thirty (30) days of receipt by Landlord, in a form which is recordable in the jurisdiction in which the Leased Premises is located. Until such time as Tenant exercises said option, if ever, Landlord hereby agrees to give Tenant no less than ninety (90) days prior notice prior to entering into a lease or other use or occupancy agreement pertaining to any portion of the Parent Parcel. During the foregoing ninety (90) day period, Tenant may elect to designate the Expansion Area by written notice to Landlord, in which case such Expansion Area would no longer be available for Landlord to lease to a third party.

7. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the leasehold owner of the Leased Premises; (v) to the best of Landlord’s knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant’s rights under the Lease, as amended and modified by this Amendment; (vi) so long as Tenant performs its obligations under the Lease, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises, and Landlord shall not act or permit any third person to act in any manner which would interfere with or disrupt Tenant or Tenant’s customers’ use of the Leased Premises and (vii) the square footage of the Leased Premises is the greater of Tenant’s existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment.

8. **Confidentiality.** The Parties acknowledge and agree that Section 6 of the First Amendment is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to confidentiality shall be controlled by this Section of this Amendment. Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential to the extent permitted by law. Except with Landlord’s family, attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.

9. **Notices.** The Parties acknowledge and agree that Section 17 of the Original Lease and Section 7 of the First Amendment are hereby deleted in their entirety and are of no further force and effect. From and after the Effective Date the notice address and requirements of the Lease, as modified by this Amendment, shall be controlled by this Section of this Amendment. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: 56 Church St, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner
provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

10. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.

11. **Waiver.** THE PARTIES ACKNOWLEDGE AND AGREE THAT SECTION 10 OF THE FIRST AMENDMENT IS HEREBY DELETED IN ITS ENTIRETY AND IS OF NO FURTHER FORCE AND EFFECT. FROM AND AFTER THE EFFECTIVE DATE AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL LANDLORD OR TENANT BE LIABLE TO THE OTHER FOR, AND LANDLORD AND TENANT HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OF BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES.

12. **Tenant’s Securitization Rights; Estoppel.** The Parties acknowledge and agree that Section 11 of the First Amendment is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to Tenant’s securitization rights shall be controlled by this Section of this Amendment. Landlord hereby consents to the granting by Tenant of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a “Security Interest”) in Tenant’s interest in this Lease, as amended, and all of Tenant’s property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant’s mortgagee (“Tenant’s Mortgagor”) of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a “Holder”) as “Tenant” hereunder in the event a Holder succeeds to the interest of Tenant hereunder by the exercise of such remedies. Provided, however, that in such case, the rights of the Holder shall not, under any circumstances, be greater than those granted to Tenant under the Lease and this Amendment. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Holder.

13. **Taxes.** The Parties acknowledge and agree that Section 12 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to taxes shall be controlled by this Section of this Amendment. During the term of the Lease, as modified by this Amendment, Tenant shall pay when due all real property, personal property, and other taxes, fees, and assessments that are directly attributable to Tenant’s improvements on the Leased Premises (the “Applicable Taxes”) directly to the local taxing authority to the extent that the Applicable Taxes are billed directly to Tenant. Tenant hereby agrees to reimburse Landlord for any Applicable Taxes billed directly to Landlord (which shall not include any taxes or other assessments attributable to periods prior to the Effective Date). Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of any Applicable Taxes along with proof of payment of the same by Landlord. Landlord shall submit requests for reimbursement in writing to: American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801 unless otherwise directed.
by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Landlord. Anything to the contrary notwithstanding, Landlord is only eligible for reimbursement if Landlord requests reimbursement within one (1) year after the date such taxes became due. Additionally, Landlord shall not be entitled to reimbursement for any costs associated with an increase in the value of Landlord's real property calculated based on any monetary consideration paid from Tenant to Landlord. If Landlord fails to pay when due any real property, personal property, and other taxes, fees, and assessments affecting the Parent Parcel, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord's behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord's behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord's behalf by any lawful means.

14. **Termination.** The Parties acknowledge that Section 10(a) of the Original Lease shall be deleted in its entirety and replaced with the following:

"(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within 60 days of receipt of written notice of default (without, however, limiting the rights available to the parties pursuant to any other provisions hereof); provided, that the default is of the type which may not reasonably be cured within 60 days and if the defaulting party commences efforts to cure the default within such 60-day period and uses its best good faith efforts to cure such default within a reasonable time, the non-defaulting party shall not longer be entitled to declare a default."

15. **Deletions.** The Parties acknowledge and agree that Sections 9(a), 10(b), 20 of the Lease are hereby deleted in their entirety and are of no further force and effect.

16. **Conflict/Capitalized Terms.** The Parties hereby acknowledge and agree that in the event of a conflict between the terms and provisions of this Amendment and those contained in the Lease, the terms and provisions of this Amendment shall control. Except as otherwise defined or expressly provided in this Amendment, all capitalized terms used in this Amendment shall have the meanings or definitions ascribed to them in the Lease. To the extent of any inconsistency in or conflict between the meaning, definition, or usage of any capitalized terms in this Amendment and the meaning, definition, or usage of any such capitalized terms or similar or analogous terms in the Lease, the meaning, definition, or usage of any such capitalized terms in this Amendment shall control.

[SIGNATURES FOLLOW ON NEXT PAGE]
LANDLORD:

City of Mountain Brook, Alabama, an Alabama municipal corporation

Signature: __________________________
Print Name: ________________________
Title: _____________________________
Date: _____________________________

[SIGNATURES CONTINUE ON NEXT PAGE]

Site No: 300249
Site Name: Liberty Parkway
TENANT:

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: ___________________________
Print Name: __________________________
Title: _______________________________
Date: _______________________________
EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord’s deed (or deeds) that include the land area encompassed by the Lease and Tenant’s improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

Tract One:

Beginning at the Southeast corner of Section 2, Township 18 South Range 2 West of the Huntsville Principal Meridian, run West along the South line of said Section 2, 2703.25 feet; thence 135°00’ right 372.00 feet; thence 12°30’ left 258.00 feet; thence 58°00’ right 289.00 feet; thence 17°00’ right 83.68 feet; thence 17°00’ left 185.00 feet; thence 90°00’ left 440.00 feet; thence 19°00’ left 451.20 feet to the North line of the SW ¼ of the SE ¼ of said Section 2; thence 108°34’ right 1846.30 feet along said North line of SW ¼ of the SE ¼ and the north line of the SE ¼ of the right 1318.0 feet along said East line to the point of beginning, containing 50 acres or more.

LESS AND EXCEPT:

That property conveyed to the State of Alabama by virtue of a deed recorded in Book 1130 at Page 359.

Being Jefferson County County APN 28-00-02-4-001-020.000.

Tract Two:

That certain tract of land described as Jefferson County APN 28-00-02-4-001.002, and being described in Deed Book 3543, Page 5, Jefferson County, Alabama.
EXHIBIT A (Continued)

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant’s (and Tenant’s customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THENCE ALONG THE EASTERLY SECTION LINE OF SAID SECTION, NORTH 00°56' 11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THENCE LEAVING SAID THE EASTERLY SECTION LINE AND RUNNING ALONG A TIE-LINE, NORTH 64°56'16" WEST, 207.95 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE RUNNING, SOUTH 16°36'56" WEST, 35.27 FEET TO A POINT; THENCE, SOUTH 73°23'18" WEST, 64.38 FEET TO A POINT; THENCE, NORTH 35°16'17" WEST, 23.30 FEET TO A POINT; THENCE, NORTH 23°54'21" EAST, 56.62 FEET TO A POINT; THENCE, SOUTH 73°23'01" EAST, 65.00 FEET TO A POINT AND THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 0.0874 ACRES (3,809 SQUARE FEET), MORE OR LESS.
EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right of way.

TOGETHER WITH AN EXISTING 20-FOOT WIDE INGRESS-EGRESS AND UTILITY EASEMENT LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, CITY OF MOUNTAIN BROOK, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THENCE ALONG THE EASTERLY SECTION LINE OF SAID SECTION, NORTH 00°56'11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THENCE LEAVING SAID EASTERLY SECTION LINE AND RUNNING ALONG A TIE LINE, NORTH 64°56'16" WEST, 207.95 FEET TO A POINT; THENCE, SOUTH 16°36'56" WEST, 35.27 FEET TO A POINT; THENCE, SOUTH 79°23'18" WEST, 64.38 FEET TO A POINT; THENCE, NORTH 35°15'17" WEST, 23.30 FEET TO A POINT; THENCE, NORTH 23°54'21" EAST, 46.62 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE RUNNING, NORTH 75°23'01" WEST, 10.00 FEET TO A POINT; THENCE, NORTH 14°57'32" EAST, 227.92 FEET TO A POINT; THENCE, NORTH 55°43'30" EAST, 196.86 FEET TO A POINT; THENCE, NORTH 02°03'36" EAST, 52.71 FEET TO A POINT; THENCE, NORTH 19°06'22" WEST, 109.86 FEET TO A POINT; THENCE, NORTH 34°42'41" WEST, 228.89 FEET TO A POINT; THENCE, NORTH 43°50'21" WEST, 106.99 FEET TO A POINT; THENCE, NORTH 49°31'03" WEST, 164.86 FEET TO A POINT; THENCE, NORTH 53°23'24" WEST, 59.46 FEET TO A POINT; THENCE, 112.36 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 63.34 FEET AND BEING SSCRIBED BY A CHORD BEARING NORTH 02°34'21" WEST, 98.19 FEET, TO A POINT; THENCE, NORTH 58°22'04" EAST, 61.92 FEET TO A POINT; THENCE, NORTH 71°57'10" EAST, 93.02 FEET TO A POINT; THENCE, NORTH 78°35'05" EAST, 46.16 FEET TO THE ENDING AT A POINT ON THE WESTERN RIGHT-OF-WAY LINE OF INTERSTATE 459 (HAVING A VARIABLE WIDTH RIGHT-OF-WAY), SAID POINT HAVING A ALABAMA WEST STATE PLANE COORDINATE VALUE OF NORTHING: 1271495.27, EASTING: 2209392.51, ALSO BEING THE TERMINUS OF EASEMENT.
EXHIBIT B

FORM OF MEMORANDUM OF LEASE
MEMORANDUM OF LEASE

This Memorandum of Lease (the "Memorandum") is entered into on the __________ day of ________________, 202___ by and between City of Mountain Brook, Alabama, an Alabama municipal corporation ("Landlord") and American Tower Asset Sub, LLC, a Delaware limited liability company ("Tenant").

