

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
MARCH 13, 2023**

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[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:00 p.m. on the 13<sup>th</sup> day of March, 2023 (others were allowed to listen to the meeting by way of Internet video conference). 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  
Graham L. Smith  
Gerald A. Garner  
Stewart Welch III, Mayor

Absent: Lloyd C. Shelton

Also present were City Attorney Carl Johnson, City Manager Sam Gaston, and Acting City Clerk Steven Boone.

**1. EXECUTIVE SESSION**

Council President Pro Tempore Pritchard made a motion that the City Council convenes in executive session to discuss two real estate negotiations and that the City Council shall reconvene upon conclusion of the executive session. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council President Virginia Smith. 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  
Gerald A. Garner  
Graham L. Smith

Nays: None

**2. AGENDA**

1. BZA Appointment

Tyler Slaten-Senior Planner

- Recommendation is to reappoint Norman Orr to the Board of Zoning Adjustment

Virginia Smith

- Item added to the formal agenda (Resolution No. 2023-044)

2. Junior High Field Project bids

Billy Pritchard-Council President Pro Tempore

- Bids were received last week
- Would like to award the bid to Sports Turf Company and move forward with contract

Virginia Smith

- Item added to the formal agenda (Resolution No. 2023-047)

3. "Small Car Only" parking spaces on Cahaba Road at Brook Manor Drive

Jaye Loggins-Police Chief

- Received a request to make these spaces Small Car Only
- Looked at the location and would recommend making those two spaces Small Car Only

Virginia Smith-Council President

- Items added to the formal agenda (Resolution No. 2023-046)

4. Request by Schoel Engineering for additional fees for consulting services on the Junior High drainage project

Taylor Schoel-Schoel Engineering

- Requesting additional time to cover the additional schedule due to additional work on Richmar and Hillsdale that was not in original design scope
- Requesting additional design of downstream improvement for additional drainage work hydrology associated with that design

Virginia Smith

- Item added to the formal agenda (Resolution No. 2023-045)

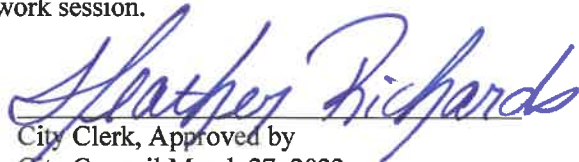
5. Review of the other matters to be considered at the formal (7:00p.m.) meeting

2. **ADJOURNMENT**

There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 6:57 pm.

3. **CERTIFICATION**

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the regular session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A-106) on March 13, 2023, 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 27, 2023

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
MARCH 13, 2023**

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[As a convenience, members of the public were invited to listen, observe and participate in the public meeting by Internet video conference.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:00 p.m. on the 13<sup>th</sup> day of March, 2023 (others were allowed to listen to the meeting by way of Internet video conference). The Council President Virginia Smith 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  
Graham L. Smith  
Gerald A. Garner  
Stewart Welch III, Mayor

Absent: Lloyd C. Shelton

Also present were City Attorney Carl Johnson, City Manager Sam Gaston, and Acting City Clerk Steve Boone.

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

**1. CONSENT AGENDA**

Council President Virginia 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 27, 2023, regular meeting of the City Council

<b>2023-039</b>	Authorize the sale or disposal of certain surplus property	Exhibit 1, Appendix 1
<b>2023-040</b>	Authorize the contribution agreement (cost share) with the Mountain Brook Board of Education with respect to the Crestline Elementary School Gym project	Exhibit 2, Appendix 2
<b>2023-041</b>	Authorize the execution of a contractor agreement with Video Industrial Services with respect to 3333 Sandhurst Road Pipe Project	Exhibit 3, Appendix 3
<b>2023-042</b>	Authorize the execution of a contractor agreement with Wright Construction Company with respect to the Brookwood Baptist Church Drainage Project	Exhibit 4, Appendix 4

<b>2023-043</b>	Authorize the execution of an agreement with United Ability, Inc. (dba Gone for Good Document Destruction and E-Waste Recycling) with respect to a community document destruction and e-waste recycling event to be held at the High School on April 22, 2023 from 1 p.m. until 4 p.m.	Exhibit 5, Appendix 5
<b>2023-044</b>	Reappoint Norman Orr to the Board of Zoning Adjustment, to serve without compensation, with the term of office to end March 24, 2026	Exhibit 6, Appendix 6
<b>2023-045</b>	Authorize the execution of a professional services agreement for additional consulting services between the City and Schoel Engineering Company with respect to the Mountain Brook Junior High drainage improvement project	Exhibit 7, Appendix 7
<b>2023-046</b>	Designate the first two parking spaces north of Brook Manor Drive on the western side of Cahaba Road to be restricted for “small cars only” pursuant to Sec. 50-113 of the City Code	Exhibit 8, Appendix 8
<b>2023-047</b>	Award the bid for the Mountain Brook Junior High Athletic Field project (C-20221221-853) to Sports Turf Company including Alternates 1 through 3	Exhibit 9, Appendix 9
<b>2023-048 MOTION</b>	Reject all bids with respect to the Pinecrest Road and Canterbury United Methodist Church (UMC) drainage improvement project (B-20221201-825)	Exhibit 10

Thereupon, the foregoing minutes, motion, and resolutions (Nos. 2023-039 through 2023-047), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council President Pro Tempore Pritchard. The minutes, motion, and resolutions were then considered by the City Council. Council Member Graham Smith seconded the motion to adopt the foregoing minutes, motion 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  
Graham L. Smith  
Gerald A. Garner

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes, motion and resolutions (Nos. 2023-039 through 2023-047) were adopted by a vote of 4—0 and as evidence thereof she signed the same.

## 2. COMMENTS FROM RESIDENTS AND ATTENDEES

Michael Keller-301 Overbrook Road

- Inquired about the cancer causing chemicals in the sports turf and the potential contamination of downstream water

John Bricken-GMC

- There has been no proof that the sports turf causes cancer
- To his recollection, it is safe to play on

John Summerville-3028 Overhill Road

- Stated there is an article in the Guardian magazine regarding artificial turf being potentially linked to cancer deaths of 6 Philadelphia ball players
- All 6 players, who played on the turf, had the same form of brain cancer
- Stated stadiums are banning these turfs because of the cancer causing chemicals in the turf
- Asking the council to look into this matter further for the long-term health of the children

### 3. ANNOUNCEMENT

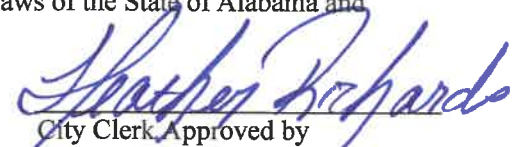
Council President Virginia Smith announced the next regular meeting of the City Council is March 27, 2023, 7:00p.m.

### 4. ADJOURNMENT

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 7:08 p.m.

