

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
OCTOBER 9, 2023**

---

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 0 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 6:15 p.m. on the 9<sup>th</sup> day of October, 2023 (others were allowed to listen to the meeting by way of Internet video conference- no one did). Council President Smith 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  
Lloyd C. Shelton  
Gerald A. Garner  
Stewart Welch III, Mayor

Absent:

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

**1. AGENDA**

1. Recommendation to lower the speed limit on Spring Hill Road and Hermitage Road

Sam Gaston-City Manager

- Asked Richard Caudle with Skipper Consultants to look at this area again
- Based on the traffic study conducted by the police department and Richard Caudle's review, the City is not recommending the speed limit to be changed

2. Change order for the Jemison Park project

Joel Eliason-Nimrod Long & Associates

- There were several items that came up during the construction during the summer
- There were some areas where the soil was not drying out as quickly as they needed it to, had to modify the design with CS Beaty
- In removing the old concrete sidewalks, found three layers of concrete that needed to be removed
- Change in tree protection fencing-had to switch to a different detail to save the trees
- Additional signage was requested by the Parks and Recreation department (park closure signs)
- Had to remove dead trees that could potentially be dangerous for trail users
- Expect to have one more change order

Virginia Smith-Council President

- Item added to the formal agenda (Resolution No. 2023-171)

3. Requests for sidewalk and drainage improvements on Cherokee Road from Old Leeds Road to Overbrook Road

Elizabeth Jewel-3509 Cherokee Road

- Cherokee Road was classified as a Level 1 (high priority); however it was put into phase 6 with regards to installation of sidewalks
- Here today to ask the council to reassess and move Cherokee Road up on the list
- Cherokee Road floods during heavy rainfall events
- The residence at 3501 has pooling that occurs during heavy rain
- At her residence, there are 18 inches of road that is exposed

Jay Kaston-3501 Cherokee Road

- Water hits driveway and pools which causes the concrete to come up
- Helped at least 3 high school students that have received flat tires on Cherokee Road (due to road conditions)

Emmett Bates-3521 Cherokee Road

- Had a small parking pad; however, over time it has eroded and collapsed (this is due to the drainage issues)
- Large trucks park/drive down Cherokee Road which cause damages to the road
- Would like to have a sidewalk where the parking pad used to be

Milton Smith-3435 Cherokee Road

- The erosion issues has created problems on both sides of the road
- The erosion issue is getting worse and worse
- If someone runs off the road, they are in severe jeopardy

Lloyd Shelton-Council Member

- Inquired if Public Works get involved in guardrail projects

Ronald Vaughn-Public Works Director

- The Public Works department does get involved
- In the past, have had different guardrail projects and guardrail repair
- If the council chose to move forward with guardrails, then would need to determine what area would need a guardrail

Gerald Garner-Council Member

- Safety is a priority
- The problem with sidewalks is they take time to be built
- In the interim, would like to see guardrails on Cherokee Road

Ronald Vaughn

- Did identify some maintenance items to help with the drainage
- Where the open ditches are located, can add riprap along shoulder
- Will address and do what can be done in the next few weeks
- Can add reflectors at the drop-off
- Will look into the price for a guardrail
- Will freshen up sideline stripes

Virginia Smith-Council President

- Ronald Vaughn will meet with neighbors (if needed) and will proceed with easy City fixes
- This does not include sidewalks at this time

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

## 2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Virginia Smith made a motion that the City Council convenes in executive session to discuss matters of litigation and that the City Council shall reconvene upon conclusion of the executive session to the regular council meeting. 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 Member Shelton. Then, upon the question being put and the roll called, the vote was recorded as follows:

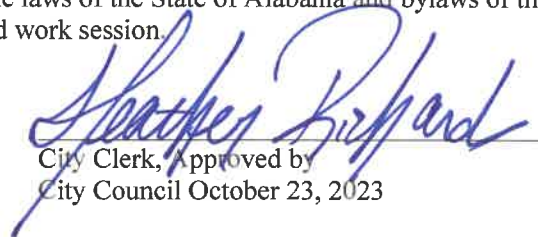
Ayes: Virginia C. Smith  
William S. Pritchard III  
Graham L. Smith  
Lloyd C. Shelton  
Gerald A. Garner

Nays: None

There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 7:12 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 October 9, 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 October 23, 2023

**MINUTES OF THE REGULAR MEETING OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
OCTOBER 9, 2023**

---

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 0 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:13 p.m. on the 9<sup>th</sup> day of October, 2023 (others were allowed to listen to the meeting by way of Internet video conference-no one did). 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  
Lloyd C. Shelton  
Gerald A. Garner  
Stewart Welch III, Mayor

Absent:

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

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

**1. INTRODUCTION OF SPECIAL GUESTS (BOY SCOUTS)**

Henry Scott with Troup 86 out of St. Luke's Episcopal Church

- Working on the Communication Badge

Charlie Long with Troup 53 out of St. Peter's Anglican Church

- Working on the Communications Badge

William Clements with Troup 53 out of St. Peter's Anglican Church

- Working on Citizenship in the Nation Badge

**2. 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 September 25, 2023, regular meeting of the City Council

2023-160	Authorize the City to enter into an agreement with All In Mountain Brook	Exhibit 1, Appendix 1
2023-161	Authorize the City to enter into an agreement with the Birmingham Zoo	Exhibit 2, Appendix 2

2023-162	Authorize the City to enter into an agreement with the Birmingham Botanical Society	Exhibit 3, Appendix 3
2023-163	Authorize the City to enter into an agreement with the Prescott House	Exhibit 4, Appendix 4
2023-164	Authorize the City to enter into an agreement with the Mountain Brook Chamber of Commerce	Exhibit 5, Appendix 5
2023-165	Accept the proposal submitted by Wicked Solutions with respect to the Strategic Planning Project for the City of Mountain Brook	Exhibit 6, Appendix 6
2023-166	Award the bid [B-20230818-900] for the Mountain Brook Street Paving/Resurfacing Project to Dunn Construction	Exhibit 7, Appendix 7
2023-167	Award the bid [B-20230818-920] for the Mountain Brook Street Cut Repair Project to Glenn Contracting and Paving Company	Exhibit 8, Appendix 8
2023-168	Award the bid [B-20230818-910] for the Mountain Brook Street Striping Project to Highway Management Systems	Exhibit 9, Appendix 9
2023-169	Execute a Transit Service Agreement FY2024 with Birmingham-Jefferson County Transit Authority (dba) MAX	Exhibit 10, Appendix 10
2023-170	Authorize the sale or disposal of certain surplus property	Exhibit 11, Appendix 11
2023-171	Approve change order No. 3 with respect to the Jemison Trail Nature Trail Improvement Project	Exhibit 12, Appendix 12

Thereupon, the foregoing minutes and resolutions (Nos. 2023-160 through 2023-171), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Garner. The minutes and resolutions were then considered by the City Council. Council Member Graham Smith seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith  
William S. Pritchard III  
Graham L. Smith  
Lloyd C. Shelton  
Gerald A. Garner

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes and resolutions (Nos. 2023-160 through 2023-171) were adopted by a vote of 5—0 and as evidence thereof he signed the same.

**3. MOTION TO CORRECT AND RE-APPROVE THE JUNE 20<sup>TH</sup> MOUNTAIN BROOK CITY COUNCIL MINUTES WITH RESPECT TO THE RECORDING OF THE VOTE FOR UNANIMOUS CONSENT FOR IMMEDIATE CONSIDERATION FOR ORDINANCE NO. 2143 (EXHIBIT 13)**

Council President Virginia Smith made a motion to approve Motion 2023-172 to correct and re-approve the June 20<sup>th</sup> Mountain Brook City Council minutes with respect to the recording of the vote for unanimous consent for immediate consideration for Ordinance No. 2143. The motion was seconded by Council Member Shelton. Thereupon, Council President Virginia Smith called for a vote with the following results:

Ayes: Virginia C. Smith  
William S. ("Billy") Pritchard III  
Lloyd C. Shelton  
Graham L. Smith  
Gerald A. Garner

Nays: None

Council President Virginia Smith declared Motion (No. 2023-172) is hereby passed by a vote of 5-0 (Exhibit 13).

**4. COMMENTS FROM RESIDENCES AND ATTENDEES**

(There were no public comments)

**5. ANNOUNCEMENT**

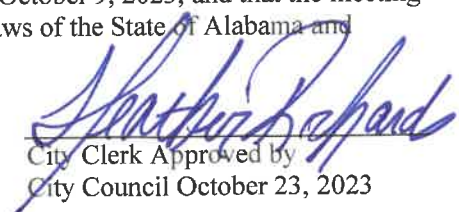
Council President Virginia Smith announced the next regular meeting of the City Council is October 23, 2023, 7:00p.m.

**6. ADJOURNMENT**

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 7:17 p.m.

**7. 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 October 9, 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 October 23, 2023

**EXHIBIT 1**

**RESOLUTION NO. 2023-160**

**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 enter into an agreement with All In Mountain Brook, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**APPENDIX 1**

---

**EXHIBIT 2****RESOLUTION NO. 2023-161**

**WHEREAS**, the Birmingham Zoo (“Zoo”) is a regional educational and entertainment attraction located adjacent to the municipal limits of the City of Mountain Brook (“City”); and

**WHEREAS**, the City desires to increase the learning opportunities for students who attend Mountain Brook City Schools; and

**WHEREAS**, the Zoo has developed certain programs, exhibits, and learning opportunities which, in the City’s opinion, will be helpful and instructive to said students; and

**WHEREAS**, such programs exhibits, and learning experiences are not available at Mountain Brook City Schools; and

**WHEREAS**, the City, as a community partner, supports the mission and purpose of the Zoo, and has provided financial commitments to the Zoo as a result of the Zoo’s commitments and service to the City; and

**WHEREAS**, the City Council of the City of Mountain Brook wishes to extend those financial commitments to the Zoo for an additional year, all as set forth in the attached Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Mountain Brook that the City’s financial commitments to the Zoo shall be and hereby is extended for an additional year as set forth in the attached Agreement.

**BE IT FURTHER RESOLVED** that the commitments between the parties expressed in the Agreement is deemed to be fair and adequate and serve a public purpose, and the Mayor is hereby authorized to execute the Agreement on behalf of the City.

**APPENDIX 2**

---

**EXHIBIT 3****RESOLUTION NO. 2023-162**

**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 enter into a contract with the Birmingham Botanical Society subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**APPENDIX 3**

---

**EXHIBIT 4**

**RESOLUTION NO. 2023-163**

**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 enter into a contract with the Prescott House subject to such minor changes as may be determined appropriate by the City Attorney, a copy of which contract is attached hereto as Exhibit A.

**APPENDIX 4**

---

**EXHIBIT 5**

**RESOLUTION NO. 2023-164**

**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 enter into an agreement with the Mountain Brook Chamber of Commerce, in the form as attached hereto as Exhibit A, subject to such minor changes as may be determined appropriate by the City Attorney.

**APPENDIX 5**

---

**EXHIBIT 6**

**RESOLUTION NO. 2023-165**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby accepts the proposal submitted by Wicked Solutions with respect to the Strategic Planning Project for the City of Mountain Brook.

**APPENDIX 6**

---

**EXHIBIT 7**

**RESOLUTION NO. 2023-166**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid [B-20230818-900] for the Mountain Brook Street



Paving/Resurfacing Project in the amount of \$708,601.85 to Dunn Construction Co. having been determined by the City to have submitted the lowest bid in conformance with the expressed specifications.

**APPENDIX 7**

---

**EXHIBIT 8**

**RESOLUTION NO. 2023-167**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid [B-20230818-920] for the Mountain Brook Street Cut Repair Project in the amount of \$275.00 per square yard to Glenn Contracting and Paving Co. having been determined by the City to have submitted the only bid in conformance with the expressed specifications.

**APPENDIX 8**

---

**EXHIBIT 9**

**RESOLUTION NO. 2023-168**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid [B-20230818-910] for the Mountain Brook Street Striping Project in the amount of \$465,000 to Highway Management Systems having been determined by the City to have submitted the only bid in conformance with the expressed specifications.

**APPENDIX 9**

---

**EXHIBIT 10**

**RESOLUTION NO. 2023-169**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a Transit Service Agreement FY2024 between the City and Birmingham-Jefferson County Transit Authority (BJCTA) (dba\ "MAX"), in the form as attached hereto as Exhibit A.

**APPENDIX 10**

---

**EXHIBIT 11**

**RESOLUTION NO. 2023-170**

**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 property, as described in the form as attached hereto as Exhibit A, owned by the City of Mountain Brook, Alabama are no longer needed for public or municipal purposes and is hereby declared surplus property; and

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 11**

---

#### **EXHIBIT 12**

#### **RESOLUTION NO. 2023-171**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby approving change order No. 3 with respect to the Jemison Trail Nature Trail Improvement Project (Resolution No. 2023-037) in the amount of \$7,303.50.

#### **APPENDIX 12**

---

#### **EXHIBIT 13**

#### **MOTION NO. 2023-172**

Council President Virginia Smith made a motion to correct and re-approve the June 20th Mountain Brook City Council minutes with respect to the recording of the vote for unanimous consent for immediate consideration for Ordinance No. 2143

The motion was seconded by Council Member Shelton.

There being no further discussion or comments or questions from the audience, Council President Virginia Smith called for a vote with the following results:

Ayes: Virginia C. Smith, Council President  
William S. Pritchard III, Council President Pro Tempore  
Gerald A. Garner  
Lloyd C. Shelton  
Graham L. Smith

Nays: None

Council President Virginia Smith thereupon declared that said motion (No. 2023-172) is adopted by a vote of 5—0.

---

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

CONTRACT AGREEMENT

THIS AGREEMENT is entered on this 9<sup>th</sup> day of October, 2023, by and between the City of Mountain Brook (hereinafter referred to as "City") and All In Mountain Brook (hereinafter referred to as "Contractor"):

WHEREAS, municipalities in the State of Alabama are authorized to promote the public health, safety, morals, security, prosperity, contentment and general welfare of the community;

WHEREAS, All In Mountain Brook is an organization which has as one of its goals the promotion of public health, safety, morals, security, prosperity, contentment and the general welfare in the City of Mountain Brook specifically, the enhancement and protection of the lives of Mountain Brook youth;

WHEREAS, the City Council of the City of Mountain Brook, Alabama desires to enter into a contract with the Contractor for the purpose of providing services and resources to residents of the City of Mountain Brook which are designed to combat issues and problems that place the lives and well-being of Mountain Brook youth at risk;

WITNESSETH,

1. That the City, for and in consideration of the covenants and agreements hereinafter set out to be kept and performed by the Contractor, does hereby agree to pay the Contractor the sum of \$10,000.00 (Ten Thousand and No/100 Dollars) (hereinafter referred to as the "Contract Amount") for performing the services herein provided for the period of October 1, 2023, through September 30, 2024.

2. SCOPE OF SERVICES:

In consideration of the covenants and agreements made herein by the City, the Contractor agrees that the Contractor shall be totally responsible for, and shall have exclusive control over, the management and disbursement of the Contract Amount, and that the Contract Amount shall be used only for the purposes herein described:

- a. To underwrite All In Mountain Brook, parent and student educational programming, thereby targeting families and youth in grades Kindergarten through twelfth grade, including but not limited to All In Mountain Brook speakers, activities, materials, and communications designed to combat issues and problems that place the lives and well-being of Mountain Brook youth at risk.
- b. Activities will be planned by appointed Parent Teacher Organization representatives in each school, along with administrators and school counselors.
- c. Contractor anticipates the following disbursement of the contract amount:  
  - (1) Approximately \$7,000 for parent and community programs
  - (2) Approximately \$3,000 for student programs

- d. Contractor agrees to provide any and all personnel, supplies, and/or equipment necessary for the services herein to be provided.
3. The Contractor agrees to provide to the City at all reasonable times and places an accounting of the Contractor's expenditure of the Contract Amount.
4. The Contractor shall not transfer or assign this contract or any of the rights and privileges granted herein without the prior written consent of the City.
5. The Contractor agrees that upon violation of any of the covenants and agreements herein contained, on account of any act or omission of the Contractor, the City may, at its option, terminate and cancel this contract and to exercise any remedy, at its option, available to it whether in law or equity.
6. The Contractor agrees it will comply with Title 6 of the Civil Rights Act of 1964 assuring that no person under its employ will be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination on the grounds of race, sex, color, national origin or handicap.
7. Notwithstanding any of the other provisions contained in this contract, the City shall maintain the right to terminate this contract upon proper notice, which shall be in writing and shall be provided to the Contractor at least 30 days prior to the intended date of cancellation.
8. Except as otherwise expressly provided in this Agreement, any notice, consent or other communication required or permitted under this Agreement must be in writing and will be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service, or, if mailed, three days after the notice is deposited in the United States mail addressed as follows:  
  
To City of Mountain Brook: City Manager  
City of Mountain Brook  
Post Office Box 130009  
Mountain Brook, Alabama 35213  
  
To Contractor: All In Mountain Brook  
c/o Becky Holt
9. Any time period stated in a notice will be computed from the time the notice is deemed received. Either party may change its mailing address or the individual to receive notice by notifying the other party as provided in this paragraph.
10. No oral agreement or communication with any officer, agent, employee, or consultant of the City either before or after execution of the Agreement will affect or modify any of the terms or obligations contained in this Agreement. Any such oral agreement or communication will be considered as unofficial information and in no way binding upon City or Contractor. Any amendment to this Agreement must be in writing and signed by both parties.

APPENDIX 1

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this 9<sup>th</sup> day of Oct, 2023

CITY OF MOUNTAIN BROOK,

A Municipal Corporation

BY: [Signature]  
Mayor, City of Mountain Brook

WITNESSED

BY: [Signature]

ALL IN MOUNTAIN BROOK

BY: [Signature]  
Its Authorized Agent  
Print name: Becky Holt  
Title: Executive Director, All In Mountain Brook

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, Heather T. Richards, a notary public in and for said County in said State, hereby certify that Becky Holt, whose name as Authorized Agent of All In Mountain Brook, a nonprofit corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and will full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 12<sup>th</sup> day of October, 2023.

[Signature]  
NOTARY PUBLIC  
My commission Expires:

HEATHER T. RICHARDS  
Notary Public, Alabama State at Large  
My Commission Expires 1-11-2027

THIS AGREEMENT made this 6<sup>th</sup> day of October 2023 by and between the CITY OF MOUNTAIN BROOK, ALABAMA ("Mountain Brook" a municipal corporation of the State of Alabama) and the BIRMINGHAM ZOO, INC. ("Zoo" an Alabama non-profit corporation).

WHEREAS, the City desires to increase the learning opportunities for students who attend Mountain Brook City Schools; and

WHEREAS, the Zoo has developed certain programs, exhibits, and learning opportunities which, in the City's opinion, will be helpful and instructive to said students; and

WHEREAS, such programs exhibits, and learning experiences are not available at Mountain Brook City Schools; and

WHEREAS, the Zoo has agreed to work cooperatively with and assist the City with future public works projects; and

WHEREAS, the City has agreed to pay the Zoo the sum of Ten Thousand Dollars (\$10,000.00), in consideration of the Zoo providing the City the services referred to in this Agreement.

NOW, THEREFORE, consideration of the premises and in consideration of the covenants and agreements contained herein, the City and the Zoo hereby agree as follows:

1. The City shall pay to the Zoo Ten Thousand Dollars (\$10,000.00) within sixty (60) days of execution of the agreement and receipt of the Zoo's most recent annual report for the year ended December 31, 2022.

2. In consideration of the payment of funds as provided herein, the Zoo shall provide at least the following services to the City ("Services") to the best of their ability based on the health and wellbeing of all parties due to COVID-19, and the guidelines for public safety issued by Jefferson County:

- The Zoo will provide educational resources for all pre-scheduled field trips to the Zoo from Mountain Brook City Schools for one (1) year from the date of execution of this Agreement. In addition, all participants in pre-scheduled field trips from Mountain Brook City Schools to the Zoo will be eligible to participate in the Zoo's group discount admission program.
- The Zoo will provide to Mountain Brook City Schools a series of educational programming and classes targeting elementary, middle and high school students free. The Zoo will provide an educational program for each school in the Mountain Brook City Schools system free of charge for one (1) year from the date of the execution of agreement. These programs may include virtual programs, field trip programs or outreach programs targeting elementary, middle and high school students.
- The Zoo will use its best efforts to work cooperatively with the City and provide assistance and support to the City with the City's future public works projects that are located near the Zoo.
- The Zoo shall provide personnel, supplies, equipment, and expertise necessary to fulfill its obligations to Mountain Brook City Schools under the terms of this Agreement. The Zoo is an independent contractor and none of its agents or employees shall be deemed to be under the control of the City nor shall any of the agents or employees, or other persons, firms, or corporations conducting

Page 1 of 2

4. The Zoo shall indemnify the City and its agents, employees, and elected officials and hold them harmless from and against all actions, causes of action, claims, demands, damages, losses, and expenses of any kind, including, but not limited to attorney's fees and court costs, which may be asserted against, or suffered by the City or its agents and employees arising out of, or in connection with: (a) the performance or attempted performance by the Zoo or its agents or employees of the Zoo's obligations under this Agreement; and (b) any claim that the payments described herein were improperly paid by the City to the Zoo.

5. The Zoo agrees to employ accounting procedures which are appropriate to the types of operation conducted by the Zoo and which are customary to similar operations. All financial records and other documents pertaining to this Agreement shall be maintained by the Zoo for a period of three (3) years after the expiration or termination of this Agreement. The City shall have full access to, and the right to examine any of such financial records and other documents at all reasonable times during the term of this Agreement and during said three-year period. The Zoo agrees that upon request from the City, the Zoo will submit to and cooperate with periodic audits by the Alabama Department of Public Examiners or other audit procedures requested by the City.

6. If the Zoo fails to comply with the provisions of this Agreement, such failure shall constitute a default under this Agreement and, unless corrected by the Zoo within thirty (30) days following receipt of written notice for the City of such default, shall be deemed a breach of this Agreement and the City shall have a right to terminate this Agreement by giving the Zoo twelve (12) days prior written notice of such termination, and the City shall not be obligated to make any additional payments to the Zoo. Such termination of this Agreement by the City shall not relieve the Zoo of any of its obligation or liabilities to the City under the provisions of paragraph 4 of this Agreement, whether such obligations or liabilities occur or accrue before or after the termination of this Agreement.

In witness whereof, the Birmingham Zoo, Inc. has caused this Agreement to be executed by its duly authorized Chief Executive Officer and the City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor, all as of the 6<sup>th</sup> day of October 2023.

CITY OF MOUNTAIN BROOK

BIRMINGHAM ZOO, INC

Stewart Welch III  
Mayor, City of Mountain Brook

Jennie Whitman  
Chief Financial Officer, Birmingham Zoo, Inc

Attest: *Anthony Richards*  
Name/Title: *Anthony Richards / City Clerk*

Attest: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

Page 2 of 2



May 15, 2023

#### Board of Directors

Thomas E. Sisson  
Chair

Lee McKinney  
Vice Chair

Austin Davis  
Treasurer

Mary Pat Lawrence  
Secretary

Nancy Collier Goedicke  
Past Chair

Robert B. Aland

Alana B. Borden

Emily Wood Brown

Jack Dornell

Solene Rogers Dickerson

Daron M. Drew-Jells

Shing Edwards

David Feilchner

Christina Ginkins

Danay Hendricks

Tim Hancoessey, Jr.

Randell W. Jordan

Phillip W. Lachap

Matt Lyden

Chaz C. Mitchell

Wally Neal III

Jerry F. Perkins, Jr.

Kyle Rogers

Crystal Gunn Witherspoon

Ex Officio

Thomas Nelson

Junior Board President

Chris Pfefferkorn

President and CEO

Emeritus

Arthur C. P. Hanley

Colin H. Lusa

Michael D. Thompson

Jesse S. Vogtle, Jr.

Platinum

Transparency

2023

Candid.

Sam Gaston, City Manager  
City of Mountain Brook  
P. O. Box 130009  
Mountain Brook, AL 35213

RE: 2023-2024 Budget Appropriation Request

Dear Sam:

Thank you to the City of Mountain Brook for its continued financial support of your Birmingham Zoo's mission: *Inspiring Passion to Conserve the Natural World*. Since 2008, your investments have directly supported care for our animals and it was our privilege to serve thousands of Mountain Brook residents. The Birmingham Zoo respectfully requests the City of Mountain Brook to consider an appropriation of \$25,000 for the fiscal year 2023-2024. As a 501 (c)(3) nonprofit, the Birmingham Zoo relies on support from ticket sales, Zoo Memberships, and donations to care for the animals and provide educational programs. Here's how you benefit.

#### In Your Community

- Of 14,245 Zoo Member households - 8% are in Mountain Brook ZIP codes
- In a 2018 review, Birmingham Zoo had an estimated economic impact of \$28 million
- Your Zoo employs over 115 full-time employees and approximately 250 teen and adult volunteers
- 2022 attendance saw 500,000 Zoo visitors representing a strong regional presence with guests who, during their stay, purchased gas, food and lodging

#### Benefiting Your Community

- For 2023-2024, your Zoo will provide a discounted group rate to all City of Mountain Brook Schools.

#### Serving Your Students

- 46 Mountain Brook families will attend 2023 Summer Zoo Camp, providing essential summer activities for busy families and students
- 213 students participated in your Zoo's Discovery Programs offering science programming that meets state standards
- 36 Mountain Brook students experienced hands-on learning at Zoo Labs
- 59 Mountain Brook students took part in Field Experiences at your Zoo

#### Your Constituents and Your Zoo

- In 2022, Mountain Brook residents hosted 9% of all private events taking place at the Zoo. Your constituents are visiting your Birmingham Zoo for business meetings, special occasions, and family gatherings.

#### Marketing that Benefits You

- Name listing on the Sponsorship/Corporate Partner donor panel, seen by Zoo visitors
- Recognition in the contribution section of *Animal Tracks*, Zoo's Member online magazine sent to 30,000 households and name listing in Annual Report

#### Credentials and Recognition: Assurance for You

- As a member of the Association of Zoos and Aquariums (AZA), the Birmingham Zoo ranks in the top 10% of accredited animal-holding facilities in the nation. The Birmingham Zoo is the only accredited zoo in Alabama with over 500 animals, representing 172 species. The Zoo protects and preserves endangered animals and promotes conservation
- Has received a 4-Star ranking from Charity Navigator/Candid. This accolade signifies the Zoo's strong financial health, accountability and transparency
- Has a Platinum Seal of Transparency from Guidestar, one of the most trusted sources of information on nonprofit organizations in the United States

We look forward to hearing from you regarding our request. If you have any questions, please contact me via email at cpfefferkorn@birminghamzoo.com or call 205-397-3855.

Sincerely,

*Chris Pfefferkorn*  
Chris Pfefferkorn  
President & CEO

*Thank for all of your past support!*

cc: Virginia Carruthers Smith, City Council President

Enclosures - Annual Report, Audit and IRS Tax-exempt letter



ACCREDITED BY THE  
ASSOCIATION  
OF ZOOS &  
AQUARIUMS









**MEET THE PELICAN**  
When highly intelligent African elephants (HPE) showed up at the Alabama Wildlife Center, they were met with the same excitement as the wild pelicans. Seven birds were rescued from the wild and brought to the center. They were unable to fly, but they were healthy and happy. The center's staff worked to help them learn to fly and to care for themselves. The birds are now thriving in their new home.

## RECOVERY WITH THE UTMOST CARE

The center's staff worked to help the birds learn to fly and to care for themselves. The birds are now thriving in their new home.

### OLIVER'S TUMOR

The oldest Sumatran orangutan in the U.S., Oliver, has been living at the center for over 30 years. He was diagnosed with a brain tumor, but he is now recovering well after surgery.

### WILSON'S WING

Red-tailed hawk Wilson recently injured his wing while flying in his enclosure. The center's staff worked to help him recover, and he is now flying again.

### WILSON'S WING

Red-tailed hawk Wilson recently injured his wing while flying in his enclosure. The center's staff worked to help him recover, and he is now flying again.



**KHAN'S DONATION**  
While much of the center's focus is on the care of the animals, it also relies on the generosity of donors like Khan. His donation has helped the center continue its work.



**CAYENNE'S EYE**  
Cayenne is a young bird who has been living at the center for a few years. He has a unique eye condition, but he is healthy and happy.



## REPAIRING THE WORLD'S BIGGEST TOOTHACHE

**BLUMVAGI** the Zoo's resident African elephant, is the only elephant in the world who has been diagnosed with a toothache. The center's staff worked to help him recover, and he is now feeling better.

The center's staff worked to help the elephant recover from his toothache. They used a variety of techniques, including pain management and dental care.

The center's staff worked to help the elephant recover from his toothache. They used a variety of techniques, including pain management and dental care.

The center's staff worked to help the elephant recover from his toothache. They used a variety of techniques, including pain management and dental care.

The center's staff worked to help the elephant recover from his toothache. They used a variety of techniques, including pain management and dental care.

The center's staff worked to help the elephant recover from his toothache. They used a variety of techniques, including pain management and dental care.



## RENOVATE & REVITALIZE

### RENOVATING THE BLACK FLAMES

The center's staff worked to renovate the Black Flames exhibit. They made several improvements, including new landscaping and new exhibits.

### NATIONAL WELLBEING WORKSHOP

The center's staff worked to improve the wellbeing of the animals. They held a workshop to discuss ways to improve the animals' lives.

### NEW QUARTERS

The center's staff worked to build new quarters for the animals. They designed and built several new enclosures.

The center's staff worked to build new quarters for the animals. They designed and built several new enclosures.



## MINUTE BOOK 93

## RESTORE THROUGH GLOBAL CONSERVATION

### SCORPION TORTOISE HEADSTART PROGRAM

The Zoo's scorpion tortoise headstart program is helping to restore the population of this endangered species. The program involves raising the tortoises in a controlled environment.

The program involves raising the tortoises in a controlled environment. The tortoises are then released into the wild when they are old enough.

The program involves raising the tortoises in a controlled environment. The tortoises are then released into the wild when they are old enough.

The program involves raising the tortoises in a controlled environment. The tortoises are then released into the wild when they are old enough.

The program involves raising the tortoises in a controlled environment. The tortoises are then released into the wild when they are old enough.

The program involves raising the tortoises in a controlled environment. The tortoises are then released into the wild when they are old enough.

The program involves raising the tortoises in a controlled environment. The tortoises are then released into the wild when they are old enough.

The program involves raising the tortoises in a controlled environment. The tortoises are then released into the wild when they are old enough.







OUR ENDLESS GRATITUDE TO OUR  
2022 BIRMINGHAM ZOO INVESTORS

[illegible][illegible][illegible][illegible][illegible]**MINUTE BOOK 93**

**THANKS A LOT!**  
to the 1,100 additional people  
made important gifts to  
\$22.755 Y Birmingham  
about-us/annual-report  
these friends

2022 BOARD OF EXECUTIVE DIRECTORS	Executive Committee	Newly Collist-Gundlach Chair
	Chair	Thomas E. Sutton Vice Chair
	Austin Davis Treasurer Lee McElhinney Secretary Robert Alamed Immediate Past Chair	
2022 BOARD OF DIRECTORS	Board	Alexis Borden Leigh Collier Jack Darrall Kellen Desai Will French Gayatri H. Hendricks Tim Hennessy, Jr. Randall W. Jordan Phillippe W. Lathrop Mary Pat Lawrence Wally Nall Jerry Perkins, Jr. Bryle Rogers

SENIOR EXECUTIVE CHAIRMAN	
Chris Hefner, former President & CEO	Chris Hefner, former President & CEO
Holbe Collins, former Deputy Secretary	Holbe Collins, former Deputy Secretary
Chief Financial Officer	Chief Financial Officer
Chief Legal Officer	Chief Legal Officer
Vice President of Development	Vice President of Development
Stephanie McLean, DVM, DAB, DACVIM Member of American Heart Association	Stephanie McLean, DVM, DAB, DACVIM Member of American Heart Association
Vice President of Operations	Vice President of Operations
Vice President of Education	Vice President of Education
Tyler McLean Staff Learning & Inclusion Manager	Tyler McLean Staff Learning & Inclusion Manager
Adrian Naeff	Adrian Naeff
Kim Leung Human Resources Manager	Kim Leung Human Resources Manager
2022 JUNIOR BOARD	
Executive Committee	
George Harnish, President	George Harnish, President
Thomas Nelson, Vice President	Thomas Nelson, Vice President
Keith Gorman, Secretary	Keith Gorman, Secretary
James Harnish, Advisor	James Harnish, Advisor
Robert Harnish, Advisor	Robert Harnish, Advisor

them Zoo through their  
landscapes known for her  
creations. She thoughtfully

Gifts Legacy —  
Mrs. P. Miller  
Mrs. Joseph McCusick  
Miss Staff, Jr.  
Miss Book Foundation  
Miss Mary Ann Westham  
Mrs. Mary Weidowessell


THE NATIONAL ARCHIVES  
4350 LBJ FRIEDLAND BLVD  
COLLEGE PARK, MD 20740-6001  
TEL: 301-837-1000 FAX: 301-837-1001

We gratefully recognize these members of the Executive Committee:

- Anonymous
- Anne M. Berman
- Lucille K. Berman
- Cynthia and George Butler
- William H. Brown, DVM and Jean Oell
- Nancy C. Gaudette
- Christine M. Johnson
- Henry D. Krimshaw
- Elizabeth M. Krimshaw
- Richard L. Krimshaw
- Lynn Krimshaw
- Phyllis Krimshaw

For more information on the Berman Award, please contact the American Veterinary Medical Association, 1931 N. Lincoln Avenue, Schaumburg, IL 60196. Tel: 815/399-7600. Fax: 815/399-7601. E-mail: [awards@avma.org](mailto:awards@avma.org)

**STAFF EXCELLENCE**



A circular inset photograph showing a black butterfly with white spots resting on a flower. The butterfly is positioned in the center of the circle, with its wings spread. The background of the circle shows green foliage and other flowers.

Louis Anderson  
 Aaron Nelson  
 Michael Nix  
 Hobson Bell  
 Ashley Pacey  
 Cameron Dunner  
 Phil Carroll  
 Kristal Drummond  
 Jayna Eadehouse  
 Carson Jones  
 Dan Strahan  
 Paul Simmons  
 Anne Somerville  
 Ebee Tullos  
 Stringer Vogtle  
 Caroline Walker  
 Warner Watkins  
 Megan Latham  
 Katy Lincoln  
 Adam Mestre  
 Walker Monroe  
 Catherine Morris

Thim Program,  
Mountain Gorilla

[illegible]

## APPENDIX 2

26

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: ~~2000~~ 1 6 2001

Employer Identification Number:  
62-1231591

DLN  
3.7

17053237046010  
Contact Person:

BIRMINGHAM ZOO INC  
2630 CAHABA RD  
BIRMINGHAM, AL 35233

ID# 3116

Contact Telephone Number  
(877) 829-5500

Accounting  
Time

Form 990 Required:

Yes  
Addendum Applied

No.

Dear Applicant:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

We have further determined that you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

If your source of support, or your purposes, character, or method of operation change, please let us know so we can consider the effect of the change on your exempt status and foundation status. In the case of an amendment to your organizational document or bylaws, please send us a copy of the amended document or bylaws. Also, you should inform us of all changes in your name or address.

As of January 1, 1984, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, if you are involved in an excess benefit transaction, that transaction might be subject to the excise taxes of section 4958. Additionally, you are not automatically exempt from other federal excise taxes. If you have any questions about excise, employment, or other federal taxes, please contact your key district office.

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the

Letter 947 (DO/CF)

Birmingham Zoo, Inc.  
2630 Cahaba Road  
Birmingham, AL 35223  
205-879-0409  
BIRMINGHAMZOO.COM

**J. W. Wilson** is a graduate of the University of California, Davis, and is currently a Ph.D. student at the University of California, Berkeley. He is currently working on his thesis, "The Role of the Natural World in the Development of the American West." He is also a member of the American Society of Naturalists and the American Society of Zoologists.

October 9, 2023



BIRMINGHAM ZOO INC

BIRMINGHAM ZOO INC

part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of Code sections 2055, 2106, and 2522.

Contribution deductions are allowable to donors only to the extent that their contributions are gifts, with no consideration received. Ticket purchases and similar payments in conjunction with fundraising events may not necessarily qualify as deductible contributions, depending on the circumstances. See Revenue Ruling 67-246, published in Cumulative Bulletin 1967-2, on page 104, which sets forth guidelines regarding the deductibility, as charitable contributions, of payments made by taxpayers for admission to or other participation in fundraising activities for charity.

In the heading of this letter we have indicated whether you must file Form 990, Return of Organization Exempt From Income Tax. If Yes is indicated, you are required to file Form 990 only if your gross receipts each year are normally more than \$25,000. However, if you receive a Form 990 package in the mail, please file the return even if you do not exceed the gross receipts test. If you are not required to file, simply attach the label provided, check the box in the heading to indicate that your annual gross receipts are normally \$25,000 or less, and sign the return.

If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of \$20 a day is charged when a return is filed late, unless there is reasonable cause for the delay. However, the maximum penalty charged cannot exceed \$10,000 or 5 percent of your gross receipts for the year, whichever is less. For organizations with gross receipts exceeding \$1,000,000 in any year, the penalty is \$100 per day per return, unless there is reasonable cause for the delay. The maximum penalty for an organization with gross receipts exceeding \$1,000,000 shall not exceed \$50,000. This penalty may also be charged if a return is not complete, so be sure your return is complete before you file it.

You are required to make your annual information return, Form 990 or Form 990-BE, available for public inspection for three years after the later of the due date of the return or the date the return is filed. You are also required to make available for public inspection your exemption application, any supporting documents, and your exemption letter. Copies of these documents are also required to be provided to any individual upon written or in person request without charge other than reasonable fees for copying and postage. You may fulfill this requirement by placing these documents on the Internet. Penalties may be imposed for failure to comply with these requirements. Additional information is available in Publication 557, Tax-Exempt Status for Your Organization, or you may call our toll free number shown above.

Letter 947 (DO/CG)

Letter 947 (DO/CG)

### Charitable Contributions - Substantiation and Disclosure Requirements

UNDER THE NEW LAW, CHARITIES WILL NEED TO PROVIDE NEW KINDS OF INFORMATION TO DONORS. Failure to do so may result in denial of deductions to donors and the imposition of penalties on charities.

Legislation signed into law by the President on August 10, 1993, contains a number of significant provisions affecting tax-exempt charitable organizations described in section 501(c)(3) of the Internal Revenue Code. These provisions include: (1) new substantiation requirements for donors, and (2) new public disclosure requirements for charities (with potential penalties for failing to comply). Additionally, charities should note that donors could be penalized by loss of the deduction if they fail to substantiate. THE SUBSTANTIATION AND DISCLOSURE PROVISIONS APPLY TO CONTRIBUTIONS MADE AFTER DECEMBER 31, 1993.

Charities need to familiarize themselves with these tax law changes in order to bring themselves into compliance. This Publication alerts you to the new provisions affecting tax-exempt charitable organizations. See first below for brief descriptions of the new law's key provisions. The Internal Revenue Service plans to provide further guidance in the near future.

#### Donor's Substantiation Requirements

**Documenting Certain Charitable Contributions.** Beginning January 1, 1994, no deduction will be allowed under section 170 of the Internal Revenue Code for any cash contribution of \$250 or more unless the donor has contemporaneous written substantiation from the charity. In cases where the charity has provided goods or services to the donor in exchange for making the contribution, this contemporaneous written substantiation must include a good faith estimate of the value of such goods or services. Thus, taxpayers may no longer rely solely on a cancelled check to substantiate a cash contribution of \$250 or more.

The substantiation must be "contemporaneous." That is, it must be obtained by the donor no later than the date the donor actually files a return for the tax year in which the contribution was made. If the return is filed after the due date or extended due date, then the substantiation must have been obtained by the due date or extended due date.

The responsibility for obtaining this substantiation lies with the donor, who must request it from the charity. The charity is not required to record or report this information to the IRS on behalf of donors.

The legislation provides that substantiation will not be required if, in accordance with regulations prescribed by the Secretary, the charity reports directly to the IRS the information required to be provided in the written substantiation. At present, there are no regulations establishing procedures for direct reporting by charities to the IRS of charitable contributions made in 1994. Consequently, charities and donors should be prepared to provide/obtain the described substantiation for 1994 contributions of \$250 or more.

There is no prescribed format for the written acknowledgment. For example, letters, postcards or computer-generated forms may be acceptable. The acknowledgment does not have to include the donor's social security or tax identification number. It must, however, provide sufficient information to substantiate the amount of the deductible contribution. The acknowledgment should note the amount of any cash contribution. However, if the donation is in the form of property, then the acknowledgment must describe, but need not value, such property. Valuation of the donated property is the responsibility of the donor.

The written substantiation should also note whether the donee organization provided any goods or services in consideration, in whole or in part, for the contribution and, if so, must provide a description and good faith estimate of the value of the goods or services. In the new law these are referred to as "quid pro quo contributions."