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. Parent Parcel and Lease. The Board of Education of the City of Mountain Brook ("Board") is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on Exhibit A – attached hereto and by this reference made a part hereof (the "Parent Parcel") and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 26, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama. Landlord and Tenant (or its predecessor) entered into that certain Tower Site Sublease Agreement, dated November 1, 1997 (as the same may have been amended from time to time, collectively, the "Lease"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "Leased Premises"), which Leased Premises is also described on Exhibit A.

2. Expiration Date. Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be November 30, 2042. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.

3. Leased Premises Description. Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared
and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on Exhibit A with a legal description or legal descriptions based upon such as-built survey. Upon Tenant’s request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.

4. **Effect/Miscellaneous**. This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.

5. **Notices**. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: 56 Church St, Mountain Brook, AL 35213, To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

6. **Counterparts**. This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

7. **Governing Law**. This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

[SIGNATURES FOLLOW ON NEXT PAGE]
IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day first above written.

LANDLORD

City of Mountain Brook, Alabama,
an Alabama municipal corporation

Signature: ____________________________
Print Name: __________________________
Title: ________________________________
Date: ________________________________

2 WITNESSES

Signature: ____________________________
Print Name: __________________________

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of ________________________
County of ________________________________

On this ___ day of _______________________, 202___, before me, the undersigned Notary Public, personally appeared ________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Notary Public
Print Name: _________________________
My commission expires: ________________

[SEAL]

(SIGNATURES CONTINUE ON NEXT PAGE)
American Tower Asset Sub, LLC,
a Delaware limited liability company

TENANT

Signature: ______________________________
Print Name: ______________________________
Title: ______________________________
Date: ______________________________

WITNESSES

Signature: ______________________________
Print Name: ______________________________

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this ___ day of ________________________, 202___, before me, the undersigned Notary Public,
personally appeared ________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

________________________________
Notary Public
Print Name: ______________________________
My commission expires: __________________

[SEAL]

Site No: 300249
Site Name: Liberty Parkway
EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

Tract One:

Beginning at the Southeast corner of Section 2, Township 18 South Range 2 West of the Huntsville Principal Meridian, run West along the South line of said Section 2, 2703.25 feet; thence 135°00' right 372.00 feet; thence 12°30' left 258.00 feet; thence 58°00' right 289.00 feet; thence 17°00' right 83.68 feet; thence 17°00' left 185.00 feet; thence 90°00' left 440.00 feet; thence 19°00' left 451.20 feet to the North line of the SW ¼ of the SE ¼ of said Section 2; thence 108°34' right 1846.30 feet along said North line of SW ¼ of the SE ¼ and the north line of the SE ¼ of the right 1318.0 feet along said East line to the point of beginning, containing 50 acres or more.

LESS AND EXCEPT:

That property conveyed to the State of Alabama by virtue of a deed recorded in Book 1130 at Page 359.

Being Jefferson County County APN 28-00-02-4-001-020.000.

Tract Two:

That certain tract of land described as Jefferson County APN 28-00-02-4-001.002, and being described in Deed Book 3543, Page 5, Jefferson County, Alabama.
EXHIBIT A (Continued)

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant’s (and Tenant’s customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THENCE ALONG THE EASTERLY SECTION LINE OF SAID SECTION, NORTH 00°56'11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THENCE LEAVING SAID THE EASTERLY SECTION LINE AND RUNNING ALONG A TIE-LINE, NORTH 64°56'16" WEST, 207.95 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE RUNNING, SOUTH 16°36'56" WEST, 35.27 FEET TO A POINT; THENCE, SOUTH 73°23'18" WEST, 64.38 FEET TO A POINT; THENCE, NORTH 35°15'17" WEST, 23.30 FEET TO A POINT; THENCE, NORTH 23°54'21" EAST, 56.62 FEET TO A POINT; THENCE, SOUTH 73°23'01" EAST, 65.00 FEET TO A POINT AND THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 0.0874 ACRES (3,809 SQUARE FEET), MORE OR LESS.
EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right of way.

TOGETHER WITH AN EXISTING 20-FOOT WIDE INGRESS-EGRESS AND UTILITY EASEMENT LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, CITY OF MOUNTAIN BROOK, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THENCE ALONG THE EASTERLY SECTION LINE OF SAID SECTION, NORTH 00°56'11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THENCE LEAVING SAID EASTERLY SECTION LINE AND RUNNING ALONG A TIE-LINE, NORTH 64°56'16" WEST, 207.96 FEET TO A POINT; THENCE, SOUTH 16°36'55" WEST, 35.27 FEET TO A POINT; THENCE, SOUTH 79°23'18" WEST, 64.38 FEET TO A POINT; THENCE, NORTH 35°15'17" WEST, 23.30 FEET TO A POINT; THENCE, NORTH 23°54'21" EAST, 46.62 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE RUNNING, NORTH 73°23'01" WEST, 10.00 FEET TO A POINT; THENCE, NORTH 14°57'32" EAST, 227.92 FEET TO A POINT; THENCE, NORTH 55°43'30" EAST, 196.86 FEET TO A POINT; THENCE, NORTH 02°03'36" EAST, 52.71 FEET TO A POINT; THENCE, NORTH 19°06'22" WEST, 109.86 FEET TO A POINT; THENCE, NORTH 34°42'41" WEST, 228.89 FEET TO A POINT; THENCE, NORTH 43°50'21" WEST, 106.99 FEET TO A POINT; THENCE, NORTH 49°31'03" WEST, 164.86 FEET TO A POINT; THENCE, NORTH 53°23'24" WEST, 59.46 FEET TO A POINT; THENCE, 112.36 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 63.34 FEET AND BEING Scribed BY A CHORD BEARING NORTH 02°34'21" WEST, 98.19 FEET TO A POINT; THENCE, NORTH 58°22'04" EAST, 61.92 FEET TO A POINT; THENCE, NORTH 71°57'10" EAST, 93.02 FEET TO A POINT; THENCE, NORTH 78°35'05" EAST, 46.16 FEET TO THE ENDING AT A POINT ON THE WESTERN RIGHT-OF-WAY LINE OF INTERSTATE 459 (HAVING A VARIABLE WIDTH RIGHT-OF-WAY), SAID POINT HAVING A ALABAMA WEST STATE PLANE COORDINATE VALUE OF NORTING: 1271495.27, EASTING: 2209392.51, ALSO BEING THE TERMINUS OF EASEMENT.

Site No: 300249
Site Name: Liberty Parkway
Instructions for completing the Resolution and Consent Affidavit

*IMPORTANT INFORMATION BELOW*

In order to avoid delays in the completion of this transaction, the Resolution and Consent Affidavit must be signed by ALL Members, Partners, Directors, Shareholders, Officers or Trustees of the organization. Section 6 of this form allows for the organization to appoint one person to sign the remaining documents but **ONE HUNDRED PERCENT (100%)** of the ownership or voting interest of the organization must sign this first. Failure to comply with these instructions or properly indicate the percentage of ownership and/or voting interest will result in delays and could require the documents to be re-executed. If you have any questions, please contact your land lease representative.
RESOLUTION

City of Mountain Brook, Alabama, an Alabama municipal corporation

Be it known that, the City Council of the City of Mountain Brook, Alabama (the “Landlord”) does hereby declare and resolve the following:

1. Landlord has leased or subleased a portion of land to American Tower Asset Sub, LLC, a Delaware limited liability company (the “Tenant”) under a Tower Site Sublease Agreement originally dated November 1, 1997 (as the same may have been amended, renewed, extended, restated or otherwise modified, collectively, the “Lease”).

2. Landlord and Tenant desire to enter into an amendment of the Lease (the “Amendment”) in order to further amend the Lease as more particularly set forth in the Amendment, a copy of which is attached hereto as Exhibit A and by this reference made a part hereof.

3. Landlord is duly organized, validly existing, and in good standing in the jurisdiction of its formation, organization, and/or incorporation, as applicable, and is otherwise authorized to transact business and in good standing in any other jurisdictions where such qualifications are required. Landlord has full power and authority to enter into and perform Landlord’s obligations under the Amendment and the other Transaction Documents (as hereinafter defined), and the Amendment and the other Transaction Documents have been duly executed and delivered by Landlord.

