

**MEETING AGENDA OF THE  
MOUNTAIN BROOK CITY COUNCIL**

**CITY HALL COUNCIL  
56 CHURCH STREET, MOUNTAIN BROOK, AL 35213**

**APRIL 27, 2020, 7:00 P.M.**

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

**Due to COVID-19 and the mandate that public gatherings of 10 or more are not permitted, the City Council shall convene by way of electronic communications and public attendance at the meeting will not be permitted. Therefore, should anyone wish to listen, observe or participate in the City Council meetings of April 27, 2020 at 7 p.m., please join by way of the Zoom app (re: Meeting ID 980-5272-9155, password 605756).**

1. Approval of the minutes of the April 13, 2020, regular meeting of the Mountain Brook City Council.
2. Consideration: Resolution adopting the investment policy statement for the City of Mountain Brook Section 115 Trust Agreement (retiree medical other post-employment benefit (OPEB) plan).
3. Consideration: Resolution amending the City of Mountain Brook Employee Handbook with respect to the firefighter holiday leave.
4. Consideration: Resolution approving the sidewalk cafe permit application for Crafts (formerly Miss Dot's), subject to the approval by the City's inspection staff and City Attorney for compliance with provisions of the City Code with respect to indemnification and related requirements.
5. Consideration: Resolution awarding the bid for street resurfacing and authorizing the execution of a 3-year contract for same.
6. Consideration: Resolution authorizing the execution of an amendment to the construction contract between the City and Morris-Shea Bridge Company (Resolution No. 2019-078) with respect to the installation of a retaining wall at the Athletic Complex.
7. Consideration: Awarding the bid for the purchase interlocking stone blocks for an additional retaining wall at the Athletic Complex.
8. Announcement: The next regular meeting of the City Council is May 11, 2020, at 7:00 p.m. in the Council Chamber of City Hall located at 56 Church Street, Mountain Brook, AL 35213.
9. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL  
PRE-MEETING DISCUSSION  
APRIL 13, 2020**

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

The City Council of the City of Mountain Brook, Alabama met informally by way of Internet conference on the 13th day of April, 2020. The Council President called the pre-meeting to order and the roll was called with the following results:

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

**Absent:** None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

**1. AGENDA**

1. Engagement of bond counsel for anticipated debt issuance—Steven Boone (Resolution No. 2020-050 was added to the formal meeting agenda.)
2. Revision of the City's OPEB Trust investment policy and selection of investment advisor—Steven, Boone (Resolution No. 2020-051 was added to the formal meeting agenda. The investment policy statement will be presented to the City Council for consideration on April 27, 2020.)
3. Citations for violations of COVID19 Social Distancing directives—Chief Cook, Appendix 1 (Each elected official expressed their support for the Police Department to begin issuing misdemeanor citations to persons violating the distance orders.)
4. Additional retaining walls at the Athletic Complex—Shanda Williams, Appendix 2 (Ms. Williams will proceed with the invitation to bid and it is contemplated that the bid award shall be formally considered by the City Council on April 27, 2020.)
5. Conditional Use for MPower Fitness, 2419 Canterbury Road—Dana Hazen. The members of the City Council expressed concern about the requested 11 a.m. and noon class request due to lunchtime parking demand and suggested a compromise of 10:30 a.m. and 1:30 p.m. with no music. The compromise was acceptable to the applicant, Ms. Emma Suttles, as well as Cathy and Carolyn Kelley, owners of The White Room. The Kelley's requested that MPower patrons park on Heathermoor Road to which Ms. Suttles stated she will ask her clients to do so. Resolution No. 2020-046 was added to the formal meeting agenda.)
6. Review of the other matters to be considered at the formal (7 p.m.) meeting. The proposed professional services agreement presented by Edmonds Engineers, Inc. to study Fire Station Nos.

2 and 3 (Appendix 3) was tabled. Council member Black questioned the need for these facility assessments as these facilities are likely obsolete and to be reconstructed within the next few years. Council member Black, City Manager and Fire Chief were asked to meet with Edmonds Engineering, Inc. representatives for further study and evaluation. All other matters were determined to be considered at one time on a consent agenda.

## **2. ADJOURNMENT**

There being no further matters for discussion, Council President Smith adjourned the pre-meeting at approximately 6:55 p.m.