Please note that there is a new law requiring charities to furnish disclosure statements to donors for each quid pro quo contribution in excess of \$75. This is addressed in the next section regarding Disclosure by Charity.

If the goods or services consist entirely of intangible religious benefits, the statement should indicate this, but the statement need not describe or provide an estimate of the value of these benefits. "Intangible religious benefits" are also discussed in the following section on Disclosure by Charity. If, on the other hand, the donor received nothing in return for the contribution, the written substantiation must so state.

The present law realizes in effect that, generally, if the value of an item or group of like items exceeds \$5,000, the donor must obtain a qualified appraisal and submit an appraisal summary with the return claiming the deduction.

The organization may either provide separate statements for each contribution of \$250 or more from a taxpayer, or furnish periodic statements substantiating contributions of \$250 or more.

Separate payments are regarded as independent contributions and are not aggregated for purposes of measuring the \$250 threshold. However, the Service is authorized to establish anti-abuse rules to prevent avoidance of the substantiation requirement by taxpayers writing separate smaller checks on the same date.

If donations are made through payroll deductions, the deduction from each paycheck is regarded as a separate payment.

A charity that knowingly provides false written substantiation to a donor may be subject to the penalties for aiding and abetting an understatement of tax liability under section 6701 of the Code.

#### Disclosure by Charity of Receipt of Quid Pro Quo Contribution

Beginning January 1, 1994, under new section 6115 of the Internal Revenue Code, a charitable organization must provide a written disclosure statement to donors who make a payment, described as a "quid pro quo contribution," in excess of \$75. This requirement is separate from the written substantiation required for deductibility purposes as discussed above. While, in certain circumstances, an organization may be able to meet both requirements with the same written document, an organization must be careful to satisfy the section 6115 written disclosure statement requirement in a timely manner because of the penalties involved.

A quid pro quo contribution is a payment made partly as a contribution and partly for goods or services provided to the donor by the charity. An example of a quid pro quo contribution is where the donor gives a charity \$100 in consideration for a concert ticket valued at \$40. In this example, \$60 would be deductible. Because the donor's payment (quid pro quo contribution) exceeds \$75, the disclosure statement must be furnished, even though the deductible amount does not exceed \$75.

Separate payments of \$75 or less made at different times of the year for separate fundraising events will not be aggregated for purposes of the \$75 threshold. However, the Service is authorized to develop anti-abuse rules to prevent avoidance of this disclosure requirement in situations such as the writing of multiple checks for the same transaction.

The required written disclosure statement must:

(1) inform the donor that the purpose of the contribution that is de-

You are not required to file federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T, Exempt Organization Business Income Tax Return. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

If we have indicated in the heading of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

Because this letter could help resolve any questions about your exempt status and foundation status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

*Steven T. Miller*

Steven T. Miller  
Director, Exempt Organizations

APPENDIX 2

deduction for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the value of goods or services provided by the charity, and

(2) provide the donor with a good-faith estimate of the value of the goods or services that the donor received.

The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when the associated contribution is actually received.

The disclosure must be in writing and must be made in a manner that is reasonably likely to come to the attention of the donor. For example, a disclosure in small print within a larger document might not meet this requirement.

In the following three circumstances, the disclosure statement is not required.

- (1) Where the only goods or services given to a donor meet the standards for "transcendental value" set out in section 3.01, paragraph 2 of Rev. Rul. 90-12, 1990-1 CB 471, as amplified by section 2.01 of Rev. Proc. 92-49, 1992-1 CB 987 (or any updates or revisions thereof);
- (2) Where there is no donative element involved in a particular transaction with a charity, such as in a typical museum gift shop sale;
- (3) Where there is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to

the donor by an organization organized exclusively for religious purposes, and must be of a type that generally is not sold in a commercial transaction outside the donative context. An example of an intangible religious benefit would be admission to a religious ceremony. The exception also generally applies to de minimis tangible benefits, such as wine, provided in connection with a religious ceremony. The intangible religious benefit exception, however, does not apply to such items as pajamas for children for education leading to a recognized degree, or for travel services, or consumer goods.

A penalty is imposed on charities that do not meet the disclosure requirements. For failure to make the required disclosure in connection with a quid pro quo contribution of more than \$75, there is a penalty of \$10 per contribution, not to exceed \$3,000 per fundraising event or mailing. The charity may avoid the penalty if it can show that the failure was due to reasonable cause.

Please note that the prevailing basic rule allowing donor deductions only to the extent that the payment exceeds the fair market value of the goods or services received in return still applies generally to all quid pro quo contributions. The \$75 threshold pertains only to the obligation to disclose and the imposition of the \$10 per contribution penalty, not the rule on deductibility of the payment.



Department of the Treasury  
Internal Revenue Service  
Publication 1771 (11-83)  
Catalog Number 20054Q

Bulk Rate  
Postage and Fees Paid  
IRS  
Permit No. G-48

Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

**Contract for Services**  
**Fiscal Year 2024**

This contract for services ("Contract") is entered into by and between City of Mountain Brook, an Alabama Municipal corporation ("City"), and the Birmingham Botanical Society, a nonprofit corporation organized under the laws of the State of Alabama ("Contractor").

Whereas, City desires to increase the learning opportunities for students in its school system including:

Whereas, Contractor has developed certain programs, exhibits, and learning laboratories which, in the City's opinion, will be helpful and instructive to such students; and

Whereas, such programs, exhibits and learning laboratories are not available in the Mountain Brook school system; and

Whereas, City has agreed to pay Contractor the sum of ten thousand dollars (\$10,000.00) in consideration of Contractor providing City services referred to in the Contract.

Now, therefore, in consideration of the premises and in consideration of the covenants and agreements contained herein, City and Contractor hereby agree as follows:

1. City shall pay to Contractor the sum of ten thousand dollars (\$10,000.00), upon execution of this contract for services for one year from date of execution and receipt of the Contractor's annual report for the fiscal year ended September 30, 2023.
2. In consideration of the payment of the Contract Funds as provided herein, Contractor shall provide at least the following services to City ("Services"):
  - a. Contractor will continue to provide City students with a variety of free science curriculum-based field trips. The trained docents provide activities which are based on Alabama Course of Study: Science
  - b. Contractor agrees to inform the teachers about the Contractor's field trips and invite their participation
  - c. Field trips are for students in grades Kindergarten (K) through High School, inclusive
  - d. The following field trips\* are available during the following months:

none of its agents or employees shall be deemed to be under the control of City nor shall any of the agents, or employees or other persons, firms, or corporations conducting business for or on behalf of Contractor be deemed to be agents, or employees of City.

4. Contractor shall indemnify City and its agents, employees and elected officials harmless, from and against all actions, causes of action, claims, demands, damages, losses and expenses of any kind, including, but not limited to attorneys' fees and court costs which may be asserted against, or suffered by, City or its agents and employees arising out of, or in connection with: (a) the performance, or attempted performance, by Contractor or its agents or employees of Contractor's obligations under this Contract; and (b) any claim that the Contract funds were improperly paid by City to Contractor.
5. Contractor agrees to employ accounting procedures which are appropriate to the types of operations conducted by Contractor and which are customary to similar operations. All financial records and other documents pertaining to this Contract shall be maintained by Contractor for a period of three (3) years after the expiration or termination of the Contract. City shall have full access to, and the right to examine, any of such financial records and other documents at all reasonable times during the term of this Contract and during said three-year period. Contractor agrees that upon request from City, Contractor will submit to, and cooperate with, periodic audits by Alabama Department of Public Examiners or other audit procedures requested by the City.
6. If Contractor fails to comply with the provisions of the Contract, such failure shall constitute a default under this Contract and, unless corrected by Contractor within thirty (30) days following receipt of written notice from City of such default, shall be deemed a breach of this Contract and City shall have a right to terminate this Contract by giving Contractor ten (10) days prior written notice of such termination, and City shall not be obligated to make any additional payments to Contractor. Such termination of this Contract by City shall not relieve Contractor of any of its obligations or liabilities to City under the provisions of paragraph 4 of this Contract, whether such obligations or liabilities occur or accrue before or after the termination of this Contract.
7. The Contractor and the representative of the Contractor who executes this Contract, by the execution of the Contract, certify that:
  - a. no part of the Contract funds paid by City pursuant to this Contract shall be paid to, or used in any way for personal benefit of, any elected official, employee or representative of any government or any family member of any such official, employee or representative, including federal, state, county and municipal governments and any agency of any such government;

Native American Area	September-November March-May
Dr. George Washington Carver	September-November
Garden Gates Workshop (Plant Propagation)	January-February
Tropical Rain Forest	March-May
Alabama Woodlands (Interdependence)	September-November March-May
Secret Life of Trees	September-November March-May
Plants: Inside Out	September-November March-May
Pollinator Observation	March-May

\*Field trip topics are subject to change in order to coincide with the Alabama Course of Study and the needs of teachers in Jefferson County.

- e. Field Trips are available Monday through Friday, inclusive, from 9:30-11:30am. No field trips are offered on federal and state holidays
- f. Schools shall select the students that will attend the Contractors' field trips. The Contractor shall not be responsible for providing transportation
- g. Schools shall contact the Contractor at least ten (10) business days in advance of a proposed field trip to schedule a date that shall be reasonably convenient for schools and the Contractor
- h. The Contractor requires the presence of one (1) adult per ten (10) children for the duration of each field trip
- i. The City and the Contractor shall each monitor the number of students that attend the Contractor's field trips and shall agree to reconcile the number at the end of the Contract period
- j. The Contractor will engage with sophomore-through-senior City high school students
- k. Select field trips will be made available virtually in English and Spanish
- l. City Chamber of Commerce shall seek additional opportunities with the Contractor
3. Contractor shall provide the personnel, supplies, equipment, and expertise necessary to fulfill its obligations under this Contract. Contractor is an independent Contractor and

- b. neither the Contractor nor any of its officers, agents, representatives or employees has in any way colluded, conspired or connived with any elected official, employee, or representative of City, or any other elected official or public employee, in any manner whatsoever to secure or obtain the Contract; and
- c. except as expressly set out in this scope of services of this Contract, no promise or commitment of any nature whatsoever of anything of value whatsoever has been made to any such elected official, employee or representative of City as an inducement or consideration for this Contract.

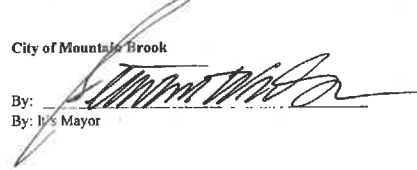
Any violation of the certification shall constitute a breach and default of this Contract which shall be cause for termination. Upon such termination, the Contractor shall immediately refund to City all amounts paid by City pursuant to this Contract.

In witness whereof, the Birmingham Botanical Society has caused this Contract to be executed by its duly authorized Executive Director on Oct. 3, 2023, and City of Mountain Brook has caused this Contract to be executed by its duly authorized representative, on Oct. 3, 2023, but this Contract shall be effective as of October 1, 2023.

**Birmingham Botanical Society, Inc.**

By:   
It's Executive Director

**City of Mountain Brook**

By:   
By: It's Mayor

# 2022

## ANNUAL REPORT

A Celebration of Friendship at the Gardens Since 1862, Birmingham Botanical Gardens has served as a cherished place of respite, a meaningful connection to nature, and a vibrant source of plant, gardening, wellness, and environmental education thanks to your ongoing commitment to this invaluable community resource. We extend our sincere gratitude to all who support our mission through donations, event sponsorships, memberships, honorary and memorial tributes, planned giving, and gifts to specific programs. Thank you for helping us grow a greener tomorrow.

### 2022 PROGRAM HIGHLIGHTS

Year after year, your dedication and support allow us to fulfill our mission: to protect, nurture, and share the wonders of Birmingham Botanical Gardens. Because of you, the Friends achieved these milestones in 2022:

#### Protecting the Gardens' Wonders

The Friends continued to support the ongoing care and maintenance of the Gardens by working to bridge the gap between limited City funding and the Gardens' operational needs. Examples of garden support made possible by the Friends during 2022 include turf care and water feature maintenance, the purchase of plugs for bedding plants and pine straw mulch for garden beds, and many renovation and upgrade projects throughout the Gardens.

During the first half of 2022, the Keul Wildflower Garden benefited from a vigorous process of editing its planting areas by removing a significant amount of invasive or undesirable trees and shrubs. Guided by a garden management plan developed in concert with noted landscape architect Thomas Rainer, this preparatory work paved the way for an eagerly awaited planting phase that began in the fall of 2022, which saw the addition of 106 native trees and shrubs to the garden. In addition, several exciting new projects were initiated, including the creation of inviting flagstone overlooks and replacement of rotting wood timber steps with beautiful stone staircases throughout the garden, as well as the start of an "Oak-Pine Savanna" habitat project, aimed at establishing an open grassland ecosystem.

In 2022, our Gardens Support team undertook new ventures in the Southern Living Garden aimed at further developing the collection. During the spring, they devoted their efforts to completely mapping the existing garden to scale, generating a basemap in AutoCAD to guide their design efforts. They established a partnership with the Plant Development Services Inc., who supplied all the plant material for the upcoming redesign of the Southern Living Plant Collection Border, scheduled for installation in the spring of 2023. The team also continued to enhance existing plantings by adding layers of seasonal interest, including the planting of almost 2,000 tulip bulbs.

In addition to these significant garden projects, the Friends coordinated an on-site consultation with landscape architect Harriet Henderson focused on proposed Japanese Garden projects and enhancements. Based in the Philadelphia area, Harriet studied Japanese Garden design in Kyoto, Japan, and is an authority on Asian gardens. She is a frequent lecturer at such distinguished horticultural institutions as Longwood Gardens, the Morris Arboretum, and the Pennsylvania Horticultural Society.

The sculpture collection at the Gardens was expanded with two new sculptures by Cordray Parker: *Untitled* in the Fern Glade Garden and *Encounter* in the Grape Myrtle Garden. These works were generously gifted by the artist's wife, Lori Parker, and join Cordray's existing work located in the Hill Garden, titled *Nite*.

#### Nurturing the Gardens' Wonders

The Friends collaborated with Huntsville Botanical Garden and Bellingrath Gardens and Home on developing professional workshops to support elementary school teachers as they work to implement STEM (Science Technology Engineering & Mathematics) themed lessons in their classrooms. In addition, the three gardens designed a STEM for Kids series to engage K-6th grade students. All sessions were scheduled to pilot in 2023.

Designed to promote a love of reading, creativity, and gardening, the Friends initiated a free, weekly Storytime at the Gardens for preschool-age children and their caregivers. Offering a welcome alternative to screen time, Storytime offers the added benefits of visiting the Gardens and being outdoors.

The Friends continued its efforts to cultivate the next generation of horticulturists and plant scientists by hosting two college interns with an interest in public gardens during summer 2022. The program combines hands-on experience, specially arranged field trips, and the opportunity to pursue an independent research project related to their interests. Our Rotary Club of Shades Valley Intern researched propagation methods of the critically endangered Tutwiler's Spleenwort (*Asplenium tutwilerae*), one of the eastern USA's rarest species of ferns. Our Native Plant Intern studied the techniques of fungiculture, creating and installing a demonstration area of "mushroom logs."

J:\Minutes & Agendas\Council\2023\20231009 Minutes.docx

The Friends of Birmingham Botanical Gardens has earned a 2023 Platinum Seal of Transparency with Candid. View our nonprofit profile: [guidestar.org/profile/63-0495211](https://guidestar.org/profile/63-0495211)

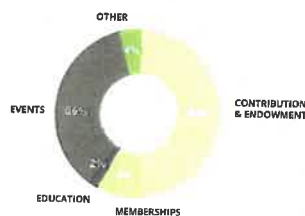
TOGETHER WE GROW.

## MINUTE BOOK 93

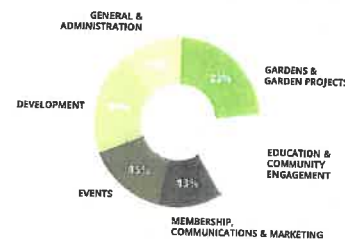
Operating of Birmingham Park and Recreation Board, Birmingham Botanical Gardens is the result of a public/private partnership between the City of Birmingham and the nonprofit Friends of Birmingham Botanical Gardens. For nearly 60 years, the City and the Friends have worked side by side to fulfill the Gardens' mission. Funding from the City covers many of the Gardens' core, day-to-day operating expenses. Thanks to your generous support, the Friends has the capacity to offer a broad range of programs that inform, inspire, and enrich our community. Your contributions also enable the Friends to play a critical role in supplementing the Gardens' operational needs and ensuring the ongoing stewardship and enhancement of this beloved community treasure.

989

### Operating Revenue \$2,479,032



### Operating Expenses \$2,431,008



Source: Friends of Birmingham Botanical Gardens actual, unaudited financial statements for the 18 months January through December 2022. Operating revenue does not include investment activity and reflects several generous donor-designed gifts with multiplier impact.

### FUNDRAISING, MEMBERSHIP & VOLUNTEER HIGHLIGHTS



Antiques at the Gardens, the Friends' largest fundraiser of the year, exceeded its goal for 2022, making it one of the most successful Antiques shows to date. On September 29, the Friends' 2022 Gala in the Gardens kicked off the 16th-annual Antiques at the Gardens presented by First Horizon Bank and featuring the show's first textile sponsor, Sister Parish Design. Led by 2022 co-chairs Anna Cooper, Catherine Pringle, and Mark Thompson and a committee of 160 dedicated volunteers, the four-day event featured talks by 13 nationally acclaimed interior designers, floral designers, architects, landscape architects, and furniture designers, as well as 22 celebrated antiques dealers from across the country.



The Premier's Junior Board raised more than \$10,000 for the Friends' summer Native Plant Internship through sponsorships, ticket sales, and in-kind support for our inaugural Race in the Race.



The Friends expanded annual member households by 9% through on-site and virtual membership drives including piloting a new Membership Month initiative in March. An impressive array of local nurseries, garden centers, and flower shops lend their support with participation in our member partner discount program.



Our volunteer program increased service hours by 13% over 2021 as we continue to leverage volunteer passions and skills to support the Gardens and all that this inspiring green space makes possible.



### Sharing the Gardens' Wonders

The Friends launched a new website to replace the Gardens' previous site originally constructed over 15 years ago. The new site includes a responsive, mobile-friendly design, fresh photos and videography, a new Gardens map, updated garden descriptions, a comprehensive calendar for programs and events, and featured seasonal plants. The new site showcases the natural beauty and diversity of the Gardens' 26 garden spaces; new and enhanced educational programs; and the benefits and impact of membership, giving, and volunteer service.

In June 2022, the Friends donated close to 1,100 herbs and vegetable plants to various organizations committed to the betterment of our local community through a diverse set of programs and efforts such as educational outreach, urban gardening, and food relief efforts. With these donations, each organization expanded its capacity to serve Birmingham-area residents, and we are grateful to be a part of their meaningful work.



In 2022, we were honored to join our partners in the Blue Skies Green Spaces Collaborative—The Birmingham Zoo, Freshwater Land Trust, Railroad Park Foundation, Red Mountain Park, Ruffner Mountain, Southern Environmental Center, and the Vulcan Park & Museum—as well as the Alabama Trails Foundation, Birmingham Historical Society, and Birmingham Southern College to host special Birmingham-area festivities as part of a nationwide celebration of the 200th anniversary of the birth of landscape design pioneer Frederick Law Olmsted.

Olmsted, often called the founder of American landscape architecture, led the way in preserving and conserving publicly accessible green spaces at a time when urban areas throughout the United States were being developed and growing by leaps and bounds. His work and guiding principles touched thousands of landscapes across the country—including many in Birmingham—and continue to inspire new generations of landscape planners and conservation-minded organizations everywhere.

## THANK YOU!

The impact and very existence of this beloved urban oasis are thanks to the support of a community that cares. Please visit [bdbgardens.org/annualgiving](https://bdbgardens.org/annualgiving) for a list of donors, corporate sponsors, and philanthropic members who supported the Friends with cumulative gifts of \$1,000 and more in January and December 2022. Thank you for making our important work possible.

October 14, 2022



FRIENDS  
of Birmingham  
Botanical Gardens





Every year more than 330,000 people visit Birmingham Botanical Gardens but keeping this peaceful respite open and blooming to all every day of the year, is just a portion of what the Friends of Birmingham Botanical Gardens (the Friends) does for our region. Across its 87.5 acres and 25 specialty gardens, the Friends helps cultivate and protect Alabama's rich natural heritage, growing and propagating many rare and endangered endemic plants. The Gardens is an important part of our region's biodiversity as well as a beautiful asset to Jefferson County.

The Gardens is a public/private partnership between the City of Birmingham's Park & Recreation Board, who own the grounds and provide for general gardening, and the non-profit Friends of Birmingham Botanical Gardens who provide for special projects, beautification, outreach, as well as conservation and education programs. Some examples of what the Friends does includes free science education experiences for school children, growing and donating over 2,000 lbs. of fresh vegetables annually to those feeding the food insecure, adding irrigation throughout the Gardens to maintain our collections, rejuvenate the rhododendron garden into a native rhododendron jewel box, and more.

A grant of \$10,000 would go toward advancing the programs of the Friends that enrich the community and make the Gardens such an asset to Central Alabama. In particular, Mountain Brook schools have been deeply involved in Discovery Field Trips, free hands-on science education that connects students' in-class learning to real world experiences. Since the pandemic we have focused on expanding our scholastic reach by producing virtual and on-demand content. In the last year, based on feedback from participants, the demand has shifted to a return to in-person programming. In 2023/2024 we are dedicated to providing programming at the Gardens and expanding access to return to pre-pandemic capacities. Funding would specifically go toward updating materials used in educational experiences and the areas in which they take place.

In addition, we are focusing this year on providing STEM professional development for elementary school teachers. These workshops will take place this summer and are free to all City of Mountain Brook elementary school teachers, helping support and implement STEM themed lessons in their classrooms.

On the physical grounds, we are in the midst of reimagining our Kaul Wildflower Garden, the largest collection of native southeast flora in the U.S., to recreate the unique habitats to showcase where these special plants flourish. In addition, we are working to unify our edible plant areas into a "Culinary Corridor" bolstering our vegetable garden, apiary, herb terrace, and adding a fruit orchard, with all food grown donated to the Foundry and Community Kitchens. Both of these projects will create educational opportunities and a place to classes to gather when learning about current offered topics like George Washington Carver and Native American farming techniques.

Since 1962, Birmingham Botanical Gardens has welcomed visitors from across the region and around the world to explore the Gardens' botanical treasures, enjoy nature, learn about plants, gardening, and the environment, and connect with friends and family. A \$10,000 award would go toward continuing to connect the people of Vestavia Hills to nature in this unique cultural landmark through the many important programs of the Friends. This includes providing the award-winning Discovery Field Trips, free e-learning courses, calming virtual tours, free gardening seminars, virtual and self-guided field trips with materials for teachers, and more.

Friends of Birmingham Botanical Gardens respectfully requests support in the amount of \$10,000 from the City of Mountain Brook to help underwrite these free education programs. Funds will support materials, administrative costs, equipment, maintenance of gardens, and professional development teacher workshops.

We ask you to join us once again in supporting our gardens, education, and volunteerism programs, helping us enrich visitors' minds, bodies, communities, their present, and their futures.

A facility of the Birmingham Park & Recreation Board, Birmingham Botanical Gardens is a public/private partnership between the City of Birmingham and the nonprofit Birmingham Botanical Society, Inc., the Friends of Birmingham Botanical Gardens, the mission-driven, membership-based organization.

**CONTRACT FOR SERVICES**

Prescott House Child Advocacy Center hereby proposes to provide services to the City of Mountain Brook Police Department in the form of forensic interviews, counseling, team reviews, court preparation, and court accompaniment in all reported cases alleging child abuse, child sexual abuse, and children who have witnessed violent crime.

Prescott House proposes to provide said services, and additional related services as the case may require for FY2023, October 1, 2023 through September 30, 2024.

The City of Mountain Brook agrees to compensate Prescott House Child Advocacy Center for said services in the amount of seventy-five hundred dollars (\$5,000.00) to be paid during the period stated above.

Maribeth Thomas  
Maribeth Thomas, M.A., LPC-S Executive Director

October 2, 2023

Date signed

[Signature]  
On behalf of the City of Mountain Brook, AL

10-9-2023  
Date signed

1730 14<sup>th</sup> Avenue South ■ Birmingham, AL 35205 ■ (205) 930-3622 ■ [www.prescotohouse.org](http://www.prescotohouse.org)

*where healing begins and hope is restored*

## AGREEMENT FOR SERVICES

This Agreement entered into between the City of Mountain Brook, an Alabama municipal corporation ("City") and Mountain Brook Chamber of Commerce, an Alabama non-profit corporation ("Chamber"). City and Chamber hereby agree as follows.

1. This Agreement shall be in effect for a period of one year (October 1, 2023 through September 30, 2024).
2. Notwithstanding any other provision of this Agreement, it is agreed that City shall not be liable for any of the debts or obligations incurred by Chamber, nor shall City be deemed or considered a partner, joint venture or otherwise interested in the assets of Chamber, or profits earned or derived by Chamber, nor shall Chamber at any time use the name or credit of City in purchasing, or attempting to purchase, any equipment, supplies or any other materials or services.
3. Chamber, in the performance of its operations and obligations hereunder, shall not be deemed to be an agent of City, but shall be deemed to be an independent contractor in every respect and shall take all steps, at Chamber's expense, as City may, from time to time, request to indicate that Chamber is an independent contractor.
4. City shall allow Chamber to include membership application, Chamber information and cover letter to be included with the City's annual business license renewal mailing.
5. Chamber may not transfer or assign its interest in this Agreement or assign its rights, duties, or obligations under this Agreement without the prior written approval of City.
6. City shall not assume any responsibility for the means by which, or the manner in which, services are provided by Chamber.
7. Chamber agrees to comply strictly with all applicable ordinances and laws while performing its obligations under this Agreement.
8. City agrees to pay Chamber an amount not to exceed the sum of \$130,000.00 each year from October 1, 2023 through September 30, 2024 for all services to be performed by Chamber under this Agreement. Said sum shall be paid as follows:

**Installment Due Date or Event**

Upon Execution of Agreement.....	\$32,500.00
December 1, 2023 .....	\$32,500.00
May 1, 2024 .....	\$32,500.00
September 1, 2024 .....	\$32,500.00

- (b) Chamber will assist in the planning and implementation of at least two major promotional campaigns for each of the three major commercial areas of the City and assist in any other planned and approved minor event for any of the villages or commercial areas of the City. ( i.e. Highway 280 or Overton Village) which may include but is not limited to advertising, live entertainment, promotional prizes, contest prizes, and refreshments.
- (b) Chamber will conduct ongoing membership drive efforts
- (c) Chamber shall continue to aggressively promote, market, and administer the Village Gold Gift Certificate Program along with developing, marketing and administering other phases of the Village Gold Program.
- (d) Chamber shall continue to develop its web technology as one of the primary methods of marketing the City, its commercial areas and individual businesses, along with serving as a primary communication tool to the residence and general public.
- (e) Chamber will continue to develop a branding image for the organization and its membership to include marketing materials in keeping with the image of the Chamber and the City of Mountain Brook.

In witness whereof, City of Mountain Brook has caused this Agreement to be executed by its duly authorized Mayor and Mountain Brook Chamber of Commerce has caused this Agreement to be executed by its duly authorized corporate officer, on the date or dates beneath their signatures.

ATTEST:

CITY OF MOUNTAIN BROOK

By:   
Its City ClerkBy:   
Its Mayor

10-9-2023

Date of Execution

ATTEST:

MOUNTAIN BROOK  
CHAMBER OF COMMERCEBy: \_\_\_\_\_  
Its Executive DirectorBy: \_\_\_\_\_  
Its President

Date of Execution

9. In consideration of the foregoing, Chamber agrees to provide City the following services:
- (a) provide and maintain within the Chamber organization a program for citywide economic development;
  - (b) provide a professionally qualified Chamber staff to carry on the functions of Chamber;
  - (c) seek, discover and endeavor to attract and promote tourism and commercial development for the benefit and economic improvement of City;
  - (d) gather, keep updated, research and distribute information and data to be used as advertisements and presentations for general and specific commercial prospects;
  - (e) develop, produce and secure maps, charts, photographs, brochures, briefing facilities, reports, and social media content as necessary and required to promote adequately new and expanding commercial and office development within City;
  - (f) for the economic development of City, maintain contact, and cooperate and work closely, with other agencies, organizations, and individuals with similar purposes;
  - (g) stay familiar with local, state, regional and national trends in economic development; create more and better jobs, for the benefit of City and its citizens, through land control, site development, local and area technical institutions and any and all other sources and aids;
  - (h) receive, study and respond to all inquiries and City referrals which are directly or otherwise sent to City by potential visitors, businesses and professional people, students from all over the United States and the world, research and survey agencies and outside sources and individuals seeking information about the community, its people, government, history, economic base, institutions, professions, state and federal agencies, schools and educational institutions, housing, job opportunities, legal professions, hospitals, and paramedical services, churches, climatic conditions, laws and statutes, taxes and licenses;
  - (i) serve as principal public relations and information agency for City and for all people who are referred to Chamber by City and who come to Chamber's office or otherwise contact Chamber, but would otherwise have to call upon City for the services and information enumerated in the above item;
  - (j) welcome individuals and groups deemed by City to be important to City, and assist and help in coordinating ground-breaking ceremonies, openings, -civic presentations and other activities involving City and its officials;
  - (k) report annually to the Mountain Brook City Council on activities within City relating to economic development and other important subjects relating to City;
  - (l) promote communications between the City and business community for public relations and business development purposes;
  - (m) assist businesses, agencies, institutions and people moving to the area; and
  - (n) through management and staff of the Chamber, as well as volunteers, to do what is possible to foster and promote the City to create and maintain its good name.
  - (o) work in partnership with the Board of Education faculty to facilitate and coordinate the Leadership Mountain Brook curriculum and provide financial resources for initial start-up costs for projects approved by the City for implementation

10. In addition to the foregoing services to be provided by Chamber to City:

- (a) Chamber will prepare and coordinate a commercial marketing campaign for the holiday shopping season which shall encompass each of the City's primary commercial areas for the purpose of promoting the shopping in such areas.

ANALYZE. ENGAGE. PLAN. EDUCATE.

WICKED  
SOLUTIONSJoe A. Summers, Ph.D.  
Owner & Manager

## Scope of Work

### Strategic Planning Project for the City of Mountain Brook

#### OVERVIEW:

Dr. Joe Summers will work with key Mountain Brook municipal stakeholders to facilitate the development the Mountain Brook Strategic Plan. The strategic plan will identify strategic issues and opportunities for the city and provide general strategies for implementation of prioritized needs.

The project is designed to answer three questions for Mountain Brook:

1. Where are we now?
2. Where do we want to be?
3. How do we get there?

#### PROJECT ACTIVITIES:

- Conduct an initial meeting with the Mountain Brook City Manager and other key stakeholders to discuss the planning process and to identify key issues and needs that should be reflected in the plan.
- Obtain and review the most recent strategic plan for Mountain Brook.

Proposal - Mountain Brook Strategic Plan 1

#### ADMINISTRATION AND COST:

The cost for the completion of the tasks and deliverance of the strategic plan will be \$12,000, payable to *Wicked Solutions, LLC*, with \$2,000 to be paid upon project approval and the balance of \$10,000 after project completion. This cost includes all professional services, facilitation, report preparation, office, and travel expenses. Dr. Summers will work closely with the City of Mountain Brook to ensure that project processes, activities, and products meet the needs of the client. He is flexible to make reasonable modifications in the elements in this scope of work to meet specific needs of Mountain Brook.

- Identify performance benchmarks and innovative strategies from Mountain Brook benchmark communities (throughout the U.S.)
- Develop an electronic mailing list of key Mountain Brook stakeholders.
- Gather information and opinions via electronic stakeholder surveys (Survey Monkey) to identify prioritized community issues, needs, and potential strategies.
  - *Survey One:* An open-ended survey for community stakeholders to identify opinions about key community priorities, assets, and challenges.
  - *Survey Two:* A detailed electronic survey to identify and prioritize strategic issues, goals, and potential strategies. Respondents will identify and rank community priorities and provide input on specific strategies related to:
    - *Physical Infrastructure* (Transportation, Utilities, Facilities)
    - *Human Infrastructure* (Education and Workforce)
    - *Civic Infrastructure* (Community Leadership and Citizen Engagement)
    - *Municipal Administration and Revenues*
    - *Quality of Life* (Parks and Recreation, Library, Aesthetics, Villages)
- Based on stakeholder input from surveys, develop a draft strategic plan for the city, with prioritized issues, goals, and strategies.
- Conduct strategic planning meeting(s) (about 2-3 hours) in Mountain Brook to discuss and revise the draft strategic plan. (The meeting[s] should include municipal stakeholders who have participated in electronic surveys.)
- Develop and deliver a final Mountain Brook Strategic Plan (based on input from the strategic planning session).

#### WORK PRODUCTS:

##### Mountain Brook Survey Results

- Survey One Report:
  - Mountain Brook Stakeholder Perspectives on Vision, Community Priorities, Assets, and Challenges
- Survey Two Report:
  - Mountain Brook Stakeholder Perspectives on Issues and Strategies (ranked)

##### Mountain Brook Strategic Plan

- Mountain Brook Vision Statement
- Prioritized Mountain Brook Issues, Goals, and Implementation Strategies

Proposal - Mountain Brook Strategic Plan 2

#### BIO:



JOE ARTHUR SUMMERS, Ph.D.  
Owner & Manager  
Wicked Solutions, LLC

Dr. Joe A. Summers is Executive Director Emeritus of the Government & Economic Development Institute (GEDI) at Auburn University, and the Founder and Manager of *Wicked Solutions*, a consulting firm that helps clients understand and address complex problems faced by communities and organizations. *Wicked Solutions* provides research and analysis, employee and citizen training, citizen and stakeholder engagement, and strategic planning assistance to organizations and communities that want to improve economic vitality, workforce readiness, local governance, or tackle other "wicked" problems.

In July 2019, Dr. Summers retired as Executive Director of GEDI after over 30 years in leadership positions at Auburn University. He previously served as Director of the Economic & Community Development Institute (ECDI), Director of the Economic Development Institute (EDI), and Director of Training and Research for the Center for Governmental Services (CGS). Before his tenure at Auburn, he taught political science and public administration courses at Auburn University, the University of Georgia, the University of Alabama at Birmingham, and Stephen F. Austin State University in Nacogdoches, Texas. He has also worked as a county health inspector and a high school teacher and football/basketball coach.

Dr. Summers has presented over 800 training workshops, courses, speeches, and events for Alabama state and local elected officials, economic developers, and community leaders. He is an experienced consultant, with over 30 years of outreach experience working with communities and local governments in Alabama, with extensive experience assisting organizations and communities with strategic

October 9, 2023

planning and civic engagement initiatives. He has directed strategic planning projects in the Alabama cities of Northport, Sylacauga, Brewton, Gadsden (2 plans), Uniontown, Eufaula (3 plans), Demopolis, Headland, Valley, Hartselle, Alexander City (2 plans), Vestavia Hills, Arab, Childersburg, Guin, Fayette, Monroeville, Evergreen, Ozark, Tallahassee, Ashville, and Haleyville.

He directed economic development-related strategic planning projects for Pickens County, Shelby County, Lee County, Russell County, Elmore County, Lamar County, Fayette County, Marion County, Winston County, and West Colbert County. He has provided strategic planning and facilitation assistance to many statewide associations and organizations in Alabama, including the Economic Development Association of Alabama (EDAA). He has facilitated many community roundtables and deliberative forums throughout Alabama. He directed a North Alabama Nature-based Tourism Strategic Plan for a 17-county region for the Tennessee Valley Authority. He also facilitated the development of a strategic development plan for Alabama's I-22 Corridor region, funded by the Appalachian Regional Commission.

He is the author of numerous publications on the topic of rural economic and community development, including *Beyond the Interstate: The Crisis in Rural Alabama* (January 2003) and *Crossroads and Connections: Strategies for Rural Alabama* (October 2004), and "Politics and Economic Development in the Southern Black Belt," for the *Oxford Handbook of Southern Politics* (2012).

Dr. Sumners has served as a technical advisor for statewide commissions/task forces under four Alabama governors - the Alabama Commission on Tax and Fiscal Policy Reform, Alabama Task Force on Economically Distressed Counties, Alabama Black Belt Action Commission, Alabama Rural Action Commission, Alabama Workforce Council, and Alabama Small Business Task Force. He is a founding Board member of the Alabama Communities of Excellence (ACE) Program and previously served on the Board of Directors for the David Mathews Center for Civic Life and Main Street Alabama.

He is a native of Harpersville, Alabama. He received his BS (summa cum laude) and MA degrees from Auburn University and his Ph.D. in Political Science from the University of Georgia. He is married and has two children and three grandchildren.

Contact:

3708 Quail Trace  
Opelika, AL 36801  
334-559-2001  
[sumneja@auburn.edu](mailto:sumneja@auburn.edu)  
[www.wickedolutions.online](http://www.wickedolutions.online)



COMPANY	CONTACT	PHONE NUMBER	BID AMOUNT	TIME & DATE
Apac Mid South	Bob Watson	1-205-612-9392	\$1,104,157	9/22/23 (10:00)
Dunn Construction	Greg Caldwell	1-205-510-0281	\$708,601.85	9/22/23 (10:00)
Wiregrass Construction	Michael Doss	1-205-620-4132	\$1,353,458	9/22/23 (10:00)
James Paving	Larry James	1-205-283-4818	\$1,025,867	9/22/23 (10:00)

September 26, 2023

Project Reference: Mountain Brook Street Resurfacing Project  
 Bid No. B-20230818-900  
 Bid Date: September 22, 2023  
 Recommendation to Award

Mr. Gaston,

We are in receipt of the bids for the Mountain Brook Street Resurfacing for October 2023 through September 2026. In total 4 bids were received.

The apparent low bidder is Dunn Construction Co., Inc. in the amount of \$708,601.85 based on estimated quantities for 2023. Unit prices are to remain the same and can be adjusted lower or higher based on the Petroleum Index. Asphalt is a petroleum based product and it is an industry standard to bid paving projects in this manner. Our paving contracts have used this formula for approximately five years with no issues.

The submitted information appears to be in accordance with the bid requirements and the contractor has the required experience and qualifications, as stipulated in the bid documents.

Based on this, and in consideration of the conditions submitted, I recommend awarding Dunn Construction Co., Inc.

Sincerely,



Steven Gay, Public Works Assistant Director

Cc: Ronald Vaughn  
 Hunter Johnston  
 Daniel Davis

APPENDIX 7

Sign-in Sheet

Bid Opening  
 Street Resurfacing Project (B-20230818-900)  
 September 22, 2023 at 10 a.m.

Company Name	Company Representative	E-mail Address	Telephone Number
1. Wiregrass Construction	Mark Wilson	MarkWilson@wiregrassconstruction.com	256-453-4124
2. Wiregrass Construction	David Sullivan	dsullivan@wiregrassconstruction.com	(256) 620-4122
3. James Paving Co., LLC	Larry James	Larry@jamespavingcompany.com	205-283-4818
4. Dunn Construction	Greg Caldwell	gregcaldwell@dunnconstruction.com	205-510-0281
5. City of Mountain Brook	James Gray	grayj@minbrook.org	205-802-3870
6. City of Mountain Brook	Sam Gaston	MSB@minbrook.org	205-802-3803
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

City of Mountain Brook  
 Public Works Department

STREET RESURFACING PROJECT B-20230818-900 MANUAL

OWNER: The City of Mountain Brook, Alabama

CONTRACTOR:

October 9, 2023

**I Invitation for Bids (Advertisement)****II Specifications & Conditions**

1. **General Requirements**  
(Includes 2023 Street List & Estimated Quantities First Year Contract & ALDOT Specification Asphalt Index 109.03)

2. **General Conditions**

3. **Special Conditions**

**III. Instructions to Bidders****IV. Contractor Qualifications/Requirements for Award****V. Contract Award Process****VI. Forms/Exhibits for this Project**

- EXHIBIT A - Contractor Bid Response Form
- EXHIBIT B - Bidder Qualification Form)
- EXHIBIT C - Street Resurfacing Project B-20230818-900 Contract

**VII. Anticipated Bid/Award/Project Schedule**

**Bid Submission Deadline & Bid Opening Time:** Friday September 22, 2023 – 10:00 A.M.  
**Address for Bid Submission** City Hall - City of Mountain Brook  
 56 Church Street,  
 Mountain Brook, AL 35213-3700  
 ATTN: City Manager/Purchasing Agent

The City of Mountain Brook, Alabama ("City") invites interested contractors to submit sealed bids to the above noted address for the award of a three-year unit price contract to pave streets in the City and perform related operations related (the "Work" or "Project"). This contract will apply to street repaving operations that the City commences after October 1, 2023. Each bidder is responsible for mailing or delivering its bid so that it will be actually received at the above address and location at or before the time of the specified bid opening; bids received after that time will not be considered. Bids must be submitted by the time and date specified above, at which time those bids will be publicly opened and read as soon thereafter as practicable.