4. The City Council hereby approves of the Transaction Documents and all of the terms and provisions contained therein and declares, resolves and/or affirms, as applicable, that Landlord is hereby authorized to enter into the Transaction Documents with Tenant and effect the transactions contemplated therein.

5. The City Council also declares that it has full legal authority to bind Landlord under the laws of the State or Commonwealth in which the Leased Premises (as defined in the Amendment) is located, and has the full authority to execute any and all of the Transaction Documents on behalf of Landlord and to nominate individuals to act on Landlord’s behalf.
6. The City Council hereby nominates the below listed individual (the “Nominee”) as attorney-in-fact to execute and deliver the Amendment, together with any other documents and agreements, including, without limitation, the Memorandum (as defined in the Amendment), required to be executed and delivered pursuant to the terms and provisions of the Amendment (the Amendment and all of such other aforementioned agreements and documents, collectively, the “Transaction Documents”), on behalf of Landlord. The Nominee shall have full power and authority to act on behalf of Landlord for purposes of executing and delivering the Transaction Documents and ensuring that Landlord fulfills its obligations thereunder. Additionally, the Nominee shall have full authority to direct the manner in which all payments made by Tenant pursuant to the Amendment are to be made to Landlord, including, without limitation, identifying which bank account(s) to transfer funds to in the event a wire payment is made by Tenant.

   NOMINEE: (Print Name) Stewart Welch III
c/o City of Mountain Brook
56 Church Street
Mountain Brook, AL 35213

7. This Resolution shall become effective as of the date of its passage by the City Council.

8. The City Council hereby acknowledges and agrees that Tenant, its lenders, and its title insurance company are relying upon, and are entitled to rely upon, this Resolution and the contents hereof as a material inducement to entering into the Amendment and other Transaction Documents. Tenant, its lenders, and its title insurance company may rely upon a faxed, scanned or otherwise electronically reproduced fully-executed copy of this document as if it were an original.

9. This document can only be amended or modified by addendum or an amendment that is fully executed and approved by the City Council.

   [SIGNATURE AND NOTARY PAGES TO FOLLOW]
Adopted: This 8th day of March, 2021

Virginia C. Smith, Council President

William S. Pritchard III Council President Pro Tempore

Gerald A. Garner, Council Member

Lloyd C. Shelton, Council Member

Alice B. Womack, Council Member

Approved: This 8th day of March, 2021

Mayor

WITNESS AND ACKNOWLEDGEMENT

State of Alabama )
Jefferson County, Alabama )

On this 8th day of March, 2021, before me, the undersigned Notary Public, personally appeared Stewart Welch III, Mayor, and Virginia C. Smith, President, William S. Pritchard III, President Pro Tempore, and Council members Gerald A. Garner, Lloyd C. Shelton and Alice B. Womack, of the City Council of the City of Mountain Brook, Alabama each proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons or the entity upon which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: Steven Boone
My commission expires: April 13, 2021

[SEAL]
CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on March 8, 2021, as same appears in the minutes of record of said meeting.

______________________________
City Clerk
SECOND AMENDMENT TO TOWER SITE SUBLEASE AGREEMENT

This Second Amendment to Tower Site Sublease Agreement (this “Amendment”) is made effective as of the latter signature date hereof (the “Effective Date”) by and between City of Mountain Brook, Alabama, an Alabama municipal corporation (“Landlord”) and American Tower Asset Sub, LLC, a Delaware limited liability company (“Tenant”) (Landlord and Tenant being collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, Landlord owns the Board of Education of the City of Mountain Brook (“Board”) is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described on Exhibit A—attached hereto and by this reference made a part hereof (the “Parent Parcel”) and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 26, 2015, as recorded in Book LR 201511, Page 27633 in the office of the Judge of Probate of Jefferson County, Alabama; and

WHEREAS, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Tower Site Sublease Agreement dated November 1, 1997 (the “Original Lease”) as amended by that certain The First Amendment to Tower Site Sublease Agreement (the “First Amendment”; the Original Lease and the First Amendment, collectively, the “Lease”), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the “Leased Premises”), which Leased Premises are also described on Exhibit A; and

WHEREAS, Landlord and Tenant desire to amend the terms of the Lease and to otherwise modify the Lease as expressly provided herein.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. One-Time Payment. Tenant shall pay to Landlord a one-time payment in the amount of Ten Thousand and No/100 Dollars ($10,000.00), payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant’s receipt of this Amendment executed by Landlord, or before November-December 1, 2020; (b) Tenant’s confirmation that Landlord’s statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord’s ownership/ho to sublease the Leased Premises to Tenant; (c) Tenant’s receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein.

2. Memorandum of Lease. The Landlord hereby agrees to execute and return to Tenant an original recordable Memorandum of Lease in the form and of the substance attached hereto as Exhibit B and by this reference made a part hereof (the “Memorandum”) executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. Rent and Escalation. Commencing with the second rental payment due following the Effective Date, the rent payable from Tenant to Landlord is hereby reduced to Forty Thousand and No/100 Dollars ($40,000.00) per year (the “Rent”). Commencing on December 1, 2022 and on the beginning of each renewal term thereafter, Rent due under the Lease, as amended hereby, shall increase by an amount equal to twelve percent (12%) of the then current Rent. In the event of any overpayment of Rent or
additional rent (as described in Section 11 of the Original Lease) prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to the CITY OF MOUNTAIN BROOK, ALABAMA. The escalations in this Section shall be the only escalations to the Rent and any/all rental escalations otherwise contained in the Lease are hereby null and void and are of no further force and effect.

4. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. In the event there is a conflict between the Lease and this Amendment, this Amendment shall control. The Parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant’s activities at and uses of the site prior to the Effective Date, Landlord’s execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent and/or approval from, or to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant’s interest in this Lease, as modified by this Amendment. Tenant and Tenant’s subtenants and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way, Tenant shall fully comply with all municipal ordinances governing its operations, including but not limited to zoning, telecommunication and building code ordinances. To the extent approval is necessary from governmental agencies other than the City of Mountain Brook, Landlord authorizes Tenant, its subtenants and licensees, and their agents to file applications or seek approval with other such authorities or agencies for Tenant’s intended use of the Leased Premises. Upon request by Tenant and at Tenant’s sole cost and expense but without additional consideration owed to Landlord, Landlord hereby consents to, and agrees to promptly execute and return to Tenant building permits, zoning applications and other forms and documents, including a memorandum of lease or any appeals related to the value of the Leased Premises, as required for the use of the Leased Premises by Tenant and/or Tenant’s customers, licensees, and sublessees. Landlord hereby appoints Tenant as Landlord’s attorney-in-fact coupled with an interest to prepare, execute and deliver land use and zoning and building permit applications that concern the Leased Premises, or any appeals related to the value of the Leased Premises, on behalf of Landlord with federal, state and local governmental authorities, provided that such applications or appeals shall be limited strictly to the use or value of the Leased Premises as a wireless telecommunications facility and that such attorney-in-fact shall not allow Tenant to re-zone or otherwise reclassify the Leased Premises or the Parent Parcel approval or use of the Leased Premises by Tenant and/or Tenant’s customers, licensees, and sublessees. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.

5. **Termination and Removal.** Within 120 days of the expiration or termination of the Lease, Tenant shall remove all of its above-ground communications equipment and other personal property from the Leased Premises, but not including underground utilities, if any, and restore the Leased Premises to its original condition, reasonable wear and tear excepted.

6. **Non-Compete.** During the original term or any renewal terms of the Lease, as amended hereby, Landlord shall not sell, transfer, grant, convey, lease, and/or license by deed, easement, lease, license or other legal instrument, an interest in and to, or the right to use or occupy any portion of the Parent Parcel or Landlord’s contiguous, adjacent, adjoining or surrounding property to any person or entity.
directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "Third Party Competitor") without the prior written consent of Tenant, which may be withheld, conditioned, and/or delayed in Tenant’s sole, reasonable discretion.

7. **Limited Right of First Refusal.** Notwithstanding anything to the contrary contained herein, this paragraph shall not apply to any fee simple sale of the Parent Parcel from Landlord to any prospective purchaser that is not a Third Party Competitor. If Landlord receives an offer or desires to offer to: (i) sell or convey any interest (including, but not limited to, leaseholds or easements) in any real property of which the Leased Premises is a part to a Third Party Competitor or (ii) assign all or any portion of Landlord’s interest in the Lease to a Third Party Competitor (any such offer, the "Offer"), Tenant shall have the right of first refusal to purchase the real property or other interest being offered by Landlord in connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant must provide Landlord with written notice of its election not later than forty-five (45) days after Tenant receives written notice from Landlord of the Offer. If Tenant elects not to exercise Tenant’s right of first refusal with respect to the Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease, as modified by this Amendment. Landlord hereby acknowledges and agrees that any sale or conveyance by Landlord in violation of this Section is and shall be deemed to be null and void and of no force and effect. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.