## **3. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the work session of the City Council of the City of Mountain Brook, Alabama held by way of Internet teleconference on April 13, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

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City Clerk  
Approved by City Council April 27, 2020

**MINUTES OF THE REGULAR OF THE  
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK  
APRIL 13, 2020**

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

The City Council of the City of Mountain Brook, Alabama met in public session by way of Internet teleconference at 7:00 p.m. on the 13th day of April, 2020. The Council President called the meeting to order and the roll was called with the following results:

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

**Absent:** None

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Steven Boone.

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

**1. CONSENT AGENDA**

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

Approval of the minutes of the March 23 2020, regular meeting of the City Council

<b>2020-043</b>	Amend the City of Mountain Brook Employee Handbook with respect to the firefighter vacation and sick leave accrual rates	Exhibit 1, Appendix 1
<b>2020-044</b>	Reappoint Turner Williams as municipal court judge with the term to end April 13, 2022	Exhibit 2
<b>2020-045</b>	Authorize the execution of the professional services agreement between the City and Caprine Engineering, LLC with respect to the feasibility of constructing a new fire station on the existing site (3785 Locksley Drive)	Exhibit 3, Appendix 2
<b>2020-046</b>	Approve the conditional use application for MPower Fitness located at 2419 Canterbury Road to include fitness classes on weekdays at 10:30 a.m. and 1:30 p.m. with no music allowed, such conditional approval permitted once the COVID19 restrictions are lifted until school resumes	Exhibit 4, Appendix 3
<b>2020-047</b>	Authorize the execution of a professional services agreement between the City and Sain Associates with respect to additional services (Birmingham plat and right-of-way acquisition) for the roundabout project (CMAQ-3715(266))	Exhibit 5, Appendix 4

<b>2020-048</b>	Authorize the execution of a professional services agreement between the City and Schoel Engineering Company, Inc., with respect to the South Brookwood drainage project	Exhibit 6, Appendix 5
<b>2020-049</b>	Authorize the 1) temporary waiver of the City's Home Occupation license requirements and 2) waiver of penalties for the delinquent filing and remittance of taxes resulting from logistical issues with respect to third-part tax providers and/or employee availability, schedule and access to accounting records	Exhibit 7
<b>2020-050</b>	Accept the professional services proposal submitted by Maynard, Cooper & Gale, PC with respect to legal services as bond counsel for the City	Exhibit 8, Appendix 6
<b>2020-051</b>	Accepts the financial services proposal submitted by Regions Investment Management (RIM) with respect to the management of the City's Section 115 Retiree Medical (OPEB) Trust investments	Exhibit 9, Appendix 7
<b>2020-052</b>	Appoint Marjorie K. Colvin to the Jefferson-Blount-St. Clair Mental Health Authority to serve without compensation through April 13, 2026	Exhibit 10, Appendix 8

Thereupon, the foregoing minutes and resolutions were introduced by Council President Smith and a motion for their immediate adoption made by Council member Black. The minutes and resolutions were then considered by the City Council. Council President announced that she shall recuse herself from Resolution No. 2020-050. Council President Pro Tempore Pritchard 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 Smith, Council President (with the exception of Resolution No. 2020-050)  
William S. Pritchard III, Council President Pro Tempore  
Philip E. Black  
Lloyd C. Shelton  
Alice B. Womack

Nays: None

Abstained: None

Council President Smith thereupon declared that said minutes and resolutions (Nos. 2020-043 through 2020-049, 2020-051, and 2020-052) were adopted by a vote of 5—0 and that Resolution No. 2020-050 was adopted by a vote of 5—0 and as evidence thereof she signed the same.

## 2. ANNOUNCEMENTS

The next regular meeting of the City Council will be April 27, 2020, at 7:00 p.m. with the location and means to be determined and announced at a later date.

## 3. ADJOURNEMENT

There being no further business or matters for discussion, Council President Smith adjourned the meeting at approximately 7:10 p.m.

**4. CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct transcript of the regular meeting of the City Council of the City of Mountain Brook, Alabama by Internet teleconference on April 13, 2020, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that a quorum was present.

