

**SPECIAL MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

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

MAY 1, 2023, 6 P.M.

As a matter of convenience, members of the public are invited to listen and observe in public meetings by Internet video conference. Presenters and others interested in a particular matter for discussion are required to attend the meeting in-person. The City is not responsible for technical issues that may occur that interfere with the virtual meeting. The City Council, at its sole discretion, may proceed with its in-person business meeting regardless of whether virtual attendees can hear and/or observe the proceedings. The City intends to make the meeting available by way of the Zoom app (re: Meeting ID 801-559-1126, password 05012023).

1. Law Day Proclamation
2. Consideration: Resolution approving the unbudgeted solutions proposal submitted by Lexipol for the Police Department
3. Consideration: Resolution authorizing the professional service agreement with Skipper Consulting Inc. with respect to the Overton Road flashing warning sign
4. Public hearing - request to rezone property from Residence B district to Planned Unit Development (PUD) district - 2305 Montevallo Road, Montevallo Road Partners, LLC
5. Announcement: The City Council will have a Special Meeting on Tuesday, May 2nd, 2023 at 5:30 p.m. to discuss drainage options for Richmar Drive and Mountain Avenue
6. Announcement: The next regular meeting of the City Council is May 8, 2023 at 7:00 p.m.
7. Adjourn

LAW DAY PROCLAMATION

WHEREAS, in 1958 President Eisenhower proclaimed Law Day to honor the role of law in the creation of the United States of America, and in 1961 Congress issued a joint resolution declaring May 1, Law Day; and

WHEREAS, the theme for Law Day 2023 is Cornerstones of Democracy: Civics, Civility, and Collaboration; and

WHEREAS, at times throughout our nation's history, there have been divisions in society, aggravated by incivility in public discourse and insufficient understanding about the Constitution and the way American government works. Even the Founding generation overcame deep divisions to craft our great charter of government; and

WHEREAS, all Americans must remember, as President Lincoln proclaimed, "We are not enemies, but friends... Though passion may have strained, it must not break our bonds of affection;" and

WHEREAS, members of the legal profession should lead the way in promoting collaboration to overcome our differences and resolve our disputes so that we may strengthen the bonds of affection between citizens, and ensure all Americans understand how our constitutional order protects the blessings of liberty; and

WHEREAS, the theme for Law Day 2023 is Cornerstones of Democracy: Civics, Civility, and Collaboration, we encourage all Americans to work together to overcome our differences, resolve our disputes, and preserve our democracy and republic.

NOW, THEREFORE, I, Stewart H. Welch III, Mayor of Mountain Brook, Alabama do hereby proclaim May 1, 2023 as

"LAW DAY"

and urge everyone to observe this day by renewing their commitment to civic engagement, civility, and collaboration.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Mountain Brook to be affixed the 1st day of May of the year of our Lord 2023 and of the Independence of the United States of America, the 247th.

Stewart H. Welch III, Mayor

RESOLUTION NO. 2023-072

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that the City Council hereby approves the unbudgeted solutions proposal submitted by Lexipol for creating, revising, and maintenance of the Police Department’s policies.

ADOPTED: This 1st day of May, 2023.

Council President

APPROVED: This 1st day of May, 2023.

Mayor

CERTIFICATION

I, Heather Richards, 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 May 1, 2023, as same appears in the minutes of record of said meeting.

City Clerk



Heather Richards <richardsh@mtnbrook.org>

Lexipol Bid Law

Mandy Rogers <mrogers@bishopcolvin.com>

Fri, Apr 28, 2023 at 10:09 AM

To: gastons@mtnbrook.org

Cc: boones@mtnbrook.org, richardsh@mtnbrook.org, Carl Johnson <carljohnson@bishopcolvin.com>

Good morning, Sam:

I have reviewed Lexipol's proposal for providing policy management services for the Mountain Brook Police Department. The proposal includes customized and/or specialized services that draw on professional resources and expertise and that entail compliance with ongoing legal and professional training and performance standards, as well as risk management measures.

The nature of services brings the proposal within the ambit of the bid law's exemption for professional services:

Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.

ALA. CODE §41-16-51(a)(3) (1975).

I offer no opinion as to whether Lexipol qualifies as a "sole source" for the services in question within the meaning of §41-16-51(a)(13).

Please let me know if you have any questions.