8.5. **Tenant's Right to Expand Leased Premises.** For good and valuable consideration, the receipt adequacy and sufficiency of which are hereby acknowledged, Landlord hereby grants to Tenant an irrevocable option to expand the Leased Premises to include an additional one thousand two hundred (1,200) square feet contiguous to the Leased Premises, the shape and location of which shall be mutually agreed upon by the Parties (the "Expansion Area"). Tenant may, by written notice to Landlord, exercise said option, in Tenant’s sole and absolute discretion, at any time during the term of the Lease (as the same may be extended from time to time). In connection with this option to expand, Tenant, its agents, employees and independent contractors, shall have the right to enter upon that portion of the Parent Parcel lying beyond the Leased Premises at any time for purposes of evaluating the land and to perform (or cause to be performed) test borings of the soil, environmental audits, engineering studies and to conduct a boundary, as-built or similar survey of all (or any portion of) the Expansion Area to be prepared by a surveyor duly licensed under the laws of the state in which the Expansion Area is located. Said right of Tenant shall include, without limitation, the right to clear trees, brush and other obstructions which may interfere, in Tenant’s sole discretion, with Tenant’s ability to conduct such evaluation activities. Landlord agrees to execute an amendment to the Lease to reflect the addition of the Expansion Area to the Leased Premises, within thirty (30) days of receipt by Landlord, in a form which is recordable in the jurisdiction in which the Leased Premises is located. Until such time as Tenant exercises said option, if ever, Landlord hereby agrees to give Tenant no less than ninety (90) days prior notice prior to entering into a lease or other use or occupancy agreement pertaining to any portion of the Parent Parcel. During the foregoing ninety (90) day period, Tenant may elect to designate the Expansion Area by written notice to Landlord, in which case such Expansion Area would no longer be available for Landlord to lease to a third party.

9.7. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this

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Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the sole and exclusive owner of the Leased Premises and all other portions of the Parent Parcel; (v) to the best of Landlord’s knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises or any other portion of the Parent Parcel which do or could (now or at any time in the future) adversely impact, limit, and/or impair Tenant’s rights under the Lease, as amended and modified by this Amendment; (vi) so long as Tenant performs its obligations under the Lease, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises, and Landlord shall not act or permit any third person to act in any manner which would interfere with or disrupt Tenant’s business or frustrate Tenant or Tenant’s customers’ use of the Leased Premises and (vii) the square footage of the Leased Premises is greater than the square footage of Tenant’s existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment. Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs, fees, expenses, or losses of any kind sustained or incurred by Tenant as a result of breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.

10.8. **Confidentiality.** The Parties acknowledge and agree that Section 6 of the First Amendment is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to confidentiality shall be controlled by this Section of this Amendment. Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential to the extent permitted by law. Except with Landlord’s family, attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.

11.10. **Notices.** The Parties acknowledge and agree that Section 17 of the Original Lease and Section 7 of the First Amendment are hereby deleted in their entirety and are of no further force and effect. From and after the Effective Date the notice address and requirements of the Lease, as modified by this Amendment, shall be controlled by this Section of this Amendment. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: To Landlord at: 56 Church St, Mountain Brook, AL 35213; To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

12.10. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the
same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.

13.13 Waiver. THE PARTIES ACKNOWLEDGE AND AGREE THAT SECTION 10 OF THE FIRST AMENDMENT IS HEREBY DELETED IN ITS ENTIRETY AND IS OF NO FURTHER FORCE AND EFFECT. FROM AND AFTER THE EFFECTIVE DATE AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL LANDLORD OR TENANT BE LIABLE TO THE OTHER FOR, AND LANDLORD AND TENANT HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OR LOSS OF BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES.

14.12 Tenant's Securitization Rights; Estoppel. The Parties acknowledge and agree that Section 11 of the First Amendment is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to Tenant's securitization rights shall be controlled by this Section of this Amendment. Landlord hereby consents to the granting by Tenant of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "Security Interest") in Tenant's interest in this Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("Tenant's Mortgagee") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a "Holder") as "Tenant" hereunder in the event a Holder succeeds to the interest of Tenant hereunder by the exercise of such remedies. Provided, however, that in such case, the rights of the Holder shall not, under any circumstances, be greater than those granted to Tenant under the Lease and this Amendment. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Holder.

15.13 Taxes. The Parties acknowledge and agree that Section 12 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to taxes shall be controlled by this Section of this Amendment. During the term of the Lease, as modified by this Amendment, Tenant shall pay when due all real property, personal property, and other taxes, fees, and assessments that are directly attributable to Tenant's improvements on the Leased Premises (the "Applicable Taxes") directly to the local taxing authority to the extent that the Applicable Taxes are billed directly to Tenant. With respect to any Applicable Taxes that are billed to Landlord, Tenant hereby agrees to pay upon the presentation of notice by Landlord to Tenant of those taxes and will reimburse Landlord for any Applicable Taxes billed directly to and paid by Landlord (which shall not include any taxes or other assessments attributable to periods prior to the Effective Date). Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of any Applicable Taxes along with proof of payment, if payment was made, of the same by Landlord. Landlord shall submit requests for reimbursement in writing to: American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801 unless otherwise directed by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment, whether to the taxing authority or to the Landlord if the Applicable Taxes were paid by Landlord within forty-five (45) days of receipt of a written reimbursement request from Landlord. Anything to the contrary notwithstanding, Landlord is only eligible for reimbursement if Landlord requests reimbursement within one (1) year after the date such taxes became due. Additionally, Landlord shall not be entitled to reimbursement for any costs associated

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with an increase in the value of Landlord’s real property calculated based on any monetary consideration paid from Tenant to Landlord. If Landlord fails to pay when due any real property, personal property, and other taxes, fees, and assessments affecting the Parent Parcel, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord’s behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord’s behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord’s behalf by any lawful means.

14. Termination. The Parties acknowledge that Section 10(a) of the Original Lease shall be deleted in its entirety and replaced with the following:

“(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within 60 days of receipt of written notice of default (without, however, limiting the rights available to the parties pursuant to any other provisions hereof), provided, that the default is of the type which may not reasonably be cured within 60 days and if the defaulting party commences efforts to cure the default within such 60-day period and uses its best good faith efforts to cure such default within a reasonable time, the non-defaulting party shall not longer be entitled to declare a default.”

15. Deletions. The Parties acknowledge and agree that Sections 9(a), 10(b), 20 of the Lease are hereby deleted in their entirety and are of no further force and effect.

16. Conflict/Capitalized Terms. The Parties hereby acknowledge and agree that in the event of a conflict between the terms and provisions of this Amendment and those contained in the Lease, the terms and provisions of this Amendment shall control. Except as otherwise defined or expressly provided in this Amendment, all capitalized terms used in this Amendment shall have the meanings or definitions ascribed to them in the Lease. To the extent of any inconsistency in or conflict between the meaning, definition, or usage of any capitalized terms in this Amendment and the meaning, definition, or usage of any such capitalized terms or similar or analogous terms in the Lease, the meaning, definition, or usage of any such capitalized terms in this Amendment shall control.

[SIGNATURES FOLLOW ON NEXT PAGE]
LANDLORD:

City of Mountain Brook, Alabama,
an Alabama municipal corporation

Signature: ____________________________
Print Name: __________________________
Title: ________________________________
Date: ________________________________

[SIGNATURES CONTINUE ON NEXT PAGE]
TENANT:

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: ______________________
Print Name: ______________________
Title: ______________________
Date: ______________________
EXHIBIT A

This Exhibit A may be replaced at Tenant’s option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord’s deed (or deeds) that include the land area encompassed by the Lease and Tenant’s improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

Tract One:

Beginning at the Southeast corner of Section 2, Township 18 South Range 2 West of the Huntsville Principal Meridian, run West along the South line of said Section 2, 2703.25 feet; thence 135°00’ right 372.00 feet; thence 12°30’ left 258.00 feet; thence 58°00’ right 289.00 feet, thence 17°00’ right 83.68 feet, thence 17°00’ left 185.00 feet; thence 90°00’ left 440.00 feet; thence 19°00’ left 451.20 feet to the North line of the SW ¼ of the SE ¼ of said Section 2; thence 108°34’ right 1846.30 feet along said North line of SW ¼ of the SE ¼ and the north line of the SE ¼ of the right 1318.0 feet along said East line to the point of beginning, containing 50 acres or more.

LESS AND EXCEPT:

That property conveyed to the State of Alabama by virtue of a deed recorded in Book 1130 at Page 359.

Being Jefferson County County APN 28-00-02-4-001-020.000.

Tract Two:

That certain tract of land described as Jefferson County APN 28-00-02-4-001.002, and being described in Deed Book 3543, Page 5, Jefferson County, Alabama.

Site No: 300249
Site Name: Liberty Parkway
EXHIBIT A (Continued)

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant’s (and Tenant’s customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THENCE ALONG THE EASTERLY SECTION LINE OF SAID SECTION, NORTH 00°56'11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THENCE LEAVING SAID THE EASTERLY SECTION LINE AND RUNNING ALONG A TIE LINE, NORTH 64°56'16" WEST, 207.95 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE RUNNING, SOUTH 16°36'56" WEST, 36.27 FEET TO A POINT; THENCE, SOUTH 73°23'18" WEST, 64.38 FEET TO A POINT; THENCE, NORTH 35°15'17" WEST, 23.30 FEET TO A POINT; THENCE, NORTH 23°54'21" EAST, 56.62 FEET TO A POINT; THENCE, SOUTH 73°23'01" EAST, 65.00 FEET TO A POINT AND THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 0.0874 ACRES (3,809 SQUARE FEET), MORE OR LESS.
EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right of way.