### 5. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama held at City Hall, Council Chamber (Room A-108) on March 13, 2023, 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 27, 2023

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### EXHIBIT 1

#### RESOLUTION NO. 2023-039

**WHEREAS**, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

**WHEREAS**, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook, as follows:

Section 1. It is hereby established and declared that the following equipment owned by the City of Mountain Brook, Alabama is no longer needed for public or municipal purposes and is hereby declared surplus property:

Item	Manufacturer	Model	Number
Sod Cutter	N/A	Ryan Jr. 18"	1
Trailer (6'x10')	N/A	N/A	1
Welder	N/A	Big40g	1
Trailer (83"x12')	N/A	N/A	1
Turf Trailer	N/A	N/A	1
Tractor	John Deere	850	1
Lot of computer monitors	N/A	N/A	1

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell said property by way of public Internet auction or to dispose of said items not sold.

#### APPENDIX 1

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#### EXHIBIT 2

#### RESOLUTION NO. 2023-040

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a contribution agreement (costs sharing) between the City and Mountain Brook Board of Education with respect to the Crestline Elementary School Gymnasium project.

#### APPENDIX 2

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#### EXHIBIT 3

#### RESOLUTION NO. 2023-041

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a contractor agreement, in the form as attached hereto as Exhibit A, between the City and Video Industrial Services with respect to 3333 Sandhurst Road Pipe Project.

#### APPENDIX 3

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**EXHIBIT 4****RESOLUTION NO. 2023-042**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a contractor agreement, in the form as attached hereto as Exhibit A, between the City and Wright Construction Company with respect to the Brookwood Baptist Drainage Project.

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**APPENDIX 4**

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**EXHIBIT 5****RESOLUTION NO. 2023-043**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the execution of an agreement between the City and United Ability, Inc. (dba Gone For Good Document Destruction and E-Waste Recycling), in the form as attached hereto as Exhibit A, with respect to a community document destruction and e-waste recycling event to be held in Mountain Brook.

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**APPENDIX 5**

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**EXHIBIT 6****RESOLUTION NO. 2023-044**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that Norman Orr is hereby reappointed to the Board of Zoning Adjustment, to serve without compensation, with the term of office to end March 24 , 2026

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**APPENDIX 6**

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**EXHIBIT 7****RESOLUTION NO. 2023-045**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the agreement for additional consulting services between the City and Schoel Engineering Company, Inc. with respect to the Mountain Brook Junior High Drainage Improvements Study and Design.

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**APPENDIX 7**

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**EXHIBIT 8**

**RESOLUTION NO. 2023-046**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the City Council hereby authorizes the first two (2) parking spaces north of Brook Manor Drive on the western side of Cahaba Road, in the map as attached hereto as Exhibit A, as "Small Car Only" pursuant to Section 50-113 (Parking of oversized vehicles) of the Code of the City of Mountain Brook, Alabama.

**APPENDIX 8****EXHIBIT 9****RESOLUTION NO. 2023-047**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid for the Mountain Brook Junior High Athletic Field project to Sports Turf Company in the amount of \$3,362,906.00 (base bid) having been determined to have submitted the best bid in conformance with the project specifications as described in the invitation to bid; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the following alternates are also hereby accepted and approved:

No. 1 – Sports Field Lighting	-	\$228,850.00
No. 2 – Tennis Court Lighting	-	\$ 96,880.00
No. 3 – Restroom Building	-	\$301,364.00

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a contractor agreement, in the form as attached hereto as Exhibit A, between the City and Sports Turf Company with respect to the aforementioned project.

**APPENDIX 9****EXHIBIT 10****MOTION NO. 2023-048**

Council President Pro Tempore Pritchard made a motion to reject the bids with respect to the Pinecrest Road and Canterbury UMC (B-20221201-825) Drainage Improvement Project. The motion was seconded by Council member Graham Smith. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes:	Virginia C. Smith William S. Pritchard III Gerald A. Garner Graham L. Smith
Nays:	None



Abstained:     None

Council President Virginia Smith thereupon declared that said motion (No. 2023-048) was adopted by a vote of 4—0.

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Sod Cutter  
Ryan Jr. 18"



Trailer  
6'x10' light duty



APPENDIX 1

Welder  
Towable Miller Big40g  
Discontinued parts



Trailer  
Turf trailer 1  
83"x12'



Trailer  
Turf trailer 2

Tractor  
John Deere 850



APPENDIX 1

3/10/23, 11:00 AM

City of Mountain Brook Mail - for gov deals auction



City of Mountain Brook

Heather Richards <richardsh@mtbrook.org>

for gov deals auction

1 message

Gilbert Aban <abang@mtbrook.org> Wed, Mar 1, 2023 at 10:46 AM  
To: Heather Richards <richardsh@mtbrook.org>, Steve O'Dell <odells@mtbrook.org>

1 lot computer monitors

Serial #s

- cnp520x9w2
- 3cq51804bn
- cn509j0vj
- cnk83220f46
- tsp15152a3580
- cnk8150nqn
- cnc931aj01t
- cnc304qn5r
- cn-w5hwr

Thank you,

Gilbert Aban  
INFORMATION TECHNOLOGY



- [p] 205 802 3819
- [f] 205 874 0619
- [e] abang@mtbrook.org
- [w] www.mtbrook.org
- [a] 56 Church St. Mountain Brook, AL 35213

**Avoid Malware and Scams -Always stop, look, and think before you click!**

1. Don't click on suspicious e-mail attachments. Most viruses and worms arrive on your PC in the form of e-mail attachments.
2. Be cautious of the return address. Though an e-mail message may claim it's from your bank, your ISP, or even your boss, that doesn't mean it is.
3. Be cautious of the message. To persuade you to launch a virus-laden mail attachment or provide your personal information, virus authors must earn your trust.
4. Be cautious of the link. A link in an e-mail message that claims to point to a bank (ex.) web site may not really go there.

\*\*\* If you suspect or detect any suspicious activity please notify us immediately. \*\*\*

THIS CONTRIBUTION AGREEMENT (the "Agreement") is made and entered into as of the 31st day of January, 2023 (the "Effective Date") by and among the City of Mountain Brook, an Alabama municipal corporation (the "City"), and the Mountain Brook City Board of Education, a quasi-corporation and agency and instrumentality of the State of Alabama (the "Board").

RECITALS:

- A. The Board owns certain property located in the Crestline neighborhood of the City, where Crestline Elementary School is located (the "Property").
B. The City and the Board wish to improve the Crestline School facilities, as well as provide additional space for recreation for the children and citizens of the City, specifically, Mountain Brook Athletics.
C. The City and the Board have determined that it is in the best interest of the schools and the City to build a new gymnasium at Crestline Elementary School (the "Project").
D. The Project will be constructed on the Board's Property and will be paid for jointly by contributions from the Board and the City.
E. The City and the Board wish to confirm their agreement for the Project by this Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confirmed, the parties hereto agree as follows:

1. PROPERTY DILIGENCE.

- 1.1 Plans. The Board shall be responsible for obtaining the plans for the Project. The Board shall consult with the City on those plans for final approval by and among the City and the Board.
1.2 Entitlements and Approvals. The Board shall be responsible for all entitlements and approvals permits, licenses, variances, special exceptions, conditional use authorizations, zoning changes and other governmental approvals that are required for the Project.