Best regards,

Carl Johnson

(205) 251-2881

via

carljohnson@bishopcolvin.com

Mandy Rogers



Heather Richards <richardsh@mtnbrook.org>

Council Items

Carl Johnson <carljohnson@bishopcolvin.com> Fri, Apr 28, 2023 at 8:54 AM
To: Sam Gaston <gastons@mtnbrook.org>, Heather Richards <richardsh@mtnbrook.org>
Cc: Steve Boone <boones@mtnbrook.org>, Jaye Loggins <logginsj@mtnbrook.org>, Whit Colvin <wcolvin@bishopcolvin.com>, Nimrod Long <nimrod@nimrodlong.com>, Joel Eliason <jeliason@nimrodlong.com>

Good to go with Lexipol (re bid law question).

Thanks,

Carl Johnson
1910 First Avenue North
Birmingham, Alabama 35203
Phone : (205) 251-2881
Fax : (205) 254-3987
Email : carljohnson@bishopcolvin.com




From: Sam Gaston <gastons@mtnbrook.org>
Sent: Friday, April 28, 2023 8:22 AM

[Quoted text hidden]

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Mountain Brook Police Department
Chief Jaye Loggins
101 Tibbett Street
Mountain Brook, Alabama 35213
Phone: 205.879.0486
Fax: 205.802-2415

To: Mountain Brook City Council
From: J. Loggins, Chief of Police 
Date: April 18, 2023
Re: Budget Amendment

I am submitting this memorandum as a request for an amendment to the Police Department's FY23 budget. The amendment will affect the "Annual Maint-Software" line item 100-3510-6463-3502. The request is for approval of utilizing Lexipol in creating, revising, and maintenance of department policies. The current policies are inconsistent and outdated. Many of the policies date back to 2009 signed by then Chief J. Stanley.

By utilizing Lexipol, our policies will be established through the current laws and court decisions surrounding employee and law enforcement practices. The company will work with our department in review and revision with personnel specific for Alabama. Through the use of Lexipol, our department's policies and practices will have consistent maintenance as the company will inform us and also amend policies due to Alabama Supreme Court and US Supreme Court decisions as well as new and changing legislation and practices. The services will include written policies, training bulletins, updates and reporting of employees completing trainings and acknowledgement of receiving the policies. Included in the policies will be high-risk, high-liability, and daily operations policies.

The service will make the Mountain Brook Police Department stronger and will meet the professional standards expected of our personnel. In a recent review of our department's practices, the Alabama Municipal Insurance Corporation recommended a service of this type to bring our policies up to date. Several departments within the state utilize the service and all are complimentary of the company and services provided. I have included a proposal along with this request for your review. The company will be able to produce a "sole source letter" when requested. Thank you for any and all consideration in this matter. I will be available for questions and/or comments.



SOLUTIONS PROPOSAL



PREPARED FOR:

Mountain Brook Police Department (AL)
Lieutenant Chris Thompson
thompsonc@mtnbrook.org
2052837253

PREPARED BY:

Allen Payne
apayne@lexipol.com

2611 Internet Blvd, Ste 100
Frisco, Texas 75034
(844) 312-9500
www.lexipol.com

Executive Summary

Public safety agencies and local government organizations today face challenges of keeping personnel safe and healthy, reducing risk and maintaining a positive reputation. Add to that the dynamically changing legislative landscape and evolving best practices, and even the most progressive, forward-thinking departments can struggle to keep up.

Lexipol's solutions are designed to save you time and money while protecting your personnel and your community. Our team consists of professionals with expertise in public safety law, policy, state and federal accreditation, training, mental and physical wellness and grants. We continually monitor changes and trends in legislation, case law and best practices and use this knowledge to create policies, training, wellness resources and funding services that minimize risk and help you effectively serve your community.

THE LEXIPOL ADVANTAGE

Lexipol was founded by public safety experts who saw a need for a better, safer way to run a public safety agency. Since the company launch in 2003, Lexipol has grown to form an entire risk management solution for public safety and local government. Today, we serve more than 10,000 agencies and municipalities and 2 million public safety and government professionals with a range of informational and technological solutions to meet the challenges facing these dynamic industries. In addition to providing policy management, accreditation, online training, wellness resources, and grant assistance, we provide 24/7 industry news and analysis through the digital communities Police1, FireRescue1, Corrections1, EMS1 and Gov1.