Interested contractors may obtain the Street Resurfacing Project Manual (which includes the Specifications and Conditions, Contractor Bid Response Form, Bidder Qualification Form and all other Contract Documents) from the City's Website or by contacting its Project Representative, Hunter Johnston, Public Works Department, [hjohnston@mtmbrook.org](mailto:hjohnston@mtmbrook.org). The City will not conduct a Pre-Bid Conference in connection with the subject award. Technical questions about the Work or Specifications should be directed in writing to Mr. Johnston at his email address. Questions about purchasing or other matters may be directed to Steven Boone, Finance Director, City of Mountain Brook, at [boones@mtmbrook.org](mailto:boones@mtmbrook.org).

To be considered for the award of the contract on this Work, an interested contractor must complete and return the Contractor's Bid Response Form and provide other information requested in the Project Manual. Also, the successful contractor must possess the minimum experience and qualifications to perform the Work as specified in those materials.

Each bidder is required to furnish a \$10,000 bid bond, cashier's check or other similar type of bid security with its Bid to secure its intent to perform the Work if it receives the award. Further, when selected, the successful contractor must provide a Performance Bond in the amount of its annual contract price and a Labor & Materials Bond in the amount of half that price.

The award of the contemplated contract will be made in compliance with Ala. Code §39-2-1 *et. seq.* (1975). The award will be made to a responsible contractor that meets minimum qualifications and submits the lowest responsive bid that the City determines is most advantageous to it. In making that determination, the City, in the exercise of its sole judgment, may consider pertinent factors other than just price. These factors include, but are not limited to, experience in the industry, quality of past service provided to the City and other similarly situated entities, history of successfully completing similar projects, its claims history, resources of the bidder to perform the obligations under the Contract and the training and experience of the Project Team that the contractor will provide to serve the City.

The City reserves the right to accept or reject any or all bids and to waive formalities related to submitted bids.

s/ Sam S. Gaston  
 City Manager/Purchasing Agent

Advertised by Posting on City Website: September 1, 2023

**II. SPECIFICATIONS & CONDITIONS****I. GENERAL REQUIREMENTS.**

The work to be performed under a three (3) year unit price contract shall consist of milling and repaving of asphalt streets in the City of Mountain Brook ("City") that are selected by the City ("Work" or "Project"). The term "Work" may apply to operations along a particular street (or section thereof) designated by the City or to the Project in its entirety. This contract will apply to street repaving and related operations that the City commences after May 8, 2020. The successful contractor ("Contractor") shall be responsible to furnish all labor, supervision, materials, tools, fuel, power, equipment and incidentals required to complete the Project in conformity with the requirements in the Specifications & Conditions and all other Contract Documents.

**A. Length of Contract.** The City will award a three (3) year Contract.

**B. Streets to be Repaved.** Below is a list of the asphalt streets within the City that it expects to be repaved in the first year of the contract (2023), along with the estimated quantities of milling and paving associated with that Work. At least thirty days before the first and second anniversaries of the Effective Date of the Contract, Subsequently, the City will designate the streets that it desires to be repaved during the second and third years of the Contract, respectively.

**C. Estimated Quantities.** The Quantities shown on the Street List and Estimated Quantities First Year Contract Table below and elsewhere in the Contract Documents are the City's good faith estimates and approximations of the scope of Work and materials that is believed to be required during the first year of the contract (the twelve-month period beginning October 2023). These estimations are given for the sole purpose of awarding the contemplated contract. The City does not warrant the accuracy of these estimates and approximations, that these estimated quantities will be required to complete the Work in the first Contract Year (beginning October 2023), or that the successful contractor will receive any minimum amount of compensation based on these estimates. Each bidder shall inspect the locations at which the Work will be performed and determine from its own investigation the amounts of milling, paving and other operations that it determines will be required to complete the Work.

The City anticipates, but does not warrant or guarantee, that the amount of Work and estimated quantities that the Contractor will be required to supply in the second and third years of the contract will be consistent with the estimates for the first contract year.

Further, the City reserves the right to increase or decrease the estimated quantities in these bid documents without penalty, and except as provided in the specifications, any such increase or decrease in quantities will not change the unit prices over the term of the contract that are proposed by the successful contractor.

**D. Payment.** Payment for the Work will be based on the unit prices of the successful Contractor for the actual quantities of materials supplied and operations that are successfully completed by the Contractor in accordance with the Specifications and Conditions and other Contract Documents.

**E. Contract/Contract Documents.** As used herein, the term "Contract" refers to the written agreement between the City and the successful Contractor for the performance of the Work. The Contract includes all the following documents and any approved addenda and change orders thereto: Invitation to Bid; Specifications & Conditions (with General Information -including the Street Paving List for Project B-20230818-900 and ALDOT Specification Section 109.03; General Conditions and Special Conditions); Instructions to Bidders; Contractor Qualifications/Requirements for Award; Contract Award Process completed EXHIBIT A - Contractor Bid Response Form and EXHIBIT B - Bidder Qualification Form; and EXHIBIT C - Street Resurfacing Project B-20230818-900 Contract (collectively, the "Contract Documents").

In the event of any conflict between the terms, provisions and conditions in the different Contract Documents, the language in the document in the order below shall take govern and control: (1) Street Resurfacing Project B-20230818-900 Contract; (2) Special Conditions; (3) General Conditions; and (4) General Requirements.

**STREET LIST AND ESTIMATED QUANTITIES FIRST YEAR CONTRACT**

			OPERATIONS	MILL	PAVING
	Street Name *	Reference Point *	Mill, Level & Seal	Tons	Square Yards
1	Montclair Road	Country Club Rd to Memory Lane		1050	10497
2	Morningside Drive	City Limit to Montclair Rd		202	2022
3	Pine Ridge Road			1471	14707
4	Glenco Drive			1013	10133
5	Valley Head Road	Spring Valley Rd to N. Woodridge Rd		431	4306
6	Spring Valley Rd	N. Woodridge Rd. to Crestside Dr.		502	5022
7	Spring Valley Rd	Crestside Drive to Crestbrook Rd		851	8511
8	Spring Valley Rd	Crestbrook Rd to Mill Spring Rd		802	8022
9	Montrose Road	Montevallo Rd. to Beechwood Rd		763	7638
10	Beechwood Rd.			575	5758
11	Overbrook Rd.			2984	29839
12	Park Brook Rd.			141	1410
13	Forest Run Lane			53	533
			TOTALS	10,838	108,398
	Note *				
	Unless indicated above the entire street will be repaved				

1. ANNUAL CONSTRUCTION SCHEDULE. As soon as possible after the Effective Date of the Contract and approximately thirty (30) days before its subsequent anniversaries, the City will meet with the Contractor to determine the construction schedule that will establish the order and times in which the streets will be repaved during each contract year (the "Annual Schedule"). The City solely reserves the right to determine this Schedule. However, at a scheduling meeting, the City agrees to consider in good faith the recommendations from the Contractor concerning scheduling the Work and selecting the streets that are to be repaved in an order and manner that will expedite efficiencies in completing the Project.

The Annual Schedule shall become a part of the contract and shall be adhered to as closely as practicable thereafter by the contractor until each separate part of the work has been completed. The schedule may be revised from time to time as the work progresses by approval of both parties, but, unless expressly agreed by the City, approval by the City shall not be construed in any way as an approval of an extension of time to complete the Work.

G. Commencement & Completion Dates. After the annual scheduling meeting and the City's determination of the Annual Schedule for streets to be repaved, the Contractor thereafter shall commence Work not later than forty-eight (48) hours after its receipt from City of a written or verbal notice to proceed (the "Commencement Date"). All the Work on each street(s) (or section thereof) shall be completed within the time set forth for those streets in the Annual Schedule (the "Completion Date").

The City agrees that, if Contractor is unable to complete the Work by the Completion Date because of unforeseeable events or matters that are beyond its reasonable control (e.g., strikes, shortages of material, governmental preemption in connection with a national emergency and Acts of God) and that do not result from its negligence, the time for completing the Work may be extended by the length of time equal to the duration of any such events or matters. Such extensions of time shall be considered only when submitted to the City Project Representative in writing within ten (10) days from and after the time when any such alleged cause of delay shall occur.

H. Liquidated Damages. If Contractor does not substantially complete its Work on a particular street(s) (or part thereof) that is set forth on the Annual Schedule by the time it is shown on that Schedule, the Contractor agrees that the City may deduct the amount below from any monies that are otherwise payable the Contractor under the Contract for those operations:

\$150.00 per day until Work on a particular street(s) (or section thereof) is substantially complete

In addition, if Contractor does not timely complete all of the Work on the Annual Schedule within the time specified for it thereon, the Contractor agrees that the City may deduct the amount below from any monies that are otherwise payable the Contractor under the Contract:

\$300.00 per day until all Work shown on the Annual Schedule is complete.

(the above amounts being collectively referenced herein as "Liquidated Damages").

The Contractor and City agree that calculating the actual damages that will flow from Contractor's failure to timely complete the Work at a particular street or all the Work would be difficult to estimate or prove. Therefore, the parties agree that the above Liquidated Damages amounts (a) are designed to compensate the City for the Contractor's failure to timely perform the Project, (b) are not penalties or intended as punishment, and (c) are intended to compensate the City for its inconvenience and the increased time in administering the Contract, supervision, inspection and engineering which is required for any operation or phase of the Project that is not completed within the time contemplated. Moreover, if the City permits the Contractor to continue and finish the Work (or any part of it) after the time for performance has expired, the performance of that delayed work will not waive, diminish or impact the City's rights under the contemplated contract to deduct Liquidated Damages.

I. Unit Prices Constant/Exceptions for Binder & Wearing Course Materials. The Unit Prices entered by the successful Contractor on its Bid Response Form will remain constant throughout the term of the contemplated Contract, except for the Leveeling Course Baby Binder and Slag Seal Wearing Course bituminous materials that are designated by \*\* on that Form. The unit prices for these bituminous materials will be adjusted on a monthly basis over the three (3) year

## "Exhibit A"

109.03

### (b) GALLONAGE (LITERS).

When specified on the plans or in the proposal, bituminous material will be measured by the gallon (liter) in the railroad car, tank truck, distributor tank, or drums. Each railroad tank, tank truck, drum or distributor tank of bituminous material delivered for the project will be measured. The measurement shall be taken when the bituminous material is of a uniform temperature and free from air bubbles.

### (c) TEMPERATURE CORRECTION.

The volumetric measurement of the bituminous material will be based upon a temperature of 60 °F (16 °C), using the following correction factors:  
0.0033 per degree F (0.0063 per degree C) for petroleum oils having a specific gravity above 0.966 at 60 °F/16 °C;  
0.0040 per degree F (0.0072 per degree C) for petroleum oils having a specific gravity between 0.920 and 0.966 at 60 °F/16 °C;  
0.0023 per degree F (0.0045 per degree C) for emulsified asphalt.

### 109.03 Scope of Payment.

#### (a) QUANTITIES.

The quantities listed in the bid schedule do not govern final payment. Payments to the Contractor for contract items will be made for the actual quantities of these items performed in accordance with the plans and specifications. If upon completion of the construction these actual quantities show an increase or decrease from those in the proposal, the contract unit prices will still govern except where modified by supplemental agreement or allowance made as provided in Articles 104.02 and 104.03. Quantities included in supplemental agreements will be paid for as stipulated therein. Force account work will be paid for as provided in Article 109.04.

#### (b) BASIS OF PAYMENT.

The Contractor shall accept the compensation as herein provided, in full payment for furnishing all materials, labor, tools, equipment and incidentals necessary to the completed work and for performing all work contemplated and embraced under the contract, also for all loss or damage arising from the nature of the work, or from the action of the elements except as noted in Article 107.17, or from any unforeseen difficulties which may be encountered during the prosecution of the work and until its final acceptance; also for all risks of every description connected with the prosecution of the work.

#### (c) UNIT PRICE COVERAGE.

In cases where the basis of payment clause in the specifications relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or materials essential to the item, this same work or materials will not be measured or paid for under any other pay item which may appear elsewhere in the specifications. Reference is made to item 107.01(c).

#### (d) REPAIR OR RENEWAL OF DEFECTIVE WORK.

The payment of any current estimate shall in no way effect the obligation of the Contractor to repair or renew any defective parts of the construction or to be responsible for all damages due to such defects.

#### (e) BITUMINOUS MATERIAL PRICE ADJUSTMENTS.

##### 1. ASPHALT INDEX.

The contract unit prices for bituminous materials shall be based on the asphalt prices at the time of opening bids. The Department will establish a monthly "Asphalt Index" to address fluctuations in the cost of the bituminous materials during the life of the project.

The index will be composed of the following four entries:

- PG Asphalt (for all grades without polymer);
- PG Asphalt with Polymer (for all grades with polymer);
- Emulsified Asphalt (for all grades without polymer and cutback asphalts);
- Emulsified Asphalt with Polymer (for all grades with polymer).

##### 2. USAGE AND PAYMENT.

Adjustments in compensation will be computed each month that bituminous materials are used in the work. Bituminous plants mix bases and pavements, surface treatments and tack coat are

1-71

term of the Contract or the Asphalt Index published monthly by ALDOT (Alabama Department of Transportation) according to ALDOT Specification Section 109.03 (the "Asphalt Index"). A copy of ALDOT Specifications Section 109.03 is included below.

J. One Year Warranty: Contractor warrants the fitness and soundness of all workmanship and materials for a period of one year after the completion of the Work. This one-year warranty period shall begin on the date of final estimate payment to the Contractor by the City with respect to the Work in question. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom within this one-year period. The City will give notice of observed defects with reasonable promptness. At its own expense, Contractor shall replace or repair all defective materials and make good all defective workmanship to the reasonable satisfaction of the City.

None of the following shall relieve the Contractor of liability or responsibility with respect to this warranty or responsibility for to replace or repair faulty materials or workmanship: (a) the issuance or a final certificate of payment, (b) any provision in the Contract Documents, or (c) use of a part or the entirety of any Work site by the City or the public.

K. Traffic Control: The Contractor is exclusively responsible for all traffic control related to the performance of the Work. This responsibility includes, without limitation, determining and implementing all appropriate measures to place signs, warn drivers and others affected by the Work, and utilize flag persons.

## ALDOT Specifications Section 109.03

109.03

The only types of bituminous materials for which a price adjustment will be computed: adjustments in compensation will be based on an index that is a monthly price per gallon for the bituminous material. Before the expiration of contract time (plus approved time extension) the dollar amount of adjustment will be determined by multiplying the increase or decrease of the current payment estimate from the base index by the number of gallons of bituminous material used in the work during the period covered by the monthly estimate. The base index will be the value of the index for the month in which the project is let.

After the expiration of contract time (plus approved time extension) two calculations of a potential price adjustment will be made. The first calculation will be made using the current index and the base index. The second calculation will be made using the index during the month that contract time (plus approved time extension) expired and the base index. The amount of the price adjustment for the current estimate period will be the smallest amount of an increase in compensation if both calculations are an increase in compensation. The amount of the price adjustment will be the largest amount of a decrease in compensation if both calculations are a decrease in compensation. The amount of the price adjustment will be the decrease in compensation if one of the calculations is an increase in compensation and the other calculation is a decrease in compensation.

The amount of asphalt will be calculated as follows:  
- Bituminous Plant Mix Bases and Pavements - the number of gallons (liters) of new bituminous material required by the approved job mix formula. A correction factor of 0.51 pounds per gallon (1.02 kg/L) will be used for figuring quantities. No measurement for adjustment will be made for the amount of asphalt recuperator used or for the amount of bituminous material recovered and used in surface recycling operations.  
- Surface Treatments - actual gallons (liters) of asphalt used with specification requirements with volumetric correction to 60 °F (16 °C) as per Subarticle 109.03(c).  
- Tack Coat - actual gallons (liters) of asphalt used with specification requirements with volumetric correction to 60 °F (16 °C) as per Subarticle 109.03(c).

(7) ADJUSTMENTS DUE TO COST OF CONSTRUCTION FUEL FOR HMA PRODUCTION.  
Changes in the compensation due the Contractor will be made by the Engineer to address changes in the cost of fuel required for the production of Hot Mix Asphalt (HMA) in a plant. The changes in compensation will be made based on a monthly index of the cost of fuel determined by the Department.

A monthly HMA production fuel index will be established based on the average area terminal price reports for No. 3 fuel and No. 6 (D.S.S.) fuel of the "West Coast Price Report" published during the week to which the first day of the month occurs.

Before the expiration of contract time (plus approved time extension) the dollar amount of adjustment will be determined by multiplying the increase or decrease of the current (current estimate) index from the base index by the number of gallons of fuel that are used in the production of the HMA during the period covered by the monthly estimate. The number of gallons of fuel required for the production of the HMA shall be 2.5 gallons per ton (7.6 L per metric ton) of HMA produced during the estimate period. The base index will be the value of the index for the month in which the project is let.

After the expiration of contract time (plus approved time extension) two calculations of a potential price adjustment will be made. The first calculation will be made using the current index and the base index. The second calculation will be made using the index during the month that contract time (plus approved time extension) expired and the base index. The amount of the price adjustment for the current estimate period will be the smallest amount of an increase in compensation if both calculations are an increase in compensation. The amount of the price adjustment will be the largest amount of a decrease in compensation if both calculations are a decrease in compensation. The amount of the price adjustment will be the decrease in compensation if one of the calculations is an increase in compensation and the other calculation is a decrease in compensation.

Changes in compensation will be made for the number of base (base index) of HMA placed and paid for in accordance with the requirements given in the following sections:

Section 127, Plant Mix Bituminous Base;  
Section 404, Paver-Laid Surface Treatments;  
Section 420, Polymer Modified Open-Graded Friction Course;  
Section 423, Stone Mastic Asphalt;  
Section 424, Supervene Bituminous Concrete Base, Binder, and Wearing Surface Layers;

1-72

L. City Audit Right/Contractor's Retention of Records. Upon reasonable advance notice from the City during the term of the Contract or in a periodic audit that follows the completion of part or all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

## 2. GENERAL CONDITIONS

**A. Bidder's Obligations to Examine Contract Documents and Site of Work.** Bidders are advised that the Contract Documents contain all the information which the City will furnish and that is applicable to the Work. All other information furnished verbally or otherwise by the City (or any of its representatives) prior to the execution of the Contract shall become a part of or change the Contract. Prior to submitting their bid, bidders are presumed to have carefully (a) read the Contract Documents (including the Specification and Conditions); (b) visited the sites of the Work ("Work Site(s)"); (c) examined local conditions; and (d) determined for themselves by their independent research any difficulties that they may encounter relating to the accessibility of the Work location, attending circumstances affecting the cost of performing it and the time required for completion, and also considered all information that it deems pertinent calculating and making its proposal. Further, bidders shall rely exclusively upon their own estimates, investigations and other data which they deem necessary for submitting their respective proposals. The City may assume that, by making a proposal, a bidder has made these examinations and investigations, and considered all factors pertinent to it.

**B. Intent of Contract Documents.** The intent of the Specifications and other Contract Documents is to prescribe the operations that the Contractor must undertake to fully comply with its obligations under the Contract. The Contractor shall do all work as provided in the Contract, and shall do such additional, extra and incidental work as may be reasonably necessary to complete the work in a satisfactory and acceptable manner. Any work or material not shown in the Specifications or Conditions but which may be fairly implied as included in any item of the Contract shall be performed and/or furnished by the Contractor without additional charge thereof.

**C. Increases or Decreases in Work.** The City reserves the right to alter the estimated quantities of Work herein and made throughout the term of the Contract when it, in the exercise of its sole discretion, determines those alterations necessary. If the City makes those alterations, Contractor shall perform the work as altered, increased or decreased pursuant to the terms of the Contract and utilizing the unit prices bid by it for the Work. If the event of any increases or decreases in estimated quantities during the term, no allowance will be made to Contractor for any change in anticipated profits, nor shall such changes be considered as waiving or invalidating any conditions or provisions of the Contract.

**D. Changes in Plans.** The City reserves the right, at any time, to make such changes in the plans and the character of the Work as may be necessary or desirable to insure that, in the exercise of the City's sole discretion, it is completed in the most satisfactory manner; provided that any such changes may not materially alter the original Specifications or change the general nature of the Work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the Contract.

**E. Extra Work.** When any extra operations are necessary for the proper completion of the Work but no prices for them are provided in the bid or Contract, the Contractor shall perform such work when requested by the City Project Representative if mutually agreed prices for such extra operations are agreed in advance.

### F. Clean Up.

(i) Throughout the progress of different phases or sections of the Work, Contractor shall keep the respective construction areas (including, but not limited to, the storage areas used by it) free from accumulation of waste material or rubbish and shall store its materials and equipment in a neat and orderly manner. Immediately upon completion of any section of the Work and before payment therefore has been made, Contractor shall remove from the site all construction equipment, temporary structures, and debris and shall restore the site to a neat, workmanlike condition. Further, Contractor shall dispose of waste material from each Work site at locations that are not at those sites, have been selected by the Contractor and have been determined by it to be proper and lawful for disposal of the type material being removed.

10

any work be covered or hidden prior to the approval thereof by the City's Project Representative, it shall be uncovered for examination at the Contractor's expense.

**N. Removal of Defective Work.** Work performed that is not in conformity with the Specifications and Conditions will be removed and replaced at Contractor's risk and expense. Defective materials shall be removed immediately from the site of the work.

**O. Preliminary Inspection.** As each separate part of the work at a site is completed, it shall be inspected by the City Project Representative. If that work is found to be in substantial compliance with the Specifications, the City shall tentatively accept it. Thereafter, all such completed and accepted part of the work shall be maintained in good condition by and at the expense of the Contractor until final acceptance by the City of all work covered by the Contract. Tests of the work may be requested by the City Project Representative following this preliminary approval.

**P. Final Inspection.** After the construction of all work at a site(s) has been completed, the City Project Representative, the Contractor Project Representative and other representative of the Parties shall make a joint final inspection of all phases of the Work. If the work is not acceptable at the time of such inspection, the City Project Representative will notify Contractor of the defects which must be remedied before final acceptance can be made.

**Q. Compliance with Laws.** During the term of the Contract, Contractor shall observe and comply with all Federal and State laws and local ordinances and regulations which in any manner affect the conduct of the Work or any Work site (collectively "Laws"), including, but not limited to, Laws regarding the protection of the environment and those regarding protection and the safety of its workers. Further, Contractor shall observe and comply with all orders and decrees of any governmental agency, body or tribunal having jurisdiction or authority over the Work or operations at any Work site which may be in effect at the commencement of the Work or subsequently be enacted during the term.

**R. Permits.** At its expense, the Contractor shall procure, and maintain throughout the term of the Contract all governmental permits and licenses required to perform the Work and provide all notices necessary and incident to lawful prosecution of the work.

**S. Patented Devices.** Contractor (and the Surety issuing any construction bond) shall indemnify and save harmless the City and its representatives from all and every demand for damages, royalties or fees on any patented devices, materials and processes used by the Contractor or used in connection with the Work that is performed, or material furnished hereunder.

**T. Sanitation.** Contractor shall provide and maintain the necessary sanitary conveniences for the use of its laborers at the Work sites, and these conveniences shall be reasonably secluded from public observations. Sanitary conveniences and practices used by Contractor at the sites shall comply with state and local regulations.

### U. Public Convenience and Safety.

(i) Where the Work is located in, on or near City streets, alleys, rights-of-way or highways, Contractor shall store construction materials and equipment needed by it to perform the work in such a manner as will provide reasonably adequate and satisfactory convenience and access for the general public and residents affected by its operations.

(ii) No street shall be closed without the permission of the City Project Representative and the City Fire Department. Where traffic is temporarily diverted from the area of a Work site, the Contractor shall provide all materials and perform all work needed to construct and maintain any required temporary roadways and structures.

(iii) Contractor shall store all materials and equipment at a site so that access to all fire hydrant, valves, manholes and other utility appurtenances is not affected.

(ii) Where the Contractor has performed operations on or has made use of private property for storage of materials or for other purposes, it shall obtain a satisfactory release from the owner of said property after completion of the work and the removal of all materials and equipment therefrom.

(iii) After completion of operations contemplated hereunder at the site of each separate part of the work, Contractor shall restore all surfaces and conditions there to a neat and orderly condition, and shall remove all construction equipment, tools and supplies therefrom.

**G. Supervision.** Contractor exclusively shall be responsible for supervising all Work and all its employees or other representatives who may perform operations at any Work location. Notwithstanding, during the course of those operations by Contractor, the City Project Representative may, but is not obligated to, provide input to the Contractor Project Representative on the following matters: the quality and acceptability of materials furnished; rate of progress of the work; sequence of construction; interpretation of plans and specifications; compensation; and suspension of Work if determined by the City representative to be required for public convenience. The provision of any such input will not excuse Contractor from its failure to comply with the Contract, relieve it from its responsibility to fully supervise its Work and its employees and representatives at all Work sites, or be considered or construed to constitute the assumption by the City of any of Contractor's responsibilities under the Contract Documents.

**H. Conformity with Specifications.** All Work shall conform to the Specifications and Conditions for the Project. Any deviation from those Specifications which may be required by the exigencies of construction must be approved by the City Project Representative and authorized by him in writing.

**I. City Street Plans.** Upon request by Contractor, the City may furnish any maps of streets that it maintains in areas where the Work will be performed. If those maps are supplied, Contractor acknowledges that the information and data furnished on them are not warranted by the City for accuracy, completeness, or reliance by the Contractor in performing the Work, but instead are furnished as general information only. Further, Contractor agrees and understands that the City does not warrant the locations of gas mains, water mains, conduits, sewers, or any other surface or subsurface improvements that may be indicated on any City maps, that the City assumes no responsibility for failing to depict any surface or subsurface improvements on those maps or failing to depict them in their exact location, that inaccuracies in these maps will not be considered sufficient basis for claims for extra work or for increasing its compensation for Work, and that the City is not responsible for any deduction, interpretation, or conclusion that the Contractor may make or draw from any of them.

**J. Quality of Materials.** Only materials conforming to the requirements of the Specifications shall be used in the Work, and such materials shall be used only after approval has been given by the City Project Representative. All materials furnished for the Work shall be new and unused and of recent manufacture.

**K. Samples and Tests of Materials.** Where required by the Specifications or by the City Project Representative, tests and/or inspection of materials incorporated in the Work shall be performed by commercial laboratories approved by that Representative. Unless otherwise specified, those tests shall be made in accordance with the latest standard methods of the American Society for Testing Materials. The costs of such tests, sampling and inspection shall be borne by the Contractor, and it shall furnish evidence satisfactory to the City Project Representative that the materials have passed the required tests and inspections prior to the incorporation of them into the work.

**L. Storage of Materials.** Materials intended for incorporation into the Work shall be stored in a manner that will ensure preservation of their quality and fitness for that use. Storage facilities shall be provided at the expense of the Contractor. The Contractor shall be responsible for any loss, damage or deterioration of materials and equipment it places at or near a Work site that is caused by improper protection from weather, vandalism, theft or other conditions.

**M. Inspection.** The City Project Representative may, but is not obligated, to inspect different phases of work in progress. Contractor shall furnish that Representative with every reasonable facility for ascertaining whether or not the work as performed is in accordance with the requirements and intent of the Specifications and Conditions. Should

11

(iv) Where the Work is located in or adjacent to any street, alley or public place, Contractor, at its own expense, shall furnish and erect such barricades, fences, signs, lights and danger signals and shall provide such watchmen as are reasonably required to protect third persons, property in the area and the work from injury, damage or loss. Contractor shall be solely responsible for all damages to the third persons, property or the work site arising from its breach of this obligation. The Contractor's responsibility to protect the public, property and work site shall not cease until the work has been finally accepted by the City.

**V. Use of Explosives.** If Contractor utilizes any explosives in the prosecution of the Work, it is responsible to exercise utmost care so as not to endanger life or property that is or may be affected thereby, and to strictly comply with applicable state and local laws and ordinances regulating their use and storage.

**W. License to Use City Streets.** During the period of performing its Work at a site, the City grants Contractor a license to occupy such portions of its streets, ways or public property as will not unduly restrict traffic or endanger the public.

**X. Use of Rights of Way Owned by Public Entities.** If performance of the work encroaches upon the right-of-way owned by any railway, public utility, governmental entity or a public entity, the City will obtain all easements or authority necessary to enter upon or use such right-of-way; provided that the Contractor shall (i) make all arrangements with the entity owning such right-of-way for the actual construction, (ii) perform the work on or across such right-of-way in the manner and at the times agreed upon with its owner, (iii) shall pay the costs, if any, of temporary construction required by the owner thereof as a means of providing safe and continuous operation of its facilities during the construction period and to protect its facilities and the general public, and (iv) where required by such owner, post with it any performance bond to guarantee the satisfactory replacement or repair of materials, paving or grading within such right-of-way.

**Y. Use, Restoration and Other Responsibilities Concerning Private Property.** In the course of its operations, Contractor shall not enter upon private property for any purpose without first obtaining permission from its owner. Contractor shall be responsible for the preservation of and shall use every precaution necessary to prevent damage to all trees, shrubbery, fences, culverts, bridges, pavement, driveways, sidewalks, or other improvements on private property (including all water, sewer, gas, telephone, and electric lines serving that property) along or adjacent to the Work. Not less than twenty-four (24) hours in advance of its operations, Contractor also shall notify the proper representatives of any public service corporation, organization or individual owning property along or adjacent to the location of the Work which might interfere with their operations or use of their respective properties.

**Z. Responsibility for Damage.** If any direct or indirect damage or injury is done to public or private property on account of any act, omission, neglect or misconduct by Contractor in the prosecution of its Work or as a consequence of it furnishing defective work or materials or otherwise failing to perform its responsibilities hereunder, Contractor, at its sole expense, shall restore such property to a condition similar or equal to that existing before such damage occurred or it shall duly compensate the property owner or other injured party for any such damage or injury.

**AA. Public Utilities.** If prosecution of the Work requires that any property or improvements of public utilities be cut, moved, relocated, rebuilt, or otherwise disturbed in any way, the Contractor shall notify the utility to make the required changes, and, prior to making application to the utility, make all preliminary arrangements with them regarding those accommodations. The City shall not be responsible for any delays in the accomplishment of the required action by a utility by reason of Contractor's failure to properly schedule same, and in no case shall the Contractor be allowed any claim for extension of time or additional compensation based on failure of the utility to act or accommodate the Work within the stipulated period of time.

**BB. Service Connections.** If service connections or lines from water or gas mains or sewers to the premises of a property are disconnected, broken, damaged, or otherwise rendered inoperative for any reason by the Contractor

in prosecuting the work, it, at its own expense, shall repair or replace same and restore service to the premises as the earliest possible time.

**CC. Temporary Sewer and Drain Connections.** If existing storm or sanitary sewers are required to be removed, relocated, or rebuilt to prosecute the Work, the Contractor, at his own expense, shall provide and maintain temporary outlets and connections for all private or public drains, sewers, and sewer outlets connected to or served by the sewers to be rebuilt, and where necessary, shall provide adequate pumping facilities and maintain these services until such time as the permanent sewers and connections are built and in service.

**DD. Water/Electricity/Gasoline/Supplies.** Contractor, at its expense, is responsible to provide and maintain at an adequate supply of water, electricity, gasoline or other incidental supplies required to prosecute the Work.

**EE. Use of Part of Completed Work.** If, in the opinion of the City Project Representative, any portion of the Work has been substantially completed and is in suitable condition for use, the City may use that portion upon that Representative's written order; provided that such usage shall not be construed in any way to constitute acceptance of defective work or waive any of the Specifications and Conditions or Contractor's obligations in the Contract Documents. Pending final completion and acceptance of the Work in such portion, all necessary repairs and renewals of it shall remain the responsibility of the Contractor if those repairs or renewals result from defective material or workmanship, from natural causes other than ordinary wear and tear or due to operations of the Contractor.

**FF. Contractor's Responsibility for Claims.**

(i) Contractor (and its Surety) shall defend, indemnify and save harmless the City (and all its officials, agents, and servants) against any claims, actions, causes, expenses (including those reasonable attorney's fees and costs of litigation) and suits of any name or character claiming damages (including those for bodily injury, death or property damage) or compensation from the City (collectively hereinafter "Claims") arising from or based on the violation of any law, ordinance, regulation, order or decree, whether such violation is committed by Contractor, its employees or any of its subcontractors.

(ii) Contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officers, agents and employees) from all Claims by any person, entity or property owners arising from any of the following: (a) Contractor's neglect in performing or safeguarding the Work; (b) Contractor's use of unacceptable materials in constructing the Work; (c) Contractor's failure to perform any of its obligations in the Contract; or (d) by on account of any claim or amounts arising or recovered under the "Workmen's Compensation Law" or any other law, ordinance, order or decree.

(iii) In the event City approves Contractor's engagement of a subcontractor to perform Contractor's obligations and responsibilities under the Contract, Contractor guarantees payment of all just claims for materials, supplies, tools, equipment or labor supplied or performed by any subcontractor.

**GG. Insurance.** Contractor is responsible to provide the insurance set forth in Section 6(b) of Contract that is included in the Contract Documents and is to be executed by the parties before commencement of the Work.

**HH. Contractor's Responsible for Work until Accepted.** Contractor shall remain responsible its Work at a location until it is finally accepted by the City Project Representative. All work there shall remain under the charge and care of the contractor, and it shall take every necessary precaution to prevent injury or damage to any person related to that work site from any other cause whatsoever (whether arising from its execution or failure to execute the work) until that acceptance occurs. Further, Contractor, at its own expense, shall rebuild, repair, and remedy any damage in any portion of the Work that is occasioned by any cause before acceptance.

14

(i) the determination of quantities of work completed will be made by the City's Project Representative based on measurements taken by him or his assistants. These determinations will be calculated according to the United States standard measurements;

(ii) the compensation paid to Contractor is intended to constitute full payment to it for all of the following: it furnishing all labor, materials, tools, equipment and incidentals; for it performing all work and operations embraced under the Contract; for all loss or damage incurred by it that arise out of the nature of the Work; for any unforeseen defects or obstructions which may arise during the prosecution of the Work and before its final acceptance by the City; for all risks connected with the prosecution of the Work, submitting a bid or entering the Contract; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work herein specified; and for completing the work in an acceptable manner according to the Specifications and Conditions;

(iii) Upon payment by the City for any materials or work covered by partial estimates, that work become the sole property of the City; however, the City's payment of any partial or periodical estimates prior to final acceptance shall in no way constitute acceptance of the associated work, nor in any way prejudice or affect the obligation of the Contractor, at its expense, to repair, correct, renew or replace any defective materials or workmanship to construction of the work;

(iv) Any extra work performed by the Contractor and approved by the City will be paid at the lump sum and other rate agreed and set forth in a change order or other writing that is signed by both parties before such work is begun. All extra work shall be subject to all other conditions of the Contract;

(v) Progress Payments/Retainage. Within five (5) days following the end of each calendar month during the term, the Contractor may prepare and submit an invoice of an estimate of the quantities of work performed during the prior month and its calculation of the total amount due for that Work. All such pay estimates must be certified as correct by the City Project Representative and approved by the City before payment. On or before the tenth (10<sup>th</sup>) day of the month for which such invoice for partial payment is submitted, the City Project Representative will undertake to so certify any request for partial payment to Contractor. Following such certification, the City will remit payment with respect to the undisputed portion of the pay estimate, less 5% amount authorized by the Public Works Law to be retained and less any previous payments. The retained amount of approximately fifty (50%) percent of all work, the City determines that satisfactory progress is being made, retainage will not be withheld on subsequent partial payments. The retained amounts shall be held by the City until final completion and acceptance of all Work contemplated under the contract, at which time the retained amounts and other amounts then due shall be paid in full or otherwise applied by the City as is contemplated in the Contract.

(vi) When the Work has been completely performed by the contractor and all its parts have been approved by the City Project Representative and accepted by the City, the parties will meet and agree on the terms of final documentation that will reconcile the cost of the Work performed under the Contract (including any extra work as authorized by change orders), the total amount retained, the total amount paid on previous partial estimates and any amounts due Contractor. In this final reconciliation process, payments by the City for prior estimates are subject to necessary corrections or revisions.

(vii) Final Payment. Final payment of all amounts due hereunder will be made to Contractor within ten (10) days after the final reconciliation process is completed.

## MINUTE BOOK

**II. No Waiver by City.** The City shall not waive any of its rights under the Contract by occurrence of the following: any inspection of the work by the City Project Representative (or by any of his duly authorized representatives); the issuance of any order, measurement or certificate by that Representative; any order by the City to suspend the work; the City's acceptance of any work; or the City's grant of any extension of time to complete work. Further, no waiver of any breach of contract shall be held to be a waiver of any other or subsequent breach.

**JJ. No Assignment or Subcontracting without City's Consent.** The Contractor shall not assign any benefit, obligation or right under the contract, or subcontract any part of the work to a subcontractor, in whole or part, without prior written consent of the City, which consent may be withheld for any reason. Any authorized subcontractors shall comply with the applicable provisions of the principal Contract, and the Contractor shall be fully responsible for the acts and omissions of his subcontractors.

**KK. Prosecution of Work.** In performing the Work and in the course of its operations contemplated hereunder, Contractor shall

(i) continuously and diligently prosecute the Work in such order and manner to complete it in a safe, workmanlike and timely manner;

(ii) exclusively be responsible for training and supervising all of its personnel, and take necessary actions to ensure that its workmen have sufficient skill and experience to properly perform the work assigned to them;

(iii) comply with all federal, state and local laws, regulations and ordinances governing the employment of labor and the payment of wages thereto for work performed under the Contract; and

(iv) furnish an ample force of trained laborers, tools, supplies and equipment that it considers necessary to complete the Work at a satisfactory rate of progress.

**LL. Grounds for Termination of Contract:** See Section 2 of the Contract that is included in these Contract Documents.

**MM. Temporary Suspension.** Notwithstanding any other provision in the Contract, the City, in the exercise of its sole discretion, retains the right and authority to, after giving notice to Contractor, temporarily suspend the prosecution of the Work at a location(s) in whole or part for such time(s) as the City Project Representative deems necessary. After the period of the temporary suspension expires, the Contractor promptly shall re-commence prosecution of the Work at any such location(s) after being notified by that Representative to resume operations. Contractor shall not suspend Work at a site without written authority from the City Project Representative.

**NN. Fulfillment of Contract.** The Contract will be considered fulfilled by the Contractor when all of the work has been completed, the final inspection has been made, the City has received satisfactory evidence of payment by the Contractor for all labor and materials used in the work, Contractor has duly advertised its completion of the Project and final payment for services and operations by the Contractor has been made to it by the City. Notwithstanding, fulfillment of the Contract shall not be construed to waive, modify, limit or affect any of the City's rights hereunder related to the Contractor's one-year warranty for defects in material or workmanship, any of the City's rights under any bonds, or any of its rights or remedies under law.

**OO. Payment.** During the term of the Contract, Contractor will be compensated for Work that is successfully completed based on the quantities of materials supplies, operations successfully performed, and unit prices set forth in its Contractor Bid Response. Additionally, the following understandings apply with respect to those payments:

15

### 3. SPECIAL CONDITIONS

#### Item 1. Milling of Asphalt

##### 1.01 SCOPE

The milling of asphalt shall be performed in a manner that will produce a smooth riding surface. The equipment used for milling shall and will be approved by the City Project Representative.

##### 1.02 BASIS OF PAYMENT

Payment shall be made at the contract unit price per ton and shall be the actual number of tons milled and verified by the Contractor at its weigh station. The Contractor shall furnish the City with two (2) copies of weight tickets on each truck returning milled mix to Contractor's plant. This amount, so paid, shall constitute full compensation for milling and transporting the mix to the plant and furnishing all equipment and tools, fuel, labor and incidentals necessary to complete the work.

#### Item 2. Adjusting Manholes, Inlets, and Catch Basins

##### 2.01 SCOPE

The work covered by this item shall consist of furnishing all materials and labor necessary for the resetting and adjusting of existing manhole, inlet, or catch basin frames and covers to bring them to the location and grade required by the new construction.

##### 2.02 RESETTING

Existing manhole, inlet, and catch basin frames and covers shall be reset in accordance with these specifications when the existing manholes, inlets, or catch basins are more than one (1) inch above or below the new grade or elevation of the proposed construction. They shall be thoroughly cleaned and accurately set to line and grade of the new construction by removing the frame and cover and raising or lowering the masonry top of the structure and resetting on a cushion of cement mortar.

##### 2.03 PAVING RINGS

Paving rings of proper diameter, width, length, weight, and height, may be used on manhole, inlet, or catch basin frames in lieu of resetting under this specification.

##### 2.04 METHOD OF PAYMENT

Payment for adjusting, resetting, or raising manhole, inlet, and catch basin frames and covers shall be made for the actual number so relocated as specified above and at the unit price as listed under this Item of the contract pay items. This amount, so paid, shall be full compensation for adjusting, resetting, and furnishing and placing paving rings, materials, tools, equipment, forms, drawings and specifications, and performing all labor required to complete the work herein specified.