2. PROPERTY OPERATION.

- 2.1 Cooperation and Management. After the Effective Date, the Board agrees to allow the City and its agents to enter the Property for the development, construction and items related thereto for the Project and to maintain its existing property insurance policy covering the Property in full force and effect.
2.2 Updates. The Board agrees that until the Project is completed it will promptly notify the City, in writing, if the Board obtains knowledge or receives written notice of (a) any event which has or is likely to have an adverse effect on the operation, physical condition or financial condition of the Property, (b) any violation, potential violation or alleged violation of any legal requirements or the encumbrances related to the Property, (c) any legal action or governmental proceeding related to the Property or which may affect the City's ability to perform its obligations under this Agreement, (d) any default under any agreement related to the Property, (e) any damage to or destruction of the Property by fire or other casualty, or (f) any actual, pending or threatened taking of the Property by condemnation or eminent domain.

4.8 No Partnership or Joint Venture. The terms and provisions of this agreement are intended solely to create a Contribution Agreement and are not intended and do not create any partnership or joint venture between the Parties hereto.

4.9 Third-Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of the City and the Board and their respective permitted successors or assigns, and it is not the intention of the parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other person.

4.10 Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

4.11 Entire Agreement/Amendment. This Agreement supersedes all previous contracts or understandings, including any offers, letters of intent, proposals or letters of understanding, and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties respecting the within subject matter, and no party shall be entitled to benefits other than those specified herein. As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or verbal, not expressly incorporated herein are superseded, and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto.

4.12 Counterparts. This Agreement may be executed in separate counterparts. Each such counterpart shall be deemed an original and all of which shall constitute one and the same instrument. The signature pages and notary acknowledgments, if any, from one or more separate executed counterparts may be combined together with one or more other separate executed counterparts to form a single document. This Agreement shall be fully executed when each party whose signature is required has signed and delivered at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Agreement. This Agreement and any instrument, document or agreement to be executed or delivered in connection herewith may be executed and delivered by facsimile transmission, electronic mail or other electronic means and the electronic signature of a party, or a signature transmitted or delivered by electronic means, shall be binding upon such party as fully as though such signature was executed and delivered in person. An electronic or photocopy of this Agreement, certified as being in full force and effect, shall be admissible into evidence in any judicial proceeding and no party shall be required to produce the copy of this Agreement containing the original signatures of the parties.

SIGNATURE PAGE FOLLOWS

3.1 Construction of the Project. The Board shall take the lead in obtaining bids for the costs of the Project and shall be responsible for hiring and contracting with the appropriate architect, contractor and project manager to be responsible for and oversee the development and construction of the Project.

3.2 Financing. The City and the Board agree that the costs of the Project have been estimated to be Six Million and Forty-Eight Thousand Dollars (\$6,048,000) ("Construction Cost Estimate"). The City and the Board agree that the construction costs shall be paid through the following contribution percentages until such time as all construction costs, including, but not limited to the Construction Cost Estimate and any increases, add-ons, change orders, or cost overruns ("Construction Costs"):

- (1) The Board shall contribute Seventy-Eight Percent (78%) of all Construction Costs and the City shall contribute Twenty-Two Percent (22%) of all Construction Costs. The City shall pay the Board its portion of the Construction costs over Ten (10) years. The total Construction Costs shall be multiplied by Twenty-Two Percent (22%) and then divided by ten and that is the annual amount that the City shall pay to the Board each year for Ten (10) years.

4. MISCELLANEOUS.

4.1 Consents, Approvals and Discretion. Except as herein expressly provided to the contrary, whenever this Agreement requires any consent or approval to be given by a party, or whenever a party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

4.2 Choice of Law. The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to conflict of laws principles.

4.3 Benefit/Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns. No party may assign this Agreement without the prior written consent of the other parties; provided, however, that any party may, without the prior written consent of the other parties, assign its rights and delegate its duties hereunder to one or more affiliates, but in such event, the assignor shall be required to remain obligated hereunder in the same manner as if such assignment had not been affected.

4.4 Waiver of Breach. The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or any other provision hereof.

4.5 Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.

4.6 Gender and Number. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

4.7 Divisions and Headings. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

Handwritten initials 'JM'

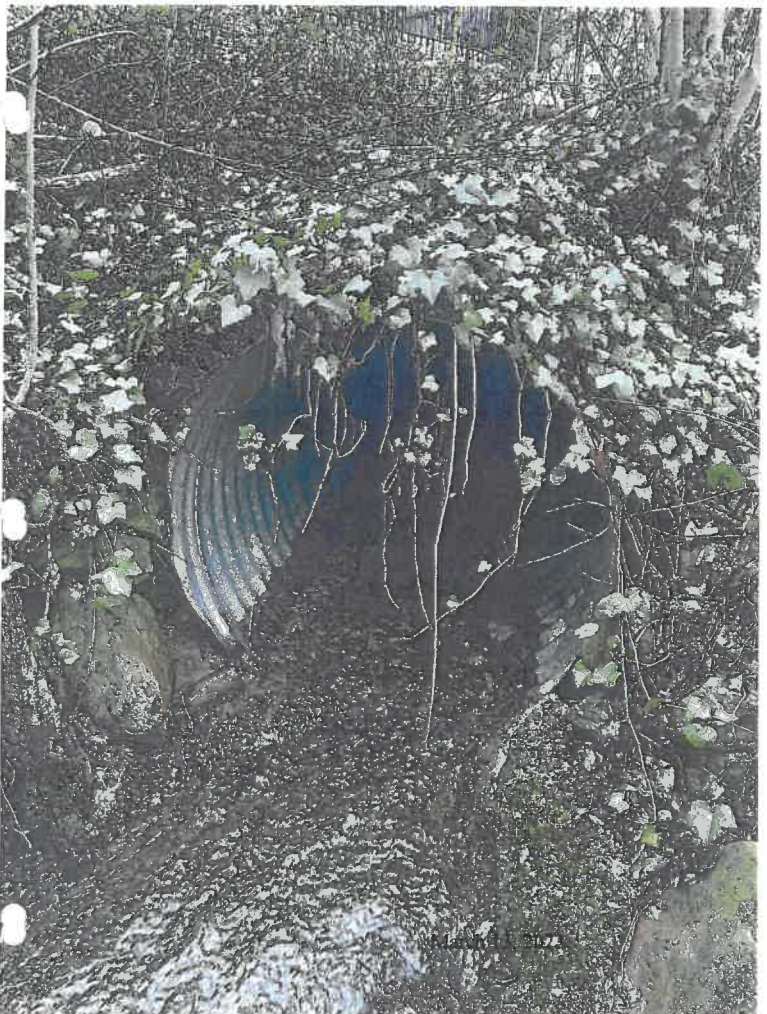
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