TOGETHER WITH AN EXISTING 20-FOOT WIDE INGRESS-EGRESS AND UTILITY EASEMENT LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, CITY OF MOUNTAIN BROOK, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THEN E ALONG THE EASTERN SECTION LINE OF SAID SECTION, NORTH 00°56'11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THEN E LEAVING SAID EASTERN SECTION LINE AND RUNNING ALONG A TIE LINE, NORTH 64°56'16" WEST, 207.95 FEET TO A POINT; THEN E, SOUTH 16°36'56" WEST, 36.27 FEET TO A POINT; THEN E, SOUTH 73°23'18" WEST, 64.38 FEET TO A POINT; THEN E, NORTH 35°15'17" WEST, 23.30 FEET TO A POINT; THEN E, NORTH 23°54'21" EAST, 46.62 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THEN E RUNNING, NORTH 73°23'01" WEST, 10.00 FEET TO A POINT; THEN E, NORTH 14°47'32" EAST, 227.92 FEET TO A POINT; THEN E, NORTH 55°43'30" EAST, 196.86 FEET TO A POINT; THEN E, NORTH 02°03'36" EAST, 52.71 FEET TO A POINT; THEN E, NORTH 19°05'22" WEST, 109.86 FEET TO A POINT; THEN E, NORTH 34°42'41" WEST, 228.89 FEET TO A POINT; THEN E, NORTH 43°50'21" WEST, 106.99 FEET TO A POINT; THEN E, NORTH 49°31'03" WEST, 164.86 FEET TO A POINT; THEN E, NORTH 53°23'24" WEST, 59.46 FEET TO A POINT; THEN E, 112.35 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 63.34 FEET AND BEING Scribed BY A CHORD BEARING NORTH 02°24'21" WEST, 98.19 FEET, TO A POINT; THEN E, NORTH 58°22'04" EAST, 61.92 FEET TO A POINT; THEN E, NORTH 71°57'10" EAST, 93.02 FEET TO A POINT; THEN E, NORTH 78°38'05" EAST, 46.16 FEET TO THE ENDING AT A POINT ON THE WESTERN RIGHT-OF-WAY LINE OF INTERSTATE 459 (HAVING A VARIABLE WIDTH RIGHT-OF-WAY), SAID POINT HAVING A ALABAMA WEST STATE PLANE COORDINATE VALUE OF NORTHING: 1271495.27, EASTING: 2209392.51, ALSO BEING THE TERMINUS OF EASEMENT.
EXHIBIT B

FORM OF MEMORANDUM OF LEASE
MEMORANDUM OF LEASE

This Memorandum of Lease (the “Memorandum”) is entered into on the ______ day of ______, 202___ by and between City of Mountain Brook, Alabama, an Alabama municipal corporation (“Landlord”) and American Tower Asset Sub, LLC, a Delaware limited liability company (“Tenant”).

NOTICE is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **Parent Parcel and Lease.** Landlord-The Board of Education of the City of Mountain Brook (“Board”) is the owner of certain real property located in Jefferson County, Alabama, being more particularly depicted or described in Exhibit A—attached hereto and by this reference made a part hereof (the “Parent Parcel”) and the Board leased a portion of the Parent Parcel to Landlord pursuant to that certain lease agreement, dated October 1, 1989, as amended, and further pursuant to a restated and amended lease agreement dated January 26, 2015, as recorded in Book LR 201511, Page 27639 in the office of the Judge of Probate of Jefferson County, Alabama. Landlord (or its predecessor in interest) and Tenant (or its predecessor in interest) entered into that certain Tower Site Sublease Agreement, dated November 1, 1997 (as the same may have been amended from time to time, collectively, the “Lease”), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the “Leased Premises”), which Leased Premises is also described on Exhibit A.

2. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be November 30, 2042. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.

3. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared.
and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on Exhibit A with a legal description or legal descriptions based upon such as-built survey. Upon Tenant’s request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.

4. **Right of First Refusal.** There is a right of first refusal in the Lease.

5.4 **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.

6.5 **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein; To Landlord at: 56 Church St, Mountain Brook, AL 35213, To Tenant at: Attn: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.

7.6 **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

8.2 **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

[**SIGNATURES FOLLOW ON NEXT PAGE**]
IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day first above written.

LANDLORD

City of Mountain Brook, Alabama,
an Alabama municipal corporation

Signature: ____________________________
Print Name: __________________________
Title: __________________________
Date: __________________________

2 WITNESSES

Signature: ____________________________
Print Name: __________________________

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of ________________
County of __________________________

On this ___ day of ________________, 20__ before me, the undersigned Notary Public, personally appeared ____________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____________________________
Notary Public
Print Name: __________________________
My commission expires: ________________ [SEAL]

[SIGNATURES CONTINUE ON NEXT PAGE]
TENANT

American Tower Asset Sub, LLC,
a Delaware limited liability company

Signature: __________________________
Print Name: _________________________
Title: ______________________________
Date: _____________________________

WITNESSES

Signature: __________________________
Print Name: _________________________

WITNESS AND ACKNOWLEDGEMENT

Commonwealth of Massachusetts

County of Middlesex

On this ___ day of ___________________, 20____, before me, the undersigned Notary Public,
personally appeared ________________________, who proved to me on the
basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Notary Public
Print Name: _______________________
My commission expires: _______________ [SEAL]

Site No: 300249
Site Name: Liberty Parkway
EXHIBIT A

This Exhibit A may be replaced at Tenant's option as described below

PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

Tract One:

Beginning at the Southeast corner of Section 2, Township 18 South Range 2 West of the Huntsville Principal Meridian, run West along the South line of said Section 2, 2703.25 feet; thence 135°00' right 372.00 feet; thence 12°30' left 258.00 feet; thence 58°00' right 289.00 feet, thence 17°00' right 83.68 feet, thence 17°00' left 185.00 feet; thence 90°00' left 440.00 feet; thence 19°00' left 451.20 feet to the North line of the SW ¼ of the SE ¼ of said Section 2; thence 108°34' right 1846.30 feet along said North line of SW ¼ of the SE ¼ and the north line of the SE ¼ of the right 1318.0 feet along said East line to the point of beginning, containing 50 acres or more.

LESS AND EXCEPT:

That property conveyed to the State of Alabama by virtue of a deed recorded in Book 1130 at Page 359.

Being Jefferson County County APN 28-00-02-4-001-020.000.

Tract Two:

That certain tract of land described as Jefferson County APN 28-00-02-4-001.002, and being described in Deed Book 3543, Page 5, Jefferson County, Alabama.

Site No: 300249
Site Name: Liberty Parkway
EXHIBIT A (Continued)

LEASED PREMISES

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant’s (and Tenant’s customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THENCE ALONG THE EASTERLY SECTION LINE OF SAID SECTION, NORTH 00°56'11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THENCE LEAVING SAID THE EASTERLY SECTION LINE AND RUNNING ALONG A TIE-LINE, NORTH 64°55'16" WEST, 207.95 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE RUNNING, SOUTH 16°36'56" WEST, 35.27 FEET TO A POINT; THENCE, SOUTH 79°23'18" WEST, 64.38 FEET TO A POINT; THENCE, NORTH 35°15'17" WEST, 23.30 FEET TO A POINT; THENCE, NORTH 23°54'21" EAST, 56.62 FEET TO A POINT; THENCE, SOUTH 73°23'01" EAST, 65.00 FEET TO A POINT AND THE TRUE POINT OF BEGINNING.

SAID TRACT CONTAINS 0.0874 ACRES (3,809 SQUARE FEET), MORE OR LESS.
EXHIBIT A (Continued)

ACCESS AND UTILITIES

The Access and Utilities Easements include all easements of record as well as existing access and utilities currently servicing the Leased Premises to and from a public right of way.

TOGETHER WITH AN EXISTING 20-FOOT WIDE INGRESS-EGRESS AND UTILITY EASEMENT LYING AND BEING IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 18 SOUTH, RANGE 2 WEST, CITY OF MOUNTAIN BROOK, JEFFERSON COUNTY, ALABAMA, AND BEING MORE PARTICULARLY DESCRIBED BY THE FOLLOWING CENTERLINE DATA:

TO FIND THE POINT OF BEGINNING, COMMENCE AT THE SOUTHEAST CORNER, OF THE ABOVE NAMED SECTION, THENCE ALONG THE EASTERLY SECTION LINE OF SAID SECTION, NORTH 00°56'11" WEST, 215.05 FEET TO A CONCRETE MONUMENT FOUND, THENCE LEAVING SAID EASTERLY SECTION LINE AND RUNNING ALONG A TIE-LINE, NORTH 64°56'16" WEST, 207.96 FEET TO A POINT; THENCE, SOUTH 16°36'56" WEST, 95.27 FEET TO A POINT; THENCE, SOUTH 73°23'18" WEST, 64.38 FEET TO A POINT; THENCE, NORTH 35°15'17" WEST, 23.30 FEET TO A POINT; THENCE, NORTH 23°54'21" EAST, 46.62 FEET TO A POINT AND THE TRUE POINT OF BEGINNING; THENCE RUNNING, NORTH 73°23'01" WEST, 10.00 FEET TO A POINT; THENCE, NORTH 34°45'32" EAST, 227.92 FEET TO A POINT; THENCE, SOUTH 54°33'30" EAST, 196.86 FEET TO A POINT; THENCE, NORTH 02°03'36" EAST, 52.71 FEET TO A POINT; THENCE, NORTH 19°06'22" WEST, 109.86 FEET TO A POINT; THENCE, NORTH 34°42'41" WEST, 228.69 FEET TO A POINT; THENCE, NORTH 43°50'21" WEST, 105.99 FEET TO A POINT; THENCE, NORTH 49°31'03" WEST, 164.86 FEET TO A POINT; THENCE, NORTH 53°23'24" WEST, 59.46 FEET TO A POINT; THENCE, 112.36 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 63.34 FEET AND BEING Scribed BY A CHORD BEARING NORTH 02°34'21" WEST, 98.19 FEET, TO A POINT; THENCE, NORTH 58°22'04" EAST, 61.92 FEET TO A POINT; THENCE, NORTH 71°57'10" EAST, 93.02 FEET TO A POINT; THENCE, NORTH 78°38'05" EAST, 46.16 FEET TO THE ENDING AT A POINT ON THE WESTERN RIGHT-OF-WAY LINE OF INTERSTATE 459 (HAVING A VARIABLE WIDTH RIGHT-OF-WAY), SAID POINT HAVING A ALABAMA WEST STATE PLANE COORDINATE VALUE OF NORTING: 1271495.27, EASTING: 2209392.51, ALSO BEING THE TERMINUS OF EASEMENT.
Instructions for completing the Resolution and Consent Affidavit