#### Item 3. Bituminous Trackless Tack Coat

##### 3.01 SCOPE

The work covered by this item shall consist of furnishing all labor, materials and equipment, and performing all operations in connection with the application of a bituminous tack coat on a previously prepared bituminous binder course or existing pavement, as shown on drawings, as hereinafter specified and as directed by the Project Coordinator.

17



3.02 DESCRIPTION

The bituminous trackless tack coat shall consist of a hot or cold application of bituminous material on a prepared bituminous binder course, base course or existing pavement as specified by the Project Coordinator.

3.03 QUANTITY OF MATERIAL

The amount of bituminous material to be applied to each square yard for the trackless tack coat shall be within the minimum and maximum quantities specified below. The exact amount to be applied shall be determined by the Project Coordinator and may be varied to meet existing conditions.

MATERIAL	AMOUNT
Tact Cost Bituminous Material	Gallons per Square Yard 0.05 min to 0.15 max

3.04 WEATHER LIMITATION

The tack coat shall be applied only when the existing surface is dry, when the atmospheric temperature is above fifty (50) degrees F., and when the weather is not rainy.

3.05 REMOVAL OF LOOSE AND FOREIGN MATERIAL

Immediately before applying the tack coat all surfaces, both horizontal and vertical, which will be in contact with the new asphalt plant mix shall be thoroughly cleaned of all dirt, debris, extruded joint material, grease, oil, grass, roots, clay coating, and all other foreign materials which may impair the construction. All depressions not reached by rotary power brooms and blower shall be cleaned by hand broom, or other equipment, including, but not limited to, washing and flushing. The contractor shall not grease, oil or perform any maintenance of any equipment while located within the construction limits of the work.

3.06 DETERMINATION OF PAY QUANTITIES

The quantities of bituminous tack coat for which payment will be allowed shall be expressed in gallons and shall be the actual quantities of material used in the accepted work as measured by the City Project Representatives, corrected to gallons at sixty (60) degrees F. in accordance with the appropriate table contained in the American Society for Testing Materials, Standard Abridged Volume Correction Table, Serial Designation D206-36, for Petroleum Oils.

3.07 PAYMENT

Payment for bituminous tack coat placed under these specifications shall be made for the quantities determined as specified above at the contract unit price per gallon as listed under this Item of the contract pay items. This amount, so paid, shall be full compensation for furnishing, delivering and applying the material, furnishing and spreading blotter material, and for all labor, equipment, tools and other expenses incidental to the work. Pouring cracks in existing pavements shall be considered as an incidental item of the work and no specific payment will be allowed therefore.

Item 4. Seal Wearing Course and Baby Binder Leveling Course

4.01 SCOPE

The work covered by this item shall consist of furnishing all labor, materials, equipment and performing all operations in connection with the construction of a seal wearing course and baby binder leveling course, as hereinafter specified. The binder course may be used as a leveling course for filling holes and replacing removed base course, which has not been removed to a depth of more than two and one-half inches. In general, the binder course is to be used to bring an uneven surface to the intended contour of the finished pavement as well as to provide additional thickness to the existing pavement as required by the contract plans and specifications.

4.02 Determination of Pay Quantities.

The quantities of binder course and seal course, for which payment will be allowed, shall be expressed in tons, and shall be the actual number of tons of hot laid bituminous plant mix used in the completed and accepted work, as verified by the plant inspector. When and as directed by the Project Coordinator, trucks shall be weighed at periodic intervals.

4.03 Payment.

Payment for hot laid binder course and seal wearing course placed under these specifications will be made for the quantities determined in the manner specified above at the applicable contract unit price per ton. This amount, so paid, shall constitute full compensation for preparing or reconditioning base course or sub-grade and for furnishing all material, including asphalt, all equipment and tools and for handling, mixing, manipulating, placing, shaping, compacting, rolling and finishing, improving unsatisfactory areas and furnishing all labor and incidentals necessary to complete the work in place.

Contractor guarantees that maximum cost to apply the minimum thickness of slag aggregate seal will not exceed the bid price, as adjusted by the Asphalt Index. It is understood that the City can pay Contractor either on a tonnage basis or guaranteed maximum amount, whichever is less.

Item 5-- Other

5.01. SURFACE TAPERING: All new surfaces shall be tapered to meet the existing gutter line to the maximum extent possible without structurally weakening the new surface.

III. INSTRUCTIONS TO BIDDERS

1. Bids and associated completed forms should be placed in sealed envelope or container that is addressed to City of Mountain Brook, Alabama, Attention: City Manager, City Hall, 56 Church Street, Mountain Brook, AL 35213-3700, and delivered on or before the local time and date specified in the Invitation to Bid.

2. The following information should be clearly shown on the exterior of the sealed bid: (a) BID FOR STREET RESURFACING PROJECT - B-20230818-900; (b) Date and Time of Bid Opening; (c) Name of Bidder; and (d) Bidder's State of Alabama License number.

3. The completed Contractor Bid Response Form (see enclosed Exhibit A) and completed Bidder Qualification Form (see enclosed Exhibit B) are due no later than Friday, Sept. 22, 2023 at 10:00 a.m. The bidder shall be responsible for taking whatever measures are necessary to ensure that its response reaches the City at the designated address on or before the local time and date specified. The City shall not be responsible for, and may not consider, any proposal delayed in the postal or other delivery service, or in the City's internal mail system, nor any late proposal, amendment thereto, or request for withdrawal of proposal received after the time and date specified. Proposals received after the time and date specified on the bid submission deadline will not be opened and will not be considered for award.

4. Each bidder shall submit two (2) copies of their responses.

5. Bids must be entered on the Contractor Bid Response Form that is provided herein. Each bidder shall fully complete all sections of this Form, and sign in the appropriate places thereon in the presence of a notary.

6. Bids that are completed in pencil or fixed to the City will not be accepted.

7. All questions and clarifications regarding this Bid, Specifications or the Work must be submitted in writing by Sept. 18, 2023, at 5 p.m. to the following City representatives:

**Purchasing Questions:**  
Steven Boone  
Finance Director  
City of Mountain Brook  
boones@mtnbrook.org  
(205) 802-3825

**Technical Questions:**  
Hunter Johnston  
Public Works Dept.  
City of Mountain Brook  
johnstonh@mtnbrook.org  
(205) 802-3875

The City will attempt to respond to such questions by 5:00 p.m. on Sept. 20, 2023. No oral answers or interpretations to such inquiries will be provided. The City's response to all questions will be e-mailed to all interested firms that have requested Contract Documents from Hunter Johnston before that time and treated as an Addendum to these materials. All addenda issued shall become part of the contract documents for this Bid.

8. Each bidder is responsible for all costs related to the preparation of its Bid Response.

IV. CONTRACTOR QUALIFICATIONS/REQUIREMENTS FOR AWARD

Interested contractors are required to meet all qualifications in this section in order to be considered for award of the contemplated contract for the Work (the "contract"). Respondents should complete and return the enclosed Exhibit B - the Bidder Qualification Form with their bid. If a respondent does not submit this documentation substantiating that they comply with these qualifications/ requirements in this Section II, the City may disqualify them from an award or entering the contract.

A. Minimum Experience: Bidders must have at least ten (10) years of experience in the commercial street paving business. Interested contractors must provide information on the Bidder Qualification Form (see Exhibit B) indicating whether they meet this requirement.

B. Licensing Requirements. To be eligible for the award, the successful contractor must provide the City evidence that it has or will obtain the following licenses and attach copies thereof the Bidder Qualification Form:

- a. State of Alabama Contractor License
- b. City of Mountain Brook Business License\*

(\*Note: If not currently held, this license must be obtained prior to commencing work.)

The interested contractor also shall attach any other state, county or local licenses and/or certificates held by it that evidence the contractor's qualifications in heating, ventilation, and air conditioning maintenance, repair and installation.

C. Performance of Similar Projects/References. The successful contractor must have performed projects of a scope comparable to this Project for at least five (5) municipalities (other than the City of the Mountain Brook) or counties in Alabama within the last five (5) years. References for each such firm shall also be provided. The City and its employees may not be accepted as a reference. The City reserves the right to contact references as part of the evaluation and selection process. Information indicating compliance with this qualification shall be provided on Exhibit B.

D. No Pre-Bid Conference: The City does not anticipate conducting a pre-bid conference in connection with this award. However, interested contractors may direct written inquiries concerning the Project or Contract Documents to the City's Project Representatives indicated above.

E. Bid Bond Requirement. Each bidder is required to furnish with its Bid a \$10,000 bid bond, cashier's check or other similar form of bid security acceptable to the City to secure its intent to perform the Work if it receives the award.

F. Other Bonding Requirements. When selected, before commencing work the successful contractor must provide a Performance Bond in the amount of its annual contract price and a Labor & Materials Bond in the amount of half that price.

These bonds shall remain in effect for twelve (12) months after completion of the Work, shall be in a form satisfactory to the City, and the surety for them shall be a reputable bonding company authorized to transact business in Alabama and shall be acceptable to the City.

G. Insurance Requirements. Before commencing its work, Contractor must provide the types of insurance and comply with the insurance requirements set forth in Section 6(b) of the Contract that is included as Exhibit C in the Contract Documents.

## V. CONTRACT AWARD PROCESS

1. Bidder's Intent. By submitting a bid, the bidder accepts and agrees to comply with the Specifications of the Work and obligations in other sections of the Contract Documents, unless otherwise stated in a bid exception that is accepted by the City.

2. Any exception taken by a bidder should be stated in detail, in writing, at the time of its submission. The City reserves the right to accept or reject any such exception taken by the bidder, and deviations from the Specifications or other obligations in the Contract Documents that are not accepted by the City may be grounds for rejecting and disqualifying the bid.

3. The City intends to notify the successful contractor of the tentative award of the Contract within three (3) days after the bid opening. Following the award, the Contractor will enter the Contract and furnish the required construction bonds (Performance and Labor & Materials bonds) within approximately ten (10) days after the award.

4. In determining the entity to whom to make an award, the City reserves the right to:

- reject the proposal of any bidder who has previously failed to perform properly or timely complete contracts of a similar nature;
- reject the proposal of any bidder which, based on the City's investigation, is not in a position or does not have the resources to satisfactorily and timely perform the contract;
- reject the proposal of any bidder who is in arrears or in default to the City upon any debt or prior contract;
- reject the proposal of any bidder who has failed to faithfully perform work or services on any previous contract or project for the City that is similar to that contemplated in this bid;
- request that a bidder present additional evidence that it has the ability and possesses the necessary facilities, pecuniary resources and adequate insurance to comply with the terms of this bid, and require that such evidence be presented within a specified time and to the reasonable satisfaction of the City; and
- disqualify a bidder's response because it is not complete, the bidder failed to provide information requested in the bid materials or its bid is irregular (e.g., forms are altered or reflect additions or conditions not anticipated).

5. Contract. Following the award the successful Contractor shall execute the Street Resurfacing Project B-20230818-900 Contract in substantially the form of Exhibit C below.

6. Bids which have been opened and read may not be withdrawn for a period of 60 days after date of opening.

7. Before an award is made, the City reserves the right to investigate the previous experience, financial status, and general ability of the respective bidders to perform the Project.

8. As soon as the bids have been compared, the City may, at its discretion, return the bid guarantees accompanying those bids which in its judgment would not be considered for the award. After the award is made, only the successful bidder's bid guaranty will be retained until the required contract and construction bonds have been executed, after which it will be returned to the bidder.

9. The City reserves the right to accept or reject any or all bids.

22

## VI. FORMS/EXHIBITS FOR THIS PROJECT

### EXHIBIT A - CONTRACTOR BID RESPONSE FORM \*

Below is the firm bid of the undersigned to perform the Street Resurfacing Project M110-2020 for the three (3) year term of the Contract at the unit prices indicated below. The undersigned submits this Form in response to the City's Invitation to Bid for this Project. The City may use the address and contact information below for its communications with the undersigned bidder. The undersigned has read and understands the Contract Documents that apply to the Project and conditions for the award of the contemplated Contract and, except as may be listed in any exception sheet, submits its bid and agrees to perform the Work in accordance with the requirements in the Contract Documents.

#### OPERATIONS/ESTIMATED QUANTITIES/ANNUAL UNIT PRICES

ITEM NOS.*	A. DESCRIPTION/ OPERATION	B. UNIT	C. ESTIMATE QUANTITY 1 <sup>ST</sup> YEAR CONTRACT	D. ANNUAL UNIT PRICE	E. UNIT PRICE BID PER ITEM
1.01	ASPHALT MILLING	TON	5349	\$22.25	\$118,016.25
2.01	ADJUSTING MANHOLES	EACH	10	\$260.00	\$2,600.00
3.01	BITUMINOUS TRACKLESS TACT COAT	GALLON	5349	\$3.40	\$18,188.60
4.01	LEVELING COURSE BABY BINDER **	TON	300	\$113.00	\$33,900.00
4.01	SLAG SEAL WEARING COURSE **	TON	5349	\$100.00	\$534,900.00

TOTAL AMOUNT BID: \$ 708,601.85  
(Sum of Subtotals in Column E)

#### Notes:

- The Item Numbers correspond to the enumerated provisions in the Special Conditions.
- The interested contractor shall enter its Annual Unit Price for each item shown in Column C, and then multiply that Annual Unit Price times the Estimated Quantity in Column D. The product of Column C times Column D should then be entered in the corresponding Row in Column E.
- The Total Amount Bid is the sum of the subtotals entered by the contractor in each row of Column E.
- Please state any Exceptions to the Specifications or other requirements in the Contract Document on a separate sheet and attach that sheet to your Bid Response.
- Bidders must complete, sign, notarize and return the Bidder Affidavit and Warranty below with their Bid Responses.
- Please see Section II.1.1 of the Specifications portion of the Manual. Prices for these materials are subject to adjustment monthly per ALDOT Specification Section 109.03 (the "Asphalt Index").

10. In determining which proposal is most advantageous to the City, in the exercise of its sole judgment, may consider pertinent factors other than just price. These factors include, but are not limited to, experience in the industry, quality of past service provided to the City and other similarly situated entities, history of successfully completing similar projects, its Claims History, resources of the bidder to perform the obligations under the Contract and the training and experience of the Project Team that the contractor will provide to serve the City.

11. The City reserves the right to waive irregularities and technicalities in submitted bids and make the award to the bidder submitting the proposal that is most advantageous to it.

12. Should the successful bidder to whom the contract has been awarded fail to execute the Contract and furnish satisfactory construction bonds within ten (10) days after date of notice award, it shall be considered to have abandoned their proposal; its offer shall be withdrawn; and the amount of the bid guaranty shall be forfeited to the City as fixed and agreed damages. The submission of a bid by any bidder shall be considered as an acceptance by them of this provision.

23

DUNN CONSTRUCTION COMPANY, INC.	9/22/2023
Name of Firm or Company Submitting Bid	Date of Bid
3905 MESSER AIRPORT HWY	630062840
Street Address	Tax Id # of Bidder
BIRMINGHAM AL 35222	https://www.dunnconstruction.com/
City State Zip	Web Site of Bidder
GREG CALDWELL - VICE PRESIDENT	205-470-9752
Printed Name Representative Executing for Bidder	Cell Ph. # Bidder Contact
<i>Greg Caldwell</i>	205-510-0281
Signature of Bidder Representative	Office Ph. # Bidder Contact
VICE PRESIDENT	gcaldwell@dunnconstruction.com
Title	Email Address Bidder Rep.

This Bid Response must be notarized.

Sworn to and subscribed before me on this 22 day of SEPTEMBER 2023.

*John WE* 5/6/2025  
Notary Public Commission Expiration Date

SEAL



27

The undersigned warrants, represents and agrees that each of the following is true and correct in connection with its Contractor Bid Response for the Contract to be awarded to perform the Street Resurfacing Project B-20230818-900:

- it has not colluded with any other bidders;
- it has not, directly or indirectly, induced any other bidder to submit a sham bid or to refrain from making a bid;
- it has not paid or agreed to pay any party, either directly or indirectly, any money or other thing of value for assistance or aid rendered to or to be rendered in attempting to procure the contract contemplated in this bid;
- if the subject contract is awarded to the bidder, no employee or officer of the City has an interest, either direct or indirect, in it or is a beneficiary of the contractual arrangement made the basis thereof.
- all the information contained in the response to the bid is true and correct; and
- the City may rely on information submitted in awarding the subject contract.

DUNN CONSTRUCTION COMPANY, INC.

Name of Firm or Company Submitting Bid

By: [Signature]  
Signature of Bidder Representative

Printed Name: GREG CALDWELL

Its: VICE PRESIDENT

Date: 9/22/2023

Sworn to and subscribed before me on this 22 day of SEPTEMBER, 2023.

Notary Public: [Signature] Commission Expiration Date: 5/6/2025

SEAL



28

## (d) Type of Organization:

(1) If your organization is a corporation, answer the following:

- Date of incorporation: 1878
- State of incorporation: Delaware
- President's name: Bo Walters
- Vice-President's name(s): Greg Caldwell
- Secretary's Name: Wade Edwards
- Treasurer's name: Wade Edwards

(2) If your organization is a partnership, answer the following:

- Date of organization:
- Type of partnership (if applicable):
- Name(s) of general partner(s):

(3) If your organization is individually owned, answer the following:

- Date of organization:
- Name of owner:

## (e) Administration of Business.

Please describe in general how you operate and administer your business. In this description, please state each of the following:

- the total number of employees;
- the number of workers who are dedicated to field operations;
- the name and title of your general supervisor of field service operations; and
- the number of employees dedicated to administrative and office matters.

- 280 (i) - 240
- Shane Watson
- 40

## 4. Licensing.

List and attach to this Form all licenses and certifications that your organization currently holds or has that authorize it to perform commercial street paving operations in the State of Alabama.

See attached GC License

Also please list the License number and attach a copy of the following Licenses to this Form:

- State of Alabama
- City of Mountain Brook Business License\*
- Jefferson County

8

20230818

00211537

\*Note: If not currently held, Contractor must acquire a City Business License prior to commencing work.

30

NOTE: THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR CONTRACTOR BID RESPONSE FORM. IF ADDITIONAL SPACE IS NEEDED, PLEASE STATE THAT INFORMATION ON ADDITIONAL SHEET(S) THAT YOU ATTACH TO THIS FORM AND INDICATE ON THEM THE NUMBER AND ITEM TO WHICH THE INFORMATION CORRESPONDS.

1. Name of Business: DUNN CONSTRUCTION COMPANY, INC.

Principal Business Address:

3905 MESSER AIRPORT HWY  
BIRMINGHAM, AL 35222

## 2. Business Contact(s)

(a) Primary Contact (Note: If a Pre-Bid Conference is held, the Primary Contact should attend that Conference.)

Name: ROBERT POWELL  
Title or Position with Company: PROJECT MANAGER  
Day Phone: 205-531-1216  
Email: RPOWELL@DUNNCONSTRUCTION.COM  
Street Mailing Address of Contact: 3905 MESSER AIRPORT HWY  
BIRMINGHAM, AL 35222

## (b) Other Business Contact(s)

List the name, position, telephone number, email and street addresses of persons on the bidder's staff other than the Primary Contact who can answer inquiries and who may attend the mandatory pre-bid meeting.  
Greg Caldwell - 205-470-9752 gcalwell@dunnconstruction.com

## 3. Business History

(a) The successful contractor must have at least ten (10) years of experience in the commercial street paving business. How many years has your organization been in this business? 145

(b) State the facts and attach written documentation evidencing that your organization has been in the commercial street paving business for the required minimum ten-year period.

Dunn Construction has been in business since 1978. We currently hold multiple cities around Birmingham. We are currently completing the last city of this Brook Contract that was awarded in 2023. Along with multiple municipal contracts Dunn has multiple ALDOT resurfacing contracts.

(c) How many years has your organization operated under its present business name? 145

29

## 5. Other Similar Street Paving Projects by Contractor.

The contractor must have had successfully performed street paving projects of a scope comparable to this Project for at least five (5) municipalities (other than the City of the Mountain Brook) or counties in Alabama within the last five (5) years. Please provide the following information as to each such contract:

City/County Name: CITY OF BESSEMER  
Contact at City/County: DANIEL MAYFIELD - EFS ENGINEERING  
Title of Contract: BESSEMER STREET RESURFACING  
Phone Number: 205-424-3737  
Type(s) of Contract(s): ANNUAL RESURFACING  
Dates of Contract: 8/1/2023 - CURRENT  
Location(s) of Service: 117 VARIOUS STREETS

City/County Name: CITY OF BIRMINGHAM  
Contact at City/County: JASON LANGE  
Title of Contract: CITY OF BIRMINGHAM - 2023 RESURFACING  
Phone Number: 205-254-2102  
Type(s) of Contract(s): ANNUAL RESURFACING  
Dates of Contract: 12/2022 - CURRENT  
Location(s) of Service: 100+ VARIOUS CITY STREETS

City/County Name: CITY OF BIRMINGHAM  
Contact at City/County: JASON LANGE  
Title of Contract: CITY OF BIRMINGHAM - ST PACKAGE  
Phone Number: 205-254-2102  
Type(s) of Contract(s): ANNUAL RESURFACING  
Dates of Contract: MARCH 2023 - CURRENT  
Location(s) of Service: 14 SELECTED CITY STREETS

City/County Name: CITY OF PARRISH  
Contact at City/County: Johnny L. Riddinger  
Title of Contract: CITY OF PARRISH RESURFACING  
Phone Number: 205-275-7627  
Type(s) of Contract(s): SINGLE STREET RESURFACING  
Dates of Contract: 9/18/2022 - FEB 2023  
Location(s) of Service: MAIN STREET - PARRISH

City/County Name: CITY OF PELHAM  
Contact at City/County: MIKE EDDINGTON  
Title of Contract: PELHAM RESURFACING 2021  
Phone Number: 205-620-6418  
Type(s) of Contract(s): ANNUAL RESURFACING  
Dates of Contract: 4/1/2021 - DECEMBER 2021  
Location(s) of Service: 6 SELECTED CITY STREETS

31

APPENDIX 7



**6. List/Qualifications of Project Team.**

On a separate page, please list and furnish the following information concerning each of the employees or other representatives whom you will appoint to perform the Project:

- name
- job title
- areas of experience and the length of time for each area
- special training, licensing, and certification for each employee

**7. Insurance.**

If available at this time, please attach a certificate issued by your current Insurance Carrier(s) indicating the existence and limits of your Comprehensive General Liability (including assumed contractual liability coverage), Automobile Liability, and Worker's Compensation coverage required in Section 6 of the enclosed Contract.

**8. Claims History.**

(a) Within the last five (5) years, has the bidder, or any officer, director, member or owner of it, been a party to any lawsuit, any arbitration or participated in any other type of alternative dispute resolution process with regard to a claim, dispute, or disagreement arising from the bidder's (or any officer's, director's, member's or such owner's) performance or failure to perform its obligations under an agreement to provide services and conduct operations? (For purposes of this question, an "owner" of the bidder is any person who holds 10% or more of the stock or interest in the bidder organization.) Yes \_\_\_\_\_ No X.

If yes, for each such contract or project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the manner in which any such claim or dispute was resolved:

(b) Within the last five (5) years, has any owner, client or customer of your organization made, asserted or pursued a claim against a Surety that issued a Performance Bond on a contract that was being performed by the bidder and that arose from its performance or failure to perform obligations under an agreement with that customer to provide services? Yes \_\_\_\_\_ No X.

If yes, for each such project, explain fully the nature of the matter, location, circumstances, your role, and, if resolved, the manner in which any Performance Bond claim was resolved:

(c) Within the last five (5) years, have any of your clients or customers formally declared that the bidder is in default or has breached a material obligation in any agreement to provide services or operations? Yes \_\_\_\_\_ No X. If yes, for each such project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the manner in which any such default or breach was resolved:

32

(d) Has your organization ever failed to complete any work, contract or project awarded to it?

Yes \_\_\_\_\_ No X. If yes, please provide all details related to such matter.

(e) Are there any judgments against your organization, or against any of your officers or owners individually, that arise from any litigation or arbitration that have been entered but are not satisfied? Yes \_\_\_\_\_ No X.

If yes, please provide all details related to such matter:

(g) Within the last five years, has any officer, principal or owner of your organization ever been an officer or principal of another organization when it failed to complete a contract? (For purposes of this question, an "owner" of the bidder is any person who holds 10% or more of the stock or interest in the bidder.)

Yes \_\_\_\_\_ No X. If yes, please provide all details related to such matter:

**CERTIFICATION**

The undersigned representative of the Bidder certifies that he/she is authorized to sign below and submit this Bidder Qualification Form on its behalf, and that the information submitted is current, accurate, true and sufficiently complete so as not to be misleading.

Name of Bidder

DUNN CONSTRUCTION COMPANY, INC.

(Type or Print)

By: Greg Caldwell

Signature

GREG CALDWELL

Printed Name

VICE PRESIDENT

Title of Authorized Representative

Sworn to and subscribed before me on this 22 day of SEPTEMBER, 2023.

Notary Public

Commission Expiration Date

33



APPENDIX 7

**EXHIBIT C - STREET RESURFACING PROJECT B-20230818-900 CONTRACT**

This Street Resurfacing Project B-20230818-900 Contract (the "Contract") is made by and between (the "Contractor") and the City of Mountain Brook, Alabama (the "City") effective as of the date last signed below by a party (the "Effective Date").

**WHEREAS**, for the referenced Project the City has conducted a competitive bid process to award a three-year unit price contract in connection with paving certain streets in the City and performing operations related thereto (the "Work" or "Project");

**WHEREAS**, the City has determined Contractor to be the lowest responsible bidder in response to its Invitation for Bids for the Project;

**WHEREAS**, Contractor agrees to perform the Work in compliance with all Contract Documents in the Project Manual (including the Specifications & Conditions and the Contractor's completed Bid Response Form), which documents are incorporated by reference and collectively may be referenced herein as the "Contract Documents;" and

**WHEREAS**, the parties desire to memorialize the terms and conditions of this Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the Contractor and City agree as follows:

**1. Work.** Contractor shall perform the Work in accordance with the terms, provisions and conditions of this Contract and the Contract Documents. The Contractor's Bid Response Form is also incorporated herein and made a part hereof by reference. The Contractor will be compensated for performing the Work at the prices set forth in the Contractor Bid Response Form.

**2. Term/Early Termination.** The term of this Contract shall commence on the Effective Date and thereafter continue in effect for a period of three (3) years (the "Term"). Notwithstanding the provision immediately above or any other provision herein or in the Contract Documents, the Contract may be terminated before the expiration of its Term if any of the following occur:

(a) Termination for Cause by City. If the Contractor fails to perform any material obligation as required in the Contract Documents or this Contract (a "Default"), the City may terminate the Contract for cause on thirty (30) days' advance written notice to Contractor; provided that the Contractor shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause. This termination remedy is in addition to any other remedy or right provided to the City in the Contract or available by law that arises from a Default. The circumstances that may constitute a Default by the Contractor include, but are not limited to the following: (i) its failure to perform the Work in a satisfactory manner; (ii) its failure to perform the Work in a timely manner; (iii) the accumulation of substantial evidence that the progress being made by the Contractor is insufficient to complete the Work within the specified time; (iv) the deliberate failure on the part of the Contractor to proceed with the construction of the work when so instructed by the City or to observe any requirements of the Specifications; and (v) the Contractor's failure to promptly make good any defects in materials, workmanship or construction; and

(b) Termination for Cause by Contractor. If the City does not perform a material obligation owed Contractor in the Contract Documents, the Contractor may terminate the Contract for cause on

thirty (30) days' advance written notice to the City; provided that the City shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause; and

1004

## MINUTE BOOK

- (c) Termination for Non-Appropriation. Notwithstanding any other provision above in this section or elsewhere in this Contract, the City, effective upon provision of written notice to Contractor, may terminate this Agreement at the end of the first or second contract year without cause or the occurrence of a Default and without any liability, penalty or obligation to pay for Work after the effective date of termination if its governing body does not appropriate or allocate funds for the Project. In the event of such termination for non-appropriation, the City shall remain obligated to pay for Work performed by the Contractor prior to termination.

If a Contractor Default occurs and the Contract is terminated, Contractor shall discontinue its operations to perform the Work. Moreover, the City, in addition to exercising its right to terminate this Contract, may have the Work completed by another contractor(s), in which event Contractor shall be responsible for the difference, if any, between the amount paid by the City to another contractor to complete the Work and that provided for hereunder as the cost of the Work if it were performed by the Contractor. No failure on the part of the City to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

3. **Payment to Contractor.** The amounts to be paid to Contractor shall be calculated and based on the unit prices set forth in its completed Contractor Bid Response Form (which Form is incorporated by reference herein) and applicable provisions in the Contract Documents.

4. **Project Representatives.** Each party shall appoint a representative(s) who shall coordinate with the other party on matters pertinent to the performance of the Work and the administration of this Contract (the "Project Representative(s)").

The City's Project Representatives are:

Hunter Johnston, Public Works Dept.  
3579 East Street  
Mountain Brook, AL 35243  
Email: johnstonh@mtmbrook.org  
Tel No: 205-802-3875

&

Ronnie Vaughn, Public Works Dept.  
3579 East Street  
Mountain Brook, AL 35243  
Email: vaughnr@mtmbrook.org  
Tel No: 205-802-3865

The Contractor's Project Representative is:

\_\_\_\_\_, AL 352\_\_\_\_\_  
Email: \_\_\_\_\_  
Tel \_\_\_\_\_

The Project Representatives designated above shall have the authority to act on behalf of its respective organization to transmit instructions, receive information and administer the Contract consistent with its terms and conditions. Either party may designate a Project Representative other than the person named above upon provision of written notice to the other.

4. **Notices.** Any notice required hereunder shall be sufficiently given when given in writing and sent to the appropriate Project Representatives 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 that party.

33

All required insurance shall be provided by a policy (ies) issued by a company or companies qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the City. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

Except for the Workers Compensation and Employer's Liability coverage, all coverage shall contain endorsements naming the City of Mountain Brook, and its officers, employees and agents, as additional insureds with respect to liabilities that arise out of and result from the operations of the Contractor or the performance of the Work. Before the commencement of the Work hereunder, the Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

7. **Safety.** Contractor exclusively shall be responsible for traffic control, the safety of its personnel (and that of any subcontractor or subcontractor personnel), the protection of its equipment and the protection of the Work while performing its operations on or about the City streets and property (the "Work Sites"). In addition, Contractor shall undertake whatever precautions and practices that it determines are necessary (including, but not limited to, the posting of signs warning against hazards, use of flagmen, etc.) to maintain a safe work environment and at all times to protect the general public, its personnel, its equipment, City personnel and City property from injury, damage or loss in the course of its operations.

The City makes no representation and gives no warranty that its Work Sites (or any equipment or improvements thereon) are safe or fit for the performance of the Work. Prior to commencing its operations, Contractor (and its representatives) agrees to thoroughly examine, inspect and become familiar with each Site, determine that the Work at each such Site can be completed in an orderly and safe manner and implement whatever precautions, practices or actions that it deems are required to safely the Work in those locations.

8. **Representations of Contractor.** As further inducement to enter this Contract, the Contractor represents and warrants each of the following to the City:

- (a) that it will perform the Work in a good and workmanlike manner;
- (b) that, prior to entering this Contract, it has familiarized itself with the conditions and nature the Work sites where it will perform operations; and
- (c) that all actions required to be taken by it or on its behalf to execute the Contract, and to perform its obligations and agreements hereunder, have been duly taken.

9. **Entire Agreement/Ineffective Provisions in Contractor Documents.** This Contract (and the other Contract Documents) comprises the entire agreement between the parties concerning the matters herein. These terms, provisions and conditions in the Contract supersede all prior negotiations, representations or agreements, either written or oral, concerning the subjects herein, and any such prior understandings concerning these matters are of no effect and are merged into this Contract. Further, the parties agree that no terms, provisions or conditions that are stated in any work or purchase order, proposed invoice or other document generated by the Contractor in connection with the Work are not incorporated into or form part of the Contract. Notwithstanding the existence of any such documents, the parties understand, agree and covenant as follows:

- (a) The City shall not be liable to the Contractor for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor;
- (b) The City shall not be liable for any late payment charges, interest, or fees on any delinquent billing for goods, materials, or services; provided that, in the event Contractor should successfully prosecute

5. **Dispute Resolution.** The Project Representatives of the parties will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If those Representatives are unable to amicably resolve a Dispute, it will be referred to the senior manager/official level of each party for consideration. If the Dispute cannot be resolved at the senior official level, either party may request that the Dispute be mediated.

However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism for any claim between the parties shall be litigation in a court that is located in Jefferson County, Alabama. If (i) the City should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) the City secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the City, the Contractor will reimburse the City for its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

### 6. Indemnification by Contractor/Insurance Requirements

(a) **Indemnification.** The Contractor agrees to defend, indemnify, and hold harmless the City of Mountain Brook, and its agents, employees and officials (hereinafter the "Indemnitees") from and against from and against all demands, actions, damages, judgments, expenses (including, but not limited to, attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages) (collectively herein "Claim(s)") by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") asserted against any Indemnitee(s) that arise out of, relate to, result from, or are attributable to any of the following: (a) any conditions in or about the work sites on which the Contractor or any Contractor Representative may enter or encounter in performing the Work; and (b) any negligent act, omission or conduct by the Contractor or any Contractor Representative that arises from or relates to its (or their) performance or failure to perform its (or their) responsibilities under this Contract or the Work. This indemnification obligation includes Claims by third parties that are caused in part by the negligence of an Indemnitee; provided, nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for Claims resulting from the sole negligence or the willful misconduct of the Indemnitees.

(b) **Insurance Requirements.** The Contractor shall maintain the following types of insurance for the duration of this Contract and for limits not less than stated below:

(i) **Comprehensive General Liability** for all operations performed by or on behalf of the Contractor or any Contractor Representative related to or arising from the performance of the Work or Project contemplated in the Contract, with limits of not less than

- \$1,000,000 combined single limit and aggregate for bodily injury (excluding auto) and property damage (excluding auto), per occurrence; and
- Excess umbrella coverage of \$1,000,000.00 for each occurrence

This insurance shall include coverage for the following: assumed contractual liability; completed operations; damages to third parties for personal injury (including death) and property damage; and damage, destruction and injury to City property and City personnel caused by or resulting from the operations of the Contractor and any Contractor Representative;

(iii) **Automobile Liability** of not less than \$1,000,000 with excess umbrella coverage of \$1,000,000.00 for each occurrence. This insurance shall cover any owned or rented vehicles or equipment utilized for the Project;

(iv) **Workers' Compensation** as required by statute; and

(v) **Employer's Liability** - liability limits of \$500,000 per occurrence.

34

an action against the City to collect delinquent amounts owed hereunder, Contractor will receive pre-judgment interest allowed under applicable law related to that delinquency.

(c) The City will not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Contract or the performance or nonperformance thereof; and

(d) Unless expressly stated in the Contract, the City does not waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf in connection with the performance of the Work. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City (or the City) is expressly disavowed, excluded from the terms of the Contract, and void.

10. **No Assignment or Subcontracting Without Consent.** Except as expressly authorized herein, Contractor may not assign, transfer, convey, sublet or otherwise transfer or dispose of any of its rights, obligations, responsibilities or interest therein to any other person, firm or corporation without the prior written consent of the City, which may be withheld for any reason. Unless expressly agreed to the contrary, in no event shall such consent relieve the contractor from its obligations to the City hereunder or change the terms of the Contract. Further, if a subcontractor is approved and performs Work contemplated by this Contract, the Contractor shall remain responsible to the City for the actions, conduct and performance of the subcontractor (and any of its agents, employees or representatives), and any work performed by a subcontractor shall be considered as having been rendered by the Contractor and directly provided by it.

In no event may this Contract be assigned to an unsuccessful bidder who was rejected because it was not a responsible respondent.

### 11. Miscellaneous Provisions.

(a) During the Term of this Contract, Company agrees to comply with all federal, state and local laws, regulations and codes applicable to the performance of the Work (collectively, "Laws"), including, but not limited to, Laws concerning the safety, inspection, maintenance, and operation of its equipment, employment laws related to its personnel, Occupational Safety Health & Administration (OSHA) regulations or other requirements intended to protect the safety of workers, Laws intended to protect the public, or Laws intended to protect the quality of air, water or environment. The requirements of these Laws shall be construed as the minimum requirements of the Contract.

(b) The Contractor is an independent contractor of the City. This Contract does not create any partnership, joint venture or principal-agent relationship between the Contractor and the City. Further, Contractor (and its employees, representatives or subcontractors) exclusively controls the means and methods it uses or selects to perform the Work, and the City retains no control or authority with respect to those means and methods.

(c) **City Right to Audit/Contractor's Retention of Records.** Upon reasonable advance notice from the City during the course of performing the Work or in a periodic audit that follows the completion of part or all of it, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

APPENDIX 7

(d) The Contract is made only for the benefit of the City and the Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(e) At its expense, Contractor shall secure and maintain throughout the Term of this Contract all licenses, permits and governmental approvals required to perform the Work.

(f) This Contract may be amended or modified only by written instrument signed by both parties. Further, neither the scope of Work nor the time of completion of Work operations may be changed except in accordance with the terms of a written change order signed by City and Contractor.

(g) This Contract may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. Copies of this Contract showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals, and shall have the same legal force and effect as an original document.

(h) Any forbearance or delay on the part of the City in enforcing any of its rights under this Contract shall not be construed as a waiver of those rights. No terms of this Contract shall be waived by the City unless expressly waived in writing.

(i) If any provision of this Contract is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(j) In the event of a conflict between any term or provision in the Specifications (or other Contract Documents) and those in this Contract, the provisions in this Contract shall control and govern.

(k) **Exclusion of Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT, THE CONTRACTOR AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THIS CONTRACT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE CONTRACTOR'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CITY'S BREACH. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE TERMS IN THIS PROVISION WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THIS CONTRACT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CITY.

(l) **Applicable Law.** The meaning, legal effect, and enforcement of terms and provisions of the Contract and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama, except to the extent otherwise required by applicable conflict-of-law principles.

(m) **Construction of Contract.** Except as expressly stated herein, nothing in this Contract shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity. Furthermore, in the event that any ambiguity in the terms of this Contract is determined to exist, no presumption shall be made that either of the parties drafted the Contract.

(n) **Immigration Law Compliance.** The Contractor represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon*

37

Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act") and that, during the performance of this Agreement, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to the contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act. The Contractor further agrees and warrants that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the Project, jobsite or premises of the City and shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If the Contractor violates any term of this paragraph, this Contract will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

(Signature Page Follows)

APPENDIX 7

38

In witness whereof the undersigned, duly authorized representatives of the parties have executed this Contract on behalf of their respective organization.

ATTEST

By: \_\_\_\_\_

Its: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST

By: Shelly Richards

Its: City Clerk

CITY OF MOUNTAIN BROOK, ALABAMA

By: Stewart H. Welch, III

Its: Mayor

Date: Stewart H. Welch

#### VII. ANTICIPATED BID/AWARD/PROJECT SCHEDULE

1. Sept. 1, 2023 - Issuance of Project Manual by City
2. Sept. 18, 2023 - Deadline for Interested Contractors to Submit Written Questions
3. Sept. 20, 2023 at 5:00 p.m. - City's Written Answers to Questions
4. Sept. 22 at 10:00 a.m. - Bids & Other Completed Documents Due & Bid Opening
5. Week of Sept. 25, 2023 - Award Contract by City Council/Deliverables (Construction Bonds & Proof of Insurance) Due from Successful Contractor/Contract Executed
6. Oct. 1, 2023 - Term of Three-Year Contract Commences







Company ID Number: 246291

# THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING

## ARTICLE I

### PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and **Dunn Construction Company, Inc.** (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

## ARTICLE II

### FUNCTIONS TO BE PERFORMED

#### A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1305(a)), and SSA regulations (20 CFR Part 401).

Page 1 of 13 E-Verify MOU for Employer (Revision Date: 10/25/08)



Company ID Number: 246291

4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and aliens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

#### B. RESPONSIBILITIES OF DHS

1. After SSA verifies the accuracy of SSA records for aliens through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct, to the extent authorized by this MOU:
  - Automated verification checks on alien employees by electronic means, and
  - Photo verification checks (when available) on employees.

2. DHS agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to provide to the Employer a manual (the E-Verify User Manual) containing instructions on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSCE), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by alien employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of alien employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.