Our customers choose Lexipol to make an investment in the safety and security of their personnel, their agencies and their communities. We help agencies address issues that create substantial risk, including:

- Inconsistent and outdated policies
- Lack of technology to easily update and issue policies and training electronically
- Unchecked mental health needs of staff
- Difficulty keeping up with new and changing legislation and practices
- Inability to produce policy acknowledgment and training documentation
- Unfamiliarity of city legal resources with the intricacies of public safety law
- The need to secure grant funding for critical equipment, infrastructure and personnel

Lexipol is backed by the expertise of 440 employees with more than 2,075 years of combined experience in constitutional law, civil rights, ADA and discrimination, mental health, psychology, labor negotiations, Internal Affairs, use of force, hazmat, instructional design, federal and state grants and a whole lot more. That means no more trying to figure out policy, achieve accreditation, develop training or wellness content, or secure funding on your own. You can draw on the experience of our dedicated team members who have researched, taught and lived these issues.

We look forward to working with Mountain Brook Police Department (AL) to address your unique challenges.

Scope of Services

Policy Manual

Constitutionally sound, up-to-date policies are the foundation for consistent, safe public safety operations and are key to reducing risk and enhancing personnel and community safety. Lexipol's comprehensive policy manual covers all aspects of your agency's operations.

- More than 155 policies researched and written by public safety attorneys and subject matter experts
- Policies based on State and federal laws and regulations as well as nationwide best practices
- Content customized to reflect your agency's terminology and structure

Daily Training Bulletins (DTBs)

Even the best policy manual lacks effectiveness if it's not backed by training. Lexipol's Daily Training Bulletins are designed to help your personnel learn and apply your agency's policy content through 2-minute training exercises.

- Scenario-based training ties policy to real-world applications
- Understanding and retention of policy content is improved via a singular focus on one distinct aspect of the policy
- Each Daily Training Bulletin concludes with a question that confirms the user understood the training objective
- Daily Training Bulletins can be completed via computers or from smartphones, tablets or other mobile devices
- Reports show completion of Daily Training Bulletins by agency member and topic

Policy Updates

Lexipol's legal and content development teams continuously review state and federal laws and regulations, court decisions and evolving best practices. When needed, we create new and updated policies and provide them to your agency, making it simple and efficient to keep your policy content up to date.

- Updates delivered to you through Lexipol's web-based content delivery platform
- Changes presented in side-by-side comparison against existing policy so you can easily identify modifications/improvements
- Your agency can accept, reject or customize each update

Web-Based Delivery Platform and Mobile App (Knowledge Management System)

Lexipol's online content delivery platform, called KMS, provides secure storage and easy access to all your policy and training content, and our KMS mobile app facilitates staff use of policies and training completion.

- Ability to edit and customize content to reflect your agency's mission and philosophy
- Efficient distribution of policies, updates and training to staff
- Archival and easy retrieval of all versions of your agency's policy manual
- Mobile app provides in-the-field access to policy and training materials

Reports

Lexipol's Knowledge Management System provides intuitive reporting capabilities and easy-to-read reports that enhance command staff meetings and strategic planning.

- Track and report when your personnel have acknowledged policies and policy updates
- Produce reports showing completion of Daily Training Bulletins
- Sort reports by agency member, topic and other subgroups (e.g., shift, assignment)
- Reduce the time your supervisors spend verifying policy acknowledgement and training completion

Implementation Policy Tier I: High-Risk Policies

Benefit from our proven, systematic approach to implementing policies. Tier I represents about 20% of the manual, including foundational policies necessary to provide structure and authority to your policy manual, as well as policies addressing high-risk, low-frequency and high-risk, high-frequency incidents. You'll receive one-on-one collaborative assistance to help you review, customize and adopt the policies efficiently and effectively.

Implementation Policy Tier II: High-Liability Policies

Benefit from our proven, systematic approach to implementing policies. Tier II represents about 20% of the manual, including policies that relate to common day-to-day calls for service that have a higher level of potential liability.

You'll receive one-on-one collaborative assistance to help you review, customize and adopt the policies efficiently and effectively.

Implementation Policy Tier III: Daily Operations Policies

Benefit from our proven, systematic approach to implementing polices. Tier III represents about 20% of the manual, including policies needed for orderly daily operations of your organization. You'll receive one-on-one collaborative assistance to help you review, customize and adopt the policies efficiently and effectively.