*IMPORTANT INFORMATION BELOW*

In order to avoid delays in the completion of this transaction, the Resolution and Consent Affidavit must be signed by ALL Members, Partners, Directors, Shareholders, Officers or Trustees of the organization. Section 6 of this form allows for the organization to appoint one person to sign the remaining documents but ONE HUNDRED PERCENT (100%) of the ownership or voting interest of the organization must sign this first. Failure to comply with these instructions or properly indicate the percentage of ownership and/or voting interest will result in delays and could require the documents to be re-executed. If you have any questions, please contact your land lease representative.
RESOLUTION AND CONSENT AFFIDAVIT

City of Mountain Brook, Alabama, an Alabama municipal corporation

Be it known that, under the pains and penalties of perjury, the undersigned Members, Partners, Directors, Shareholders, Officers or Trustees, as applicable (collectively, the "Affiliates") of City of the above referenced entity, Mountain Brook, Alabama (the "Landlord"), does hereby declare and resolve the following:

1. Landlord (or its predecessor in interest) has leased or subleased a portion of land to American Tower Asset Sub, LLC, a Delaware limited liability company (the "Tenant") under a Tower Site Sublease Agreement originally dated November 1, 1997 (as the same may have been amended, renewed, extended, restated or otherwise modified, collectively, the "Lease").

2. Landlord and Tenant desire to enter into an amendment of the Lease (the "Amendment") in order to extend the term thereof and to further amend the Lease as more particularly set forth in the Amendment, a copy of which is attached hereto as Exhibit A and by this reference made a part hereof.

3. Landlord is duly organized, validly existing, and in good standing in the jurisdiction of its formation, organization, and/or incorporation, as applicable, and is otherwise authorized to transact business and in good standing in any other jurisdictions where such qualifications are required. Landlord has full power and authority to enter into and perform Landlord’s obligations under the Amendment and the other Transaction Documents (as hereinafter defined), and the Amendment and the other Transaction Documents have been duly executed and delivered by Landlord. The Affiliates listed below are the only legal and equitable owners of Landlord and are the only members, partners, directors, shareholders, officers and/or trustees, as applicable, of Landlord.

4. The Affiliates hereby approve approves of the Transaction Documents and all of the terms and provisions contained therein and declare, resolve, resolves, and/or affirm affirms, as applicable, that Landlord is hereby authorized to enter into the Transaction Documents with Tenant and effect the transactions contemplated therein. The Affiliates hereby declare and affirm that any other corporate and shareholder, member, partner, and/or trustee actions required to effectuate
the transactions contemplated in the Amendment and other Transaction Documents have been completed.

5. The Affiants declare that they have full legal authority to bind Landlord under the laws of the State or Commonwealth in which the Leased Premises (as defined in the Amendment) is located, and the Affiants have the full authority to execute any and all of the Transaction Documents on behalf of Landlord and to nominate individuals to act on Landlord’s behalf.

6. The Affiants hereby nominate the below listed individual (the "Nominee") as attorney-in-fact to execute and deliver the Amendment, together with any other documents and agreements, including, without limitation, the Memorandum (as defined in the Amendment), required to be executed and delivered pursuant to the terms and provisions of the Amendment (the Amendment and all of such other aforementioned agreements and documents, collectively, the "Transaction Documents"), on behalf of Affiants and Landlord. The Nominee shall have full power and authority to act on behalf of Affiants and on behalf of Landlord for purposes of executing and delivering the Transaction Documents and ensuring that Landlord fulfills its obligations thereunder. Additionally, the Nominee shall have full authority to direct the manner in which all payments made by Tenant pursuant to the Amendment are to be made to Landlord, including, without limitation, identifying which bank account(s) to transfer funds to in the event a wire payment is made by Tenant.

   NOMINEE:  
   (Print Name)  
   (Address)  

7. This Resolution shall become effective as of the date of its passage by the last notarized signature of the Affiants listed below.

   City Council
   Affiants

8. The City Council hereby acknowledge and agree that Tenant, its lenders, and its title insurance company are relying upon, and are entitled to rely upon, this Resolution and the contents hereof as a material inducement to entering into the Amendment and other Transaction Documents. Tenant, its lenders, and its title insurance company may rely upon a faxed, scanned or otherwise electronically reproduced fully-executed copy of this document as if it were an original.

9. This document can only be amended or modified by addendum or an amendment that is fully executed and notarized by all Affiants listed hereunder approved by the City Council.

[SIGNATURE AND NOTARY PAGES TO FOLLOW]
EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

AFFIANT NO. 1 WITNESS

Signature: ____________________________ Signature: ____________________________
Print Name: __________________________ Print Name: ____________________________
Date: __________________________________

Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: ______ % Signature: ____________________________
Print Name: ____________________________

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of ____________________________

County of ____________________________

On this ___ day of ____________________________, 20__ before me, the undersigned Notary Public, personally appeared ____________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

__________________________
Notary Public
Print Name: ____________________________
My commission expires: ____________________________ [SEAL]
EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

AFFIANT NO. 2 WITNESS

Signature: ___________________________ Signature: ___________________________
Print Name: ___________________________ Print Name: ___________________________
Date: __________________________________

Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: ____ % Signature: ___________________________
Print Name: ___________________________

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of _______________________________

County of _______________________________

_________ On this ______ day of _____________________, 20___, before me, the undersigned Notary Public, personally appeared ___________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____________________________
Notary Public
Print Name: ___________________________
My commission expires: ___________________________ [SEAL]
EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

AFFIANT NO. 3

WITNESS

Signature: ___________________________________ Signature: ___________________________________
Print Name: __________________________________ Print Name: ___________________________________
Date: ________________________________________

Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting interest: ___ % Signature: ______________________________________
Print Name: __________________________________

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of __________________________

County of _____________________________________

_____________ on this ________ day of __________________, 20__, before me, the undersigned Notary Public, personally appeared __________________________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

__________________________________________
Notary Public
Print Name: _________________________________
My commission expires: _______________________ [SEAL]

Site No: 300249
Site Name: Liberty Parkway
EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

AFFIANT NO. 4

WITNESS

Signature: ____________________________  Signature: ____________________________
Print Name: ____________________________  Print Name: ____________________________
Date: ____________________________

Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: ______ %  Signature: ____________________________
Print Name: ____________________________

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of ____________________________

County of ____________________________

______ On this _____ day of __________________________, 20__ , before me, the undersigned Notary Public, personally appeared ____________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public
Print Name: ____________________________
My commission expires: ____________________________ [SEAL]

Site No: 300249
Site Name: Liberty Parkway
EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

AFFIANT NO. 5 .............................................. WITNESS

Signature: .............................................. Signature: ..............................................
Print Name: .............................................. Print Name: ..............................................
Date: ........................................................

Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: ____% Signature: ..............................................
Print Name: ..............................................

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of ..............................................

County of ..............................................

_________ On this ______ day of ______________________, 20____, before me, the undersigned Notary Public,
personally appeared ______________________, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity
upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____________________________
Notary Public
Print Name: ______________________
My commission expires: ______________________ [SEAL]
EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

AFFIANT NO. 6

WITNESS

Signature: ___________________________  Signature: ___________________________
Print Name: ___________________________  Print Name: ___________________________
Date: ___________________________

Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest: ______ %  Signature: ___________________________
Print Name: ___________________________

WITNESS AND ACKNOWLEDGEMENT

State/Commonwealth of ___________________________

County of ___________________________

On this _____ day of ___________________________, 20___, before me, the undersigned Notary Public, personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Notary Public
Print Name: ___________________________
My commission expires: ___________________________  [SEAL]

Steve,

Put normal signature lines and language in.

Site No: 300249
Site Name: Liberty Parkway
November 18, 2020

Walker Patton Company, Inc.
P. O. Box 130665
Birmingham, AL 35213

RE: Project No. STPBH-CN13 (907) Jefferson County, Sidewalks, Crosswalks and Signs on the Shades Creek Parkway from the Jemison Trail/Shades Creek Greenway Connection-Jemison Park to Brookwood Village.

Gentlemen:

All work included in the above numbered contract has been satisfactorily completed in conformity with the plans and specifications, and you are hereby notified that the work was accepted by the Alabama Department of Transportation as of April 5, 2018.

This letter serves as written notice of final acceptance.