7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative

Page 2 of 13 E-Verify MOU for Employer (Revision Date: 10/25/08)

APPENDIX 7



Company ID Number: 246291

nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

#### C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.
3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.
  - A. The Employer agrees that all Employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify, including any tutorials for Federal contractors if the Employer is a Federal contractor.
  - B. Failure to complete a refresher tutorial will prevent the Employer from continued use of the program.
5. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
  - If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-484-4218.
  - If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-786 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The employer will use the photocopy to verify the photo and to assist DHS with the review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

Page 3 of 13 E-Verify MOU for Employer (Revision Date: 10/25/08)



Company ID Number: 246291

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the anti-discrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures for new employees within 3 Employer business days after each employee has been hired (but after both sections 1 and 2 of the Form I-9 have been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended operations in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. In all cases, the Employer must use the SSA verification procedures first, and use DHS verification procedures and photo screening tool only after the SSA verification response has been given. Employers may initiate verification by notifying the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III, below) regarding tentative nonconfirmations, including notifying employees of the finding, providing written referral instructions to employees, allowing employees to contest the finding, and not taking

Page 4 of 13 E-Verify MOU for Employer (Revision Date: 10/25/08)

**E-Verify**

Company ID Number: 245291

adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274e.1(f)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-484-4215 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

11. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(e)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the anti-discrimination provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as

Page 6 of 13E-Verify MOU for Employees/Revision Date 10/29/05

**E-Verify**

Company ID Number: 245291

contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II.D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local and tribal governments, and sureties.

d. Verification of all employees: Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.

e. Form I-9 procedures for Federal contractors: The Employer may use a previously completed Form I-9 as the basis for initiating E-Verify verification of an employee assigned to a contract as long as that Form I-9 is complete (including the SSN), complies with Article II.C.5, the employee's work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.5, if the employee's basis for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.5, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor.

2. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

Page 7 of 13E-Verify MOU for Employees/Revision Date 10/29/05

**E-Verify**

Company ID Number: 245291

authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(d)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

#### D. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. The Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employees assigned to the contract" (as defined in FAR 22.1801) in addition to verifying the employment eligibility of all other employees required to be verified under the FAR. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.

a. Federal contractors not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States, whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor, the Employer must initiate verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

b. Federal contractors already enrolled at the time of a contract award: Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must initiate verification of each employee assigned to the

APPENDIX 7

Page 8 of 13E-Verify MOU for Employees/Revision Date 10/29/05

**E-Verify**

Company ID Number: 245291

#### ARTICLE II

##### REFERRAL OF INDIVIDUALS TO SSA AND DHS

#### A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.

2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

#### B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation.

2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible

Page 9 of 13E-Verify MOU for Employees/Revision Date 10/29/05

**E-Verify**

Company ID Number: 245281

after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 6 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (furnished and paid for by DHS).

7. The Employer understands that if it cannot determine whether there is a photo match/non-match, the Employer is required to forward the employee's documentation to DHS by scanning and uploading, or by sending the document as described in the preceding paragraph, and resolving the case as specified by the Immigration Services Verifier at DHS who will determine the photo match or non-match.

**ARTICLE IV****SERVICE PROVISIONS**

SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access the E-Verify System, an Employer will need a personal computer with Internet access.

**ARTICLE V****PARTIES**

A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take

Page 8 of 13 E-Verify MOU for Employers (Revision Date: 10/29/08)

**E-Verify**

Company ID Number: 245281

mandatory refresher tutorials. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

B. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect its performance of its contractual responsibilities.

C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability whatsoever, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

F. The Employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

H. The Individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.

Page 10 of 13 E-Verify MOU for Employers (Revision Date: 10/29/08)

**E-Verify**

Company ID Number: 245281

To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.

Employer: Dunn Construction Company Inc.

William L. Hopper III  
Name (Please Type or Print) Title

Electronically Signed  
Signature Date 09/02/2009

Department of Homeland Security - Verification Division

USCIS Verification Division  
Name (Please Type or Print) Title

Electronically Signed  
Signature Date 09/02/2009

**E-Verify**

Company ID Number: 245281

**Information Required for the E-Verify Program****Information relating to your Company:**

Company Name: Dunn Construction Company Inc.

Company Facility Address: 3006 Messer Airport Highway  
Birmingham, AL 35222

Company Alternate  
Address: P O Box 11667  
Birmingham, AL 35202

County or Parish: JEFFERSON

Employer Identification  
Number: 63063640

North American Industry  
Classification System  
Code: 237

Parent Company:

Number of Employees: 100 to 499

Number of Sites Verified  
for: 1

Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

• ALABAMA 1 site(s)

Page 11 of 13 E-Verify MOU for Employers (Revision Date: 10/29/08)

Page 12 of 13 E-Verify MOU for Employers (Revision Date: 10/29/08)



Company ID Number: 245281

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:	Charles R Miller	Fax Number:	(205) 592 - 4632
Telephone Number:	(205) 592 - 3555 ext. 287		
E-mail Address:	cmiller@dunncconstruction.com		
Name:	Jordith J Torres	Fax Number:	(205) 510 - 0275
Telephone Number:	(205) 592 - 3555 ext. 359		
E-mail Address:	jt Torres@dunncconstruction.com		
Name:	William L Hopper III	Fax Number:	(205) 510 - 0275
Telephone Number:	(205) 592 - 3555 ext. 235		
E-mail Address:	whopper@dunncconstruction.com		
Name:	Janice F Goldstein	Fax Number:	(205) 592 - 4632
Telephone Number:	(205) 592 - 3555 ext. 257		
E-mail Address:	jgoldstein@dunncconstruction.com		





CITY OF MOUNTAIN BROOK

PUBLIC WORKS DEPARTMENT  
3579 East Street  
Mountain Brook, Alabama 35222  
Telephone: 205.802.2390  
Fax: 205.967.2631  
www.mtnbrook.org

MINUTE BOOK 93

2023 Street Cut Repair Tribulations Sheet 1011

COMPANY	CONTACT	PHONE NUMBER	BID AMOUNT	TIME & DATE
Glen Contracting & Paving	Mike Sharp	1-205-369-7215	Unit \$275.00 Amount \$206,250.00	9/22/23 (9:00a.m.)

September 26, 2023

Project Reference: Mountain Brook Street Cut Repair  
Bid No. B-20230818-920  
Bid Date: September 22, 2023  
Recommendation to Award

Mr. Gaston,

We are in receipt of the bid for the Mountain Brook Street Cut Repair for October 2023 through September 2026. Only one responsive bid was received.

The only bidder is Glenn Contracting and Paving Co., Inc. in the amount of \$275.00 per square yard. Glenn is our current contractor for this service and this bid is submitted with no additional charges from our current contract.

The submitted information appears to be in accordance with the bid requirements and the contractor has the required experience and qualifications, as stipulated in the bid documents.

Based on this, and in consideration of the conditions submitted, I recommend awarding Glenn Contracting and Paving Co., Inc.

Sincerely,

*Ronnie Vaughn*

Ronnie Vaughn, Public Works Director

Co: Steven Gay  
Hunter Johnston  
Daniel Davis

APPENDIX 8

1.	Company Name	Company Representative	E-mail Address	Telephone Number
2.	CITY	STAN GASTON	GASTON@MTNBROOK.ORG	(205) 802-3803
3.	CITY	James Gay	Gay.j@mtnbrook.org	(205) 802-3870
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				

Silent-In Sheet  
Bid Opening  
Street Cut Repair Project (B-20230818-920)  
September 22, 2023 at 9 a.m.

City of Mountain Brook, Alabama  
Public Works Department

STREET CUT REPAIR PROJECT MANUAL B-20230818-920

OWNER:

The City of Mountain Brook, Alabama

CONTRACTOR:

Glenn Contracting & Paving Co., Inc.

- I Invitation for Bids (Advertisement)**
- II Specifications & Conditions**
1. General Scope
2. Special Conditions
3. General Conditions
- III. Instructions to Bidders**  
(includes EXHIBIT A - Contractor Bid Response Form & EXHIBIT B - Bidder Qualification Form)
- IV. Contractor Qualifications/Requirements for Award**
- V. Contract Award Process**  
(includes EXHIBIT C - Street Cut Repair Project 2023 Contract)
- VI. Anticipated Bid/Award/Project Schedule**

**Bid Submission Deadline & Bid Opening Time:** Friday September 22, 2023 – 9:00 A.M.  
**Address for Bid Submission:** City Hall - City of Mountain Brook  
 56 Church Street,  
 Mountain Brook, AL 35213-3700  
 ATTN: City Manager/Purchasing Agent

The City of Mountain Brook, Alabama ("City") invites interested contractors to submit sealed bids to the above noted address for the award of a three-year unit price contract to perform street cut and repair operations in the City (the "Work" or "Project"). This contract will apply to operations that the City commences after October 1, 2023. Each bidder is responsible for mailing or delivering its bid so that it will be actually received at the above address and location at or before the time of the specified bid opening; bids received after that time will not be considered. Bids must be submitted by the time and date specified above, at which time these bids will be publicly opened and read as soon thereafter as practicable.

Interested contractors may obtain the Street Cut Repair Project Manual (which includes the Specifications and Conditions, Contractor Bid Response Form, Bidder Qualification Form and all other Contract Documents) from the City's Website or by contacting its Project Representative, Hunter Johnston, Public Works Department, [hjohnstn@mtmtnbrook.org](mailto:hjohnstn@mtmtnbrook.org). The City will not conduct a Pre-Bid Conference in connection with the subject award. Technical questions about the Work or Specifications should be directed in writing to Mr. Johnston at his email address. Questions about purchasing or other matters may be directed to Steven Boone, Finance Director, City of Mountain Brook, at [sboone@mtmtnbrook.org](mailto:sboone@mtmtnbrook.org).

To be considered for the award of the contract on this Work, an interested contractor must complete and return the Contractor's Bid Response Form and provide other information requested in the Project Manual. Also, the successful contractor must possess the minimum experience and qualifications to perform the Work as specified in those materials.

Each bidder is required to furnish a \$10,000 bid bond, cashier's check or other similar type of bid security with its bid to secure its intent to perform the Work if it receives the award. Further, when selected, the successful contractor must provide a Performance Bond in the amount of its annual contract price and a Labor & Materials Bond in the amount of half that price.

The award of the contemplated contract will be made in compliance with Ala. Code §39-2-1 *et. seq.* (1975). The award will be made to a responsible contractor that meets minimum qualifications and submits the lowest responsible bid that the City determines is most advantageous to it. In making that determination, the City, in the exercise of its sole judgment, may consider pertinent factors other than just price. These factors include, but are not limited to, experience in the industry, quality of past service provided to the City and other similarly situated entities, history of successfully completing similar projects, its claims history, resources of the bidder to perform the obligations under the Contract and the training and experience of the Project Team that the contractor will provide to serve the City.

The City reserves the right to accept or reject any or all bids and to waive formalities related to submitted bids.

s/ Sam S. Gaston  
 City Manager/Purchasing Agent

Advertised by Posting on City Website: September 1, 2023

3

2

## II. SPECIFICATIONS & CONDITIONS

### 1. GENERAL SCOPE

The successful contractor ("Contractor" or "contractor") shall perform all operations related to repairing cuts in asphalt and concrete streets and other paved areas in the City of Mountain Brook ("City") that are made by utilities, contractors or other persons or entities (the "Work" or "Project"). The contractor is responsible to furnish all labor, personnel, materials, supplies, equipment, fuel, tools, and personnel to complete this Work at locations that are selected by the City in compliance with the Specifications & Conditions and other Contract Documents. The contractor will be compensated on a unit price basis at prices that will remain constant over three-year period of the anticipated contract. The City estimates that, during each year of this contract, the contractor will repair a total of approximately 1000 square yards of cuts (the "Estimated Quantities").

### 2. SPECIAL CONDITIONS

- A. **Length of Contract.** The City will award a three (3) year contract that will become effective October 1, 2023.
- B. **Asphalt Cut Repairs.** The repair of asphalt cuts shall consist of squaring of sides and edges and installing six (6") inches of binder asphalt on a compact sub-grade and a one (1") inch asphalt seal course.
- C. **Concrete Cut Repairs.** All concrete repairs shall be the same thickness as adjoining concrete, using 3,000 lb. P.S.I. concrete. Concrete shall be ochre in color.
- D. **Traffic Control:** The Contractor is exclusively responsible for all traffic control related to the performance of the Work. This responsibility includes, without limitation, determining and implementing all appropriate measures to place signs, warn drivers, pedestrians and others affected by the Work, and utilize flag persons.
- E. **Estimated Quantities.** The Estimated Quantities stated above, on the Bid Response Form and elsewhere in the Contract Documents are the City's good faith approximations of the scope of Work that is believed to be required during each year of the contract. The City anticipates, but does not guarantee, that these quantities of Work will be ordered or required. These estimates are given for the sole purpose of receiving unit price bids and awarding the contemplated contract. The City does not warrant the accuracy of these estimates and approximations, that these quantities will be required to complete the Work, or that the successful contractor will receive any minimum amount of compensation based on these estimates.
- F. **Unit Prices Constant During Term of Contract.** The Unit Prices entered by the successful Contractor on its Bid Response Form (which is included herein) will remain constant throughout each year of the contemplated Contract.
- G. **Increases or Decreases in Work.** The City reserves the right to increase or decrease the Estimated Quantities in the Contract Documents without penalty, and except as provided in the specifications, any such increase or decrease in quantities will not change the unit prices over the term of the contract. If the actual quantities of Work performed deviate from the Estimated Quantities, no allowance will be made to Contractor for any change in anticipated profits, nor shall such changes be considered as waiving or invalidating any conditions or provisions of the Contract.
- H. **Requests for Work.** The City may request Work on an as-needed basis at locations selected by it. The City will request any such Work by issuing a notice to proceed.

4

- I. **Time for Performance of Work.** Unless otherwise agreed, Contractor shall complete all Work with respect any particular location(s) designated by the City within fourteen (14) days after issuance of notice to perform operations there.
- J. **Liquidated Damages.** If Contractor does not timely complete its Work on a specified location after receiving a notice to perform, the Contractor agrees that the City may deduct the amount below from any monies that are otherwise payable the Contractor under the contract:

*\$150.00 per day until Work at specified location(s) is substantially complete*

(the above amount being referenced as "Liquidated Damages"). The Contractor and City agree that calculating the actual damages that will flow from Contractor's failure to timely complete the Work would be difficult to estimate or prove. Therefore, the parties agree that the above Liquidated Damages amounts (a) are designed to compensate the City for the Contractor's failure to timely perform the Work, (b) are not penalties or intended as punishment, and (c) are intended to compensate the City for its inconvenience and the increased time in administering the Contract, supervision, inspection and engineering which is required for any operation or phase of the Project that is not completed within the time contemplated. Moreover, if the City permits the Contractor to continue and finish the Work (or any part of it) after the time for performance has expired, the performance of that delayed work will not waive, diminish or impact the City's rights under the contemplated contract to deduct Liquidated Damages.

- K. **Payment.** The City will pay Contractor for the Work based on the unit prices in its Bid Response Form and the actual quantity of Work supplied and operations furnished by it in accordance with the Specifications & Conditions. Additionally, the following understandings apply with respect to those payments:

(i) the City's Project Representative shall determine the quantities of Work acceptably completed based on measurements taken by him or his assistants. These determinations will be calculated according to United States standard measurements;

(ii) the compensation paid to the contractor will constitute full payment for all of the following: it furnishing all labor, materials, tools, equipment and incidentals; it performing all work contemplated and embraced under the contract; for any loss or damage arising out of the Work or its elements; for any unforeseen defects or obstructions which may arise during the prosecution of the Work and before its final acceptance by the City; for all risks connected with the prosecution of the Work; for all expense incurred by the contractor or in consequence of suspension or discontinuance of such prosecution of the Work; and for completing the work in an acceptable manner according to the Specifications & Conditions and the Contract Documents;

(iii) Any materials or Work covered by partial estimates shall, upon payment, become the sole property of the City; however, the City's payment of any partial or periodical estimates prior to final acceptance of the work shall in no way constitute an acknowledgment of the acceptance of the work nor in any way prejudice or effect the obligation of the contractor to repair, correct, renew or replace, at its expense, any defects or imperfections in the construction or in quality of the materials used in the construction of the Work;

(iv) Invoices. Upon completion of Work at a location(s), the Contractor will prepare and submit an invoice indicating the quantities of work completed at each location(s) and stating the total amount due for each location(s). The City will review the invoice and, if the Work is properly completed, pay the Contractor for the Work performed at a location(s) within thirty (30) days of the date of invoice.

5

(v) All pay requests will be certified as correct by the City Project Representative and approved by the City before payment.

## MINUTE BOOK 93

### 3. GENERAL CONDITIONS

L. **Warranty:** Contractor warrants the fitness and soundness of all workmanship and materials for a period of one hundred twenty (120) days after the completion of the Work (or part thereof). This warranty period shall begin on the date of final estimate payment to the Contractor by the City with respect to the Work in question. At its expense, Contractor shall (i) replace or repair all defective materials, (ii) make good all defective workmanship, and (iii) remove and replace any Work that is not performed in conformity with the Specifications and Condition to the reasonable satisfaction of the City. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom within this period. The City will give notice of observed defects with reasonable promptness. Defective materials shall be removed immediately from the site of the work.

None of the following shall relieve the Contractor of liability or responsibility with respect to this warranty or responsibility for to replace or repair faulty materials or workmanship: (a) the issuance or a final certificate of payment with respect to a location, (b) any provision in the Contract Documents, or (c) the City's partial or entire use of any Work site.

M. **Quality of Materials:** All materials furnished for the Work shall be new and unused and of recent manufacture. Only materials that conform to the requirements of the Specifications herein and are customarily used on projects of this nature shall be used in the Work, and such materials shall be used only after approval has been given by the City Project Representative.

A. **Bidder's Obligations to Examine Contract Documents.** Bidders are advised that the Contract Documents constitute all the information that the City will furnish and that is applicable to the Project. No other information furnished verbally or otherwise by the City (or any of its representatives) prior to the execution of the Contract shall become a part of or change the Contract. Prior to submitting their bid, bidders are presumed to have carefully (a) read the Contract Documents (including the Specification and Conditions); (b) generally familiarized itself with the sites of the Work ("Work Site(s)"); (c) examined local conditions; and (d) determined for themselves by their independent research any difficulties to be encountered the accessibility of the Work, attending circumstances affecting the cost of performing it, the time required for its completion and considered all information required to make its proposal. Further, Bidders shall rely exclusively upon their own estimates, investigations and other data which they deem necessary for submitting a proposal. City may assume that, by making a proposal, the bidder has made these examinations and investigations.

B. **Intent of Contract Documents.** The intent of the Specifications and other Contract Documents is to prescribe a complete scope of work and responsibilities that the Contractor undertakes to do in full compliance with the Contract. The Contractor shall do all work as provided in the Contract, and shall do such additional, extra and incidental work as may be considered necessary to complete the work in a satisfactory and acceptable manner. Any work or material not shown in the Specifications or Conditions but which may be fairly implied as included in any item of the Contract shall be performed and/or furnished by the Contractor without additional charge thereof.

C. **Contract/Contract Documents.** As used herein, the term "Contract" (or "contract") refers to the written agreement between the City and the successful Contractor for the performance of the Work. The Contract includes all the following documents and any approved addenda and change orders thereto: Invitation to Bid; Specifications & Conditions (including the Special Conditions and General Conditions for the Project); Instructions to Bidders (with EXHIBIT A - Contractor Bid Response Form, and EXHIBIT B - Bidder Qualification Form); and Contractor Qualifications/Requirements for Award Contract Award Process (with EXHIBIT C - Street Cut Repair Project 2023 Contract) (collectively, the "Contract Documents").

In the event of any conflict between the terms, provisions and conditions in the different Contract Documents, the language in the document in the order below shall take govern and control: (1) Street Cut Repair Project 2023 Contract; (2) Special Conditions; and (3) General Conditions.

#### D. Clean Up.

(i) Throughout the progress of the Work Contractor shall keep the work area (including any storage areas used by it) free from accumulation of waste material or rubbish and shall keep his materials and equipment in a neat and orderly manner. Immediately upon completion of any section of the work and before payment therefore has been made, contractor shall remove from the site all construction equipment, temporary structures, and debris and shall restore the site to a neat, workmanlike condition. Waste material shall be disposed of at commercially reasonable locations selected by the contractor.

(ii) Where the contractor has performed work on, or has made use of, private property for storage of materials or for other purposes, it shall obtain a satisfactory release from the owner of said property after completing the work and removing all materials and equipment therefrom.

(iii) After completion of all work and before final cleanup of the site of each separate part of the Work, contractor shall restore all surfaces to a neat and orderly condition; and shall remove all construction equipment, tools and supplies therefrom.

7

6

E. **Supervision.** Contractor exclusively shall be responsible for supervising all Work. Notwithstanding, during the course of its performance, the City Project Representative may, but is not obligated, provide input to the Contractor Project Representative on the following matters: the quality and acceptability of materials furnished; rate of progress of the work; sequence of construction; interpretation of Specifications; compensation; and suspension of work if determined by the City representative to be required for public convenience. The provision of any such input will not excuse Contractor from its failure to comply with the Contract.

F. **Conformity with Specifications.** All Work shall conform to the Specifications & Conditions for the Project. Any deviation from those Specifications which may be required by the exigencies of construction must be approved by the City Project Representative and authorized by him in writing.

G. **City Audit Right/Contractor's Retention of Records.** Upon reasonable advance notice from the City during the course of performing any part of the Work or in a periodic audit that follows the completion of all the Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

H. **Public Utilities.** Contractor is exclusively responsible for determining the location of and protecting from damage any gas, water, power, sewer or other utility lines or facilities that are impacted by the Work. Further, if service connections or lines from utilities to a user's premises are disconnected, broken, damaged, or otherwise rendered inoperative for any reason by the contractor in prosecuting the Work, contractor, at its own expense, shall repair or replace same and restore service to the affected premises at the earliest possible time.

If prosecution of the Work requires that any property used by public utilities be cut, moved, relocated, rebuilt, or otherwise disturbed in any way, the contractor shall notify the utility to make the required changes, and, prior to making application to the utility, make all preliminary arrangements with the utility owner, including the scheduling of work. The City shall not be responsible for any delays in the accomplishment of the required changes on utility property by reason of the contractor's failure to schedule the work properly or otherwise, and in no case shall the contractor be allowed any claim for extension of time or additional compensation based on failure of the utility owner to make the needed changes within the stipulated period of time.

I. **Inspection.** The City Project Representative may inspect all phases of the Work in progress. Contractor shall furnish that Representative with every reasonable facility for ascertaining whether or not the Work as performed is in accordance with the requirements and intent of the Specifications & Conditions. Should any work be covered or hidden prior to the approval thereof by the City's Project Representative, it shall be uncovered for examination at the contractor's expense.

J. **Compliance with Laws.** The contractor shall, at all times, observe and comply with all Federal and State laws and local ordinances and regulations which in any manner affect the conduct of the work, and shall observe and comply with all orders and decrees which exist at the present or which may be enacted later, or bodies or tribunals having jurisdiction or authority over the work.

K. **Licenses.** At its expense, the contractor shall procure, and maintain throughout the term of the Contract, all governmental licenses required to perform the work, and provide all notices necessary and incident to lawful prosecution of the work.

L. **Patented Devices.** Contractor (and the Surety issuing any performance bond) shall indemnify and save harmless the City and its representatives from all and every demand for damages, royalties or fees on any patented

8

devices, materials and processes used by the Contractor or used in connection with the Work done or material furnished under the contract.

#### M. Public Convenience and Safety.

(i) Where the work is located in, on or near City streets, alleys, rights-of-way or highways, the contractor shall store construction materials and equipment and perform the work in such a manner as will provide reasonably adequate and satisfactory convenience for the general public and residents affected by the work.

(ii) No street shall be closed without the permission of the City Project Representative and the fire department having jurisdiction.

(iii) Storage of materials and the work shall be arranged so that there will be free access to all fire hydrant, valves, manholes and other utility appurtenances.

(iv) Where the work is located in or adjacent to any street, alley or public place, contractor shall at its own expense furnish and erect such barricades, fences, signs, lights and danger signals and shall provide such watchmen as are required to protect persons, property and the work from injury, damage or loss. Contractor shall be solely responsible for all damages to the third persons or the work due to failure of barricades, signs, lights and watchmen to protect any of them from injury or damage. The Contractor's responsibility to protect the public or work shall not cease until the City has finally accepted the work.

N. **License to Use City Streets.** During the period the Contractor performs the Work, the City grants a license to occupy such portions of its streets, ways or public property as will not unduly restrict traffic or endanger the public.

O. **Use and Restoration of Private Property.** Contractor shall not enter upon private property for any purpose without first obtaining permission from its owner. Contractor shall be responsible for the preservation of and shall use every precaution necessary to prevent damage to, all trees, shrubbery, fences, culverts, bridges, pavement, driveways, sidewalks, etc. and to all water, sewer, gas, telephone, and electric lines thereof, and to all private property along or adjacent to the work.

P. **Responsibility for Damage.** When and where any direct or indirect injury, loss or damage or injury to public or private property on account of any act, omission, neglect or misconduct in the execution of the Work by the contractor, it shall restore, at its expense, such property to a condition similar or equal to that existing before such damage or injury was done by repairing, rebuilding or otherwise restoring it as may be directed, or it shall duly compensate the property owner for any damage or injury.

Q. **Water/Electricity/Gasoline/Supplies.** Contractor, at its expense, is responsible to provide and maintain an adequate supply of any water, power, gasoline or other fuel or supplies required for the Work.

#### R. Contractor's Responsibility for Claims.

(i) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officials, agents, and servants) against any claims of liability arising from or based on the violation of any law, ordinance, regulation, order or decree related to the performance of the Work, whether such violation is committed by contractor, its employees or any of its subcontractors, in the course of performing (or failing to perform obligations hereunder related to) the Work.

(ii) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officers, agents and employees) from all suits, actions or claims of any character, name and

9

APPENDIX 8

description brought for, or on account of any injuries or damages received or sustained by any person, persons or property from any of the following: (a) the contractor's neglect in performing or safeguarding the work; (b) the use of unacceptable materials in performing the work; or (c) by on account of any claim or amounts arising or recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree.

(iii) The contractor guarantees payment of all just claims for materials, supplies, tools, equipment or labor from any subcontractor that performs work for it under the contract.

(iv) Contractor also is responsible to indemnify the City for the claims and matters set forth in Section 7(a) of the prototype Contract that is included in the Contract Documents.

S. **Insurance.** Contractor is responsible to provide the insurance stipulated in Section 7(b) of the prototype Contract that is included in the Contract Documents.

T. **Contractor's Responsible for Work until Accepted.** Contractor shall remain responsible for the work at a work site until it is finally accepted by the City Project Representative. All work there shall be under the charge and care of the contractor, and it shall take every necessary precaution to prevent injury or damage to any person from any other cause whatsoever (whether arising from its execution or failure to execute the work) until such acceptance occurs. Further, contractor, at its own expense, shall rebuild, repair, and restore all injuries or damage to any portion of the work occasioned by any cause before acceptance.

U. The parties agree that, if Contractor is unable to complete the Work (or a part thereof) because of unforeseeable events or matters that are beyond its reasonable control and that do not result from its negligence (for example, strikes, shortages of material, governmental preemption in connection with a national emergency and Acts of God), the time for completing the Work may be extended by the length of time equal to the duration of any such events matters. Such extensions of time shall be considered only when submitted to the City Project Representative in writing within ten (10) days from and after the time when any such alleged cause of delay shall occur.

V. **Grounds for Termination of Contract:** See Section 2 of prototype Contract that is included in these Contract Documents.

W. **No Waiver by City.** The City shall not waive any of its rights or powers under the contract by occurrence of the following: any inspection of the work by the City Project Representative (or by any of his duly authorized representatives); the issuance of any order, measurement or certificate by that Representative; any order by the City to pay money; the City's acceptance of any work; or the City's grant of any extension of time to complete work. Further, no waiver of any breach of contract shall be held to be a waiver of any other or subsequent breach.

X. **No Assignment or Subcontracting without City's Consent.** The contractor shall not assign any benefit, obligation or right under the contract, or subcontract any part of the work to a subcontractor, in whole or part, without prior written consent of the City, which consent may be withheld for any reason. Any authorized subcontracts shall comply with the applicable provisions of the principal contract, and the contractor shall be fully responsible for the acts and omissions of his subcontractors.

Y. **Prosecution of Work.** In performing the work, the contractor shall

(i) continuously and diligently prosecute the work in such order and manner to complete it in a safe, workmanlike and timely manner;

(ii) exclusively be responsible for training and supervising all of its personnel, and take necessary actions to ensure that its workmen have sufficient skill and experience to properly perform the work assigned to them;

10

11

### III. INSTRUCTIONS TO BIDDERS

1. Bids and associated completed forms should be placed in sealed envelope or container that is addressed to City of Mountain Brook, Alabama, Attention: City Manager, City Hall, 56 Church Street, Mountain Brook, AL 35213-3700, and delivered on or before the local time and date specified in the Invitation for Bids.

2. The following information should be clearly shown on the exterior of the sealed bid: (a) BID FOR STREET CUT REPAIR PROJECT; (b) Date and Time of Bid Opening; (c) Name of Bidder; and (d) Bidder's State of Alabama General Contractor License number.

3. The completed Contractor Bid Response Form (see enclosed Exhibit A) and completed Bidder Qualification Form (see enclosed Exhibit B) are due no later than Sept. 22, 2023, at 9:00 a.m. The bidder shall be responsible for taking whatever measures are necessary to ensure that its response reaches the City at the designated address on or before the local time and date specified. The City shall not be responsible for, and may not consider, any proposal delayed in the postal or other delivery service, or in the City's internal mail system, nor any late proposal, amendment thereto, or request for withdrawal of proposal received after the time and date specified. Proposals received after the time and date specified on the bid submission deadline will not be opened and will not be considered for award.

4. Each bidder shall submit two (2) copies of their responses.

5. Bids must be entered on the Contractor Bid Response Form that is provided herein. Each bidder shall fully complete all sections of this Form, and sign in the appropriate places thereon in the presence of a notary.

6. Bids that are completed in pencil or faxed to the City will not be accepted.

7. Each bidder is required to furnish a bid bond in the amount of \$10,000, or five per cent of its bid, whichever is lower, or cashier's check or other similar type of bid security with its Bid to secure its intent to perform the Work if it receives the award.

8. All questions and clarifications regarding the Specifications or the Contract Documents must be submitted in writing by Sept. 18, 2023, at 5 p.m. to the following City representatives:

**Purchasing Questions:**  
Steven Boone  
Finance Director  
City of Mountain Brook  
boones@minbrook.org  
(205) 802-3825

**Technical Questions:**  
Hunter Johnston  
Public Works Dept.  
City of Mountain Brook  
johnstnh@minbrook.org  
(205) 802-3875

The City will respond to any such questions by 5:00 p.m. on Sept. 20, 2023. No oral answers or interpretations of such inquiries will be provided. The City's response to all questions will be e-mailed to all interested firms that have requested Contract Documents from Hunter Johnston before that time and treated as an Addendum to these materials. All addenda issued shall become part of the contract documents for this Bid.

9. Each bidder is responsible for all costs related to the preparation of its Bid Response, and all expense it incurs in evaluating whether to submit a bid.

### EXHIBIT A - CONTRACTOR BID RESPONSE FORM \*

Below is the firm bid of the undersigned to perform the Street Cut Repair Project 2023 for the three-year term of the contract at the unit prices indicated below. The undersigned submits this Form in response to the City's Invitation for Bids for this Project. The City may use the address and contact information below for its communications with the undersigned bidder. The undersigned represents that it has read and understands the Contract Documents that set forth the Specifications and other conditions for the award of the contemplated Contract and, except as may be listed below, submits its bid and agrees to perform the Work in accordance with those Specifications and other requirements in the Contract Documents.

#### ESTIMATED QUANTITIES/UNIT PRICES/TOTAL BID\*

A. OPERATION	B. UNIT	C. ESTIMATED ANNUAL QUANTITIES	D. UNIT BID	E. AMOUNT
Repair Asphalt Cuts	Square Yards	750	3275 <sup>00</sup>	\$206,250 <sup>00</sup>
Repair Concrete Cuts	Square Yards	250	N/A	\$ N/A

TOTAL BID: \$ 206,250<sup>00</sup>  
(Sum of Subtotals in Column E) \*

#### Notes:

1. The Contractor shall enter in Column D its Unit Price for the Operation shown in Column A, and then multiply that Unit Price times the Estimated Annual Quantities in Column C. The product of Column C times Column D should then be entered in the corresponding row in Column E.
2. The Total Amount Bid is the sum of the subtotals entered by the contractor in each row of Column E. The award will be made to a responsible contractor who submits the lowest responsive total unit price bid.
3. Please state any Exceptions to the Specifications or other requirements in the Contract Document materials on a separate sheet and attach that sheet to your Bid Response.
4. Bidders must complete, sign, notarize and return the Bidder Affidavit and Warranty below with their Bid Responses.

Glenn Contracting & Paving Co., Inc.  
Name of Firm or Company Submitting Bid  
3614 Cahoon Branch Road  
Street Address  
Birmingham AL 35242  
City State Zip  
Michael Sharpe  
Printed Name Representative Executing for Bidder  
Michael Sharpe  
Signature of Bidder Representative  
President  
Title

9-20-23  
Date of Bid  
205-8680468  
Tax Id # of Bidder  
www.glennpaving.com  
Web Site of Bidder  
(205) 369-7215  
Cell Ph. # Bidder Contact  
(205) 991-0194  
Office Ph. # Bidder Contact  
info@glennpaving.com  
Email Address Bidder Rep.

This Bid Response must be notarized.

Sworn to and subscribed before me on this 20<sup>th</sup> day of September 2023.  
[Signature]  
Notary Public  
SEAL  
7/25/2026  
Commission Expiration Date

**BIDDER AFFIDAVIT AND WARRANTY**

**EXHIBIT B - BIDDER QUALIFICATION FORM - STREET CUT REPAIR PROJECT 2023**

The undersigned warrants, represents and agrees that each of the following is true and correct in connection with the Contractor Bid Response for the contract to be awarded to perform the Street Cut Repair Project B-20230818-920:

- it has not colluded with any other bidders;
- it has not, directly or indirectly, induced any other bidder to submit a sham bid or to refrain from making a bid;
- it has not paid or agreed to pay any party, either directly or indirectly, any money or other thing of value for assistance or aid rendered to or to be rendered in attempting to procure the contract contemplated in this bid;
- if the subject contract is awarded to the bidder, no employee or officer of the City has an interest, either direct or indirect, in it or is a beneficiary of the contractual arrangement made the basis thereof.
- all the information contained in the response to the bid is true and correct; and
- the City may rely on information submitted in awarding the subject contract.

Glenn Contracting & Paving Co., Inc.  
 By: [Signature]  
 Printed Name: Michael Sharp  
 Title: President  
 Date: 9.20.23

Sworn to and subscribed before me on this 21<sup>st</sup> day of September, 2023.  
[Signature] Notary Public  
7/19/2026 Commission Expiration Date

SEAL

14

**(2) If your organization is a partnership, answer the following:**

- Date of organization: \_\_\_\_\_
- Type of partnership (if applicable): \_\_\_\_\_
- Name(s) of general partner(s): \_\_\_\_\_

**(3) If your organization is individually owned, answer the following:**

- Date of organization: \_\_\_\_\_
- Name of owner: \_\_\_\_\_

**(e) Administration of Business.**

Please describe in general how you operate and administer your business. In this description, please state each of the following:

- the total number of employees;
- the number of workers who are dedicated to field operations;
- the name and title of your general supervisor of field service operations; and
- the number of employees dedicated to administrative and office matters.

Glenn Contracting operates with a total of 15 employees. 13 employees are dedicated to field operations and 2 work handling office administration. Michael Sharp oversees all jobs from start to finish. Michael Sharp is the President of the company.

**4. Licensing.**

List and attach to this Form all licenses and certifications that your organization currently holds or has that authorize it to perform commercial street repair operations in the State of Alabama.

State Licensing Board of General Contractors  
State of Alabama License  
City of Mountain Brook License

Also please list the License number and attach a copy of the following Licenses to this Form:

- State of Alabama General Contractor 38369
- City of Mountain Brook Business License\* 202300347

\*Note: If not currently held, Contractor must acquire a City Business License prior to commencing work.

**5. List/Qualifications of Project Team.**

On a separate page, please list and furnish the following information concerning each of the employees or other representatives whom you will appoint to perform the Project:

- name
- job title
- areas of experience and the length of time for each area
- special training, licensing, and certification for each employee

**6. Insurance.** If available at this time, please attach a certificate issued by your current Insurance Carrier(s) indicating the existence and limits of your Comprehensive General Liability (including assumed contractual liability coverage), Automobile Liability, and Worker's Compensation coverage required in Section 7 of the prototype Contract.

16

**MINUTE BOOK 93:** THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR CONTRACTOR BID RESPONSE. IF ADDITIONAL SPACE IS NEEDED, PLEASE STATE THAT INFORMATION ON ADDITIONAL SHEET(S) THAT YOU ATTACH TO THIS FORM AND INDICATE ON THEM THE NUMBER AND ITEM TO WHICH THE INFORMATION CORRESPONDS.

**1. Name of Business:** Glenn Contracting & Paving Co., Inc.

Principal Business Address: 3614 Cahaba Beach Road  
Birmingham, Alabama 35242

**2. Business Contact(s)**

(a) Primary Contact (Note: If a Pre-Bid Conference is held, the Primary Contact should attend that Conference.)

Name: Michael Sharp  
 Title or Position with Company: President  
 Day Phone: (205) 369-7215  
 Email: info@glennpaving.com  
 Street Mailing Address of Contact: 3614 Cahaba Beach Road  
Birmingham, Alabama 35242

(b) Other Business Contact(s)

List the name, position, telephone number, email and street addresses of persons on the bidder's staff other than the Primary Contact who can answer inquiries:  
Toni Glenn (205) 369-0168 toni@glennpaving.com  
same address

**3. Business History**

(a) The successful contractor must have at least five (5) years of experience in the commercial street repair and paving business. How many years has your organization been in this business? 45+

(b) State the facts and attach written documentation evidencing that your organization has been in the commercial street repair business for the required minimum period.

Glenn Contracting & Paving Co., Inc. has been in the commercial asphalt repair business for over 40 years. Our customers are highly satisfied with the quality of our work, our professionalism, and our efficiency.

(c) How many years has your organization operated under its present business name? 45+

(d) Type of Organization:

(i) If your organization is a corporation, answer the following:

- Date of incorporation: 1979
- State of incorporation: Alabama
- President's name: Michael Sharp
- Vice-President's name(s): Toni Glenn
- Secretary's Name: Toni Glenn
- Treasurer's name: \_\_\_\_\_

15

**7. Claims History.**

(a) Within the last five (5) years, has the bidder, or any officer, director, member or owner of it, been a party to any lawsuit, any arbitration or participated in any other type of alternative dispute resolution process with regard to a claim, dispute, or disagreement arising from the bidder's (or any officer's, director's, member's or such owner's) performance or failure to perform its obligations under an agreement to provide services and conduct operations? (For purposes of this question, an "owner" of the bidder is any person who holds 10% or more of the stock or interest in the bidder organization.) Yes \_\_\_\_\_ No X

If yes, for each such contract or project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the manner in which any such claim or dispute was resolved:

(b) Within the last five (5) years, has any owner, client or customer of your organization made, asserted or pursued a claim against a Surety that issued a Performance Bond on a contract that was being performed by the bidder and that arose from its performance or failure to perform obligations under an agreement with that customer to provide services? Yes \_\_\_\_\_ No X

If yes, for each such project, explain fully the nature of the matter, location, circumstances, your role, and, if resolved, the manner in which any Performance Bond claim was resolved:

(c) Within the last five (5) years, have any of your clients or customers formally declared that the bidder is in default or has breached a material obligation in any agreement to provide services or operations? Yes \_\_\_\_\_ No X. If yes, for each such project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the manner in which any such default or breach was resolved:

(d) Has your organization ever failed to complete any work, contract or project awarded to it?

Yes \_\_\_\_\_ No X. If yes, please provide all details related to such matter.

(e) Are there any judgments against your organization, or against any of your officers or owners individually, that arise from any litigation or arbitration that have been entered but are not satisfied? Yes \_\_\_\_\_ No X. If yes, please provide all details related to such matter:

17

APPENDIX 8



(g) Within the last five years, has any officer, principal or owner of your organization ever been an officer or principal of another organization when it failed to complete a contract? (For purposes of this question, an "owner" of the bidder is any person who holds 10% or more of the stock or interest in the bidder.)

Yes    No X If yes, please provide all details related to such matter:

#### CERTIFICATION

The undersigned representative of the Bidder certifies that he/she is authorized to sign below and submit this Bidder Qualification Form on its behalf, and that the submitted information is current, accurate, true and sufficiently complete so as not to be misleading.

Name of Bidder

Glenn Contracting & Paving Co., Inc.  
(Type or Print)

By: Michael Sharp

Signature

Michael Sharp

Printed Name

Its: President  
Title of Authorized Representative

Sworn to and subscribed before me on this 20<sup>th</sup> day of September, 2023.

[Signature]  
Notary Public

7/27/2026

Commission Expiration Date

SEAL



18

#### V. CONTRACT AWARD PROCESS

1. Bidder's Intent. By submitting a bid, the bidder accepts and agrees to comply with the Specifications & Conditions for the Work and obligations in other sections of the Contract Documents, unless otherwise stated in a bid exception that is accepted by the City.