\_\_\_\_\_  
 City Clerk  
 Approved by City Council April 27, 2020

**EXHIBIT 1**

**RESOLUTION NO. 2020-043**

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

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

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

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

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

**“V. LEAVES**

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

**A. Vacation Leave**

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

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

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

**RESOLUTION NO. 2020-053**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, constituting the governing board of the City of Mountain Brook Section 115 Trust Agreement (“Trust”), hereby adopts and approves the Investment Policy Statement of the Trust, in the form as attached hereto as Exhibit A, and,

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama that the Mayor and/or Appointing Authority of the City is/are hereby authorized and directed, for an on behalf of the City Council and governing board of the Trust to execute new account forms, applications and such other documents required by Regions Investment Management (Investment Advisor authorized upon the adoption of Resolution No. 2020-051).

**ADOPTED:** This 27th day of April, 2020.

\_\_\_\_\_  
Council President

**APPROVED:** This 27th day of April, 2020.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on April 27, 2020, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

# INVESTMENT POLICY STATEMENT

## The City of Mountain Brook Section 115 Trust Agreement April 27, 2020

This Investment Policy Statement (“Policy”) is intended to govern the investment practices of the assets of The City of Mountain Brook Section 115 Trust Agreement (“Trust”), so that all individuals with either direct or indirect responsibility may understand and manage investment assets, hereafter referred to as the “Trust”.

This Policy addresses the following:

- The general goals of the Trust
- The specific investment objectives of the Trust
- Asset allocation and rebalancing policies
- Measurement and evaluation of investment performance
- Policies and guidelines for Investment Managers

### A. Policy

Trust assets will be managed on a total return basis while considering the level of liquidity required. The Mountain Brook City Council recognizes the importance of the long-term preservation of capital, but also adheres to the principle that varying degrees of investment risk are generally rewarded with commensurate returns over the long term. Therefore, investments with different types and degrees of risk are appropriate for the Trust, provided that such risks are regularly identified and managed.

### B. Roles and Responsibilities

The City Council is authorized to delegate certain responsibilities to professional experts in various fields, including the flexibility to retain, terminate, or replace an Investment Manager. This delegation of authority allows for sufficient flexibility in the management process to capture investment opportunities as they arise

The City Council is responsible for:

1. Establishing and maintaining the Investment Policy Statement and Target Asset Allocation.
2. Monitoring the performance and risk profile of the Trust.
3. Reviewing the Investment Consultant’s implementation of the investment program.
4. Hiring, terminating, or replacing the Investment Consultant.
5. Reviewing and addressing all potential conflicts of interest.

The Investment Consultant is responsible for:

1. Selecting, rebalancing, terminating, and making tactical shifts between Investment Managers.
2. Monitoring the appropriateness of each Investment Manager’s strategy given the overall investment strategy, philosophy, and objective.
3. Monitoring the investment performance of each Investment Manager relative to its established benchmark and peer group.

4. Overseeing Trust assets and reporting on the status of the investments to the City Council or its designees.
5. Sourcing and managing the liquidity needs of the Trust as it relates to both periodic withdrawals and contributions.

### C. Investment Goals and Objectives

#### Background

In June 2004, the Governmental Accounting Standards Board (GASB) issued GASB Statement 45, Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions (OPEB). GASB 45 is an accounting and financial reporting provision requiring governmental employers to measure and report the liabilities associated with other (than pension) postemployment benefits (OPEB).

GASB 45 requires: (1) recognition of the cost of benefits in periods when the related services are received by the employer. Benefits may include medical, dental, vision, hearing, life, and other health related benefits; (2) certain financial statement reporting and notes; (3) an actuarial study every 2 years for organizations to determine the annual required contribution (ARC); and (4) reserving funds to cover retiree post-employment benefits. An irrevocable trust fund is recommended by GASB 45 but is not a requirement of GASB 45. However, properly funding the trust will reduce the organization's long-term post-employment benefit liability.

#### Return

The expected return objective for the portfolio is to provide an annualized total return, net of fees, equivalent to 5.5% over a full market cycle, which is defined as a seven to ten-year time period. Additionally, the City Council has set a goal of outperforming, net of all investment expenses, a blended market index which best represents the strategic asset allocation of the Trust's overall investment structure.