Proposal

Prepared By: Allen Payne
 Phone:
 Email: apayne@lexipol.com

Quote #: Q-54339-5
 Date: 1/27/2023
 Valid Through: 6/30/2023

Overview

Lexipol empowers first responders and public servants to best meet the needs of their residents safely and responsibly. We are the experts in policy, training and wellness support, committed to improving the quality of life for all community members. Our solutions include state-specific policies, online learning, behavioral health resources, funding assistance, and industry news and information offered through the websites Police1, FireRescue1, EMS1 and Corrections1. Lexipol serves more than 2 million public safety and government professionals in over 10,000 agencies and municipalities. The services proposed below are designed to meet your agency's specific goals and needs.

Yearly Subscription

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
1	Annual Law Enforcement Policy Manual & Daily Training Bulletins (12 Months)	USD 18,971.00	5%	USD 948.55	USD 18,022.45
	Subscription Line Items Total			USD 948.55	USD 18,022.45
				USD 948.55	USD 18,022.45
Yearly Subscription Discount:					USD 948.55
Yearly Subscription TOTAL:					USD 18,022.45

One Time Implementation

QTY	DESCRIPTION	UNIT PRICE	DISC	DISC AMT	EXTENDED
1	Law Enforcement Tier I Implementation	USD 4,701.00	5%	USD 235.05	USD 4,465.95
1	Law Enforcement Tier II Implementation	USD 4,112.00	5%	USD 205.60	USD 3,906.40
1	Law Enforcement Tier III Implementation	USD 3,428.00	5%	USD 171.40	USD 3,256.60
	One-Time Line Items Total			USD 612.05	USD 11,628.95
				USD 612.05	USD 11,628.95
One Time Implementation Discount:					USD 612.05
One Time Implementation TOTAL:					USD 11,628.95

*Law Enforcement pricing is based on 64 Law Enforcement Sworn Officers.

Discount Notes

5% Sourcewell Discount

RESOLUTION NO. 2023-073

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby accepts the professional services agreement submitted by Skipper Consulting, Inc., in the form as attached hereto as Exhibit A, with respect to preparing a traffic control device design for a flashing light warning beacon system for Overton Road near the intersection of North Woodridge Road.

ADOPTED: This 1st day of May, 2023.

Council President

APPROVED: This 1st day of May, 2023.

Mayor

CERTIFICATION

I, Heather Richards, 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 May 1, 2023, 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 control device design for an flashing light warning sign system on Overton Road near the intersection of North Woodridge Road 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:

Flashing Warning Beacon Design	\$ 4,500.00
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The CLIENT will bill for its Services monthly based on the work completed during the billing period. Invoices for uncontested amounts are payable within 30 days from the receipt by the Client, and such payment shall not be contingent or dependent upon any conditions or any action or undertaking of the Client other than those conditions, if any, specifically set forth in this Agreement.

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

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

4. STANDARD TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

insurrections, riots, governmental action, explosions, fire, floods, or any other cause not within the reasonable control of either party.

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

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

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

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

CLIENT: CITY OF MOUNTAIN BROOK, AL

CONSULTANT: SKIPPER CONSULTING INC.

By: _____

By: Richard L. Caudle

Printed Name: _____

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

Title: _____

Title: Senior Traffic Engineer

Date: _____

Date: April 26, 2023

EXHIBIT "A"
SCOPE OF WORK

The Consultant shall perform the following scope of work in relation to preparing a traffic control device design for an flashing light warning beacon system for Overton Road near the intersection of North Woodridge Road in the City of Mountain Brook.

Flashing Warning Beacon Design

The Consultant will prepare design plans for construction of an approaching traffic warning beacon system with vehicular loop actuation. 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, coordinating any required power service with the City and APCO, and performing an inspection of contractor work.

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 two (2) weeks from notice to proceed, barring unforeseen circumstances outside of the control of the Consultant.

ADDENDUM TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MOUNTAIN BROOK AND SKIPPER CONSULTING, INC. – TRAFFIC ENGINEERING SERVICES (Overton Road Flashing Warning Beacon)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY: CITY OF MOUNTAIN BROOK

CONTRACTOR: SKIPPER CONSULTING INC.

By: _____

By: Richard L. Caudle

Printed Name: _____

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

Title: _____

Title: Senior Traffic Engineer

Date: _____

Date: April 26, 2023