MOUNTAIN BROOK CITY BOARD OF EDUCATION
a quasi-corporation and agency and instrumentality of the State of Alabama
By: [Signature]
Name: Richard Barkou
Title: Superintendent

CITY OF MOUNTAIN BROOK, ALABAMA
An Alabama municipal corporation
By: [Signature]
Name: Stewart Welch III
Title: Mayor

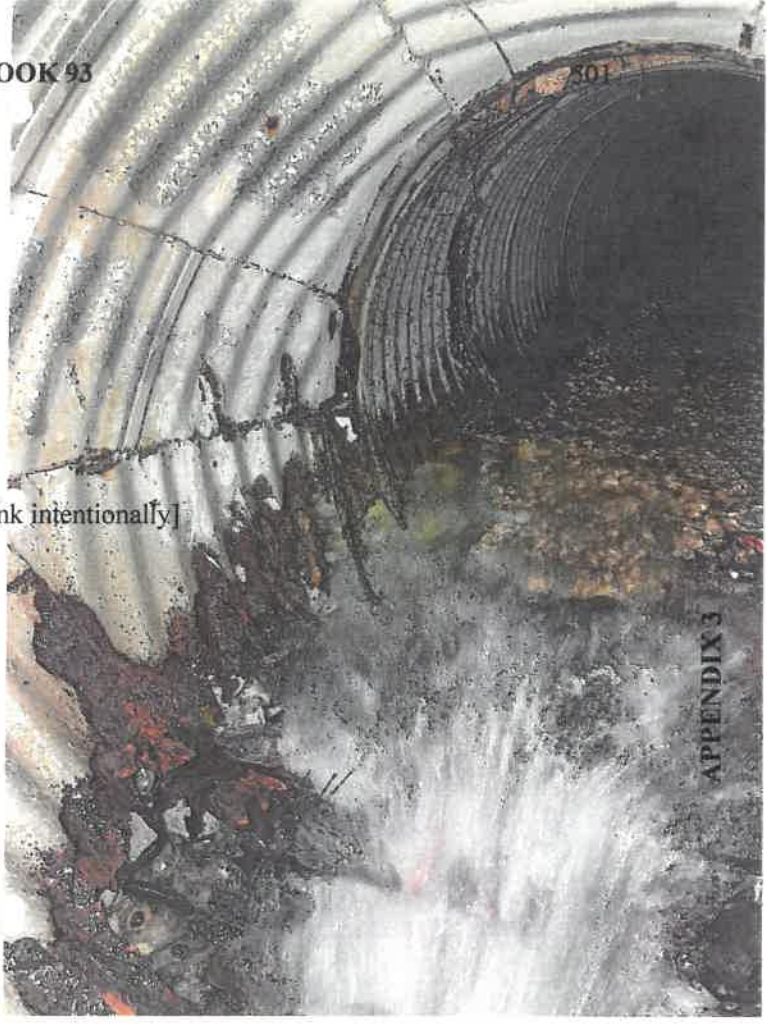
APPENDIX 2



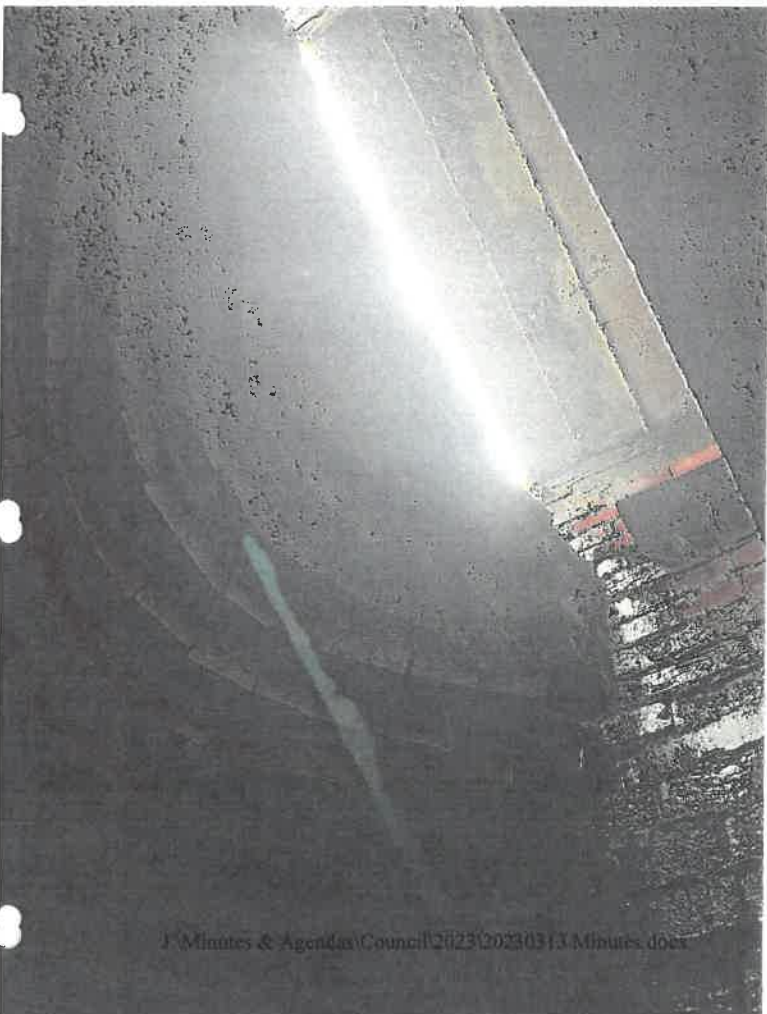




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APPENDIX 3



**Video Industrial Services** ("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") on the understated project (the "Project")

Name of Project: 3333 Sandhurst Road Pipe Project

Site of Project: 3333 Sandhurst Road  
Mountain Brook, AL 35223

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work, if any, the March 1, 2023 Contractor Proposal, hereinafter the "Contractor Proposal" and related photographs of the location and conditions at the Project site) that is attached and incorporated herein.

3. **Undertaking of Parties.** Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor and perform its other responsibilities set forth in the Contract Documents.

4. **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.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

1

- (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.

#### 7. 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:** One Million Dollars (\$1,000,000), 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, subcontractors, and broad form property damage;
- (ii) **Automobile Liability:** Automobile Liability covering owned and rented vehicles operated with policy limits of not less than One Million Dollars (\$1,000,000), 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.

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

5. **Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Forty-Nine Thousand Dollars (\$49,000.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$50,000.00.

The City will pay the Lump Sum amount of the Contract Price for this Project at the following time. Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its request for 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.

6. **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;

2

(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.

The City will not indemnify Contractor (or any of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

(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.

8. **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.