Blended Total Portfolio Benchmark (based on the asset allocation described in Section D below):

<del>50.00</del> 65.00%	S&P 500 Value
<del>50.00</del> 35.00%	Barclay's Capital U.S. Aggregate Bond Index

- The **S&P 500 Value Index** is a market-capitalization-weighted index developed by Standard and Poor's. The Index represents the value companies of the S&P 500 Index, a widely recognized benchmark of U.S. stock market performance that is dominated by the stocks of large U.S. companies. The index looks to track the value companies of the S&P 500 as identified by the following factors: book value to price ratio, earnings to price ratio, and sales to price ratio.
- The **Barclays Capital U.S. Aggregate Bond Index** is the most common index used to track the performance of investment grade bonds in the U.S. The Index is weighted according to market capitalization. Treasury securities, mortgage-backed securities (MBS) foreign bonds, government agency bonds and corporate bonds are some of the categories included in the index. The bonds represented are medium term with an average maturity of approximately 4.5 years. In all, the index represents about 8,200 fixed-income securities with a total value of approximately \$15 trillion (about 43% of the total U.S. bond market). To be included in the index, bonds must be

rated investment grade (at least Baa3/BBB) by Moody's and S&P. However, almost 80% of bonds represented in the index have an AAA rating.

## Risk

Higher returns involve higher volatility and the City Council is willing to tolerate some volatility (based on the target allocation of the Trust) to meet its long-term total return objectives. However, it is intended that the Trust assets be managed and diversified in a manner that seeks to minimize principal fluctuations over the established time horizon. The Trust should experience risk as measured by volatility or variability of return not materially higher than that of the blended benchmark as defined above.

The investment goals above are the objectives of the aggregate Trust, and are not meant to be imposed on each Investment Manager.

## D. Asset Allocation

Diversification across asset classes is a core principle of prudent portfolio management. Academic research suggests that the decision to allocate assets among various asset classes will far outweigh security selection and other decisions that impact portfolio performance. The asset class targets and ranges below show the approved investment levels associated with the Trust's investment objectives. Within each of these asset categories, sub asset classes and strategies, which are expected to act and react in combination, will be used. With regards to equity allocation, the portfolio will focus on domestic large cap dividend focused strategies. The portion of the Trust invested in each sub-class and strategy will change periodically to reflect the Investment Manager's and or Investment Consultant's tactical investment policy so long as it is within the acceptable ranges listed. Any proposed investment changes outside these ranges must be approved by the Finance Committee prior to being implemented. Asset allocation targets and ranges should be reviewed by the Finance Committee annually.

### Target Asset Allocation

	Tactical Minimum	Strategic	Tactical Maximum
<b>Global Equity</b>	<b>55%</b>	<b>65%</b>	<b>75%</b>
U.S. Large Cap Equity	55%	65%	75%
U.S. Small/Mid Cap Equity	0%	0%	0%
Non-U.S. Equity	0%	0%	0%
<b>Global Fixed Income</b>	<b>25%</b>	<b>35%</b>	<b>45%</b>
U.S. Investment Grade Bonds	25%	35%	45%
Non-U.S. Bonds	0%	0%	0%
High Yield Bonds	0%	0%	0%
TIPS	0%	0%	0%
<b>Cash</b>	<b>0%</b>	<b>0%</b>	<b>5%</b>

From time to time, market conditions may cause the portfolio's investments to vary from the established target allocations. To remain consistent with the asset allocation guidelines established by this Policy, each broad asset class (as defined above) in which the Trust invests shall be reviewed periodically for potential rebalancing back to target or initial allocations. The Investment Consultant retains the ability to not rebalance the Trust back to target or initial allocations based on market conditions, economic events or account activity if allocations remain within the permissible ranges.

Further liquidity guidelines: Investments may be made through a combination of externally managed portfolios (separately managed accounts / models), commingled funds, and partnerships with various liquidity terms. At all times, 100% of the Trust should offer daily liquidity.

## **E. Asset Class Guidelines**

1. **Cash** is intended to serve as the principal source of liquidity for operating cash flow for the Trust. It will be invested in only the safest assets including Treasury bills, Agency notes, or very safe money market instruments that focus on Treasury bills and equivalents. The focus is on safe, highly liquid assets as opposed to generating significant yield. There are no manager-specified limits for cash.
2. The purpose of the **Fixed Income** allocation will be to (i) provide current income to support operating cash flow, (ii) provide capital stability during uncertain economic times, and (iii) to provide overall portfolio diversification. As a result, both credit quality and preservation of principal will be a core emphasis of this allocation thus positions in investment grade securities issued by sovereign governments, corporations and/or financial institutions will be core holdings within the fixed income portfolio.
3. The purpose of the **Equity** allocation is to provide long-term capital appreciation. The objective in selecting equity managers is to generate average annual compounded returns higher than the relevant broad market indices (i.e., S&P 500 Value), net of fees, over full market cycles (7-10 years). However, these returns are subject to significant variability over short- to medium-time periods of less than five years.