Yours very truly,

Kyle M. Leverette, P.E.
State Construction Engineer

KML/ml
pc: Mr. Mark W. Edwards II
ARBA
Mr. William D. McDaniel
FHWA
Mr. Clay McBrien
Ms. Kelly Brendle
Mr. Tim Colquett
Mr. Brad Lindsey
Mr. Philip Shamburger
Federal Project Management

Mr. Scott George
Mr. Clarence Hampton
City of Mountain Brook
File
REVISED
CONSTRUCTION
AGREEMENT
FOR A
FEDERAL AID
PROJECT

BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF MOUNTAIN BROOK
Jefferson County

Project No. STPBH-CN13(907)
CPMS Ref# 100054593

PART ONE (1): INTRODUCTION

This Revised Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Mountain Brook, Alabama, hereinafter referred to as the CITY.

WHEREAS, the STATE and the CITY desire to cooperate in the Jemison/Shades Creek Greenway Connection, to construct sidewalks along Shades Creek Parkway (SR-149) from Cahaba Road (Jemison Park Trailhead) to Windsor Drive at the crosswalk to Brookwood Village in the City of Mountain Brook, Alabama; Project# STPBH-CN13(907); CPMS Ref# 100054593.

NOW, THEREFORE, it is mutually agreed between the STATE and the CITY as follows:

PART TWO (2): FUNDING PROVISIONS

A. Project Funding: The STATE will not be liable for Federal Aid Funds in any amount. The project will be limited to $781,039.66 Federal funds unless the Birmingham Area Metropolitan Planning Organization agrees, subject to the approval of the STATE, to reprogram the allocated Federal funds for the Birmingham Area sufficient to pay 80% of the project cost. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible project costs, whichever is less.

B. The estimated cost and participation by the various parties is as follows:

<table>
<thead>
<tr>
<th>FUNDING SOURCE</th>
<th>ESTIMATED COSTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FA STP Funds (Birmingham Area Dedicated)</td>
<td>$ 781,039.66</td>
</tr>
<tr>
<td>City Funds</td>
<td>$ 195,259.92</td>
</tr>
</tbody>
</table>

TOTAL (Incl CE&I) $ 976,299.58

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the CITY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.
Any cost incurred by the CITY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA) or in excess of the limiting amounts previously stated will not be an eligible cost to the project and will be borne and paid by the CITY.

C. Time Limit: This project will commence upon written authorization to proceed from the STATE directed to the CITY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Board and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

A. The CITY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost as part of this Agreement. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this agreement will be accomplished on property owned by or which will be acquired by the CITY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the CITY. In cases where property is leased or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the CITY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property acquired shall be in the name of the CITY with any condemnation or other legal proceedings being performed by the CITY.

The CITY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the CITY from the sale or lease of property.

B. The CITY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will not be an eligible cost as part of this Agreement.
C. The CITY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with CITY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost as part of this Agreement.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the CITY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All cost for which the CITY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the CITY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The CITY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the CITY and approved by the STATE. The plans, including the documents relating thereto, is of record in the Alabama Department of Transportation and is hereby incorporated in and made a part of this Agreement by reference. It is understood by the CITY that failure of the CITY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal funding and the refund of any federal funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for Procedures for Processing State and Industrial Access Funded County and City Projects, and attached hereto as a part of this Agreement prior to the CITY letting the contract.

D. The CITY will furnish all construction engineering for the project with CITY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost as part of this Agreement.

E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The CITY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

A. The CITY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the CITY to proceed.

B. Associated Construction cost will be an eligible cost as part of this Agreement.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids, and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the CITY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The CITY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the CITY, the CITY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The CITY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this agreement.
The CITY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the CITY will provide all bids to the STATE with a recommendation for award. The CITY shall not award the contract until it has received written approval from the STATE.

For projects with approval by the STATE to use CITY Forces, the Construction for the project will be performed by the CITY at actual costs for labor, materials, and equipment, as approved by the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

C. If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The CITY will be the permittee of record with ADEM for the permit. The CITY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The CITY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The CITY will secure all permits and licenses of every nature and description applicable to the project in any manner and will conform to and comply with the requirements of any such permit or license, and with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

D. The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation and the project will be built in accordance with the approved plans.

E. Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the CITY shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys’ fees arising out of, connected with, resulting from or related to the work performed by the CITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the CITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys’ fees, caused by the negligent, careless or unskillful acts of the CITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the CITY, its agents, servants, representatives or employees, or anyone for whose acts the CITY may be liable.

F. The CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.

G. Upon completion and acceptance of this project by the State, the CITY will assume full ownership and responsibility for the project work and maintain the project in accordance with applicable State law and comply with the Department’s Local Road Maintenance Certification Policy.
PART FIVE (5): ACCOUNTING PROVISIONS

A. The CITY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The CITY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE for the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

B. The CITY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.

C. The CITY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges, in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The CITY will report to the STATE the progress of the project in such manner as the STATE may require. The CITY will also provide the STATE any information requested by the STATE regarding the project. The CITY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The CITY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project; any and all data and records which in any way relate to the project or to the accomplishment of the project. The CITY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the CITY will give its full cooperation to those persons or their authorized representatives, as applicable.

The CITY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

D. The CITY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to, and right to examine any of said materials at all reasonable times during said period.

E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the CITY, for any audit performed on this project in accordance with Act No. 94-414.
PART SIX (6): MISCELLANEOUS PROVISIONS

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

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

C. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

D. No member, officer, or employee of the CITY during their tenure of employment, and for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.

E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.

F. This agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.

G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

H. Exhibits A, E, H, M, and N are hereby attached to and made a part of this Agreement.

I. This Agreement supersedes the Agreement dated May 7, 2010, and that Agreement dated May 7, 2010, is hereby deemed to be null and void.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

Mountain Brook
City of Homewood, Alabama

By: ___________________________ By: ___________________________
    City Clerk (Signature)     As Mayor (Signature)
    Steven Boone              Stewart Welch III

Type Name of Clerk
(AFFIX SEAL)

Type Name of Mayor

This agreement has been legally reviewed and approved as to form and content.

By: ___________________________
    William F. Patty,
    Chief Counsel

RECOMMENDED FOR APPROVAL:

_________________________________  ______________________________
    DeJarvis Leonard, P.E.            Bradley B. Lindsey, P.E.
    East Central Region Engineer      State Local Transportation Engineer

_________________________________
    Don T. Arkle, P. E.
    Chief Engineer

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

_________________________________
    John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS _____ DAY OF __________, 20____.

_________________________________
    KAY IVEY
    GOVERNOR, STATE OF ALABAMA
RESOLUTION NUMBER 2020-036

Mountain Brook

BE IT RESOLVED, by the City of Homewood as follows:

That the City enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation relating to a project for:

Jemison/Shades Creek Greenway Connection, to construct sidewalks along Shades Creek Parkway (SR-149) from Cahaba Road (Jemison Park Trailhead) to Windsor Drive at the crosswalk to Brookwood Village in the City of Mountain Brook, Alabama; Project# STPBH-CN13(907); CPMS Ref# 100054593.

Which agreement is before this Council, and that the agreement be executed in the name of the City, by the Mayor for and on its behalf and that it be attested by the City Clerk and the official seal of the City be affixed thereto.

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

Mountain Brook

I, the undersigned qualified and acting Clerk of the City of Homewood, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the City named therein, at a regular meeting of such Council held on the 8th day of March, 2021, and that such resolution is on file in the City Clerk’s Office.

ATTESTED:

_________________________________________  _______________________________________
City Clerk Steven Boone                     Mayor Stewart Welch III

8th day of March, 2021, and that such resolution is of record in the Minute Book of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on this 8th day of March, 2021.

______________________________________
City Clerk

(AFFIX SEAL)
PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.
EXHIBIT E

TERMINATION OR ABANDONMENT

a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the CITY upon an equitable basis. The value of the work performed by the CITY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:

1. The ratio of the amount of work performed by the CITY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

2. The amount of the expense to which the CITY is put in performing the work to be terminated in proportion to the amount of expense to which the CITY would have been put if he had been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the CITY prior to the termination, no consideration will be given to profit, which the CITY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the CITY, the value of the work performed by the CITY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

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

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

b. Should the AGREEMENT be terminated due to default by CITY, such termination shall be in accordance with applicable Federal Acquisition Regulations.
EQUAL RIGHTS PROVISIONS
During the performance of this contract, the CITY for itself, its assignees and successors in interest agrees as follows:

a. Compliance with Regulations

The CITY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
EXHIBIT H

Page 2

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CITY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The CITY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The CITY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the CITY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the CITY of the CITY’S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The CITY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,
b. The CITY, in accordance with the status of CITY as an independent contractor, covenants and agrees that the conduct of CITY will be consistent with such status, that CITY will neither hold CITY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that CITY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of CITY.

**CITYS' CERTIFICATIONS**

The CITY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non-salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the CITY. The CITY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the CITY at the time of execution of the AGREEMENT. The CITY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The CITY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The CITY agrees that a meal allowance shall be limited to CITY employees while in travel status only and only when used in lieu of a per diem rate.