#### 9. Miscellaneous Provisions.

a. **Entire Agreement.** This Agreement which is comprised of this instrument, the City Scope of Work (if any), and the March 1, 2023 Contractor Proposal (collectively, the "Contract Documents") 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; (2) the City Scope of Work (if any); and (3) the Contractor Proposal.

b. Counterparts. 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 have the same legal force and effect as an original document.

c. No Waiver. 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. No Assignment. 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. No Third-Party Beneficiaries. 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. Independent Contractor. 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.

g. 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

or any other person, firm, or legal entity for, from, or with respect to any Claims arising out of or relating to the Agreement or the City's performance or nonperformance of its obligations thereunder.

(ii) Late Payment Charges, Fees, Interest - any provisions (1) that obligate the City to pay any charges for penalties, interest, or fees at a rate higher than two-thirds of one percent per month (8% per annum) with respect to delinquent invoices or bills for goods, materials, or services, or (2) stipulating that a bill or invoice shall be considered delinquent if not paid by the City earlier than thirty (30) days after Contractor renders such an invoice or bill.

(iii) Insurance - provisions that obligate the City to purchase or maintain any insurance policy or amount of coverage concerning the transactions contemplated in the Agreement, or to maintain a risk management program. Notwithstanding any such provision in the Agreement, nothing shall preclude the City from purchasing a specific type of insurance requested by Contractor in connection with the transaction contemplated in the Agreement;

(iv) Governing Law - any provisions designating the law of any state, country, territory, or jurisdiction other than Alabama as the applicable or governing law. Notwithstanding any such provision in the Agreement, Contractor agrees that 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;

(v) Venue - any provision that selects the courts or tribunals in any county, state, or jurisdiction outside Alabama as the place for litigation or resolution of a dispute relating to the Agreement. Notwithstanding any such provision in the Agreement, Contractor agrees the venue of any such suit, action, or legal proceeding brought to enforce or secure relief shall be Jefferson County, Alabama, except to the extent otherwise required by applicable principles of law or if the courts in that County lack jurisdiction;

(vi) Alternative Dispute Resolution - any provisions obligating the City to arbitrate, participate in mandatory mediation proceedings, or engage in other alternate dispute resolution processes to resolve any dispute related to the Agreement. Notwithstanding any such provision in the Agreement, the Parties may agree to participate in non-binding mediation of a dispute to be conducted on terms and conditions that they negotiate;

(viii) Attorney's Fees; Court Costs; Litigation Expenses - any provisions obligating the City or making it responsible or liable for attorney's fees, court costs, litigation expenses, and like charges that may be incurred in

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.

h. 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. Open Trade. Pursuant to Ala. Code § 41-16-5 (1975), Contractor represents and agrees that, by entering the Agreement, it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

l. Applicable Law. This Agreement shall be governed by, enforced, and construed in accordance with, the laws of the State of Alabama (herein the "Applicable Law").

m. Ineffective Provisions in Contractor Documents. Notwithstanding any provisions, terms or conditions expressed in the Contractor Proposal, in any statement of Contractor's general terms and conditions, or in a quotation, invoice, or other writing or document of any form or type that Contractor furnishes the City in connection with this Agreement, the Project, the Work, or a request for payment (collectively, "Contractor Document(s)"). Contractor agrees that the types of provisions, terms, or conditions below that may be expressed in any Contractor Document are ineffective, stricken, overridden, and not enforceable as between the Parties:

(i) Indemnification - any provisions that obligate the City to indemnify or hold Contractor (or its affiliates, officials, employees, or sub-contractors) harmless for any damages, costs, losses, fees, expenses, actions, liability, or claims asserted by third parties against Contractor that relate to or arise from the Agreement (hereinafter "Claims"). Notwithstanding the inclusion of such provision in a Contractor Document, Contractor agrees that the City shall not indemnify, hold harmless, or release the Contractor

resolving disputes or claims related to the Agreement, 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; and

(ix) Modification of City's Rights, Remedies & Duties - any provisions that (1) create or impose any duty or liability on the City, or that confer or purport to confer greater rights or remedies on the Contractor than existing under Applicable Law, or (2) modify, limit, reduce, restrict, or waive any rights or remedies that would be available to the City under Applicable Law arising from the performance or operations of Contractor (or of any person, firm, or entity in privity therewith or acting on Contractor's behalf) or their default in performing their obligations under the Agreement. Notwithstanding, nothing herein shall preclude the City and Contractor from agreeing to limit, restrict or cap the amount of compensation or damages that a Party defaulting on its obligations under the Agreement would compensate the non-defaulting Party and that arise from the defaulting Party's breach or failure to perform.

(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 (CITY)

By: [Signature]  
Its: Mayor  
Date: 3/13/2023

VIDEO INDUSTRIAL SERVICES (CONTRACTOR)

By: Heath Nelson  
Its: Operations Manager  
Date: 3/14/2023

1. Scope of Work

See attached City Scope of Work (if any) and March 1, 2023 Contractor Proposal.

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. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate four (4) week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives

City Project Representative:  
Steven Gay  
3579 East Street  
Birmingham, AL 35243  
Email: gayj@mtbrook.org  
Day Tel #: 205-802-3870

Contractor Project Representative:  
Heath Nelson  
7721 2nd Avenue North  
Birmingham, AL 35206  
hnelson@videoindustrial.com  
Day Tel # 205-798-0300

4. Special Conditions

Before commencing operations, Contractor will communicate with City residents concerning any Project operations that may affect their use of roads or of other properties in the Project area. Further, Contractor will communicate directly with the City Project Representative (and other City representatives identified by him) concerning any road closures required to perform the Work.

APPENDIX 3

December 16, 2022

**City Of Mountain Brook**

Attn: Sam Gaston | Ronnie Vaughn | Steven Gay



**Re: City of Mountain Brook | Overton Road Drainage Project**

Wright Construction Company proposes to furnish all labor, materials, and equipment necessary to complete the scope of work described below at the above referenced project:

**PHASE ONE Scope of Work to Include:**

- \*demo existing concrete valley gutter and remove spoils from site.
- \*form/place/finish approx. 175LF new 6/24 concrete curb/gutter (with integral color).
- \*install concrete flume to direct water flow towards new 4'x4' storm box (with lid) that ties into existing storm pipe.

**PHASE ONE COST: \$26,925**

**PHASE TWO Scope of Work to Include:**

- \*demo small portion of existing concrete curb and remove spoils from site.
- \*form/place/finish approx. 100LF new 6/24 concrete curb/gutter (with integral color).

**PHASE ONE COST: \$7,800**



**Exclusions:** Permits, Engineering, Testing, Private Locate, Utility Relocation and/or repair, Unsuitable Soils,

asks for the opportunity to bid on this project and as usual we look forward to working with the Mountain Brook team!

**Landon Ditto**  
Lead Estimator/Project Manager

Wright Construction Company ("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") on the understated project (the Project")

Name of Project: Brookwood Baptist Drainage Project

Site of Project: 3449 Overton Road  
Mountain Brook, AL 35223

**2. Scope of Work.** See Exhibit A (which includes the City Scope of Work, if any, and the December 16, 2022 Contractor Proposal, hereinafter the "Contractor Proposal") that is attached and incorporated herein.