## **F. Restrictions**

1. There shall be no short-selling, options trading, financial futures, securities lending, or other specialized investment activity without prior approval of the City Council, except as a purchase of another security or as part of an open-end investment company registered under the Investment Company Act of 1940.
2. There shall be no non-marketable, direct investments in equity or debt private placements or leasebacks.
3. The Trust may not, invest in separate accounts, open-end investment companies, or other commingled funds whose primary investment strategies do not follow the guidelines set forth in this statement.

## **G. Cash Flows and Rebalancing**

Interest and dividends generated by Investment Managers will generally be re-invested according to the Investment Manager's mandate. The Investment Consultant will be responsible for making choices about additions or withdrawals to or from different Investment Managers, as per Section B (Roles and Responsibilities) as well as Section E (Asset Allocation).

## **H. Meeting Schedule**

The Investment Consultant will meet with the City Council or Finance Committee, at the City Council's discretion, in person or via conference call generally once a year, and at other times deemed necessary by the City Council and/or Finance Committee, to review the performance and Trust's compliance with Investment Policy objectives and guidelines.

## **I. Policy Review**

This Investment Policy Statement will be reviewed periodically by the Finance Committee, at the request of the City Council, who shall advise the City Council that such Investment Policy should be either reaffirmed or amended.

Adopted this day \_\_\_\_\_

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

\_\_\_\_\_

**RESOLUTION NO. 2020-054**

Field Code Changed

**AMENDMENT TO THE CITY'S EMPLOYEE HANDBOOK WITH RESPECT TO THE HOLIDAY LEAVE POLICY AND MAXIMUM ACCUMULATED COMPENSATORY TIME**

WHEREAS Personnel Board of Jefferson County (PBJC) Rules 13.8 sets forth the holiday leave policies to be followed by participating employers unless a policy to the contrary has been adopted and filed with PBJC; and

WHEREAS it has been determined that the holiday accrual factor for certified firefighter personnel is ambiguous and therefore subject to misinterpretation; and

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

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama that Section VI of the City's "Employee Handbook" is hereby amended as follows:

**VI. LEAVES**

Field Code Changed

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

**A. Holidays**

Beginning January 1, 2008, permanent status employees are given the following paid holidays each year:

New Year's Day	January 1
Martin Luther King, Jr. Day	3rd Monday in January
Washington's Birthday	3rd Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veterans Day	November 11
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving Day	4th Friday in November
Christmas Eve	December 24
Christmas Day	December 25
Personal Holiday	(As approved by Department Head)

When one of the holidays falls on a Saturday or Sunday, the holiday will generally be observed on the Friday before or the Monday after the holiday, respectively. When a Friday or Monday is designated as the day to observe a weekend holiday, the designated day becomes the holiday for pay purposes.

Non-exempt employees who are required to work on a holiday ~~will receive eight (8) hours of time off for the holiday, in addition to their regular pay for that day, or they will be given eight (8) hours of compensatory time to be take at a later date shall be awarded eight (8) hours (or the equivalent thereof in the case of firefighters) at his regular hourly rate or eight (8) hours (or the equivalent thereof in the case of firefighters) of Compensatory Time, in addition to the employee's regular pay for the day.~~

Exempt employees who are required to work on a scheduled holiday will be given eight (8) hours (or the equivalent thereof in the case of firefighters) of compensatory time in lieu of the holiday. (Due to different work schedules in some departments, the policy in effect may differ from that previously stated).

If a recognized holiday falls on an employee's regularly scheduled off-day and the employee takes the full day off, the employee shall be awarded eight (8) hours pay (or the equivalent thereof in the case of firefighters) at his regular hourly rate or eight (8) hours (or the equivalent thereof in the case of firefighters) of Compensatory (Holiday) Time. If a recognized holiday falls on an employee's regularly scheduled off-day and the employee takes only part of the day off, the employee shall be paid for the hours worked, plus either eight (8) hours (or the equivalent thereof in the case of firefighters) pay at his regular hourly rate or eight (8) hours (or the equivalent thereof in the case of firefighters) of Compensatory (Holiday) Time.