The CITY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The CITY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.
CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form L-11, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.
FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

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

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

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

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION

SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL
ACCESS FUNDED COUNTY AND CITY PROJECTS

No work can be performed and no contracts can be let prior to having a fully
executed project agreement, submittal of project plans to Region and notification
from the Region that advertisement for bids can be made, or, in the case of force
account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon
receipt of grant award letter signed by the Director or Governor. The Region will
prepare and submit a F-7A Budget Allotment request upon receipt of a project
funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional
engineer showing work to be performed. Plans must match the project agreement
description. It is not necessary for the Region to perform an in-depth review of
plans. The County/City will submit a certification signed by a Registered
Professional Engineer stating that the plans have been prepared so that all items
included in the plans meet AIDOT specifications. The County/City will include a
letter certifying that the County/City owns all right-of-way on which the project is
to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the
County/City, and right-of-way certification, the Region may notify the County/City
to proceed with advertising the project for letting or proceed with work in the case
of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will
furnish the Region a copy of their bid and this bid price will be used for
reimbursement.

Rev. 10/2017
DATE: February 22, 2021

TO: Mayor, City Council & City Manager

FROM: Dana Hazen, Director of PB&S

RE: Small Cell ORD Revisions (to conform to adopted FCC Guidelines)

The revised Small Cell Ordinance proposed herein is intended to change certain pricing and administrative provisions that are in Mountain Brook's existing Ordinance so as to be consistent with FCC regulations on those subjects.

Mountain Brook's Small Cell Ordinance is actually exempt from application of the new State Small Cell Law as outlined in new State Small Cell Legislation in SB 76 & HB 251 which passed each chamber, but that, before that law was sent to Governor Ivey for her signature, an amendment was made to it in Section 11, which provides as follows:

HB 251

"Section 11. This act does not apply to an authority that has entered into an agreement with a wireless provider, or that has adopted an ordinance or other resolution, relating to the permitting of small wireless facilities and poles in the rights-of-way of the authority before May 1, 2021. In order to remain exempt from the provisions of this act, an authority shall modify the local agreement, ordinance, or resolution to be in compliance with applicable federal laws, orders, or regulations within 90 days from a final non-appealable federal order, rule, or regulation relating to small wireless facilities."

Mountain Brook passed its Small Cell Ordinance several years ago, so Mountains Brook would be excluded from application of the New State Law if Governor Ivey signs that law.

While the city is not likely to be held to the provisions of said state law, the Small Cell Ordinance proposed herein includes aesthetic provisions (as to the height of poles) so as to align with the height limits set forth in the new State small cell legislation (SB 76 & HB 251).
ORDINANCE NO. 2100

AN ORDINANCE AMENDING CHAPTER 126 – SMALL CELL FACILITIES - OF THE MUNICIPAL CODE OF THE CITY OF MOUNTAIN BROOK REGARDING APPLICATION PROCESS AND FEE STRUCTURE

WHEREAS, on or about January 11, 2016, the City Council of City of Mountain Brook (City Council) enacted Ordinance No. 1948 to facilitate the availability of personal wireless communication services in the City by permitting the placement of small cell technology facilities ("Facilities") and associated structures along the right of way and on private properties in the City; and

WHEREAS, subsequent to the enactment of Ordinance No. 1948, the Federal Communications Commission issued its Declaratory Order in FCC Docket 18-133, as amended (the FCC Order) regarding fees and placement of small cell facilities on rights of way controlled by state and local governments and mandated guidelines entitled “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment” as published in the Federal Register/Vol. 83, No. 199 on October 15, 2018;

WHEREAS, upon consideration of the FCC Order and other developments regarding placement of Facilities since 2016, the City Council desires to amend Chapter 126 - Small Cell Technology Facilities” of its Municipal Code as set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the City Council as follows:

SECTION 1. Chapter 126 of the Mountain Brook Municipal Code is amended as follows.

(a) Sec. 126-2(c)(1), which concerns the Application Process for permitting the placement of small cell facilities in the right of way, is modified as follows:

Delete the following provision at the end of Sec. 126-2(c)(1):
Within 30 calendar days after an application for permit is submitted, the city shall notify the applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the city does not notify the applicant in writing that the application is incomplete within 30 days following its receipt, the application is deemed complete.

And replace with the following:
“Within 10 calendar days after an application for permit is submitted, the city shall notify the applicant in writing if any additional information is needed to complete that application or supplemental information is required to process the request. If the city does not notify the applicant in writing that the application is incomplete within 10 days following its receipt, the application is deemed complete.”

(b) Sec. 126-2(c)(2), which concerns the Time for processing application for permits for placement of small cell facilities in the right of way, is modified as follows:

Delete the following provision at the end of Sec. 126-2(c)(2):
To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this
subsection shall be tolled and not continue to run until the applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the city does not advise the applicant in writing of the incompleteness of a submitted application within 30 days after that submission.

And replace with the following:
"To the extent additional information is required to complete the application after it is filed, the applicable calendar day review period set forth in this subsection shall be tolled and not continue to run until the applicant has provided any missing or requested supplemental information; provided that tolling shall not occur if the city does not advise the applicant in writing of the incompleteness of a submitted application within 10 days after that submission."

(c) Sec. 126-2(c)(3), which concerns Reconsideration/Appeal of the city's denial of request by an applicant for a permit to place small cell facilities in the right of way, is modified as follows:

The following provision at the end of Sec. 126-2(c)(3) is deleted:
Additionally, the applicant, within 30 days following a decision by the city council to deny either:
   a. A request for reconsideration; or
   b. A decision by the city council to not approve the placement of a new support structure on the right of way; may appeal either of those decisions by the city council to the county court. If no appeal of those decisions of the city council is made, those will be deemed final.

And replaced with the following:
"Additionally, the applicant, within 30 days following a decision by the city council to deny either a request for reconsideration or a decision by it to not approve the placement of a new support structure on the right of way, may appeal either of those decisions to a court in Jefferson County, Alabama having jurisdiction concerning such dispute, or exercise whatever other remedy may be available to the applicant pursuant to applicable law. If no appeal of a decision of the city council that is adverse to the applicant is taken in that 30-day period, such decision will be final."

(d) Sec. 126-2(e), which concerns Permit and license fees concerning the placement of small cell facilities in the right of way, is modified as follows:

The following subsections (1)-(3) in Sec. 126-2(e) are deleted:
(1) A permit application and review fee to be paid when an application is submitted;
(2) A permit issuance fee per each support structure on the right-of-way contemplated for attachment; and
(3) An annual license fee per each support structure on the right-of-way pertaining to the ongoing use of public property.
And replaced with the following:
“(1) A $500 non-recurring fee for a single up-front application for collocation that includes up to five small wireless facilities, with an additional $100 for each small wireless facility beyond five in a consolidated application.
(2) A $250 non-recurring fee for the modification or replacement of an existing pole together with the mounting or installation of an associated small wireless facility in the right-of-way.
(3) A $1,000 non-recurring fee for the installation of a new pole together with the mounting or installation of an associated small wireless facility in the right-of-way.
(4) A $270 annual, recurring license fee per Small Wireless Facility; this charge includes ROW access fee or fee for attachment to municipally-owned structures in the right of way.”

(e) Sec. 126-2(b), which concerns the factors, requirements, and guidelines that the city manager may consider and apply when determining whether to issue a permit for placement of small cell technology facilities in the right-of-way is modified to include the following:

(15) A new or modified pole may not exceed the greater of either of the following:
   a. Fifty feet above the ground level.
   b. Ten feet in height above the tallest existing pole in place as of July 1, 2020, located within 500 feet of the new pole in the same right-of-way controlled by the authority.

SECTION 2. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

SECTION 3. This ordinance is cumulative in nature and is in addition to any power and authority which the City of Mountain Brook may have under any other ordinance or law.

SECTION 4. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect, notwithstanding such holding.

SECTION 5. This ordinance shall become effective immediately upon adoption and publication as approved by law.

ADOPTED: This 8th day of March, 2021.

______________________________________________
Council President

APPROVED: This 8th day of March, 2021.

______________________________________________
Mayor
ORDINANCE NO. 2101

AN ORDINANCE TO AMEND CHAPTER 14 OF THE MOUNTAIN BROOK MUNICIPAL CODE

WHEREAS, the City Council of the City of Mountain Brook, Alabama ("City Council") has enacted regulations that apply to placement of Small Cell Technology Facilities along public right of ways and on private properties within the City;

WHEREAS, said regulations are codified in Chapter 126 of the MB Municipal Code; and

WHEREAS, fees applicable to the regulations in Chapter 126 are set forth in Chapter 14 of the Mountain Brook Municipal Code.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

SECTION 1. Chapter 14 of the Mountain Brook Municipal Code is amended as follows:

<table>
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<tr>
<th>CHAPTER 126 - SMALL CELL TECHNOLOGICAL FACILITIES</th>
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<tbody>
<tr>
<td>126-2</td>
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<td>126-2(e)(1)</td>
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<td>126-2(e)(4)</td>
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<td>126-2(e)(4)</td>
</tr>
</tbody>
</table>
SECTION 2. This ordinance is cumulative in nature and is in addition to any power and authority which the City of Mountain Brook may have under any other ordinance or law.

SECTION 3. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

SECTION 4. If any part, section or subdivision of this ordinance shall be determined to be invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect, notwithstanding such holding.

SECTION 5. This ordinance shall become effective immediately upon adoption and publication as approved by law.

ADOPTED: This 8th day of March, 2021.

________________________________________
Council President

APPROVED: This 8th day of March, 2021.

________________________________________
Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on March 8, 2021, as same appears in the minutes of record of said meeting, and published by posting copies thereof on March 10, 2021, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park, 3020 Overton Road
Cahaba River Walk, 3503 Overton Road

________________________________________
City Clerk