2. Any exception taken by a bidder should be stated in detail, in writing, at the time of its submission. The City reserves the right to accept or reject any such exception taken by the bidder, and deviations from the Specifications or other obligations in the Contract Documents that are not accepted by the City may be grounds for rejecting and disqualifying the bid.

3. The City intends to notify the successful contractor of the tentative award of the contemplated contract within three (3) days after the bid opening, and formally enter that contract within five (5) days following the award of it by its governing body.

4. In determining the entity to whom to make an award, the City reserves the right to:

- (a) reject the proposal of any bidder who has previously failed to perform properly or timely complete contracts of a similar nature;
- (b) reject the proposal of any bidder which, based on the City's investigation, is not in a position or does not have the resources to satisfactorily and timely perform the contract;
- (c) reject the proposal of any bidder who is in arrears or in default to the City upon any debt or prior contract;
- (d) reject the proposal of any bidder who has failed to faithfully perform work or services on any previous contract or project for the City that is similar to that contemplated in this bid;
- (e) request that a bidder present additional evidence that it has the ability and possesses the necessary facilities, pecuniary resources and adequate insurance to comply with the terms of this bid, and require that such evidence be presented within a specified time and to the reasonable satisfaction of the City; and
- (f) disqualify a bidder's response because it is not complete, and the bidder failed to provide information requested in the bid materials.

5. Contract. Following the award, the successful contractor shall execute the Street Cut Repair Project 2020 Contract in substantially the form of Exhibit C below. The successful bidder will execute the required Contract and furnish the required construction bonds (Performance and Labor & Materials bonds) within five (5) days after date of notice of such award.

6. Bids which have been opened and read may not be withdrawn for a period of 60 days after date of opening.

7. Before an award is made, the City reserves the right to investigate the previous experience and general ability of the three (3) lowest bidders to perform the Project.

8. As soon as the bids have been compared, the City may, at its discretion, return the bid guaranties accompanying those bids which in its judgment would not be considered in making the award. After the award is made, only the successful bidder's bid guaranty will be retained until the required contract and construction bonds have been executed, after which it will be returned to the bidder.

20

#### IV. CONTRACTOR QUALIFICATIONS/REQUIREMENTS FOR AWARD

Interested contractors are required to meet all qualifications in this section in order to be considered for award of the contemplated contract for the Work (the "contract"). Respondents should complete and return the enclosed Exhibit B – Bidder Qualification Form with their bid. If a respondent does not submit documentation with its bid substantiating that they comply with these qualifications/requirements in this Section II, the City may disqualify them from an award or entering the contract.

A. **Minimum Experience.** Bidders must have at least five (5) years of experience in the commercial street repair and paving business. Interested contractors must provide information on the Bidder Qualification Form (see Exhibit B) indicating whether they meet this requirement.

B. **Licensing Requirements.** To be eligible for the award, the successful contractor must provide the City evidence that it has or will obtain the following licenses and attach copies thereof the Bidder Qualification Form:

- a. State of Alabama General Contractor License
- b. City of Mountain Brook Business License\*

(\*Note: If not currently held, this license must be obtained prior to commencing work.)

The interested contractor also shall attach any other state, county or local licenses and/or certificates held by it that evidence the contractor's qualifications in heating, ventilation, and air conditioning maintenance, repair and installation.

C. **No Pre-Bid Conference:** The City will not conduct a pre-bid conference in connection with this award. However, interested contractors may direct written inquiries concerning the Project or Contract Documents to the City's Project Representatives as indicated herein.

D. **Bid Bond or Security Requirement.** A bid bond a bid bond in the amount of \$10,000, or five per cent of its bid, whichever is lower, or cashier's check or other security payable to the City is required to be submitted by interested contractors with their responses on this Project.

E. **Other Bonding Requirements.** When selected, before commencing work the successful contractor must provide a Performance Bond in the amount of its annual contract price and a Labor & Materials Bond in the amount of half the annual contract price. Prototypes of acceptable forms of these bond types are available upon request.

These bonds shall remain in effect for twelve (12) months after completion of the Work shall be in a form satisfactory to the City, and the surety therefore shall be a reputable bonding company authorized to transact business in Alabama and shall be acceptable to the City.

G. **Insurance Requirements.** Before commencing its work, Contractor must provide the types of insurance and comply with the insurance requirements set forth in Section 7(b) of the prototype Contract that is included as Exhibit C in the Contract Documents.

9. The City reserves the right to accept or reject any or all bids.

10. Bids will be considered irregular if, by way of example, they show any omissions, alterations of forms, additions or conditions not called for or irregularities of any kind. However, the City reserves the right to waive irregularities and technicalities in submitted bids and make the award in the best interest of the City.

11. Should the successful bidder to whom the contract has been awarded fail to execute the contract and furnish satisfactory construction (surety) bonds within five (5) days after date of notice award, it shall be considered to have abandoned their proposal; its offer shall be withdrawn; and the amount of the bid bond or security shall be forfeited to the City as fixed and agreed damages. The submission of a bid by any bidder shall be considered as acceptance of this provision by them.

21

This Street Cut Repair Project 2023 Contract (the "Contract") is made by and between Olson Contracting & Paving Co., Inc. (the "Contractor") and the City of Mountain Brook, Alabama (the "City") effective as of the date last signed below by a party (the "Effective Date").

WHEREAS, on Project B-20200624-663 the City has conducted a competitive bid process to award a three-year unit price contract in connection with perform operations to repair cuts in asphalt and concrete streets and other paved areas in the City (the "Work" or "Project");

WHEREAS, the City has determined Contractor to be the lowest responsible bidder in response to its Invitation for Bids for the Project issued on or about June 24, 2020;

WHEREAS, Contractor agrees to perform the Work in compliance with all Contract Documents in the Project Manual (including the Specifications & Conditions and the Contractor Bid Response Form), which documents are incorporated by reference and collectively may be referenced herein as the "Contract Documents;" and

WHEREAS, the City and Contractor deem it desirable to memorialize the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the Contractor and City agree as follows:

1. **Work.** Contractor shall perform the Work in accordance with the terms, provisions and conditions of the Contract Documents (including the Specifications & Conditions) and this Contract. The Contractor's Bid Response Form is also incorporated herein and made a part hereof by reference. The Contractor will be compensated for performing the Work at the prices set forth in the Contractor Bid Response Form.

2. **Term/Early Termination.** The term of this Contract shall commence on August 1, 2020, and thereafter continue in effect for a period of three (3) years (the "Term"). Notwithstanding the provision immediately above or any other provision herein or in the Specifications, the Contract may be terminated before the expiration of its Term on the occurrence of any of the following:

- (a) Termination for Cause by City. If the Contractor fails to perform any material obligation as required in the Specifications or this Contract (a "Default"), the City may terminate the Contract for cause on thirty (30) days' advance written notice to Contractor; provided that the Contractor shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause. This termination remedy is in addition to any other remedy or right provided to the City in the Contract or available by law that arises from a Default. The circumstances that may constitute a Default by the Contractor include, but are not limited to the following: (i) its failure to perform the Work in a satisfactory manner; (ii) its failure to perform the Work in a timely manner; (iii) the accumulation of substantial evidence that the progress being made by the Contractor is insufficient to complete the Work within the specified time; (iv) the deliberate failure on the part of the Contractor to proceed with the construction of the work when so instructed by the City or to observe any requirements of the Specifications; and (v) the Contractor's failure to promptly make good any defects in materials or construction that may be called to its attention by the City; and

6. **Dispute Resolution.** The Project Representatives of the parties will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations under this Agreement (a "Dispute"). If those Representatives are unable to amicably resolve a Dispute, it will be escalated to the senior manager/official level of each party for consideration. If the Dispute cannot be resolved at the senior official level, either party may request that the Dispute be mediated.

However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism for any claim between the parties shall be litigation in a court located in Jefferson County, Alabama. If (i) the City should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) the City secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the City, the Contractor will reimburse the City for its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

#### 7. Indemnification by Contractor/Insurance Requirements

(a) **Indemnification.** The Contractor agrees to defend, indemnify, and hold harmless the City of Mountain Brook, and its agents, employees and officials (hereinafter the "Indemnitees") from and against from and against all demands, actions, damages, judgments, expenses (including, but not limited to, attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages) (collectively herein "Claims(s)") by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") asserted against any Indemnitee(s) that arise out of, relate to, result from, or are attributable to any of the following: (a) any conditions in or about the work sites on which the Contractor or any Contractor Representative may enter or encounter in performing the Work; and (b) any negligent act, omission or conduct by the Contractor or any Contractor Representative that arises from or relates to its (or their) performance or failure to perform its (or their) responsibilities under this Contract or the Work. This indemnification obligation includes Claims by third parties that are caused in part by the negligence of an Indemnitee; provided, nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for Claims resulting from the sole negligence or from the willful misconduct of the Indemnitees.

(b) **Insurance Requirements.** The Contractor shall maintain the following types of insurance for the duration of this Contract and for limits not less than stated below:

- (i) Comprehensive General Liability for all operations performed by or on behalf of the Contractor or any Contractor Representative related to or arising from the performance of the Work or Project contemplated in the Contract, with limits of not less than

- \$1,000,000 combined single limit and aggregate for bodily injury (excluding auto) and property damage (excluding auto), per occurrence; and  
- Excess umbrella coverage of \$1,000,000.00 for each occurrence

This insurance shall include coverage for assumed contractual liability; completed operations; damages to third parties for personal injury (including death) and property damage; and damage, destruction and injury to City property and City personnel caused by or resulting from the operations of the Contractor and any Contractor Representative;

(iii) Automobile Liability of not less than \$1,000,000 with excess umbrella coverage of \$1,000,000.00 for each occurrence. This insurance shall cover any owned or rented vehicles or equipment utilized for the Project;

(iv) Workers' Compensation as required by statute; and

(b) **Termination for Cause by City.** If the City does not perform a material obligation in the Specifications or in this Contract, the Contractor may terminate the Contract for cause on thirty (30) days' advance written notice to the City; provided that the City shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause; and

(c) **Termination for Non-Appropriation.** Notwithstanding any other provision above in this section or elsewhere in this Contract, the City, effective upon provision of written notice to Contractor, may terminate this Agreement at the end of the first or second contract year without cause or the occurrence of a Default and without any liability, penalty or obligation to pay for Work after the effective date of termination if its governing body does not appropriate or allocate funds for the Project. In the event of such termination for non-appropriation, the City shall remain obligated to pay for Work performed by the Contractor prior to termination.

In the event a Contractor Default occurs, and the Contract is terminated, Contractor shall discontinue its operations to perform the Work. Moreover, the City, in addition to exercising its right to terminate this Contract, may have the Work completed by another contractor(s), in which event Contractor shall be responsible for the difference, if any, between the amount paid by the City to another contractor to complete the Work and that provided for hereunder as the cost of the Work if it were performed by the Contractor. No failure on the part of the City to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

3. **Payment to Contractor.** The amounts to be paid to Contractor shall be calculated and based on the unit prices set forth in its completed Contractor Bid Response Form, which Form is incorporated by reference herein.

4. **Project Representatives.** Each party shall appoint a representative(s) who shall coordinate with the other party on matters pertinent to the performance of the Work and the administration of this Contract (the "Project Representative(s)").

The City's Project Representative is:

Hunter Johnston, Public Works Dept.  
3579 East Street  
Mountain Brook, AL 35243  
Email: johnstonh@mtb Brook.org  
Tel No: 205-802-3875

The Contractor's Project Representative is:

Michael Sharp  
3614 Cahaba Branch Road  
Birmingham, AL 35242  
Email: info@olsonpaving.com  
205-364-7815

The Project Representatives designated above shall have the authority to act on behalf of its respective organization, transmit instructions, receive information and administer the Contract consistent with its terms and conditions. Either party may designate a Project Representative other than the person named above upon provision of written notice to the other.

5. **Notices.** Any notice required hereunder shall be sufficiently given when given in writing and sent to the appropriate Project Representatives 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 that party.

(v) **Employer's Liability** - liability limits of \$500,000 per occurrence.

All required insurance shall be provided by a policy(ies) issued by a company or companies qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the City. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

Except for the Workers Compensation and Employer's Liability coverage, all coverage shall contain endorsements naming the City of Mountain Brook, and its officers, employees and agents, as additional insureds with respect to liabilities that arise out of and result from the operations of the Contractor or the performance of the Work. Before the commencement of the Work hereunder, the Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

8. **Safety.** Contractor exclusively shall be responsible for traffic control, the safety of its personnel (and that of any subcontractor or subcontractor personnel), the protection of its equipment and the protection of the Work while performing its operations on or about the City streets and property (the "Work Sites"). In addition, Contractor shall undertake whatever precautions and practices that it determines are necessary (including, but not limited to, the posting of signs warning against hazards, use of flagmen, etc.) to maintain a safe work environment and at all times to protect the general public, its personnel, its equipment, City personnel and City property from injury, damage or loss in the course of its operations.

The City makes no representation and gives no warranty that its Work Sites (or any equipment or improvements thereon) are safe or fit for the performance of the Work. Prior to commencing its operations, Contractor (and its representatives) agrees to thoroughly examine, inspect and become familiar with each Site, determine that the Work at each such Site can be completed in an orderly and safe manner and implement whatever precautions, practices or actions that it deems are required to safely the Work in those locations.

9. **Representations of Contractor.** As further inducement to enter this Contract, the Contractor represents and warrants each of the following to the City:

- (a) that it will perform the Work in a good and workmanlike manner;
- (b) that, prior to entering this Contract, it has familiarized itself with the general conditions and nature the Work sites where it will perform operations; and
- (c) that all actions required to be taken by it or on its behalf to execute the Contract, and to perform its obligations and agreements hereunder, have been duly taken.

10. **Entire Agreement/Ineffective Provisions in Contractor Documents.** This Contract and the other Contract Documents comprise the entire agreement between the parties concerning the matters herein. These terms, provisions and conditions in the Contract supersede all prior negotiations, representations or agreements, either written or oral, concerning the subjects herein, and any such prior understandings concerning these matters are of no effect and are merged into this Contract. Further, the parties agree that no terms, provisions or conditions that are stated in any work or purchase order, proposed invoice or other document generated by the Contractor in connection with the Work are not incorporated into or form part of the Contract. Notwithstanding the existence of any such documents, the parties understand, agree and covenant as follows:

- (a) The City shall not be liable to the Contractor for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor;

(b) The City shall not be liable for any late payment charges, interest, or fees on any delinquent billing for goods, materials, or services;

(c) The City will not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Contract or the performance or nonperformance thereof; and

(d) Unless expressly stated in the Contract, the City does not waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Contract or the performance or nonperformance thereof; and

11. No Assignment or Subcontracting Without Consent. Except as expressly authorized herein, Contractor may not assign, transfer, convey, sublet or otherwise transfer or dispose of any of its rights, obligations, responsibilities or interest therein to any other person, firm or corporation without the prior written consent of the City, which may be withheld for any reason. Unless expressly agreed to the contrary, in no event shall such consent relieve the contractor from its obligations to the City hereunder or change the terms of the Contract. Further, if a subcontractor is approved and performs Work contemplated by this Contract, the Contractor shall remain responsible to the City for the actions, conduct and performance of the subcontractor (and any of its agents, employees or representatives), and any work performed by a subcontractor shall be considered as having been rendered by the Contractor and directly provided by it.

## 12. Miscellaneous Provisions.

(a) During the Term of this Contract, Company agrees to comply with all federal, state and local laws, regulations and codes applicable to the performance of the Work (collectively, "Laws"), including, but not limited to, Laws concerning the safety, inspection, maintenance, and operation of its equipment, employment laws related to its personnel, Occupational Safety Health & Administration (OSHA) regulations or other requirements intended to protect the safety of workers, Laws intended to protect the public, or Laws intended to protect the quality of air, water or environment. The requirements of these Laws shall be construed as the minimum requirements of the Contract.

(b) The Contractor is an independent contractor of the City. This Contract does not create any partnership, joint venture or principal-agent relationship between the Contractor and the City. Further, Contractor (and its employees, representatives or subcontractors) exclusively controls the means and methods it uses or selects to perform the Work, and the City retains no control or authority with respect to those means and methods.

(c) The Contractor may not assign this Contract, or any of its rights, obligations or the benefits hereunder, to any other party without prior written approval of the City, which approval may be withheld for any reason. In no event will this Contract be assigned to an unsuccessful bidder who was rejected because it was not a responsive or responsible bidder.

(d) The Contract is made only for the benefit of the City and the Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(e) At its expense, Contractor shall secure and maintain throughout the Term of this Contract all licenses, permits and governmental approvals required to perform the Work which Contractor is obligated to perform hereunder.

26

## MINUTE BOOK 93

(f) This Contract may be amended or modified only by written instrument signed by both parties. Further, neither the scope of Work nor the time of completion of Work operations may be changed except in accordance with the terms of a written change order signed by City and Contractor.

(g) This Contract may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. Copies of this Contract showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals, and shall have the same legal force and effect as an original document.

(h) Any forbearance or delay on the part of the City in enforcing any of its rights under this Contract shall not be construed as a waiver of those rights. No terms of this Contract shall be waived by the City unless expressly waived in writing.

(i) If any provision of this Contract is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(j) In the event of a conflict between any term or provision in this Contract and those in any other Contract Document, the provisions in this Contract shall control and govern.

(k) Exclusion of Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT, THE CONTRACTOR AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THIS CONTRACT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE CONTRACTOR'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CITY'S BREACH. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE TERMS IN THIS PROVISION WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THIS CONTRACT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CITY.

(l) Choice of Law. The meaning, legal effect, and enforcement of terms and provisions of the Contract and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama, except to the extent otherwise required by applicable conflict-of-law principles.

(m) Construction. Except as expressly stated herein, nothing in this Contract shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity. Furthermore, in the event that any ambiguity in the terms of this Contract is determined to exist, no presumption shall be made that either of the parties drafted the Contract.

(n) Immigration Law Compliance. The Contractor represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Held Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act") and that, during the performance of this Agreement, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act. The Contractor further agrees and warrants

27

that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the Project, jobsite or premises of the City and shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If the Contractor violates any term of this paragraph, this Contract will be subject to immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

(o) City Audit Right/Contractor's Retention of Records. Upon reasonable advance notice from the City during the course of performing the Work or in a periodic audit that follows the completion of part of all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

In Witness Whereof the undersigned, duly authorized representatives of the parties have executed this Contract on behalf of their respective organization.

ATTEST

By: [Signature]  
Its: Secretary

CONTRACTOR: Glenn Contracting & Paving Co Inc

By: [Signature]  
Its: Resident  
Date: 9-20-23

ATTEST

By: [Signature]  
Its: City Clerk

CITY OF MOUNTAIN BROOK, ALABAMA

By: Stewart H. Welch, III

Its: Mayor  
Date: [Signature]

28

## VI. ANTICIPATED BID/AWARD/PROJECT SCHEDULE

1. Sept 1, 2023 - Issuance of Project Manual by City
2. Sept 18, 2023 - Deadline for Interested Contractors to Submit Written Questions
3. Sept 20, 2023 at 5:00 p.m. - City's Written Answers to Questions
4. Sept 22 at 9:00 a.m. - Bids & Other Completed Documents Due & Bid Opening
5. Week of Sept. 25, 2023 - Award Contract by City Council/Deliverables (Construction Bonds & Proof of Insurance) Due from Successful Contractor/Contract Executed
6. Oct. 1, 2023 - Term of Three-Year Contract Commences

29

X

MP

1019

DO NOT WRITE / SIGN / STAMP BELOW THIS LINE

DEPOSITORY BANK ENDORSEMENT

Please find enclosed the following documents:

Cashier's Check made payable to City of Mountain Brook in the amount of \$10,000.00

City of Mountain Brook Business License

State of Alabama Business License

Alabama General Contractor's License #38369

Certificate of Liability Insurance

2 letters of recommendation indicating company has been in business for more than 5 years required in Exhibit 8-9b

2 fully executed copies of Street Cut Repair Project bid packets including Exhibit A and Exhibit B

**REGIONS**

CASHIER'S CHECK

09/08/2023

5508797437

GLINN CONTRACTING AND PAVING CO INC / STREET CUT REPAIR BID

Purchaser / Purchased For

09-1620

\$10,000.00

Authorized Signature

Branch AL00047

CC047011

TEN THOUSAND DOLLARS AND 00 CENTS

PAY TO THE ORDER OF: CITY OF MOUNTAINBROOK

Regions Bank

⑈ 5508797437 ⑈ 0062000014 ⑈ 0000742651 ⑈

FOR INFORMATION CONCERNING THIS INSTRUMENT

CONTACT:

1-800-REGIONS

Security features on this document include: Watermark, Micro-Print Endorsement Line and Visible Fibers. Absence of these features may indicate alteration. Whistler logo is a certified mark of Check Payment Systems Association

**CITY OF MOUNTAIN BROOK - REVENUE DEPARTMENT**

**2023 BUSINESS LICENSE**

56 Church St PO Box 190000 Mountain Brook, Alabama 35213-0000  
Telephone: 205.802.2400 Fax: 205.870-3590

Customer: 11373  
GLENN CONTRACTING & PAVING CO  
3614 CAHABA BEACH ROAD  
BIRMINGHAM, AL  
35242



Physical Address  
GLENN CONTRACTING & PAVING CO  
3614 CAHABA BEACH R  
BIRMINGHAM, AL  
35242

License: 202300347 Issued: 09-Jan-2023 Expires: 31-Dec-2023

The firm, corporation, organization, business or person whose name appears above on paid the required license fee and is authorized to engage in business in the City of Mountain Brook, Alabama until December 31, 2023.  
This license is subject to revocation by the Finance Director for the violation by the licensee of any ordinance of the City related to the business for which this license is issued, and such license shall also be subject to revocation by the Finance Director if the licensee, under cover of such license, violates or aids or abets in violating, or knowingly permits or suffers to be violated, any local ordinance of the City. This license is valid only at the location indicated and is not transferable.

By: *Shirley B. Bland*  
Shirley Bland, City Clerk

This License Must Be Posted At Location.

**RECEIPT**

CITY OF MOUNTAIN BROOK

Received From: GLENN CONTRACTING & PAVING CO

License: 202300347

Issued: 09-Jan-2023

Check No:

Section	Business Type	License Amt	Discount	Penalty	Admin Fee	Paid
Sch D	Paving/Excavation	\$250.00	\$0.00	\$0.00	\$14.00	\$264.00
Total Amount Paid:						\$264.00

# STATE OF ALABAMA MINUTE BOOK 03

CONTROL NO. 3783154  
ACCOUNT NO. 184928  
LICENSE YEAR 2022-2023

SHELBY COUNTY  
ISSUED TO: GLENN CONTRACTING & PAVING INC  
3687 CAHABA BEACH RD  
BIRMINGHAM, AL 35242

LICENSE NO. 231002

DATE ISSUED  
10 13 2022  
MO. DAY YR.

I CERTIFY THAT ALL INFORMATION CONTAINED HEREON IS TRUE AND CORRECT: *[Signature]*  
BUSINESS LOCATION: 3609 CAHABA BEACH RD  
BIRMINGHAM, AL 35242

EXPIRES September 30, 2023  
RENEW IN OCTOBER

RL: U139 - #3783154 - T2 - P1723636 -

SECTION	BUSINESS TYPE	License Amount	FEE	PENALTY	CITATION	INTEREST	TOTAL
0084	CONSTRUCTION COMPANIES OR CONTRACTORS (\$200k+)	375.00	1.00	0.00	0.00	0.00	376.00

TOTAL	376.00
MAIL FEE	0.00
TOTAL WITH MAIL FEE	376.00

TRANSFER OF LICENSE  
Evidence having been reduced below net that a bona fide sale of the business licensed by this certificate has been made by licensee, this license is transferred to said purchaser.

Name of Purchaser: *Kathleen D. Baxter*  
State Comptroller

Issuing Authority: *Chad Scroggins*  
Commissioner of Revenue

STATE OF ALABAMA



BID LIMIT: UNLIMITED  
AMOUNT:

State Licensing Board for General Contractors

THIS IS TO CERTIFY THAT

GLENN CONTRACTING & PAVING CO INC  
BIRMINGHAM, AL 35242

is hereby licensed a General Contractor in the State of Alabama and is authorized to perform the following type(s) of work:

MU-S: PAVING, MUL-S: PAVING AND ASPHALT

until August 31, 2024 when this Certificate expires.

Witness our hands and seal of the Board, dated Montgomery, Ala.,

198127

13th day of August, 2023

*Michael B. Tate* SECRETARY-TREASURER  
*Chad A. Tate* CHAIRMAN

**ACORD CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY) 8/6/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION is WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER: Byars/Wright, Inc. 1700 4th Avenue Jasper AL 35501

INSURED: Glenn Contracting & Paving Co, Inc. 3614 Cahaba Beach Road Birmingham AL 35242

COVERAGES: CERTIFICATE NUMBER: 1384121474 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LINE	TYPE OF INSURANCE	INSURANCE NUMBER	INSURANCE PERIOD	INSURANCE LIMIT	INSURANCE COVERAGE
A	COMMERCIAL GENERAL LIABILITY	CK30776498	1/1/2023	1/1/2024	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (See endorsement) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPOC AGG \$2,000,000
A	AUTOMOBILE LIABILITY	AL80776498	1/1/2023	1/1/2024	COMBINED SINGLE LIMIT (See endorsement) \$1,000,000 BODILY INJURY (Per person) \$1,000,000 PROPERTY DAMAGE (Per accident) \$1,000,000
A	EMERGENCY LIAB	UL80776498	1/1/2023	1/1/2024	EACH OCCURRENCE \$3,000,000 AGGREGATE \$3,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	34052	1/1/2023	1/1/2024	EL EACH ACCIDENT \$1,000,000 EL DISEASE - CA EMPLOYEE \$1,000,000 EL DISEASE - POLICY LIMIT \$1,000,000
A	Equipment Rental	CX50776498	1/1/2023	1/1/2024	Limit: \$50,000 Ded: \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101. Additional Remarks Schedule, may be attached if more space is required)  
Certificate holder is included as an additional insured including completed operations in regard to the general liability if required by written contract. Additional insured endorsements are attached.

CERTIFICATE HOLDER: City of Mountain Brook 55 Church Street Mountain Brook AL 35213

CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE: *[Signature]*



**PENN NATIONAL INSURANCE**  
Real Secure®  
Pennsylvania National Mutual Casualty Insurance Company  
Penn National Casualty Insurance Company  
P.O. Box 1281  
Harrisburg, PA 17105-2881

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AUTOMATIC ADDITIONAL INSURED -- OWNERS, CONTRACTORS AND SUBCONTRACTORS (COMPLETED OPERATIONS)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. The following provision is added to SECTION II - WHO IS AN INSURED

However,

1. Any person(s) or organization(s) (referred to below as "additional insured") whom you are required in a written contract or agreement to specifically name as an additional insured for the "products-completed operations hazard". A general obligation to name a person or organization as an additional insured on any policy of insurance (including those providing coverage for the "products-completed operations hazard") will be deemed to extend only to your ongoing operations for that person or organization. An additional insured for the products-completed operation hazard is only an additional insured with respect to liability for "bodily injury" or "property damage": (1) caused, in whole or in part, by "your work" at the location or project designated and described in the contract or agreement; (2) performed for that additional insured; and (3) included in the "products-completed operations hazard."

A person's or organization's status as an additional insured under this endorsement ends when the obligation to provide additional insured status for the "products-completed operations hazard" in the written contract or agreement ends; or if no specific date or time period is included in the written contract or agreement, coverage will be extended for one year from the date "your work" is deemed complete under the definition of "products-completed operations hazard."

- The insurance afforded to such additional insured only applies to the extent permitted by law; and
- If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.
- With respect to insurance afforded to these additional insureds, the following additional exclusions apply:  
This insurance does not apply to "bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:  
1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; and  
2. Supervisory, inspection, architectural or engineering activities.
- The limits of insurance applicable to the additional insured are those specified in the written contract or agreement or in the Declarations for this policy, whichever are less. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

October 9, 2023



D. With respect to the coverage provided by this endorsement, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 4. Other Insurance, Subparagraph a. Primary Insurance, is deleted and replaced by the following:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below, except:

- (1) If a written contract or agreement that requires any person(s) or organization(s) to be an additional insured also requires this insurance to be primary and noncontributory, then this insurance is primary over any other insurance in which the additional insured is a Named Insured. We will not seek contribution from any other liability policy in which the additional insured is a Named Insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AUTOMATIC ADDITIONAL INSURED -- OWNERS, CONTRACTORS AND SUBCONTRACTORS (ONGOING OPERATIONS)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following provision is added to SECTION II - WHO IS AN INSURED

1. Any person(s) or organization(s) (referred to below as additional insured) with whom you are required in a written contract or agreement to name as an additional insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1) Your acts or omissions; or  
(2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location or project described in the contract or agreement.

However,

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and  
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to insurance afforded to these additional insureds, the following additional exclusions apply:

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; and  
b. Supervisory, inspection, architectural or engineering activities.

2. This insurance does not apply to "bodily injury" or "property damage" occurring after:

APPENDIX 8

Includes copyrighted material of Insurance Services Office, Inc., with its permission.  
Copyright, 2006, 2007, 2012 by ISO Properties, Inc., and ISO Services Properties, Inc.,  
ALL RIGHTS RESERVED.

71 1145 1116

Page 2 of 2

Includes copyrighted material of Insurance Services Office, Inc., with its permission.  
Copyright, 2006, 2007, 2012 by ISO Properties, Inc., and ISO Services Properties, Inc.,  
ALL RIGHTS RESERVED.

71 0741 1116

Page 1 of 2



P. O. Drawer 11967 Birmingham, AL 35202

September 20, 2023

City of Mountain Brook

Re: City of Mountain Brook - Street Repair

Mountain Brook, AL

To whom it may concern,

Glenn Paving and Contracting has worked for Dunn Construction on a subcontract basis for well over a decade. They have been our preferred subcontractor for any work that we cannot ourselves perform due to schedule or scope and have always conducted themselves in a professional manner and delivered quality products to both our and our customer's satisfaction.

I would not hesitate to recommend them to be awarded any contract for which they submit a bid.

Thank you,  
Dunn Construction Co., Inc.

  
Bo Welden  
Senior Project Manager

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

C. The limits of insurance applicable to the additional insured are those specified in the written contract or agreement or in the Declarations for this policy, whichever are less. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

D. With respect to the coverage provided by this endorsement, SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 4. Other Insurance, Subparagraph a. Primary Insurance, is replaced by the following:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below, except:

- (1) If a written contract or agreement that requires any person(s) or organization(s) to be an additional insured also requires this insurance to be primary and noncontributory, then this insurance is primary over any other insurance in which the additional insured is a Named Insured. We will not seek contribution from any other liability policy in which the additional insured is a Named Insured.

**From:** Rocky Smith <rsmith@smithpavinginc.com>  
**Sent:** Wednesday, September 20, 2023 10:25 AM  
**To:** Toni Glenn

To Whom It May Concern:

Glenn Contracting & Paving Co., Inc. has been doing street repair work for Smith Paving, Inc. for over 10 years. I am extremely pleased with the work they have performed for me. The work was completed on time, in a professional manner and was of the highest quality.

If you have any questions, please feel free to contact me.

Rocky Smith



CITY OF MOUNTAIN BROOK

PUBLIC WORKS DEPARTMENT  
3579 East Street  
Mountain Brook, Alabama 35223  
Telephone: 205.802.2390  
Fax: 205.967.2631  
www.minbrook.org

MINUTE BOOK 93

2023 Street Striping Tribulations Sheet<sup>1023</sup>

COMPANY	CONTACT	PHONE NUMBER	BID AMOUNT	TIME & DATE
Highway Management Systems	Jim Toner	1-205-663-1511	\$465,000	9/22/23 (9:30a.m.)

September 26, 2023

Project Reference: Mountain Brook Street Striping Project  
Bid No. B-20230818-910  
Bid Date: September 22, 2023  
Recommendation to Award

Mr. Gaston,

We are in receipt of the bid for the Mountain Brook Street Striping for October 2023 through September 2026. Only one responsive bid was received.

The only bidder is Highway Management Systems, Inc. in the amount of \$465,000.00 based on estimated quantities for 2023. Unit prices are listed in Exhibit A - Contractor Bid Response Form on page 13 of Project manual. Highway Systems Inc. is our current contractor and we are very satisfied with their work.

The submitted information appears to be in accordance with the bid requirements and the contractor has the required experience and qualifications, as stipulated in the bid documents.

Based on this, and in consideration of the conditions submitted, I recommend awarding Highway Systems Inc.

Sincerely,

*Ronnie Vaughn*

Ronnie Vaughn, Public Works Director

Cc: Steven Gay  
Hunter Johnston  
Daniel Davis

APPENDIX 9

Sign-In Sheet  
Bid Opening  
Street Striping Project (B-20230818-910)  
September 22, 2023 at 9:30 a.m.

Company Name	Company Representative	E-mail Address	Telephone Number
1. <i>Steven Gay</i>			
2. <i>City of Mountain Brook</i>			
3. <i>CITY</i>	<i>Steven Gay</i>	<i>gay@minbrook.org</i>	<i>205-802-3470</i>
4. <i>CITY</i>	<i>SAM GASTON</i>	<i>gast@minbrook.org</i>	<i>205-802-3403</i>
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

City of Mountain Brook  
Public Works Department

STREET STRIPING PROJECT MANUAL - B-20230818-910

OWNER: The City of Mountain Brook, Alabama

CONTRACTOR: Highway Management Systems, Inc

October 9, 2023

**L INVITATION FOR BIDS  
CITY OF MOUNTAIN BROOK INVITATION FOR BIDS  
STREET STRIPING PROJECT – B-20230818-910**

**I Invitation for Bids (Advertisement)****II Specifications & Conditions**

1. General Scope
2. Special Conditions
3. General Conditions

**III Instructions to Bidders**

(incl. EXHIBIT A - Contractor Bid Response Form & EXHIBIT B - Bidder Qualification Form)

**IV Contractor Qualifications/Requirements for Award****V Contract Award Process**

(incl. EXHIBIT C - Street Striping Project - 2023 Contract)

**VI Anticipated Bid/Award/Project Schedule**

**Bid Submission Deadline & Bid Opening Time:** Friday September 22, 2023 – 9:30 A.M.  
**Address for Bid Submission:** City Hall - City of Mountain Brook  
 56 Church Street,  
 Mountain Brook, AL 35213-3700  
 ATTN: City Manager/Purchasing Agent

The City of Mountain Brook, Alabama ("City") invites interested contractors to submit sealed bids to the above noted address for the award of a three-year unit price contract to perform street striping operations in the City (the "Work" or "Project"). This contract will apply to operations that the City commences after October 1, 2023. Each bidder is responsible for mailing or delivering its bid so that it will be actually received at the above address and location at or before the time of the specified bid opening; bids received after that time will not be considered. Bids must be submitted by the time and date specified above, at which time those bids will be publicly opened and read as soon thereafter as practicable.

Interested contractors may obtain the Street Striping Project Manual (which includes the Specifications and Conditions, Contractor Bid Response Form, Bidder Qualification Form and all other Contract Documents) from the City's Website or by contacting its Project Representative, Hunter Johnston, Public Works Department, [hjohnston@mountainbrook.org](mailto:hjohnston@mountainbrook.org). The City will not conduct a Pre-Bid Conference in connection with the subject award. Technical questions about the Work or Specifications should be directed in writing to Mr. Johnston at his email address. Questions about purchasing or other matters may be directed to Steven Boone, Finance Director, City of Mountain Brook, at [sboone@mountainbrook.org](mailto:sboone@mountainbrook.org).

To be considered for the award of the contract on this Work, an interested contractor must complete and return the Contractor's Bid Response Form and provide other information requested in the Project Manual. Also, the successful contractor must possess the minimum experience and qualifications to perform the Work as specified in those materials.

Each bidder is required to furnish a \$10,000 bid bond, cashier's check or other similar type of bid security with its Bid to secure its intent to perform the Work if it receives the award. Further, when selected, the successful contractor must provide a Performance Bond in the amount of its annual contract price and a Labor & Materials Bond in the amount of half that price.

The award of the contemplated contract will be made in compliance with Ala. Code §39-2-1 et. seq.(1975). The award will be made to a responsible contractor that meets minimum qualifications and submits the lowest responsive bid that the City determines is most advantageous to it. In making that determination, the City, in the exercise of its sole judgment, may consider pertinent factors other than just price. These factors include, but are not limited to, experience in the industry, quality of past service provided to the City and other similarly situated entities, history of successfully completing similar projects, its claims history, resources of the bidder to perform the obligations under the Contract and the training and experience of the Project Team that the contractor will provide to serve the City.

The City reserves the right to accept or reject any or all bids and to waive formalities related to submitted bids.

s/ Sam S. Gaston  
 City Manager/Purchasing Agent

Advertised by Posting on City Website: September 1, 2023

2

**II SPECIFICATIONS & CONDITIONS****1. GENERAL SCOPE**

The work to be performed by the successful contractor ("Contractor" or "contractor") shall consist of conducting operations to apply the following approximate quantities of stripes, markers and other materials for use on streets in the City of Mountain Brook ("City") by drivers and pedestrians at locations that are selected by the City:

Approximately 50 miles of Yellow Class A Type I Traffic Stripes, 50 miles of Solid White Class A Type I Traffic Stripes, 6,000 each Raised Reflective Traffic Markers, 14,000 square feet White Thermo Plastic 24" wide, 4,000 square feet White Thermo Plastic 8" wide, 100 each White Thermo Plastic Turn Arrows and 200,000 linear feet of Yellow Thermo Plastic Centerline, and 100,000 linear feet of White Thermo Plastic Sidelines.

("Work", "work" or "Project"). Contractor shall be responsible to furnish all labor, supervision, materials, tools, fuel, power, equipment and incidentals required to complete the Project in conformity with the requirements in the Specifications & Conditions and all other Contract Documents.

**2. SPECIAL CONDITIONS**

- A. **Length of Contract.** The City will award a three (3) year contract that will become effective October 1, 2023.
- B. **Traffic Control:** The Contractor is exclusively responsible for all traffic control related to the performance of the Work. This responsibility includes, without limitation, determining and implementing all appropriate measures to place signs, warn drivers, pedestrians and others affected by the Work, and utilize flag persons.
- C. **Estimated Quantities.** The Estimated Quantities stated above and elsewhere in the Contract Documents are the City's good faith approximations of the scope of Work and materials that is believed to be required during all 3 years of the contract. The City anticipates, but does not guarantee, that these quantities of Work will be ordered or required. These estimates are given for the sole purpose of receiving unit price bids and awarding the contemplated contract. The City does not warrant the accuracy of these estimates and approximations, that these quantities will be required to complete the Work, or that the successful contractor will receive any minimum amount of compensation based on these estimates.
- D. **Unit Prices Constant During Term of Contract.** The Unit Prices entered by the successful Contractor on its Bid Response Form (which Form is included herein) to apply the respective materials will remain constant throughout the term of the contemplated Contract.
- E. **Increases or Decreases in Work.** The City reserves the right to increase or decrease the estimated quantities in these bid documents without penalty, and except as provided in the specifications, any such increase or decrease in quantities will not change the unit prices over the term of the contract that are bid by the Contractor. If the actual quantities of Work performed deviate from the estimated quantities, no allowance will be made to Contractor for any change in anticipated profits, nor shall such changes be considered as waiving or invalidating any conditions or provisions of the Contract.
- F. **Request for Work.** The City may request Work on an as-needed basis at locations selected by it. The City will request any such Work by issuing a notice to proceed. Unless otherwise agreed, all Work contemplated with respect to a notice to proceed issued by the City shall be completed within thirty (30) days after issuance of that notice.

4

- G. **Planning.** As soon as possible after the Effective Date of the contract and approximately thirty (30) days before its subsequent anniversaries, the City will meet with the Contractor to generally plan the order and times in which the Work will be performed during each contract year (the "Annual Schedule"). The City solely reserves the right to determine this Annual Schedule. However, in that scheduling meeting, the City agrees to consider in good faith the recommendations from the Contractor concerning scheduling the Work and selecting the streets on which operations will be performed in an order and manner that will expedite efficiencies in completing the Work.

- H. **Liquidated Damages.** If Contractor does not timely complete its Work on a specified street(s) or location after receiving a notice to proceed, the Contractor agrees that the City may deduct the amount below from any monies that are otherwise payable the Contractor under the contract:

*\$150.00 per day until Work at location(s) contemplated in City's  
 Notice to Proceed is substantially complete*

(the above amount being referenced as "Liquidated Damages"). The Contractor and City agree that calculating the actual damages that will flow from Contractor's failure to timely complete the Work would be difficult to estimate or prove. Therefore, the parties agree that the above Liquidated Damages amounts (a) are intended to compensate the City for the Contractor's failure to timely perform the Work, (b) are not penalties or intended as punishment, and (c) are intended to compensate the City for its inconvenience and the increased time in administering the Contract, supervision, inspection and engineering which is required for any operation or phase of the Project that is not completed within the time contemplated. Moreover, if the City permits the Contractor to continue and finish the Work (or any part of it) after the time for performance has expired, the performance of that delayed work will not waive, diminish or impact the City's rights under the contemplated contract to deduct Liquidated Damages.