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Employees crediting holiday time for later use shall only be allowed to accumulate up to eighty (80) hours (103.38 for firefighters). After the accumulation of 80 hours (or 103.34 for firefighters) of Compensatory (Holiday) Time off, any overtime work will be paid.

If an employee's regular work day is more than eight (8) hours and the employee takes the full day off for the holiday without adjusting their schedule during the 40-hour or other work period, the employee shall be granted eight (8) hours (or the equivalent thereof for firefighters) of holiday pay and shall be charged accrued vacation or Compensatory Time, if any, for the balance.

Any employee scheduled to work on a holiday that reports-in sick on such holiday may be required by their supervisor or Department Head to provide a doctor's excuse or otherwise be charged for the holiday taken as opposed to being granted sick leave. Without prior approval, an employee who does not report to work on the scheduled work day just prior to and/or immediately following a holiday will not be paid for such holiday.

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama accumulated firefighter holiday leave time previously banked based on an eight (8) hour per holiday basis shall be converted to a 10.34 hour equivalent when paid at the 26-day work period hourly rate of pay that the above policy amendment shall become effective on May 1, 2020; and

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama that Section III. E. 5. of the "Employee Handbook" is hereby amended as follows:

#### 5. Overtime, Stand-by and Call-Back Pay

Compensation for overtime work is governed by the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Overtime work performed by non-exempt employees will be compensated at a rate of 1-1/2 times the employee's regular rate of pay. No overtime work may be performed by an employee without prior authorization of his or her Department Head. Unapproved overtime work may result in disciplinary action, up to and including discharge.

By agreement with the City Manager or the Department Head, an employee may be granted compensatory time off in lieu of compensation for overtime hours worked. If such an agreement is reached, a non-exempt employee will be allowed compensatory time off equal to 1-1/2 times the amount of overtime worked. For example, if a non-exempt employee worked two (2) hours of overtime, he or she would be entitled to three (3) hours of compensatory time off. An exempt employee who is receiving straight time compensation for hours worked in excess of his/her normally

scheduled work period is entitled to compensatory time off equal to the actual number of hours worked in excess of his/her normally scheduled work period.

If an employee elects to receive compensatory time off, he or she will only be allowed to accumulate up to eighty (80) hours (103.38 for firefighters). After the accumulation of 80 hours (or 103.38 for firefighters) of compensatory time off, any overtime work will be paid. ~~Employees with an accumulated compensatory time off balance in excess of eighty (80) hours as of the date this Employee Handbook is adopted may continue to carry forward and use such accumulated compensatory time off but will be paid for all future overtime work until the balance falls below the 80 hour threshold.~~

In anticipated emergency situations, all time during which an employee is asked to hold over at his or her duty station will count as hours worked in that work period. In the event or anticipation of an emergency, an employee asked to be available to return to work after his or her normal duty hours will be credited with one (1) hour of overtime for each full eight (8) hours of stand-by time. Eligibility for stand-by pay shall be based upon the employee receiving express instructions from his or her supervisor or Department Head to be able to be located and to be available to return to work in anticipation of an emergency situation. In the event an employee is called back to work while off-duty, the employee will be credited with overtime for all hours worked, including the time the employee spends commuting to their duty station. An employee who is called back to work while off-duty is guaranteed a minimum of two (2) hours of overtime credit."

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

**ADOPTED:** This 27th day of April, 2020.

\_\_\_\_\_  
Council President

**APPROVED:** This 27th day of April, 2020.

\_\_\_\_\_  
Mayor

#### CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on April 27, 2020, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**RESOLUTION NO. 2020-055**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the application of Craft's located at 49 Church Street (formerly Miss Dot's), for a permit to operate a sidewalk cafe' is hereby approved, subject to adherence to the recommendations of the City's Village Design Review Committee (attached hereto), review and approval by the City's inspection staff and the City Attorney for compliance with provisions of the City Code pertaining to indemnification and related requirements.