**3. Undertaking of Parties.** Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor and perform its other responsibilities set forth in the Contract Documents.

**4. 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.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(i) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

**5. Contract Price/Invoice/Certification.** Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the Parties, City will pay Contractor the lump sum amount of Thirty-Four Thousand Seven Hundred Twenty-five Dollars (\$34,725.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$50,000.00.

The City will pay the lump sum amount of the Contract Price for this Project at the following time. Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its request for 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.

**6. 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.

**7. 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: One Million Dollars (\$1,000,000), 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, subcontractors, and broad form property damage;
- (ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than One Million Dollars (\$1,000,000), 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.

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(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.

The City will not indemnify Contractor (or any of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

(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.

**8. 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.

#### 9. Miscellaneous Provisions.

a. **Entire Agreement.** This Agreement which is comprised of this instrument, the City Scope of Work (if any) and the December 16, 2022 Contractor Proposal (collectively, the "Contract Documents") 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

4

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.

h. **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. **Open Trade.** Pursuant to *Ala. Code* § 41-16-5 (1975), Contractor represents and agrees that, by entering the Agreement, it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

l. **Applicable Law.** This Agreement shall be governed by, enforced, and construed in accordance with, the laws of the State of Alabama (herein the "Applicable Law").

m. **Ineffective Provisions in Contractor Documents.** Notwithstanding any provisions, terms or conditions expressed in the Contractor Proposal, in any statement of Contractor's general terms and conditions, or in a quotation, invoice, or other writing or document of any form or type that Contractor furnishes the City in connection with this Agreement, the Project, the Work, or a request for payment (collectively, "Contractor Document(s)"). Contractor agrees that the types of provisions, terms, or conditions below that may be expressed in any Contractor Document are ineffective, stricken, overridden, and not enforceable as between the Parties:

(i) **Indemnification** - any provisions that obligate the City to indemnify or hold Contractor (or its affiliates, officials, employees, or sub-contractors) harmless for any damages, costs, losses, fees, expenses, actions, liability, or claims asserted by third parties against Contractor that relate to or arise from the Agreement (hereinafter "Claims"). Notwithstanding the inclusion of such provision in a Contractor Document, Contractor agrees that the City shall not indemnify, hold harmless, or release the Contractor

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6

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; (2) the City Scope of Work (if any); and (3) the Contractor Proposal.

b. **Counterparts.** 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 have the same legal force and effect as an original document.

c. **No Waiver.** 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. **No Assignment.** 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. **No Third-Party Beneficiaries.** 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. **Independent Contractor.** 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.

g. **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

APPENDIX 4

5

or any other person, firm, or legal entity for, from, or with respect to any Claims arising out of or relating to the Agreement or the City's performance or nonperformance of its obligations thereunder.

(ii) **Late Payment Charges; Fees; Interest** - any provisions (1) that obligate the City to pay any charges for penalties, interest, or fees at a rate higher than two-thirds of one percent per month (8% per annum) with respect to delinquent invoices or bills for goods, materials, or services, or (2) stipulating that a bill or invoice shall be considered delinquent if not paid by the City earlier than thirty (30) days after Contractor renders such an invoice or bill.

(iii) **Insurance** - provisions that obligate the City to purchase or maintain any insurance policy or amount of coverage concerning the transactions contemplated in the Agreement, or to maintain a risk management program. Notwithstanding any such provision in the Agreement, nothing shall preclude the City from purchasing a specific type of insurance requested by Contractor in connection with the transaction contemplated in the Agreement;

(iv) **Governing Law** - any provisions designating the law of any state, country, territory, or jurisdiction other than Alabama as the applicable or governing law. Notwithstanding any such provision in the Agreement, Contractor agrees that 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;

(v) **Venue** - any provision that selects the courts or tribunals in any country, state, or jurisdiction outside Alabama as the place for litigation or resolution of a dispute relating to the Agreement. Notwithstanding any such provision in the Agreement, Contractor agrees the venue of any such suit, action, or legal proceeding brought to enforce or secure relief shall be Jefferson County, Alabama, except to the extent otherwise required by applicable principles of law or if the courts in that County lack jurisdiction;

(vi) **Alternative Dispute Resolution** - any provisions obligating the City to arbitrate, participate in mandatory mediation proceedings, or engage in other alternate dispute resolution processes to resolve any dispute related to the Agreement. Notwithstanding any such provision in the Agreement, the Parties may agree to participate in non-binding mediation of a dispute to be conducted on terms and conditions that they negotiate;

(vii) **Attorney's Fees; Court Costs; Litigation Expenses** - any provisions obligating the City or making it responsible or liable for attorney's fees, court costs, litigation expenses, and like charges that may be incurred in

7

resolving disputes or claims related to the Agreement, 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; and

(ix) Modification of City's Rights, Remedies & Duties - any provisions that (1) create or impose any duty or liability on the City, or that confer or purport to confer greater rights or remedies on the Contractor than existing under Applicable Law, or (2) modify, limit, reduce, restrict, or waive any rights or remedies that would be available to the City under Applicable Law arising from the performance or operations of Contractor (or of any person, firm, or entity in privity therewith or acting on Contractor's behalf) or their default in performing their obligations under the Agreement. Notwithstanding, nothing herein shall preclude the City and Contractor from agreeing to limit, restrict or cap the amount of compensation or damages that a Party defaulting on its obligations under the Agreement would compensate the non-defaulting Party and that arise from the defaulting Party's breach or failure to perform.

(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 (CITY)

By: [Signature]  
Its: Mayor  
Date: 3/13/2023

WRIGHT CONSTRUCTION COMPANY (CONTRACTOR)

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT A - SPECIFICATIONS

1. Scope of Work

See attached City Scope of Work (if any) and December 16, 2022 Contractor Proposal.

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. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate four (4) week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives.

City Project Representative:	Contractor Project Representative:
Steven Gay	Landon Ditto
3579 East Street	1051 Commerce Blvd.
Birmingham, AL 35243	Pelham, AL 35124
Email: gayj@mtnbrook.org	Email: landon@wccbirmingham.com
Day Tel #: 205-802-3870	Day Tel # 901-337-8828

4. Special Conditions.

Contractor has all responsibility related to traffic control for the Project, including, without limitation, provision of signage and flagmen.



# GONE FOR GOOD

DOCUMENT DESTRUCTION & E-WASTE RECYCLING  
SHRED & E-WASTE EVENT - CLIENT SERVICE AGREEMENT

become due from GFG, its parent, affiliates, subsidiaries or other divisions or units.

9. Indemnification; Attorney's Fees and Collection Costs. Intentionally Deleted because Service Fees are not contemplated pursuant to this Agreement.