- I. **Payment.** The City will pay Contractor for the Work based on the unit prices in its Bid Response Form and the actual quantity of materials supplied and operations furnished by it in accordance with the Specifications & Conditions. Additionally, the following understandings apply with respect to those payments:

- (i) the determination of quantities of work acceptably completed will be made by the City's Project Representative based on measurements taken by him or his assistants. These determinations will be calculated according to United States standard measurements;
- (ii) the compensation paid to the contractor is intended to constitute full payment for all of the following: (i) furnishing all labor, materials, tools, equipment and incidentals; for performing all work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work or from the action of the elements; for any unforeseen defects or obstructions which may arise during the prosecution of the work and before its final acceptance by the City; for all risks connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work herein specified; and for completing the work in an acceptable manner according to the Specifications and Conditions;
- (iii) Any materials or work covered by partial estimates shall, upon payment, become the sole property of the City; however, the City's payment of any partial or periodical estimates prior to final acceptance of the work shall in no way constitute an acknowledgment of the acceptance of the work nor in any way prejudice or effect the obligation of the contractor to repair, correct, renew or replace, at its expense, any defects or imperfections in the construction or in quality of the materials used in the construction of the work;

5



(iv) Any extra work performed by the contractor and approved by the City will be paid at the lump sum and other rate agreed on in a change order or other writing that is signed by both parties before such work is begun. All extra work shall be subject to all other conditions of the contract;

(v) **Partial Payments.** At the end of each calendar month during the term of the contract, the Contractor may prepare and submit an invoice of an estimate of the quantities of work and of the total amount due therefore during that month. On or before the tenth (10th) day of the following month the City will review that request and, if properly submitted, make a partial payment to the contractor equivalent to the value of all work done to the end of the preceding month, less amounts authorized by the Public Works Law to be retained and less any previous payments. The City shall hold retained amounts until final completion and acceptance of all work contemplated under the contract (or part thereof), at which time the retained amounts and other amounts then due shall be paid in full;

(vi) When the work on the entire Project (or a part thereof) has been completely performed by the contractor, approved by the City Project Representative and accepted by the City, a final estimate will be prepared which shows the total cost of the work performed under the contract, (including extra work as authorized by change orders), the total amount retained and the total amount paid on previous partial estimates. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. All pay estimates will be certified as correct by the city Project Representative and approved by the owner before payment.

(vii) Final payment will be made to the contractor within ten (10) days after final acceptance of the work (or part thereof) by the City.

J. The Work shall be performed in compliance with all applicable provisions and regulations in the most current version of the Manual on Uniform Traffic Control Devices.

K. **Warranty:** Contractor warrants the fitness and soundness of all workmanship and materials for a period of ninety (90) days after the completion of the Work (or part thereof). This warranty period shall begin on the date of final estimate payment to the Contractor by the City with respect to the Work in question. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom within this period. The City will give notice of observed defects with reasonable promptness. At its own expense, Contractor shall replace or repair all defective materials and make good all defective workmanship to the reasonable satisfaction of the City.

None of the following shall relieve the Contractor of liability or responsibility with respect to this warranty or responsibility for to replace or repair faulty materials or workmanship: (a) the issuance of a final certificate of payment, (b) any provision in the Contract Documents, or (c) the City's partial or entire use of any Work site.

### 3. GENERAL CONDITIONS

A. **Bidder's Obligations to Examine Contract Documents.** Bidders are advised that the Contract Documents (and addenda or other information furnished in response to questions from interested contractors) constitute all the information that the City will furnish and that is applicable to the Project. No other information furnished verbally or otherwise by the City (or any of its representatives) prior to the execution of the Contract shall become a part of or change the Contract. Prior to submitting their bid, bidders are presumed to have carefully (a) read the Contract Documents (including the Specification and Conditions); (b) generally familiarized itself with the sites of the Work

6

G. **Supervision.** Contractor exclusively shall be responsible for supervising all Work. Notwithstanding, during the course of its performance, the City Project Representative may, but is not obligated, provide input to the Contractor Project Representative on the following matters: the quality and acceptability of materials furnished; rate of progress of the work; sequence of construction; interpretation of plans and specifications; compensation; and suspension of work if determined by the City representative to be required for public convenience. The provision of any such input will not excuse Contractor from its failure to comply with the Contract.

H. **Conformity with Specifications.** All Work shall conform to the Specifications and Conditions for the Project. Any deviation from those Specifications which may be required by the exigencies of construction must be approved by the City Project Representative and authorized by him in writing.

I. **City Audit Right/Contractor's Retention of Records.** Upon reasonable advance notice from the City during the course of performing the Work or in a periodic audit that follows the completion of part of all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

J. **City Street Plans.** If requested by contractor, the City may furnish any maps of streets that it maintains for the sites where the Work will be performed. Contractor agrees and understands that the City does not warrant the location of gas mains, water mains, conduits, sewers, or other surface or subsurface improvements that may be indicated on these maps, and the City assumes no responsibility for failure to show any or all of them on those maps or to show them in their exact location. Contractor agrees that any such inaccuracies in these maps will not be considered sufficient basis for claims for extra work or for increasing the pay quantities, that such information and data furnished in those maps are not intended as representations or warranties but are furnished for information only, and that the City will not be responsible for the accuracy of any deduction, interpretation, or conclusion that the contractor draws from them.

K. **Quality of Materials.** Only materials that conform to the requirements of the Specifications herein and are customarily used on projects of this nature shall be used in the Work, and such materials shall be used only after approval has been given by the City Project Representative. All materials furnished for the work shall be new and unused and of recent manufacture.

L. **Inspection.** The City Project Representative may inspect all phases of the work in progress. Contractor shall furnish that Representative with every reasonable facility for ascertaining whether the work as performed is in accordance with the requirements and intent of the Specifications and Conditions. Should any work be covered or hidden prior to the approval thereof by the City's Project Representative, it shall be uncovered for examination at the contractor's expense.

M. **Removal of Defective Work.** Work performed that is not in conformity with the Specifications and Conditions will be removed and replaced at Contractor's risk and expense. Defective materials shall be removed immediately from the site of the work.

N. **Preliminary Inspection.** As each separate part of the work is completed, it shall be inspected by the City Project Representative. If that work is found to be in substantial compliance with the Specifications, it shall be tentatively accepted by the City. Thereafter, all such completed and accepted part of the work shall be maintained in good condition by and at the expense of the contractor until final acceptance by the owner of all work covered by the contract. Tests of the work may be performed following this preliminary approval.

8

("Work Site(s)"); (c) examined local conditions; and (d) determined for themselves by their independent research any difficulties to be encountered in the performance of the Work, attending circumstances affecting the cost of performing it, the time required for its completion and considered all information required to make its proposal. Further, Bidders shall rely exclusively upon their own estimates, investigations and other data which they deem necessary for submitting a proposal. City may assume that, by making a proposal, the bidder has made these examinations and investigations.

B. **Intent of Contract Documents.** The intent of the Specifications and other Contract Documents is to prescribe a complete scope of work and responsibilities that the Contractor undertakes to do in full compliance with the Contract. The Contractor shall perform all work as provided in the Contract, and shall do such additional, extra and incidental work as may be considered necessary to complete that work in a satisfactory and acceptable manner. Any work or material not shown on the Specifications or Conditions but which may be fairly implied as included in any item of the Contract shall be performed and/or furnished by the Contractor without additional charge thereof.

C. **Contract/Contract Documents.** As used herein, the term "Contract" (or "contract") refers to the written agreement between the City and the successful Contractor for the performance of the Work. The Contract includes all the following documents and any approved addenda and change orders thereto: Invitation to Bid; Specifications & Conditions (including the Special Conditions and General Conditions for the Project); Instructions to Bidders (with EXHIBIT A - Contractor Bid Response Form, and EXHIBIT B - Bidder Qualification Form); and Contractor Qualifications/Requirements for Award Contract Award Process (with EXHIBIT C - Street Striping Project 2020 Contract) (collectively, the "Contract Documents").

In the event of any conflict between the terms, provisions and conditions in the different Contract Documents, the language in the document in the order below shall take govern and control: (1) Street Striping Project 2020 Contract; (2) Special Conditions; and (3) General Conditions.

D. **Alterations.** The City reserves the right, at any time, to make such changes in the plans and the character of the Work as may be necessary or desirable to insure the completion of the Project in the most satisfactory manner; provided that any such changes may not materially alter the original Specifications or change the general nature of the Work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the Contract.

E. **Extra Work.** When any extra work is necessary for the proper completion of the Project but no prices for that work are provided in the bid or Contract, the Contractor shall do such work when ordered by the City Project Representative if mutually agreed prices for such work have been agreed in advance.

#### F. Clean Up.

(i) Throughout the progress of the work Contractor shall keep the construction area, including storage areas used by him, free from accumulation of waste material or rubbish, and shall keep his materials and equipment in a neat and orderly manner. Immediately upon completion of any section of the work and before payment therefore has been made, contractor shall remove from the site all construction equipment, temporary structures, and debris and shall restore the site to a neat, workmanlike condition. Waste material shall be disposed of at commercially reasonable locations selected by the contractor.

(ii) Where the contractor has performed work on, or has made use of, private property for storage of materials or for other purposes, it shall obtain a satisfactory release from the owner of said property after completing the work and removing all materials and equipment therefrom.

(iii) After completion of all work and before final cleanup of the site of each separate part of the Work, Contractor shall restore all surfaces to a neat and orderly condition; and shall remove all construction equipment, tools and supplies therefrom.

7

O. **Final Inspection.** After the construction of all work under the Contract has been completed, the City Project representative, contractor and other representative of the City shall make a joint final inspection of all phases of the Work. If the work is not acceptable at the time of such inspection, the City Project Representative will notify the Contractor of the defects which must be remedied before final acceptance can be made.

P. **Compliance with Laws.** The contractor shall, at all times, observe and comply with all Federal and State laws and local ordinances and regulations which in any manner affect the conduct of the work, and shall observe and comply with all orders and decrees which exist at the present or which may be enacted later, or bodies or tribunals having jurisdiction or authority over the work.

Q. **Permits.** At its expense, the contractor shall procure, and maintain throughout the term of the Contract, all governmental permits and licenses required to perform the work and provide all notices necessary and incident to lawful prosecution of the work.

R. **Patented Devices.** Contractor (and the Surety issuing any performance bond) shall indemnify and save harmless the City and its representatives from all and every demand for damages, royalties or fees on any patented devices, materials and processes used by the Contractor or used in connection with the Work done or material furnished under the contract.

#### S. Public Convenience and Safety.

(i) Where the work is located in, on or near City streets, alleys, rights-of-way or highways, the contractor shall store construction materials and equipment and perform the work in such a manner as will provide reasonably adequate and satisfactory convenience for the general public and residents affected by the work.

(ii) No street shall be closed without the permission of the City Project Representative and the fire department having jurisdiction.

(iii) Storage of materials and the work shall be arranged so that there will be free access to all fire hydrant, valves, manholes and other utility appurtenances.

(iv) Where the work is located in or adjacent to any street, alley or public place, contractor, at its own expense, shall furnish and erect such barricades, fences, signs, lights and danger signals and shall provide such watchmen as are required to protect persons, property and the work from injury, damage or loss. Contractor shall be solely responsible for all damages to the third persons or the work due to failure of barricades, signs, lights and watchmen to protect any of them from injury or damage. The Contractor's responsibility to protect the public or work shall not cease until the City has finally accepted the work.

T. **License to Use City Streets.** During the period the Contractor performs the Work, the City grants a license to occupy such portions of its streets, ways or public property as will not unduly restrict traffic or endanger the public.

U. **Use and Restoration of Private Property.** Contractor shall not enter upon private property for any purpose without first obtaining permission from its owner. Contractor shall be responsible for the preservation of, and shall use every precaution necessary to prevent damage to, all trees, shrubbery, fences, culverts, bridges, pavement, driveways, sidewalks, etc. and to all water, sewer, gas, telephone, and electric lines thereof, and to all private property along or adjacent to the work.

V. **Responsibility for Damage.** When and where any direct or indirect injury, loss or damage or injury to public or private property on account of any act, omission, neglect or misconduct in the execution of the Work by the contractor, it shall restore, at its expense, such property to a condition similar or equal to that existing before such

9

damage or injury was done by repairing, rebuilding or otherwise restoring it as may be directed, or it shall duly compensate the property owner for any damage or injury.

## MINUTE BOOK

occurs. Further, contractor, at its own expense, shall rebuild, repair, and restore all injuries or damage to any portion of work occasioned by any cause before acceptance.

**W. Public Utilities.** If prosecution of the work requires that any property used by public utilities be cut, moved, relocated, rebuilt, or otherwise disturbed in any way, the contractor shall notify the utility to make the required changes, and, prior to making application to the utility, make all preliminary arrangements with the utility owner, including the scheduling of work. The City shall not be responsible for any delays in the accomplishment of the required changes on utility property by reason of the contractor's failure to schedule the work properly or otherwise, and in no case shall the contractor be allowed any claim for extension of time or additional compensation based on failure of the utility owner to make the needed changes within the stipulated period of time.

**Z. Service Connections.** If service connections or lines from water or gas mains or sewers to the user's premises are disconnected, broken, damaged, or otherwise rendered inoperative for any reason by the contractor in prosecuting the Work, contractor, at its own expense, shall repair or replace same and restore service to the affected premises at the earliest possible time.

**Y. Water/Electricity/Gasoline/Supplies.** Contractor, at its expense, is responsible to provide and maintain an adequate supply of any water, electricity, gasoline or other supplies required for the Work.

**Z. Use of Part of Completed Work.** Whenever, in the opinion of the City Project Representative, any portion of the Work is in suitable condition, it may be put into use upon his written order; provided that such usage shall not be held to be in any way an acceptance of the work or as a waiver of any of Specifications & Conditions or other obligations in the Contract Documents. Pending final completion and acceptance of the work, all necessary repairs and renewals of any section of the work so put into use shall remain the responsibility of the contractor if due to defective material or workmanship, to natural causes other than ordinary wear and tear or to the operation of the contractor.

### AA. Contractor's Responsibility for Claims.

(i) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officials, agents, and servants) against any claims of liability arising from or based on the violation of any law, ordinance, regulation, order or decree related to the performance of the Work, whether such violation is committed by contractor, its employees or any of its subcontractors, in the course of performing (or failing to perform obligations hereunder related to) the Work.

(ii) The contractor (and its surety) shall defend, indemnify and save harmless the City (and all its officers, agents and employees) from all suits, actions or claims of any character, name and description brought for, or on account of any injuries or damages received or sustained by any person, persons or property from any of the following: (a) the contractor's neglect in performing or safeguarding the work; (b) the use of unacceptable materials in performing the work; or (c) by on account of any claim or amounts arising or recovered under the "Workmen's Compensation Law" or any other law, ordinance, order or decree.

(iii) The contractor guarantees payment of all just claims for materials, supplies, tools, equipment or labor from any subcontractor that performs work for it under the contract.

**BB. Insurance.** Contractor is responsible to provide the insurance stipulated in Section 7(b) of the prototype Contract that is included in the Contract Documents.

**CC. Contractor's Responsibility for Work until Accepted.** Contractor shall remain responsible for the work at a work site until it is finally accepted by the City Project Representative. All work there shall be under the charge and care of the contractor, and it shall take every necessary precaution to prevent injury or damage to any person from any other cause whatsoever (whether arising from its execution or failure to execute the work) until such acceptance

10

**DD. The parties agree that, if Contractor is unable to complete the Work (or a part thereof) because of unforeseeable events or matters that are beyond its reasonable control and that do not result from its negligence (for example, strikes, shortages of material, governmental preemption in connection with a national emergency and Acts of God), the time for completing the Work may be extended by the length of time equal to the duration of any such events matters. Such extensions of time shall be considered only when submitted to the City Project Representative in writing within ten (10) days from and after the time when any such alleged cause of delay shall occur.**

**EE. Grounds for Termination of Contract:** See Section 2 of prototype Contract that is included in these Contract Documents.

**FF. No Waiver by City.** The City shall not waive any of its rights or powers under the contract by occurrence of the following: any inspection of the work by the City Project Representative (or by any of his duly authorized representatives); the issuance of any order, measurement or certificate by that Representative; any order by the City to pay money; the City's acceptance of any work; or the City's grant of any extension of time to complete work. Further, no waiver of any breach of contract shall be held to be a waiver of any other or subsequent breach.

**GG. No Assignment or Subcontracting without City's Consent.** The contractor shall not assign any benefit, obligation or right under the contract, or subcontract any part of the work to a subcontractor, in whole or part, without prior written consent of the City, which consent may be withheld for any reason. Any authorized subcontractors shall comply with the applicable provisions of the principal contract, and the contractor shall be fully responsible for the acts and omissions of his subcontractors.

**HH. Prosecution of Work.** In performing the work, the contractor shall

(i) continuously and diligently prosecute the work in such order and manner to complete it in a safe, workmanlike and timely manner;

(ii) exclusively be responsible for training and supervising all of its personnel, and take necessary actions to ensure that that its workmen have sufficient skill and experience to properly perform the work assigned to them;

(iii) comply with all federal, state and local laws, regulations and ordinances governing the employment of labor and the payment of wages thereto for work performed under this contract; and

(iv) furnish an ample force of trained laborers, tools, supplies and equipment that it considers necessary to complete the work at a satisfactory rate of progress.

**HH. Temporary Suspension.** The City shall have the authority to suspend the prosecution of the work in whole or part for such period(s) of time as its Project Representative deems necessary. The contractor shall proceed with the work promptly when notified by that Representative to resume operations. The contractor shall not suspend work without written authority from the City Project Representative.

**II. Fulfillment of Contract.** The contract will be considered fulfilled when all the work has been completed, the final inspection has been made, the City has received satisfactory evidence of payment by the Contractor for all labor and materials used in the work, Contractor has duly advertised its completion of the Project and final payment has been made by the City. Notwithstanding the fulfillment of the contract, that occurrence shall not be construed to waive, modify, limit or affect any of the City's rights hereunder related to the Contractor's one-year warranty, any of the City's rights under any construction bonds, or its rights under law.

11

APPENDIX 9

### III. INSTRUCTIONS TO BIDDERS

1. Bids and associated completed forms should be placed in sealed envelope or container that is addressed to City of Mountain Brook, Alabama, Attention: City Manager, City Hall, 56 Church Street, Mountain Brook, AL 35213-3700, and delivered on or before the local time and date specified in the Invitation for Bids.

2. The following information should be clearly shown on the exterior of the sealed bid: (a) BID FOR STREET STRIPING PROJECT; (b) Date and Time of Bid Opening; (c) Name of Bidder; and (d) Bidder's State of Alabama License number.

3. The completed Contractor Bid Response Form (see enclosed Exhibit A) and completed Bidder Qualification Form (see enclosed Exhibit B) are due no later than Sept. 22, 2023, at 9:30 a.m. The bidder shall be responsible for taking whatever measures are necessary to ensure that its response reaches the City at the designated address on or before the local time and date specified. The City shall not be responsible for, and may not consider, any proposal delayed in the postal or other delivery service, or in the City's internal mail system, nor any late proposal, amendment thereto, or request for withdrawal of proposal received after the time and date specified. Proposals received after the time and date specified on the bid submission deadline will not be opened and will not be considered for award.

4. Each bidder shall submit two (2) copies of their responses.

5. Bids must be entered on the Contractor Bid Response Form that is provided herein. Each bidder shall fully complete all sections of this Form, and sign in the appropriate places thereon in the presence of a notary.

6. Bids that are completed in pencil or fixed to the City will not be accepted.

7. Each bidder is required to furnish a bid bond in the amount of \$10,000, or five per cent of its bid, whichever is lower, or cashier's check or other similar type of bid security with its Bid to secure its intent to perform the Work if it receives the award.

8. All questions and clarifications regarding the Specifications or the Contract Documents must be submitted in writing by Sept. 18, 2023, at 5 p.m. to the following City representatives:

**Purchasing Questions:**  
Steven Boone  
Finance Director  
City of Mountain Brook  
boones@mtmbrook.org  
(205) 802-3825

**Technical Questions:**  
Hunter Johnston  
Public Works Dept.  
City of Mountain Brook  
johnstonh@mtmbrook.org  
(205) 802-3875

The City will respond to any such questions by 5:00 p.m. on Sept. 20, 2023. No oral answers or interpretations to such inquiries will be provided. The City's response to all questions will be e-mailed to all interested firms that have requested Contract Documents from Hunter Johnston before that time and treated as an Addendum to these materials. All addenda issued shall become part of the contract documents for this Bid.

9. Each bidder is responsible for all costs related to the preparation of its Bid Response, and all expense it incurs in evaluating whether to submit a bid.

### EXHIBIT A - CONTRACTOR BID RESPONSE FORM \*

Below is the firm bid of the undersigned to perform the Street Striping Project 2023 for the three-year term of the contract at the unit prices indicated below. The undersigned submits this Form in response to the City's Invitation for Bids for this Project. The City may use the address and contact information below for its communications with the undersigned bidder. The undersigned has read and understands the Contract Documents that set forth the Specifications and other conditions for the award of the contemplated Contract and, except as may be listed below, submits its bid and agrees to perform the Work in accordance with those Specifications and other requirements in the Contract Documents.

#### ESTIMATED QUANTITIES/UNIT PRICES/TOTAL BID AMOUNT\*

A. MATERIAL PLACED	B. UNIT	C. QUANTITIES	D. UNIT BID	E. AMOUNT
Solid yellow, Class A Type I Traffic Stripe	Miles	50	\$950.00	\$47,500.00
Solid White, Class A, Type I Traffic Stripe	Miles	50	\$950.00	\$47,500.00
Raised Reflective Traffic Markers	Each	6,000	\$6.00	\$36,000.00
Thermo Plastic 24" wide White	Sq. ft.	14,000	\$5.50	\$77,000.00
Thermo Plastic 8" wide White	Sq. ft.	4,000	\$5.50	\$22,000.00
Thermo Plastic Turn Arrows White	Each	100	\$100.00	\$10,000.00
Thermo Plastic Centerline Yellow	Linear feet	200,000	\$.75	\$150,000.00
Thermo Plastic Side Lines White	Linear feet	100,000	\$.75	\$75,000.00

TOTAL AMOUNT BID: \$ 485,000.00  
(Sum of Subtotals in Column E)

#### \* Notes:

1. The Contractor shall enter in Column D its Unit Price for each Material shown in Column A, and then multiply that Unit Price times the Estimated Quantity in Column C. The product of Column C times Column D should then be entered in the corresponding row in Column E.

2. The Total Amount Bid is the sum of the subtotals entered by the contractor in each row of Column E. The award will be made to a responsible contractor who submits the lowest responsive total unit price bid.

3. Please state any Exceptions to the Specifications or other requirements in the Contract Document materials on a separate sheet and attach that sheet to your Bid Response.

4. Bidders must complete, sign, notarize and return the Bidder Affidavit and Warranty below with their Bid Responses.

(Signature Page Follows)

The undersigned warrants, represents and agrees that each of the following is true and correct in connection with its Contractor Bid Response for the contract to be awarded to perform the Street Striping Project 2023:

- (a) it has not colluded with any other bidders;
- (b) it has not, directly or indirectly, induced any other bidder to submit a sham bid or to refrain from making a bid;
- (c) it has not paid or agreed to pay any party, either directly or indirectly, any money or other thing of value for assistance or aid rendered to or to be rendered in attempting to procure the contract contemplated in this bid;
- (d) if the subject contract is awarded to the bidder, no employee or officer of the City has an interest, either direct or indirect, in it or is a beneficiary of the contractual arrangement made the basis thereof;
- (e) all the information contained in the response to the bid is true and correct; and
- (f) the City may rely on information submitted in awarding the subject contract.

Highway Management Systems, Inc.  
Name of Firm or Company Submitting Bid

By: Jim Toner  
Signature of Bidder Representative

Printed Name: Jim Toner

Is: President  
Title

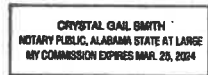
Date: 09/21/2023

Sworn to and subscribed before me on this 21st day of September 2023.

Crystal Smith  
Notary Public

03/25/2024  
Commission Expiration Date

SEAL



APPENDIX 9

Highway Management Systems, Inc.  
Name of Firm or Company Submitting Bid

09/22/2023  
Date of Bid

1110 Highway 31  
Street Address

63-1025835  
Tax Id # of Bidder

Calera AL 35040  
City State Zip

Web Site of Bidder

Jim Toner  
Printed Name Representative Executing for Bidder

Cell Ph. # Bidder Contact

205-663-1511  
Office Ph. # Bidder Contact

Jim Toner  
Signature of Bidder Representative

205-663-1511  
Email Address Bidder Rep.

President  
Title

This Bid Response must be notarized.

Sworn to and subscribed before me on this 21st day of September 2023.

Crystal Smith  
Notary Public

03/25/2024  
Commission Expiration Date

SEAL



14

15

#### EXHIBIT B - BIDDER QUALIFICATION FORM - STREET STRIPING PROJECT

NOTE: THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR CONTRACTOR BID RESPONSE FORM. IF ADDITIONAL SPACE IS NEEDED, PLEASE STATE THAT INFORMATION ON ADDITIONAL SHEET(S) THAT YOU ATTACH TO THIS FORM AND INDICATE ON THEM THE NUMBER AND ITEM TO WHICH THE INFORMATION CORRESPONDS.

1. Name of Business: Highway Management Systems, Inc.

Principal Business Address:  
1110 Highway 31  
Calera, AL 35040

#### 2. Business Contact(s)

(a) Primary Contact (Note: If a Pre-Bid Conference is held, the Primary Contact should attend that Conference.)

Name: Jim Toner  
Title or Position with Company: President  
Day Phone: 205-663-1511  
Email: jimtoner@highwaysystems.org  
Street Mailing Address of Contact: 1110 Highway 31  
Calera, AL 35040

#### (b) Other Business Contact(s)

List the name, position, telephone number, email and street addresses of persons on the bidder's staff other than the Primary Contact who can answer inquiries and who may attend the mandatory pre-bid meeting.  
Chad Smith or Crystal Smith

#### 3. Business History

(a) The successful contractor must have at least five (5) years of experience in the commercial street striping business. How many years has your organization been in this business? over 30

(b) State the facts and attach written documentation evidencing that your organization has been in the commercial street paving business for the required minimum period.  
Highway Management has been in business for over 30 years. We have conducted business with City of Mountain Brook before.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) How many years has your organization operated under its present business name?  
33 years

(d) Type of Organization:  
(i) If your organization is a corporation, answer the following:  
(I) Date of incorporation: 05/01/1990  
(II) State of incorporation: Alabama  
(III) President's name: Jim Toner

16

(iv) Vice-President's name(s) \_\_\_\_\_  
(v) Secretary's Name Crystal Smith  
(vi) Treasurer's name: Crystal Smith

(2) If your organization is a partnership, answer the following:

(i) Date of organization: \_\_\_\_\_  
(ii) Type of partnership (if applic.): \_\_\_\_\_  
(iii) Name(s) of general partner(s) \_\_\_\_\_

(3) If your organization is individually owned, answer the following:

(i) Date of organization: \_\_\_\_\_  
(ii) Name of owner: \_\_\_\_\_

#### (e) Administration of Business.

Please describe in general how you operate and administer your business. In this description, please state each of the following:

- (i) the total number of employees;
- (ii) the number of workers who are dedicated to field operations;
- (iii) the name and title of your general supervisor of field service operations; and
- (iv) the number of employees dedicated to administrative and office matters.

Highway Management has 16 total employees, four of which are office based.  
Chad Smith is the supervisor overseeing the employees.

#### 4. Licensing.

List and attach to this Form all licenses and certifications that your organization currently holds or has that authorize it to perform commercial street striping operations in the State of Alabama.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Also please list the License number and attach a copy of the following Licenses to this Form:

- a. State of Alabama General Contractor 19463
- b. City of Mountain Brook Business License\* 202302585

\*Note: If not currently held, Contractor must acquire a City Business License prior to commencing work.

#### 5. Intentionally Omitted.

#### 6. List/Qualifications of Project Team.

On a separate page, please list and furnish the following information concerning each of the employees or other representatives whom you will appoint to perform the Project:

- name
- job title
- areas of experience and the length of time for each area
- special training, licensing, and certification for each employee

17

## Employee directory report

For active employees from all locations

Name	Email	Phone	Home address	Work location	Hire date
Buendiner, Victor S		Mobile: 205-655-2613	3090 County Road 38, Jemison, AL 35085	1110 Highway 31, Calera, AL 35040	08/02/2003
Bushy, Darla S	darla14u@gmail.com	Mobile: 205-212-4384	1431 Dogwood Ln, Bessemer, AL 35523	1110 Highway 31, Calera, AL 35040	09/20/2006
Coakley, Ryan H	coakleyryan08@gmail.com	Mobile: 205-217-1369	1200 County Road 485, Clanton, AL 35046	1110 Highway 31, Calera, AL 35040	08/01/2019
Davis, Charist A	ltracy1321@gmail.com	Mobile: 205-480-3285	3111 Highway 17 S, Montevallo, AL 35115	1110 Highway 31, Calera, AL 35040	05/01/1993
Edwards, Cody R	cachore@gmail.com	Mobile: 251-223-0711	404 County Road 227, Clanton, AL 35046	1110 Highway 31, Calera, AL 35040	08/18/2016
Fossatt, Antonio D	dstrb36@yahoo.com	Mobile: 205-606-7952	1911 21st Ave, Calera, AL 35040	1110 Highway 31, Calera, AL 35040	06/11/2001
Layne, Daniel J		Mobile: 205-639-2793	150 Church St Apt 2, Thorabry, AL 35171	1110 Highway 31, Calera, AL 35040	05/07/2014
Lenoir, Jordan D	jordan.lenoir.1992@gmail.com	Mobile: 205-284-5874	12304 AL Highway 191, Maplesville, AL 35750	1110 Highway 31, Calera, AL 35040	06/04/2013
McComick, Joseph P	eltra306@outlook.com	Mobile: 205-461-8469	6753 Highway 71, Shelby, AL 35143	1110 Highway 31, Calera, AL 35040	01/22/2020
Russell, Evan T	evantrussell192@gmail.com	Mobile: 205-568-8933	1200 County Road 485, Clanton, AL 35046	1110 Highway 31, Calera, AL 35040	10/27/2014
Smith, Crystal G	csmith795@gmail.com	Mobile: 205-245-4375	80 County Road 842, Clanton, AL 35045	1110 Highway 31, Calera, AL 35040	11/04/2018
Smith, William C		Mobile: 205-258-1702	7382 AL Hwy 191, Maplesville, AL 35750	1110 Highway 31, Calera, AL 35040	01/01/1980
Toner, James W		Mobile: 205-288-1701	7277 AL Highway 191, Maplesville, AL 35750	1110 Highway 31, Calera, AL 35040	05/01/1980
Toner III, James W	jimmytoner22261@gmail.com	Mobile: 205-686-0362	7477 AL Highway 191, Maplesville, AL 35750	1110 Highway 31, Calera, AL 35040	01/01/1988
Watkins, Joseph A	nenbro1@gmail.com	Mobile: 205-586-7058	163 Mayfair Ln, Calera, AL 35040	1110 Highway 31, Calera, AL 35040	02/18/2011

If available at this time, please attach a certificate issued by your current Insurance Carrier(s) indicating the existence and limits of your Comprehensive General Liability (including assumed contractual liability coverage), Automobile Liability, and Worker's Compensation coverage required in Section 7 of the prototype Contract.

## 8. Claims History.

(a) Within the last five (5) years, has the bidder, or any officer, director, member or owner of it, been a party to any lawsuit, any arbitration or participated in any other type of alternative dispute resolution process with regard to a claim, dispute, or disagreement arising from the bidder's (or any officer's, director's, member's or such owner's) performance or failure to perform its obligations under an agreement to provide services and conduct operations? (For purposes of this question, an "owner" of the bidder is any person who holds 10% or more of the stock or interest in the bidder organization.) Yes ☐ No ☒

If yes, for each such contract or project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the manner in which any such claim or dispute was resolved:

(b) Within the last five (5) years, has any owner, client or customer of your organization made, asserted or pursued a claim against a Surety that issued a Performance Bond on a contract that was being performed by the bidder and that arose from its performance or failure to perform obligations under an agreement with that customer to provide services? Yes ☐ No ☒

If yes, for each such project, explain fully the nature of the matter, location, circumstances, your role, and, if resolved, the manner in which any Performance Bond claim was resolved:

(c) Within the last five (5) years, have any of your clients or customers formally declared that the bidder is in default or has breached a material obligation in any agreement to provide services or operations? Yes ☐ No ☒ If yes, for each such project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the manner in which any such default or breach was resolved:

(d) Has your organization ever failed to complete any work, contract or project awarded to it?

Yes ☐ No ☒ If yes, please provide all details related to such matter.

Sep 21, 2023 09:04 AM PT

(e) Are there any judgments against your organization, or against any of your officers or owners individually, that arise from any litigation or arbitration that have been entered but are not satisfied? Yes ☐ No ☒ If yes, please provide all details related to such matter:

(g) Within the last five years, has any officer, principal or owner of your organization ever been an officer or principal of another organization when it failed to complete a contract? (For purposes of this question, an "owner" of the bidder is any person who holds 10% or more of the stock or interest in the bidder.) Yes ☐ No ☒ If yes, please provide all details related to such matter:

## CERTIFICATION

The undersigned representative of the Bidder certifies that he/she is authorized to sign below and submit this Bidder Qualification Form on its behalf, and that the submitted information is current, accurate, true and sufficiently complete so as not to be misleading.

Name of Bidder

Jim Toner  
(Type or Print)

By:

Jim Toner

Its:

President

Title of Authorized Representative

Sworn to and subscribed before me on this 21st day of September 2023.

Notary Public

03/25/2024

Commission Expiration Date

SEA.

Client#: 652505

HIGHMANAG1

## ACORD. CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/21/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency LLC 10 Inverness Center Pkwy Suite 400 Birmingham, AL 35242	INSURER A: Pennycuik National Mutual Cos Ins Co INSURER B: Alabama Self Insured WC Fund INSURER C: Midwest Employers Casualty Company INSURER D: INSURER E: INSURER F:	DATE 9/21/2023
--	---	----------------

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LINE	TYPE OF INSURANCE	INSURED	POLICY NUMBER	START DATE	END DATE	LIMITS
A	COMMERICAL GENERAL LIABILITY		CL98637993	01/01/2023	01/01/2024	EACH OCCURRENCE \$1,000,000 ANNUAL AGGREGATE \$1,000,000 MED EXP ADJ ADJ \$5,000 PERSONAL & ADV ADJ \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY		AU80627993	01/01/2023	01/01/2024	COMBINED SINGLE LIMIT \$1,000,000 BODILY INJURY (Per person) \$1,000,000 BODILY INJURY (Per accident) \$1,000,000 PROPERTY DAMAGE (Per accident) \$1,000,000
A	UMBRELLA/LIAB		UL98627993	01/01/2023	01/01/2024	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY		WC19005518002022A	01/01/2023	01/01/2024	PER EMPLOYEE \$1,000,000 PER ACCIDENT \$1,000,000 PER EMPLOYEE - SA EMPLOYEE \$1,000,000 PER EMPLOYEE - POLICY LIMIT \$1,000,000
C	ADDITIONAL COVERAGES		PTAL-129091	01/01/2023	01/01/2024	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Street Striping Project - B20230618-910.

City of Mountain Brook, and its officers, employees and agents are named as additional insured with regards to the general liability and auto liability policies described above when required by written contract, but only with respects to operations of the named insured and subject to the provisions and limitations of the policies.

CERTIFICATE HOLDER City of Mountain Brook 50 Church Street Mountain Brook, AL 35213	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE PETER J. KAYE
--	--



# CITY OF MOUNTAIN BROOK - REVENUE DEPARTMENT 2023 BUSINESS LICENSE

56 Church St. PO Box 130006 Mountain Brook, Alabama 35213-0006  
Telephone: 205.802.2400 Fax: 205.870.3590

Customer: 17405  
HIGHWAY MANAGEMENT SYSTEMS INC  
1110 HIGHWAY 31 SOUTH  
CALERA, AL  
35040



Physical Address  
HIGHWAY MANAGEMENT SYSTEMS INC  
1110 HIGHWAY 31 SOUTH  
CALERA, AL  
35040

License: 202302585 Issued: 15-Feb-2023 Expires: 31-Dec-2023

The firm, corporation, organization, business or person whose name appears above as paid the required license fee and is authorized to engage in business in the City of Mountain Brook, Alabama until December 31, 2023.  
This license is subject to revocation by the Finance Director for the violation of any ordinance of the City related to the business for which this license is issued, and such license shall also be subject to revocation by the Finance Director if the licensee, under cover of such license, violates or aids or abets in violating, or knowingly permits or suffers to be violated, any penal ordinance of the City. This license is valid only at the location indicated and is not transferable.

By: *Heather Richards*  
Heather Richards, City Clerk

This License Must Be Posted At Location.

## RECEIPT

CITY OF MOUNTAIN BROOK

Received From: HIGHWAY MANAGEMENT SYSTEMS INC

License: 202302585  
Issued: 15-Feb-2023  
Check No: 26073

Section	Business Type	License Amt	Discount	Penalty	Issue Fee	Paid
Sch B-16	Other Contractor	\$150.00	\$0.00	\$24.00	\$14.00	\$188.00
Total Amount Paid:						\$188.00

Wednesday, February 15, 2023

## THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310  
Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE Highway Management Systems, Inc.  
1110 Highway 31 Calera, AL 35040

as Principal, hereinafter called the Principal, and Merchants Bonding Company (Mutual)  
P.O. Box 14498 Des Moines, IA 50306-3498

a corporation duly organized under the laws of the State of IA  
as Surety, hereinafter called the Surety, are held and firmly bound unto City of Mountain Brook  
56 Church Street Mountain Brook AL 35213

as Obligor, hereinafter called the Obligor, in the sum of Five Percent of Amount Bid  
not to exceed Ten Thousand Dollars (\$10,000.00) Dollars ( 5% ),  
for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs,  
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for STREET STRIPING PROJECT - B-20230818-910

NOW, THEREFORE, if the Obligor shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligor in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligor the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligor may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 22nd day of September, 2023

Highway Management Systems, Inc.  
(Principal) (Seal)

By: *Jim Tamm* (Title)

Merchants Bonding Company (Mutual)  
(Surety) (Seal)

By: *Ryan R. McClendon* (Title)  
Attorney-in-Fact Ryan R. McClendon

AIA DOCUMENT A310 • BID BOND • AIA • FEBRUARY 1978 ED. • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 N.Y. AVE., N.W., WASHINGTON, D.C. 20006

J:\Minutes & Agendas\Council\2023\20231009 Minutes.docx

## MINUTE BOOK 93

19453  
RENEWAL  
LICENSE NO.:  
TYPE:

STATE OF ALABAMA



BID LIMIT:  
UNLIMITED  
AMOUNT:

State Licensing Board for General Contractors

THIS IS TO CERTIFY THAT

HIGHWAY MANAGEMENT SYSTEMS INC

CALERA, AL 35040

is hereby licensed a General Contractor in the State of Alabama and is authorized to perform the following type(s) of work:

BC-S: FLOOR COATINGS, BC-S: MARBLE, BC-S: TERRAZZO, BC-S: TILE, HS-S: TRAFFIC CONTROL AND SAFETY

until August 31, 2024 when this Certificate expires.  
Witness our hands and seal of the Board, dated Montgomery, Ala.,

28th day of August, 2023  
SECRETARY-TERRAN

198321

## MERCHANTS BONDING COMPANY. POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, do hereby make, constitute and appoint, individually,

Ryan R. McClendon

their true and lawful Attorney-in-Fact, to sign in his name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the future thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

By: *Ryan R. McClendon*  
Highway Management Systems, Inc.  
City of Mountain Brook

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorney-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually filed."

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioners-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 22nd day of September, 2023.



MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.  
do hereby MERCHANTS NATIONAL INDEMNITY COMPANY

By: *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.  
On this 22nd day of September, 2023, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

Kim Lee  
Commission Number 702737  
My Commission Expires  
April 14, 2024

(Signature of notary's commission does not invalidate this instrument)

*Kim Lee*  
Notary Public

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 22nd day of September, 2023.



*William Warner Jr.*  
Secretary

October 9, 2023

POA 0018 (10/22)

Exhibit B – the Bidder Qualification Form with their bid. If a respondent does not submit documentation with its bid substantiating that they comply with these qualifications/ requirements in this Section II, the City may disqualify them from an award or entering the contract

1030

A. Minimum Experience: Bidders must have at least five (5) years of experience in the commercial street striping business. Interested contractors must provide information on the Bidder Qualification Form (see Exhibit B) indicating whether they meet this requirement.

B. Licensing Requirements. To be eligible for the award, the successful contractor must provide the City evidence that it has or will obtain the following licenses and attach copies thereof the Bidder Qualification Form:

- a. State of Alabama General Contractor License
- b. City of Mountain Brook Business License\*

(\*Note: If not currently held, this license must be obtained prior to commencing work.)