**ADOPTED:** This 27th day of April, 2020.

\_\_\_\_\_  
Council President

**APPROVED:** This 27th day of April, 2020.

\_\_\_\_\_  
Oden, Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on April 27, 2020, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk



CITY OF MOUNTAIN BROOK

P. O. Box 130009  
Mountain Brook, Alabama 35213-0009  
Telephone: 205.802.2400  
[www.mtnbrook.org](http://www.mtnbrook.org)

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## Memo

To: Mayor, Council, and City Manager

From: Dana Hazen, City Planner

Date: April 27, 2020

Subject: Hold Harmless Agreement for Craft's on Church Street-  
49 Church Street

Mrs. Dots on Church Street in Crestline Village is rebranding, and renaming to "Craft's on Church." On April 15, 2020, VDR approved new signage and a sidewalk cafe plan. The proposed seating is along the Church Street frontage and consists of three tables and twelve chairs. This is in addition to the existing seating on private property, under the awning at the entrance and along the parking lot side.

The attached VDR approval letter indicates a recommendation that the tables be rotated 90 degrees such that the backs of chairs are not facing Church Street, in order to keep the sidewalk encroachment to a minimum, helping to maintain the required 5-foot clear passage for ADA compliance.

In addition to VDR approval of furnishing type and location, the code requires city council approval of a Hold Harmless agreement for seating on a public sidewalk. The agreement is attached.

STATE OF ALABAMA )  
JEFFERSON COUNTY )

**INDEMNIFICATION and HOLD HARMLESS AGREEMENT**  
**Operation of Sidewalk Café in Mountain Brook, Alabama**

THIS AGREEMENT is entered into between Craft's on Church Street ("Restaurant Owner") and DCDG, LLC ("Property Owner"), hereinafter collectively "Owners," and the **City of Mountain Brook, Alabama**, an Alabama municipal corporation, hereinafter "City", to provide for indemnification by Owners to the City with respect to the operation and use of a sidewalk café in the City.

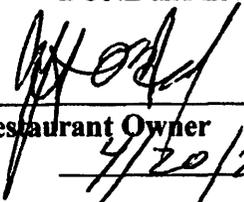
WHEREAS, the City has enacted a municipal ordinance addressing the operation and use of sidewalk cafes and requiring a revocable permit to lawfully operate a sidewalk café within the Villages of the City;

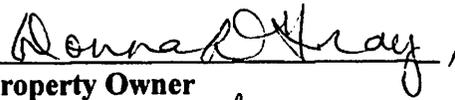
NOW THEREFORE, the parties agree as follows:

1. In consideration of the agreement and permission to operate and use a sidewalk café in the City, Owners, their heirs, agents, successors, and assigns (herein collectively "Owners") covenant and agree to indemnify, defend, save and hold harmless the City, its officers, agents, employees, successors, and assigns, (herein collectively "City") from all claims, demands, suits, proceedings, expenses, civil and criminal penalties and fines, damages, losses, reasonable attorneys' fees, and liabilities (collectively "Claims") arising from the operation or use of a sidewalk café. The existence of, or inadequacy of, insurance protection and coverage carried by Owners, in no way limits the indemnification agreement as stated herein.

2. This indemnification shall survive the cancellation, termination, or expiration of the agreement to use, revocable permit, and operation use term.

DONE and ENTERED into on this the 21<sup>st</sup> day of April, 2020.

  
\_\_\_\_\_  
Restaurant Owner  
4/20/20

  
\_\_\_\_\_  
Property Owner  
File Member



**CITY OF MOUNTAIN BROOK**

**V-20-15  
Sidewalk  
Seating**

Department of Planning, Building &  
Sustainability  
56 Church Street  
Mountain Brook, Alabama 35213  
Telephone: 205.802.3810  
[www.mtnbrook.org](http://www.mtnbrook.org)

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VILLAGE DESIGN REVIEW COMMITTEE  
CASE SUMMARY LETTER

Case: V-20-15  
Meeting Date: April 15, 2020  
Location: 49 Church Street  
Business name: Craft's On Church Street  
Property Owner: Craft O'Neal  
[coneal@onealind.com](mailto:coneal@onealind.com)  
Applicant: Rob Walker, AIA  
[rob@rw4arch.com](mailto:rob@rw4arch.com)

The Village Design Review Committee approves the sidewalk café proposal as presented, with the suggestion to rotate the tables by 90 degrees to minimize encroachment onto the sidewalk. This request will need approval of an encroachment agreement by the City Council.