10. Miscellaneous. This Agreement and any addenda attached hereto and agreed to by the parties in writing represents the entire agreement between the parties and supersedes any and all prior agreements and arrangements, whether oral or written between the parties that relate to the Event. No modification of this Agreement shall be binding unless in writing, attached hereto, and signed by both parties. This Agreement shall be construed in accordance with the laws of the State of Alabama. All words and phrases in this Agreement shall be construed to include the singular or plural number, and the masculine, feminine or neutral gender, as the context requires. The failure of either party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to that party under this Agreement, will not be construed as a waiver of that provision or any other provision, and the provision will continue to be in full force and effect. If any provision is found to be illegal, invalid, or otherwise unenforceable by any judicial or administrative body, then other provisions will not be affected and will remain in full force and effect. Provisions herein which by their very nature are intended to survive termination or cancellation of this Agreement will survive such termination or cancellation. Any notices to be given by one party to the other will be considered properly given if deposited in the United States Mail or by express mail, sent to Client at its billing address identified on the first page of this Agreement, and if to GFG, to the respective GFG branch with whom the original contract was signed unless notice of a new address is given and received in accordance with this paragraph.

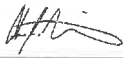
THIS AGREEMENT ("Agreement") is made effective as of the 6<sup>th</sup> day of March, 2023, by and between UNITED ABILITY, INC, an Alabama nonprofit corporation, doing business as GONE FOR GOOD DOCUMENT DESTRUCTION (hereinafter called "GFG") and the CITY OF MOUNTAIN BROOK, ALABAMA with a billing address of 56 Church Street, Mountain Brook, AL 35213, (hereinafter called "Client"). GFG and Client hereby agree as follows:

Terms and Conditions


1. Event Address: Mountain Brook High School, 3650 Bethune Drive, Mountain Brook, AL35223
2. Event Date and Time: Saturday, April 22, 2023 from 1:00 pm until 4:00pm.
3. Sole Terms. All services provided by GFG to Client for the Event are subject solely to the terms contained herein and any addenda agreed to by the parties in writing and attached hereto. No term or condition on Client's purchase order or any other instrument, agreement or understanding shall be binding upon GFG unless agreed to by the parties in writing. All typographical and clerical errors are subject to correction.
4. Authorized Representative: Client's authorized representative ("Authorized Representative") shall be Tyler Slaten, [slaten@mtmtnbrook.org](mailto:slaten@mtmtnbrook.org), 205-802-3811.
5. Services.
  - (a) Paper Materials. GFG Mobile-based operations: At the Event GFG staff will receive and dump paper material delivered by the public for shredding into a large rolling container, which will be locked when not in use by GFG staff and during transport to the mobile shred truck. Containers filled with sensitive Materials will be tipped and shredded on the mobile GFG truck. Paper material that has been shredded will be transported by GFG to a contracted recycling entity for baling within GFG's sole discretion.
  - (b) E-Waste. At the Event GFG Staff will receive electronic waste delivered by the public and properly dispose of that waste in the manner selected by GFG.
6. Service Fees. Gone for Good will provide paper and e-waste disposal services for the Event at no charge.
7. Limitation of Liability. GFG is not liable for (a) any loss or damage whatsoever relating to the Material or its destruction by GFG or (b) for the repair, replacement or restoration of any destroyed Material. GFG's aggregate liability, if any, arising under this Agreement or the provision of services to Client is limited to the amount of the Service Fees received by GFG from Client during the last year of the term of this Agreement. Notwithstanding the foregoing, in no event will GFG be liable for any special, indirect, consequential, exemplary, or punitive damages, loss of profits or revenue, or loss of use even if informed of the possibility of such damages. To the extent permitted by applicable law, these exclusions and limitations will apply regardless of whether liability arises from breach of contract, warranty, tort (including but not limited to negligence), by operation of law, or otherwise.
8. Setoff. Client will not set off invoiced amounts or any portion thereof against sums that are due or may

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first shown above.

UNITED ABILITY, INC. – "GFG"

By:   
 Name: Abe Bernstein  
 Its: Director  
 Date: March 6, 2023

CITY OF MOUNTAIN BROOK, ALABAMA – "CLIENT"

By:   
 Name: Sam Gaston  
 Its: City Manager  
 Date: 3/14/2023



**Tyler Slaten**  
Senior Planner  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205/802-3811  
Fax: 205.879.6913  
hazend@mtnbrook.org  
www.mtnbrook.org

DATE: March 13, 2023

TO: Mayor, City Council & City Manager

FROM: Tyler Slaten, City Planner

RE: BZA Term Appointment

Norman Orr's BZA term expires on March 24, 2023; Mr. Orr has expressed a wish to continue to serve on BZA, and the BZA members have unanimously recommended that he renew for another term.

APPENDIX 6

Mountain Brook Junior High Drainage Improvements Study and Design

March 9, 2023

This AGREEMENT, entered into by and between The City of Mountain Brook, Alabama, hereinafter referred to as the Client, and Schoel Engineering Company, Inc., hereinafter referred to as the Consultant, is for additional Consulting Services associated with the drainage improvements at Mountain Brook Junior High located in Mountain Brook, Alabama.

PROPOSED SCOPE & SERVICES

1. Additional Construction Administration

The Consultant will perform additional Construction Administration and Coordination throughout the duration of the project as it relates to the ongoing and upcoming School Projects. The Consultant will facilitate meetings with the project Team on a regular basis and as needed with the neighbors, Client, Contractor, and others. The Consultant will work with the Contractor and Client in solving any minor construction related problems that may arise. The detailed scope is as follows:

- Coordinate with neighbors throughout construction and participate in meetings as needed
Facilitate bi-weekly OAC meetings throughout duration of construction
Coordination with ongoing and upcoming School projects and participate in meetings as needed
Construction observation to be performed on an as-needed basis and at the direction of the Client
Minor construction-related revisions - Revisions required to coordinate with the upcoming field project

Lump Sum Fee \$ 10,100

2. Additional Design and Modeling of Downstream Improvements Due to Landowner Questions

The Consultant would perform additional hydraulic modeling of the proposed drainage improvements downstream of the Junior High. Options for improvements to the downstream ditch would be examined. Flow computations and evaluation of downstream conditions would be performed. A brief study report would document the findings. The detailed scope is as follows:

- Coordinate as required with Client
Update hydrologic and hydraulic models
Study options of improvements to the existing ditch
Develop preliminary design for review and approval by the Client
Perform model runs to examine impacts on downstream properties
Prepare brief study report

Lump Sum Fee \$ 4,300

FEE SUMMARY

Table with 2 columns: Item description and Fee amount. Includes 'Additional Construction Administration' for \$10,100 and 'Additional Design and Modeling of Downstream Improvements Due to Landowner Questions' for \$4,300.

If additional services not included in the above scope are performed, those additional services should be approved by Client in advance and may be billed according to the attached Schedule of Unit Rates.

Table listing various roles and their hourly rates: Senior Principal (\$325.00), Principal (\$215.00), Survey Field Crew (\$195.00), Department Manager/Chief Land Surveyor (\$185.00), Senior Project Manager (\$175.00), Project Manager (\$150.00), Senior Professional (\$150.00), Project Professional (\$125.00), Staff Professional (\$115.00), Senior Designer/Drafter/Specialist (\$115.00), Designer 2/Drafter 2/Specialist 2 (\$105.00), Designer 1/Drafter 1/Specialist 1 (\$95.00), Administrative/Technical Support (\$85.00).