The interested contractor also shall attach any other state, county or local licenses and/or certificates held by it that evidence the contractor's qualifications in heating, ventilation, and air conditioning maintenance, repair and installation.

C. Intentionally Omitted

D. No Pre-Bid Conference: The City does not anticipate conducting a pre-bid conference in connection with this award. However, interested contractors may direct written inquiries concerning the Project or Contract Documents to the City's Project Representatives as indicated herein.

E. Bid Bond or Security Requirement. A bid bond a bid bond in the amount of \$10,000, or five per cent of its bid, whichever is lower, or cashier's check or other security payable to the City is required to be submitted by interested contractors with their responses on this Project.

F. Other Bonding Requirements. When selected, before commencing work the successful contractor must provide a Performance Bond in the amount of its annual contract price and a Labor & Materials Bond in the amount of half the annual contract price. Prototypes of acceptable forms of these bond types are available upon request.

These bonds shall remain in effect for twelve (12) months after completion of the Work shall be in a form satisfactory to the City, and the surety therefore shall be a reputable bonding company authorized to transact business in Alabama and shall be acceptable to the City.

G. Insurance Requirements. Before commencing its work, Contractor must provide the types of insurance and comply with the insurance requirements set forth in Section 7(b) of the prototype Contract that is included as Exhibit C in the Contract Documents.

20

10. Bids will be considered irregular if, by way of example, they show any omissions, alterations of forms, additions or conditions not called for or irregularities of any kind. However, the City reserves the right to waive irregularities and technicalities in submitted bids and make the award in the best interest of the owner.

11. Should the successful bidder to whom the contract has been awarded fail to execute the contract and furnish satisfactory construction (surety) bonds within five (5) days after date of notice award, it shall be considered to have abandoned their proposal; its offer shall be withdrawn; and the amount of the bid bond or security shall be forfeited to the City as fixed and agreed damages. The submission of a bid by any bidder shall be considered as an acceptance by them of this provision.

## MINUTE BOOK 93

### V. CONTRACT AWARD PROCESS

1. Bidder's Intent. By submitting a bid, the bidder accepts and agrees to comply with the Specifications for the Work and obligations in other sections of the Contract Documents, unless otherwise stated in a bid exception that is accepted by the City.

2. Any exception taken by a bidder should be stated in detail, in writing, at the time of its submission. The City reserves the right to accept or reject any such exception taken by the bidder, and deviations from the Specifications or other obligations in the Contract Documents that are not accepted by the City may be grounds for rejecting and disqualifying the bid.

3. The City intends to notify the successful contractor of the tentative award of the contemplated contract within three (3) days after the bid opening, and formally enter that contract within five (5) days following the award of it by its governing body.

4. In determining the entity to whom to make an award, the City reserves the right to:

(a) reject the proposal of any bidder who has previously failed to perform properly or timely complete contracts of a similar nature;

(b) reject the proposal of any bidder which, based on the City's investigation, is not in a position or does not have the resources to satisfactorily and timely perform the contract;

(c) reject the proposal of any bidder who is in arrears or in default to the City upon any debt or prior contract;

(d) reject the proposal of any bidder who has failed to faithfully perform work or services on any previous contract or project for the City that is similar to that contemplated in this bid;

(e) request that a bidder present additional evidence that it has the ability and possesses the necessary facilities, pecuniary resources and adequate insurance to comply with the terms of this bid, and require that such evidence be presented within a specified time and to the reasonable satisfaction of the City; and

(f) disqualify a bidder's response because it is not complete and the bidder failed to provide information requested in the bid materials.

5. Contract. Following the award, the successful contractor shall execute the Street Striping Project 2023 Contract in substantially the form of Exhibit C below. The successful bidder will execute and deliver the required Contract and furnish the required construction bonds (Performance and Labor & Materials bonds) within five (5) days after date of notice of such award.

6. Bids which have been opened and read may not be withdrawn for a period of 60 days after date of opening.

7. Before an award is made, the City reserves the right to investigate the previous experience, financial status, and general ability of the three (3) lowest bidders to perform the Project.

8. As soon as the bids have been compared, the City may, at its discretion, return the bid guaranties accompanying those bids which in its judgment would not be considered in making the award. After the award is made, only the successful bidder's bid guaranty will be retained until the required contract and construction bonds have been executed, after which it will be returned to the bidder.

9. The City reserves the right to accept or reject any or all bids.

21

### EXHIBIT C - STREET STRIPING PROJECT 2023 CONTRACT (PROTOTYPE)

This Street Striping Project 2023 Contract (the "Contract") is made by and between (the "Contractor") and the City of Mountain Brook, Alabama (the "City") effective as of the date last signed below by a party (the "Effective Date").

WHEREAS, on Project B-20200624-662 the City has conducted a competitive bid process to award a three-year unit price contract in connection with striping and marking streets in the City and performing operations related thereto (the "Work" or "Project");

WHEREAS, the City has determined Contractor to be the lowest responsible bidder in response to its Invitation for Bids for the Project issued on or about Sept. 1, 2023;

WHEREAS, Contractor agrees to perform the Work in compliance with all Contract Documents in the Project Manual (including the Specifications & Conditions and the Contractor Bid Response Form), which documents are incorporated by reference and collectively may be referenced herein as the "Contract Documents"; and

WHEREAS, the City and Contractor deem it desirable to memorialize the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the Contractor and City agree as follows:

1. **Work**. Contractor shall perform the Work in accordance with the terms, provisions and conditions of the Contract Documents (including the Specifications & Conditions) and this Contract. The Contractor's Bid Response Form is also incorporated herein and made a part hereof by reference. The Contractor will be compensated for performing the Work at the prices set forth in the Contractor Bid Response Form.

2. **Term/Early Termination**. The term of this Contract shall commence on October 1, 2023, and thereafter continue in effect for a period of three (3) years (the "Term"). Notwithstanding the provision immediately above or any other provision herein or in the Specifications, the Contract may be terminated before the expiration of its Term on the occurrence of any of the following:

(a) Termination for Cause by City. If the Contractor fails to perform any material obligation as required in the Specifications or this Contract (a "Default"), the City may terminate the Contract for cause on thirty (30) days' advance written notice to Contractor; provided that the Contractor shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause. This termination remedy is in addition to any other remedy or right provided to the City in the Contract or available by law that arises from a Default. The circumstances that may constitute a Default by the Contractor include, but are not limited to the following: (i) its failure to perform the Work in a satisfactory manner; (ii) its failure to perform the Work in a timely manner; (iii) the accumulation of substantial evidence that the progress being made by the Contractor is insufficient to complete the Work within the specified time; (iv) the deliberate failure on the part of the Contractor to proceed with the construction of the work when so instructed by the City or to observe any requirements of the Specifications; and (v) the Contractor's failure to promptly make good any defects in materials or construction that may be called to its attention by the City; and

(b) Termination for Cause by Contractor. If the City does not perform a material obligation in the Specifications or in this Contract, the Contractor may terminate the Contract for cause on

thirty (30) days' advance written notice to the City; provided that the City shall have a reasonable opportunity to cure or correct any deficiency in performance that is the basis of the proposed termination for cause; and

- (c) **Termination for Non-Appropriation.** Notwithstanding any other provision above in this section or elsewhere in this Contract, the City, effective upon provision of written notice to Contractor, may terminate this Agreement at the end of the first or second contract year without cause or the occurrence of a Default and without any liability, penalty or obligation to pay for Work after the effective date of termination if its governing body does not appropriate or allocate funds for the Project. In the event of such termination for non-appropriation, the City shall remain obligated to pay for Work performed by the Contractor prior to termination.

In the event a Contractor Default occurs and the Contract is terminated, Contractor shall discontinue its operations to perform the Work. Moreover, the City, in addition to exercising its right to terminate this Contract, may have the Work completed by another contractor(s), in which event Contractor shall be responsible for the difference, if any, between the amount paid by the City to another contractor to complete the Work and that provided for hereunder as the cost of the Work if it were performed by the Contractor. No failure on the part of the City to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

**3. Payment to Contractor.** The amounts to be paid to Contractor shall be calculated and based on the unit prices set forth in its completed Contractor Bid Response Form, which Form is incorporated by reference herein.

**4. Project Representatives.** Each party shall appoint a representative(s) who shall coordinate with the other party on matters pertinent to the performance of the Work and the administration of this Contract (the "Project Representative(s)").

The City's Project Representatives are:

Hunter Johnston, Public Works Dept.  
3579 East Street  
Mountain Brook, AL 35243  
Email: johnstonh@mtnbrook.org  
Tel No: 205-802-3875

The Contractor's Project Representative is:

\_\_\_\_\_, AL 352\_\_\_\_\_  
Email: \_\_\_\_\_  
205-\_\_\_\_-\_\_\_\_\_

The Project Representatives designated above shall have the authority to act on behalf of its respective organization to transmit instructions, receive information and administer the Contract consistent with its terms and conditions. Either party may designate a Project Representative other than the person named above upon provision of written notice to the other.

**5. Notices.** Any notice required hereunder shall be sufficiently given when given in writing and sent to the appropriate Project Representatives 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 that party.

**6. Dispute Resolution.** The Project Representatives of the parties will use their good faith efforts to resolve any dispute or claim between them arising from the performance or failure to perform their respective obligations under this section.

24

All required insurance shall be provided by a policy(ies) issued by a company or companies qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the City. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

Except for the Workers Compensation and Employer's Liability coverage, all coverage shall contain endorsements naming the City of Mountain Brook, and its officers, employees and agents, as additional insureds with respect to liabilities that arise out of and result from the operations of the Contractor or the performance of the Work. Before the commencement of the Work hereunder, the Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

**8. Safety.** Contractor exclusively shall be responsible for traffic control, the safety of its personnel (and that of any subcontractor or subcontractor personnel), the protection of its equipment and the protection of the Work while performing its operations on or about the City streets and property (the "Work Sites"). In addition, Contractor shall undertake whatever precautions and practices that it determines are necessary (including, but not limited to, the posting of signs warning against hazards, use of flagmen, etc.) to maintain a safe work environment and at all times to protect the general public, its personnel, its equipment, City personnel and City property from injury, damage or loss in the course of its operations.

The City makes no representation and gives no warranty that its Work Sites (or any equipment or improvements thereon) are safe or fit for the performance of the Work. Prior to commencing its operations, Contractor (and its representatives) agree to thoroughly examine, inspect and become familiar with each Site, determine that the Work at each such Site can be completed in an orderly and safe manner and implement whatever precautions, practices or actions that it deems are required to safely the Work in those locations.

**9. Representations of Contractor.** As further inducement to enter this Contract, the Contractor represents and warrants each of the following to the City:

- (a) that it will perform the Work in a good and workmanlike manner;
- (b) that, prior to entering this Contract, it has familiarized itself with the general conditions and nature of the Work sites where it will perform operations; and
- (c) that all actions required to be taken by it or on its behalf to execute the Contract, and to perform its obligations and agreements hereunder, have been duly taken.

**10. Entire Agreement/Ineffective Provisions in Contractor Documents.** This Contract (and the other Contract Documents) comprise the entire agreement between the parties concerning the matters herein. These terms, provisions and conditions in the Contract supersede all prior negotiations, representations or agreements, either written or oral, concerning the subjects herein, and any such prior understandings concerning these matters are of no effect and are merged into this Contract. Further, the parties agree that no terms, provisions or conditions that are stated in any work or purchase order, proposed invoice or other document generated by the Contractor in connection with the Work are not incorporated into or form part of the Contract. Notwithstanding the existence of any such documents, the parties understand, agree and covenant as follows:

- (a) The City shall not be liable to the Contractor for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor;
- (b) The City shall not be liable for any late payment charges, interest, or fees on any delinquent billing for goods, materials, or services;

## MINUTE BOOK 93

Agreement (a "Dispute"). If those Representatives are unable to amicably resolve a Dispute, it will be escalated to the senior manager/official level of each party for consideration. If the Dispute cannot be resolved at the senior official level, either party may request that the Dispute be mediated.

1031

However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism for any claim between the parties shall be litigation in a court located in Jefferson County, Alabama. If (i) the City should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) the City secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto against the City, the Contractor will reimburse the City for its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

### 7. Indemnification by Contractor/Insurance Requirements

(a) **Indemnification.** The Contractor agrees to defend, indemnify, and hold harmless the City of Mountain Brook, and its agents, employees and officials (hereinafter the "Indemnitees") from and against from and against all demands, actions, damages, judgments, expenses (including, but not limited to, attorneys' fees, expert fees, court costs and other litigation costs), losses, damages, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property, or those for financial loss or damages) (collectively herein "Claim(s)") by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") asserted against any Indemnitee(s) that arise out of, relate to, result from, or are attributable to any of the following: (a) any conditions in or about the work sites on which the Contractor or any Contractor Representative may enter or encounter in performing the Work; and (b) any negligent act, omission or conduct by the Contractor or any Contractor Representative that arises from or relates to its (or their) performance or failure to perform its (or their) responsibilities under this Contract or the Work. This indemnification obligation includes Claims by third parties that are caused in part by the negligence of an Indemnitee; provided, nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for Claims resulting from the sole negligence or from the willful misconduct of the Indemnitees.

(b) **Insurance Requirements.** The Contractor shall maintain the following types of insurance for the duration of this Contract and for limits not less than stated below:

(i) **Comprehensive General Liability** for all operations performed by or on behalf of the Contractor or any Contractor Representative related to or arising from the performance of the Work or Project contemplated in the Contract, with limits of not less than

- \$1,000,000 combined single limit and aggregate for bodily injury (excluding auto) and property damage (excluding auto), per occurrence; and
- Excess umbrella coverage of \$1,000,000.00 for each occurrence

This insurance shall include coverage for assumed contractual liability; completed operations; damages to third parties for personal injury (including death) and property damage; and damage, destruction and injury to City property and City personnel caused by or resulting from the operations of the Contractor and any Contractor Representative;

(iii) **Automobile Liability** of not less than \$1,000,000 with excess umbrella coverage of \$1,000,000.00 for each occurrence. This insurance shall cover any owned or rented vehicles or equipment utilized for the Project;

(iv) **Workers' Compensation** as required by statute; and

(v) **Employer's Liability** - liability limits of \$500,000 per occurrence.

25

(c) The City will not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Contract or the performance or nonperformance thereof; and

(d) Unless expressly stated in the Contract, the City does not waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf in connection with the performance of the Work. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City (or the City) is expressly disavowed, excluded from the terms of the Contract, and void.

**11. No Assignment or Subcontracting Without Consent.** Except as expressly authorized herein, Contractor may not assign, transfer, convey, sublet or otherwise transfer or dispose of any of its rights, obligations, responsibilities or interest therein to any other person, firm or corporation without the prior written consent of the City, which may be withheld for any reason. Unless expressly agreed to the contrary, in no event shall such consent relieve the Contractor from its obligations to the City hereunder or change the terms of the Contract. Further, if a subcontractor is approved and performs Work contemplated by this Contract, the Contractor shall remain responsible to the City for the actions, conduct and performance of the subcontractor (and any of its agents, employees or representatives), and any work performed by a subcontractor shall be considered as having been rendered by the Contractor and directly provided by it.

### 12. Miscellaneous Provisions.

(a) During the Term of this Contract, Company agrees to comply with all federal, state and local laws, regulations and codes applicable to the performance of the Work (collectively, "Laws"), including, but not limited to, Laws concerning the safety, inspection, maintenance, and operation of its equipment, employment laws related to its personnel, Occupational Safety Health & Administration (OSHA) regulations or other requirements intended to protect the safety of workers, Laws intended to protect the public, or Laws intended to protect the quality of air, water or environment. The requirements of these Laws shall be construed as the minimum requirements of the Contract.

(b) The Contractor is an independent contractor of the City. This Contract does not create any partnership, joint venture or principal-agent relationship between the Contractor and the City. Further, Contractor (and its employees, representatives or subcontractors) exclusively controls the means and methods it uses or selects to perform the Work, and the City retains no control or authority with respect to those means and methods.

(c) The Contractor may not assign this Contract, or any of its rights, obligations or the benefits hereunder, to any other party without prior written approval of the City, which approval may be withheld for any reason. In no event will this Contract be assigned to an unsuccessful bidder who was rejected because it was not a responsive or responsible bidder.

(d) The Contract is made only for the benefit of the City and the Contractor. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(e) At its expense, Contractor shall secure and maintain throughout the Term of this Contract all licenses, permits and governmental approvals required to perform the Work which Contractor is obligated to perform hereunder.

(f) This Contract may be amended or modified only by written instrument signed by both parties. Further, neither the scope of Work nor the time of completion of Work operations may be changed except in accordance with the terms of a written change order signed by City and Contractor.

APPENDIX 9

(g) This Contract may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. Copies of this Contract showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals, and shall have the same legal force and effect as the original document.

(h) Any forbearance or delay on the part of the City in enforcing any of its rights under this Contract shall not be construed as a waiver of those rights. No terms of this Contract shall be waived by the City unless expressly waived in writing.

(i) If any provision of this Contract is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(j) In the event of a conflict between any term or provision in the Specifications (or other bid documents) and those in this Contract, the provisions in this Contract shall control and govern.

(k) **Exclusion of Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS CONTRACT, THE CONTRACTOR AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THIS CONTRACT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREBUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE CONTRACTOR'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CITY'S BREACH. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE TERMS IN THIS PROVISION WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THIS CONTRACT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CITY.

(l) **Choice of Law.** The meaning, legal effect, and enforcement of terms and provisions of the Contract and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama, except to the extent otherwise required by applicable conflict-of-law principles.

(m) **Construction.** Except as expressly stated herein, nothing in this Contract shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity. Furthermore, in the event that any ambiguity in the terms of this Contract is determined to exist, no presumption shall be made that either of the parties drafted the Contract.

(n) **Immigration Law Compliance.** The Contractor represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an "unauthorized alien," as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the "Act") and that, during the performance of this Agreement, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act. The Contractor further agrees and warrants that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the Project, jobsite or premises of the City and shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If the Contractor violates any term of this paragraph, this Contract will be subject to immediate termination by the City.

28

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

(o) **City Audit Right/Contractor's Retention of Records.** Upon reasonable advance notice from the City during the course of performing the Work or in a periodic audit that follows the completion of part of all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether the Contractor has properly completed, accounted and performed the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

In Witness Whereof the undersigned, duly authorized representatives of the parties have executed this Contract on behalf of their respective organization.

ATTEST

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST

By: 

Its: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF MOUNTAIN BROOK, ALABAMA

By: Stewart H. Welch, III

Its: Mayor

Date: \_\_\_\_\_

APPENDIX 9

## VI. ANTICIPATED BID/AWARD/PROJECT SCHEDULE

1. Sept. 1, 2023 - Issuance of Project Manual by City
2. Sept. 18, 2023 - Deadline for Interested Contractors to Submit Written Questions
3. Sept. 20, 2023 at 5:00 p.m. - City's Written Answers to Questions
4. Sept. 22 at 9:30 a.m. - Bids & Other Completed Documents Due & Bid Opening
5. Week of Sept. 25, 2023 - Award Contract by City Council/Deliverables (Construction Bonds & Proof of Insurance) Due from Successful Contractor/Contract Executed
6. Oct. 1, 2023 - Term of Three-Year Contract Commences

29



**BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY  
TRANSIT SERVICES AGREEMENT**

This Transit Services Agreement (the Agreement) is by and between the **BIRMINGHAM-JEFFERSON COUNTY TRANSIT AUTHORITY** (the BJCTA), a public corporation organized under the laws of the state of Alabama and the **CITY OF BESSEMER, ALABAMA** (the City), a municipal corporation organized under the laws of the state of Alabama.

**Recitals:**

**WHEREAS**, the BJCTA was established by Alabama Legislative Act No. 1971-993 to provide mass public transportation services and repealed by Alabama Legislative Act No.2013-380 (the Act) to expand and improve mass public transportation services in Jefferson County, Alabama; and

**WHEREAS**, Alabama Legislative Act No.2013-380 (the Act) provides that the annual amount to be paid by each municipality which elects to be served by the BJCTA shall be ascertained by multiplying the total projected hours of operation in such municipality for the forthcoming fiscal year, times the cost per hour of operation set forth by the BJCTA, based upon the certified routes and times; and

**WHEREAS**, the Act provides that the annual amount to be paid by the City shall be certified by the BJCTA to the Jefferson County Tax Collector, its Revenue Commissioner or Director of Revenue; and

**WHEREAS**, the City elects and requests transit services from the BJCTA in accordance with the Act; and

**WHEREAS**, the BJCTA desires to provide such transit services to the City.

**NOW, THEREFORE**, in consideration of the premises, in accordance with Alabama Act 2013-380 and the foregoing recitals; and other good and valuable consideration contained herein, the City and the BJCTA (the Parties) agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the following definitions shall apply, unless the context requires otherwise, or another definition is expressly provided in this Agreement:

<b><u>Agreement</u></b>	Shall mean this Transit Service Agreement, as the same may be amended from time to time.
<b><u>Transit Service</u></b>	Shall mean the revenue Transit Service to be provided by BJCTA in and to the Service Area as set forth in this Agreement.
<b><u>Cost of Transit Service</u></b>	Shall mean the cost incurred by BJCTA to provide the Transit Service, during the period October 1, 2023 through September 30, 2024.
<b><u>County</u></b>	Shall mean Jefferson County.
<b><u>ALDOT</u></b>	Shall mean the Alabama Department of Transportation.

October 1, 2023

1

**FTA** Shall mean the Federal Transit Administration.

**Service Area** Shall mean the area served by BJCTA.

**Service Schedule** Shall mean the frequency, times and stops for the Transit Service to be provided by BJCTA, as set forth and described in paragraph 5 below.

2. **PROVIDING OF TRANSIT SERVICE.** Pursuant to the terms and conditions of this Agreement and in consideration of the Payments, BJCTA agrees to provide the Transit Service in the Service Area. In regard to providing said Transit Service, the obligation of BJCTA is subject to the following:

- (a) Federal, state and local regulations applicable to BJCTA including, but not limited to, the rules and regulations promulgated from time to time by ALDOT and/or FTA as applicable to BJCTA;
- (b) All conditions beyond the reasonable control of BJCTA including but not limited to, Acts of God, hurricanes, matters of public safety, etc.;
- (c) The changing transportation needs of the City to the extent BJCTA can accommodate such needs; and

The times set forth in this Agreement and other matters regarding the providing of Transit Service are not guarantees; they are projected times for stops and starts and are subject to best efforts by BJCTA, including matters associated with traffic, accidents, etc.

3. **TERM.** This Agreement shall be effective as of the date hereof October 1, 2023 (the "**Commencement Date**") and shall, except as otherwise set forth herein or unless terminated in writing by either party, be completed on or before September 30, 2024 (the "**Expiration Date**"), which is the funding period for providing the Transit Service.

No later than March 1<sup>st</sup> of each year, the City shall file a written request for service setting forth the routes and frequency of service requested.

4. **TERMINATION.**

a. **Termination at Will.** This Agreement may be terminated by either party upon no less than thirty (30) calendar days' notice, without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

b. **Termination Due to Lack of Funds.** In the event funds from governmental sources relied upon to finance this Agreement become unavailable, the City or BJCTA may terminate this Agreement with no less than twenty-four (24) hours written notice to the other party and to the City. Notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. Notice shall be effective upon receipt.

c. **Termination for Breach.** Unless breach is waived by the City or BJCTA in writing, either party shall, in order to terminate this Agreement for breach, give the other party and the City written notice of the breach. If the breach is not cured within thirty (30) calendar days, the non-breaching party may terminate this Agreement. Notice shall be delivered by certified mail, return receipt requested.

requested, or in person with proof of delivery. Waiver by either party of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement and shall not act as a waiver or estoppel to enforcement of any provision of this Agreement. The provisions herein do not limit the City or BJCTA right to remedies at law or to damages.

5. **SERVICE SCHEDULE.** During the term of this Agreement, BJCTA may adjust the service schedule to better accommodate the overall Transit Service to be provided under this Agreement, after discussion with the City. Thus, for example, if a particular Bus Stop provides a safety hazard, then BJCTA, in cooperation with the City, could move that Bus Stop to a safer location.

6. **PAYMENT FOR TRANSIT SERVICE.** The City agrees to pay the BJCTA \$189,001.38 for providing transit services for the forthcoming fiscal year beginning October 1, 2023 through September 30, 2024. This sum represents 1995.58 service hours of Fixed Route transit services, as requested, at a rate of \$94.71 per hour. Invoices shall be billed at the beginning of each month in advance of the service being rendered. Payments are due the first day of each month and are considered late after the 15<sup>th</sup> day of the month.

If the City fails to make any monthly payment by the 15<sup>th</sup> day of the month as outlined above, the payment shall be deemed past due. Interest at 1.5% per month shall accrue daily on the past due amount, from the past due date until the date paid.

In that regard, the parties do hereby agree as follows:

a. For the purpose of invoicing, BJCTA will send monthly invoices and related matters to the City at the following address:

Attention: City Clerk  
City of Mountain Brook  
56 Church Street  
Mountain Brook, Alabama 35213

b. In any event, the obligation of BJCTA to provide the Transit Service is expressly contingent upon it receiving and only to the extent it receives the required Payments set forth above.

7. **SECURITY DEPOSIT.** No security deposit is required of the City under this Agreement.

8. **ADVERTISING.** The parties are aware and understand that BJCTA undertakes an advertising program on its buses and that BJCTA also does not specifically identify a specific bus on a specific route. From time to time, buses will be taken out of service for maintenance and repair and replacement, and future buses will also be used from time to time to provide the Transit Service. In addition, various rules (including FTA guidelines) provide for random assignment of buses with this background:

c. BJCTA will be entitled to place on the buses which it uses to provide the Transit Service, advertising from time to time.

APPENDIX 10

2

d. BJCTA shall have the right in its reasonable discretion as to what buses and the type of the buses that will be used to provide the Transit Service.

The foregoing assignments and other matters regarding the buses in the Transit Service will be subject in all respects to all applicable laws including FTA and ALDOT requirements.

9. **BOND.** The City shall not be required to furnish BJCTA with any bond or other collateral conditions for the faithful performance of the duties and due accounting for all monies received from the City under this Agreement.

10. **NON-ASSIGNABILITY.** This Agreement is not assignable by either Party without the prior written consent of the other Party.

11. **RELATIONSHIP OF OTHER PARTIES.** The Parties are aware and agree that the relationship between BJCTA and the City under this Agreement shall be that of an independent contractor and not an agent.

12. **NO THIRD-PARTY BENEFICIARY.** This Agreement is solely between the parties hereto and no person or persons not a party hereto shall have any rights or privileges whatsoever either as a third-party beneficiary or otherwise.

13. **NOTICE.** Any notice permitted to be given to either party under this Agreement shall be in writing and shall be deemed to be given (i) in the case of delivery, when delivered to the other party at the address set forth below, (ii) in the case of mailing, three (3) days after said notice has been deposited, postage pre-paid, in the United States mail and sent by certified or return receipt requested to the other party at the address set forth below and (iii) in all other cases when such notice is actually received by the party to whom it has been sent. Notices shall be sent to the following:

BJCTA: Charlotte Shaw  
Executive Director/CEO  
Birmingham-Jefferson County Transit Authority  
1801 Morris Avenue 2<sup>nd</sup> FL  
Birmingham, AL 35203

Copy: Glenn Dickerson  
Chief Financial Officer  
Birmingham-Jefferson County Transit Authority  
1801 Morris Avenue 2<sup>nd</sup> FL  
Birmingham, AL 35203

CITY: The Honorable Stewart H. Welch III, Mayor  
City of Mountain Brook  
56 Church Street  
Mountain Brook, AL 35213

Either party may change the address to which any notices are to be given by so notifying the other party to this Agreement as provided in this paragraph.

5

n. **Adjustment of Bus Routes.** The parties are aware and understand that with respect to any adjustment or modification of Transit Service, BJCTA will be required to follow State and Federal guidelines relating to adjustments and modification of Transit Service. This will generally require a minimum of sixty (60) days in order to provide various required public notices.

i. **Capital Requirements (i.e., Buses).** BJCTA has generally planned for adequate buses to provide the Transit Service. If, at any time, BJCTA experiences a material shortfall or lack of buses to provide the Transit Service, BJCTA will immediately discuss with the City such situation and how it is to be resolved. The matter will also be brought to the attention of the Board of Directors of BJCTA and the Parties will seek to arrive at a solution to provide such additional bus capacity. In doing so, the parties are aware that any solution would not necessarily involve BJCTA moving buses from its other public routes. BJCTA, through its Board of Directors, will have in its reasonable discretion the ability to deal with such situation.

o. **Default/Notice/Procedure to Resolve Disputes.** The parties understand and are aware that this Agreement is between two entities who mutually desire for the beneficial providing of the Transit Service under this Agreement and wish to avoid any default or misunderstandings. Thus, in the event one Party hereto believes that the other Party is in default under this Agreement, the other Party through a senior representative shall contact a senior representative of the other Party in an effort to discuss and resolve any alleged default or nonperformance. Failing such resolution, said Party will then be required to give actual written notice to the other party of said alleged default before said Party may exercise any of the rights available to it under this Agreement. With this background, the City is aware and specifically understands that the scope and quantity of the Transit Service being made available to it, is based upon the amount received from the city. Thus, for example, if the City should fail to pay the requisite Payments, BJCTA could seek to enforce that payment but, at its option, could also reduce in its discretion the Transit Service specifically within the Service Area.

p. **Service Within and Outside the Service Area.** The Transit Service to be provided by BJCTA under this Agreement covers Bus Routes that are located within the Service Area, as more particularly set forth in **Exhibit "A"**. BJCTA is not obligated to provide the Transit Service outside the Service Area, unless otherwise agreed between the parties through an amendment to this Agreement.

q. **Independent Contract as To Employees of BJCTA.** BJCTA is an independent contractor and retains the right to exercise full control and supervision over its employees and their compensation and discharge. BJCTA will be solely responsible for all matters relating to payment of its employees, including but not limited to the withholding and payment of employee taxes, insurance contributions, placement of insurance and pension coverages and the like.

16. **BOARD APPROVAL.** This Agreement is subject to the approval by the BJCTA Board of Directors.

17. **COMPLETE AGREEMENT.** This Agreement constitutes the complete agreement between the parties hereto with respect to the management and distribution of the services contemplated herein and it may not be amended, changed or modified except by in writing and signed by the party to be charged by said amendment, change or modification subject to the following:

14. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama. The parties further agree that the exclusive venue and jurisdiction over any action arising under this Agreement shall be in the courts of Jefferson County, Alabama. Each party expressly waives any right to a jury trial.

#### 15. MISCELLANEOUS CLAUSES.

e. **Sovereign Immunity.** Each party hereto is a government agency entitled to sovereign immunity under the laws of the State of Alabama. Nothing contained in this Agreement, the relationship between the parties hereto, the providing of the Transit Service, or otherwise shall in any way whatsoever constitute any waiver by BJCTA or the City of its rights to invoke sovereign immunity as a governmental entity.

f. **Force Majeure.** The rights and obligations and duties of the parties hereunder shall be subject to any causes beyond their reasonable control including, but not limited to, Acts of God, hurricanes, storms, and, in the case of BJCTA, government regulations and directives applicable to it.

g. **Time of Essence.** The parties recognize that time is of the essence in the performance of the provisions of this Agreement provided, however, in regard to the providing of Transit Service, that is subject to the qualifications set forth in this Agreement.

h. **Legal Obligations.** This Agreement shall not relieve any party of any obligation or responsibility imposed upon it by law.

i. **No Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party or parties claimed to have waived or consented. Waiver of any default of this Agreement shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of such default and waiver of such breach shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written approval of all parties.

j. **Benefits of Service.** The Payments to be paid by the City to BJCTA are net, and shall not be reduced based upon any other funding or benefits that BJCTA may receive including, but not limited to, ad valorem taxes, other contributions by the City and any funding that BJCTA receives from the FTA as a part of its overall ridership total.

k. **No Oral Modification.** The parties agree that this Agreement is a complete expression of the terms herein and any oral or written representations or understandings not incorporated herein are excluded.

l. **Severability.** If any of the provisions of this Agreement are held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. To that end, the provisions of this Agreement are declared to be severable.

m. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement, to produce or account for more than one (1) of such counterparts.

6

r. Modifications that are anticipated to result in no increase to BJCTA's operational cost per revenue hour (see Cost of Transit Service) require only the concurrence of the BJCTA's Executive Director and the approval of the City.

s. Modifications that are anticipated to result in an increase to BJCTA's operational cost per revenue hour (see Cost of Transit Service) require the approval of the BJCTA's Board of Directors and the City.

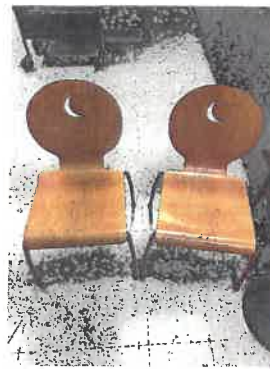
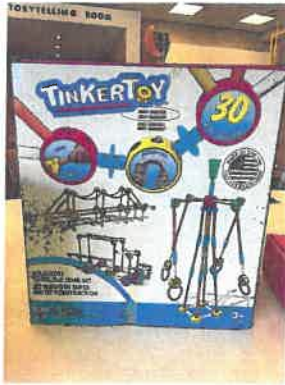
(THIS SECTION IS LEFT BLANK INTENTIONALLY)



Kids Chairs – 2, broken, to go in trash

## Surplus

Magnetic Fishing game, Tinker toy set, Bos of assorted magnetic Tegu block



Paper Shredder - 1



## Tool



## Tables - 2



## Athletic field striping machine – 1



## Table – 1, 18" x 60"







## Document G701' - 2017

## MINUTE BOOK 33

Exhibit  
October 3, 2023

1037

## Change Order




<b>PROJECT: (Name and address)</b> Jemison Trail Mountain Brook, AL	<b>CONTRACT INFORMATION:</b> Contract For: General Construction Date: May 22, 2023	<b>CHANGE ORDER INFORMATION:</b> Change Order Number: 003 Date: October 3, 2023
<b>OWNER: (Name and address)</b> The City of Mountain Brook 56 Church Street Mountain Brook, AL 35213	<b>ARCHITECT: (Name and address)</b> Nimrod Long and Associates, Inc. 880 Montclair Road, Ste 235 Birmingham, AL 35213	<b>CONTRACTOR: (Name and address)</b> C.S. Beatty Construction, Inc. 1 Civitan Place Birmingham, AL 35213

**THE CONTRACT IS CHANGED AS FOLLOWS:**  
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)  
See Exhibit A, attached for description of Contract Changes.

The original Contract Sum was	\$ 3,330,735.00
The net change by previously authorized Change Orders	\$ -179,973.00
The Contract Sum prior to this Change Order was	\$ 3,150,762.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 7,303.50
The new Contract Sum including this Change Order will be	\$ 3,158,065.50
The Contract Time will be unchanged by Zero (0) days.	
The new date of Substantial Completion will be unchanged.	

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

## NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<b>Nimrod Long and Associates, Inc.</b> <b>ARCHITECT</b>  <b>SIGNATURE</b> Joel Eliason, President <b>PRINTED NAME AND TITLE</b> October 5, 2023 <b>DATE</b>	<b>C.S. Beatty Construction, Inc.</b> <b>CONTRACTOR (Print name)</b>  <b>SIGNATURE</b> Craig Beatty, Manager <b>PRINTED NAME AND TITLE</b> 10/6/2023 <b>DATE</b>	<b>The City of Mountain Brook</b> <b>OWNER (Print name)</b>  <b>SIGNATURE</b> Sam Gaston, Mayor <b>PRINTED NAME AND TITLE</b> 10-9-2023 <b>DATE</b>
--	--	---

Item	Description	Quantity	Unit	Add/Reduce	Total
1	Credit for Trail Asphalt Paving in Contract	1	LS	\$ (837,680.00)	\$ (837,680.00)
	Credit for Asphalt Paving per Item 2 of Change Order No. 2	1	LS	\$ (9,775.00)	\$ (9,775.00)
	Credit for Asphalt Paving per Item 6 of Change Order No. 2	1	LS	\$ (8,850.00)	\$ (8,850.00)
	3.5" of Baby Binder	1	LS	\$ 292,150.00	\$ 292,150.00
	<b>Total Credits:</b>			<b>\$ (643,155.00)</b>	
	<b>Revised Grading (Phase I Only)</b>	1	LS	\$ 15,000.00	\$ 15,000.00
	#24 Stone (Furnished & Installed on Phase I & Phase II Only)	375	Tons	\$ 75.00	\$ 28,125.00
	a. Biller amount based on tons delivered.				
	b. Additional change order required if amount exceeds 375 tons.				
2	Cost to add 4" back to subgrade on Phase I and subgrade on Phase II and proposed trail with layer of #24 stone & B910	375	Tons	\$ 38.00	\$ 14,250.00
	a. Biller amount based on tons delivered.				
	b. Additional change order required if amount exceeds 375 tons.				
	<b>Total Add:</b>			<b>\$ 97,375.00</b>	
	<b>Silt Fence Credits</b>	1396	LF	\$ 3.75	\$ (5,132.50)
	Triple Stack Wattles	892	LS	\$ 18.00	\$ 16,056.00
	<b>Total Add:</b>			<b>\$ 10,923.50</b>	
3	Cost to Substitute Triple Stack Wattles for Silt Fence Around Trail (Phase I & II Only)	1	LS	\$ 3,000.00	\$ 3,000.00
	Additional Tree Removal	1	LS	\$ 1,150.00	\$ 1,150.00
	<b>Total Add:</b>			<b>\$ 4,150.00</b>	
	<b>Total Change Order Add:</b>			<b>\$ 7,303.50</b>	

AIA Document G701 - 2017. Copyright © 1978, 1987, 2000, 2001 and 2017. All rights reserved. "The American Institute of Architects." "American Institute of Architects." "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 11:50:10 ET on 10/05/2023 under Order No.2114484474 which expires on 08/24/2024. It is not for resale, is loaned for one-time use only, and may only be used in accordance with the AIA Contract Documents' Terms of Service. To report copyright violations, e-mail: [copyright@aiacontracts.com](mailto:copyright@aiacontracts.com).  
User Notes: (388AD2434)

DocuSign Envelope ID: ABAFD746-22DD-47D8-9032-6648FA0B4A70

CSBeatty  
CONSTRUCTION  
Change Order No. 3

10/6/23, 11:07 AM

City of Mountain Brook Mail - RE: Jemison Trail



Sam Gaston &lt;gastons@mtnbrook.org&gt;

## RE: Jemison Trail

1 message

Joel Eliason <jeliason@nimrodlong.com>  
To: Sam Gaston <gastons@mtnbrook.org>  
Cc: Dave Giddens <dggiddens@nimrodlong.com>, Nimrod Long <nimrod@nimrodlong.com>, Craig Beatty <cbeatty@csbeatty.com>, Casey Dunn <cdunn@csbeatty.com>  
Fri, Oct 6, 2023 at 10:52 AM

Change Order #003 includes the following changes:

Changes to the asphalt paving detail required to reinforce subgrades that are unsuitable and changes to volume of subgrade fill material required due to removal of multiple layers of concrete at the existing trail.  
Change from traditional silt fence to wattles to preserve root systems at existing trees.  
Cost for trail closure signs requested by the Parks Department.  
Cost for removal of dead trees requested by the Parks Department.

All see you Monday at 6:15.

Joel Eliason, ASLA  
President  
Nimrod Long and Associates, Inc.  
880 Montclair Road, Suite 235  
Birmingham, AL 35213  
(205) 323-8072 office  
(205) 307-8882 mobile

## Original Message

From: Sam Gaston <gastons@mtnbrook.org>  
Sent: Friday, October 6, 2023 10:39 AM  
To: Joel Eliason <jeliason@nimrodlong.com>  
Cc: Dave Giddens <dggiddens@nimrodlong.com>, Nimrod Long <nimrod@nimrodlong.com>, Craig Beatty <cbeatty@csbeatty.com>, Casey Dunn <cdunn@csbeatty.com>  
Subject: RE: Jemison Trail

Can you email me a brief explanation of the change order?

Sam S. Gaston  
City Manager  
City of Mountain Brook, AL.  
56 Church Street  
P.O. Box 130009  
Mountain Brook AL. 35213  
(205) 802-3803 Phone  
[www.mtnbrook.org](http://www.mtnbrook.org)

## Original Message

From: Joel Eliason [mailto:jeliason@nimrodlong.com]  
Sent: Friday, October 06, 2023 10:16 AM  
To: Sam Gaston <gastons@mtnbrook.org>  
Cc: Dave Giddens <dggiddens@nimrodlong.com>, Nimrod Long <nimrod@nimrodlong.com>, Craig Beatty <cbeatty@csbeatty.com>, Casey Dunn <cdunn@csbeatty.com>  
Subject: RE: Jemison Trail

CO #003 is attached. Let me know what time I need to be at pre-Council Monday. Thank you,

APPENDIX 12

October 9, 2023