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

GENERAL TERMS AND CONDITIONS

1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services.

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

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

(b) any Claims for bodily injury, death, or property damage by third parties against the Client that arise out of any "occurrence" as that term is defined by Consultant's policy of Commercial General Liability insurance required in section 7(b) below, provided that (i) Consultant's total liability under this provision shall not exceed the amount of the minimum limits of the Comprehensive General Liability policy required in subpart 7(b) below; and (b) nothing in this provision shall obligate Consultant to indemnify the Client for Claims by third

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APPENDIX 7

parties that result from the sole negligence or the willful misconduct of the Client. Nothing herein is intended or shall be interpreted to demand or require Consultant to defend or indemnify the Client from and against any third-party claims, demands, actions, proceedings or suits alleging or in any way arising out of Consultant's breach of its professional services obligations or warranty hereunder, except to the extent provided for in subsection (a) above.

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

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

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

6) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the Scope of Services within established schedules.

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

(a) Professional Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00) covering claims to the extent caused by Consultant's negligent performance of professional services or breach of professional warranty. This Professional Liability policy shall include coverage on an occurrence basis.

(b) Comprehensive General Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage on an occurrence basis for premises/operations, products/completed operations, assumed contractual obligations, and independent contractors; and

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

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

Client shall be named an additional insured on the Comprehensive General Liability and any applicable umbrella and excess policies

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

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

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

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

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

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

13) At Client's request and for its convenience, Consultant may provide documents and its work product in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional Instrument of Service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

14) This Agreement is entered with the expectation that it is not being used in a price comparison with other firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

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

16) Project Representative. Each party shall appoint a representative who shall coordinate with the other party on all matters related to the performance of the Services and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be given when sent to the



appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

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

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

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

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

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

22) Immigration Law Compliance. Consultant represents and warrants to Client that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act"); (ii) it has enrolled or will enroll in the E-Verify program prior to performing any Services on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Consultant shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Consultant further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Consultant is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

23) Amendment. Neither this Agreement nor any of the provisions herein may be amended or modified except in accordance with the terms of a subsequent written instrument that is signed by both parties.

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

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

(Signature Page Follows)

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

CITY OF MOUNTAIN BROOK, ALABAMA (CLIENT)

By: Stewart H. Welch III  
Stewart H. Welch III

Its: Mayor

Date: 3/13/2023

SCHOEL ENGINEERING COMPANY, INC. (CONSULTANT)

By: Walter Schoel III

Walter Schoel III

Its: CEO

Date: March 9, 2023

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

Company: City of Mountain Brook  
Client: same  
Street Address: 56 Church Street  
City, State, Zip: Mountain Brook, AL 35213  
Phone Number: 205 802 5803 Fax Number:  
Email Address: gastons@mtabrook.org  
Client's Project Number: Client's Purchase Order Number:  
Consultant's Project Representative:  
Client's Project Representative: Annie Vaughn

APPENDIX 7

Sam Gaston

From: Taylor Schoel <tschoel@schoel.com> on behalf of Taylor Schoel  
Sent: Thursday, March 09, 2023 1:32 PM  
To: Sam Gaston; Jess Sirkin; Ronald Vaughn  
Cc: Walter Schoel III; Mark Simpson; Whit Colvin; Ben Presley; Tony Davis  
Subject: RE: Proposed Additional Services Request for MBJH Project  
Attachments: Mountain Brook Junior High Drainage Improvements add 2.pdf

Sam,

See attached for an updated proposal. Scope item #3 has been removed. My justification for the additional construction administration time is below.

- We had a construction administration phase in our initial proposal (see the screenshot below from the original proposal). But, when we estimated the fee, we did not anticipate the added effort of dealing so closely with the School Board, B&G, neighbors, and the field project.
- The design scope when we wrote the proposal was only related to the pond expansion and the pipe installation. We then expanded the design scope to include additional work in Hillsdale and Richmar. The CA budget needs to be adjusted to account for the expanded project limits and duration.
- The original scope also did not account for leading regularly scheduled OACs throughout the duration of construction. Our team is currently leading bi-weekly OAC meetings that will continue through the end of the project in late July.
- The complex phasing of the project and how the schedule had to extend to work with the School project and the School's operation also is going to require more work than assumed.
- Additional coordination with the surrounding neighbors has also been required and is ongoing. This includes frequent meetings and correspondence regarding questions/concerns surrounding the work associated with the project.
- All the added coordination has required significantly more effort than anticipated and we are essentially out of budget with months of work to go.

3. Construction Administration

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

- Review of shop drawings
- Construction observation to be performed on an as-needed basis and at the
- Minor construction-related revisions – Revisions required as a result of f upon by the Client

Lump Sum Fee \$ 4,500



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

**MINUTE BOOK 93**

Sec. 50-113. - Parking of oversized vehicles.

March 9, 2023

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

Greetings,

As Chief of Police, I am submitting this letter as a recommendation and authorization to declare the first two parking spaces north of Brook Manor Drive on the western side of Cahaba Road as "Small Car Only". It has been determined that the vision of persons turning from Brook Manor Drive onto Cahaba Road is obstructed when larger types of vehicles are parked in the two spaces. It is believed that the "Small Car Only" designation of the two parking spaces will allow those turning from Brook Manor Drive to have a larger sight distance of Cahaba Road in order to enter the intersection completing a turn onto Cahaba Road. I request that the proper signage be authorized to properly mark the two identified spaces as "Small Car Only". The recommendation and authorization is based off of Mountain Brook City Ordinance Sec. 50-113. I have included the city ordinance with this letter for your convenience. I have also included a map of the intersection indicating the spaces to be changed marked with a red colored "x". Thank you in advance for your attention to this matter.

Sincerely,

Jaye Loggins  
 Chief of Police

(a) Parking restrictions authorized. The chief of police of the city or his designee shall be and hereby is authorized to limit, restrict, or regulate the type of vehicle that is authorized to use public parking places, spaces, or lanes if the chief of police or his designee shall determine that the size, configuration, angle, or location of the public parking lane, space, or place cannot accommodate vehicles of certain types, sizes, or dimensions without impairing or adversely affecting public safety or convenience. Upon identifying said public parking places, spaces, or lanes, the chief of police shall be and hereby is authorized to mark or indicate by appropriate signage, lettering, painting, striping, or other customary means of providing such notice of the restriction, limitation, or prohibition that shall apply to the parking place, space, or lane.

(b) Violations. It shall be a violation of the terms of this section for an operator of a motor vehicle to park, stop, or stand a vehicle that does not conform to the restrictions, limitations, or prohibitions in a public parking place, space, or lane designated and marked as heretofore described.

(Code 1996, § 12-65.7; Ord. No. 1544, §§ 1—3, 8-12-2002)

APPENDIX 8