Tyler Slaten  
Planner  
City of Mountain Brook  
56 Church St  
Mountain Brook, AL 35213  
Office 205-802-3811



**RESOLUTION NO. 2020-056**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the street resurfacing bid submitted by Dunn Construction Company, Inc. being the lowest qualified bid is hereby accepted and that the Mayor or City Manager of the City is hereby authorized and directed, for and on behalf of the City, to enter into a contract with Dunn Construction Company, Inc., for said street resurfacing (Project MI 110-2020) as described below:

<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Bid Price</u>	<u>Amount</u>
Asphalt Milling	5,349	Ton	\$ 25.20	\$134,794.80
Adjusting Manholes	10	Each	\$175.00	\$ 1,750.00
Bituminous Trackless Tact Coat	5,349	Gallon	\$ 3.50	\$ 18,721.50
Leveling Course Baby Binder	300	Ton	\$ 82.75	\$ 24,825.00
Slag Seal Wearing Course	5,349	Ton	\$ 89.50	\$478,735.50
Poly modified open graded friction course mix	N/A	Ton	N/A	\$ <u>0.00</u>
<b>BID AMOUNT (YEAR 1 ESTIMATE)</b>				<b><u>\$658,826.80</u></b>

**BE IT FURTHER RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of a contract, in the form as attached hereto as Exhibit A subject to such minor modifications that may be determined appropriate by the City Attorney, with respect to said street resurfacing project.

**ADOPTED:** This 27th day of April, 2020.

\_\_\_\_\_  
Council President

**APPROVED:** This 27th day of April, 2020.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steve Boone, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on April 27, 2020, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

Steve,

The street paving bids were opened yesterday and we received three bids. I have reviewed the bids and Dunn Construction is the low bid. Dunn has had our paving contract for several years and does a very good job for us. I recommend that the three year paving contract be awarded to Dunn Construction.

I am attaching a digital copy of Dunn's proposal and the three original bids of all three companies will be in Janet's office later today.

Thanks

A handwritten signature consisting of a stylized capital letter 'R' with a horizontal tail extending to the right.

**2020 Bid Tabulation for Street Resurfacing Project**

**DUNN CONSTRUCTION**

<b><u>DESCRIPTION</u></b>	<b><u>UNIT</u></b>	<b><u>1st Year Quantity</u></b>	<b><u>ANNUAL UNIT PRICE</u></b>	<b><u>UNIT PRICE BID PER ITEM</u></b>
ASPHALT MILLING	TON	5349	\$25.20	\$134,794.80
ADJUSTING MANHOLES	EACH	10	\$175.00	\$1,750.00
BITUMINOUS TRACKLESS TACT COAT	GALLON	5349	\$3.50	\$18,721.50
LEVELING COURSE BABY BINDER	TON	300	\$82.75	\$24,825.00
SLAG SEAL WEARING COURSE	TON	5349	\$89.50	\$478,735.50
<b><u>TOTAL AMOUNT BID</u></b>				<b>\$658,826.80</b>

**MIDSOUTH PAVING, INC**

<b><u>DESCRIPTION</u></b>	<b><u>UNIT</u></b>	<b><u>1st Year Quantity</u></b>	<b><u>ANNUAL UNIT PRICE</u></b>	<b><u>UNIT PRICE BID PER ITEM</u></b>
ASPHALT MILLING	TON	5349	\$26.39	\$141,160.11
ADJUSTING MANHOLES	EACH	10	\$209.01	\$2,090.10
BITUMINOUS TRACKLESS TACT COAT	GALLON	5349	\$3.40	\$18,186.60
LEVELING COURSE BABY BINDER	TON	300	\$146.85	\$44,055.00
SLAG SEAL WEARING COURSE	TON	5349	\$100.84	\$539,393.16
<b><u>TOTAL AMOUNT BID</u></b>				<b>\$744,884.97</b>

**GOOD HOPE CONTRACTING, INC**

<b><u>DESCRIPTION</u></b>	<b><u>UNIT</u></b>	<b><u>1st Year Quantity</u></b>	<b><u>ANNUAL UNIT PRICE</u></b>	<b><u>UNIT PRICE BID PER ITEM</u></b>
ASPHALT MILLING	TON	5349	\$40.00	\$213,960.00
ADJUSTING MANHOLES	EACH	10	\$400.00	\$4,000.00
BITUMINOUS TRACKLESS TACT COAT	GALLON	5349	\$5.00	\$26,745.00
LEVELING COURSE BABY BINDER	TON	300	\$150.00	\$45,000.00
SLAG SEAL WEARING COURSE	TON	5349	\$125.00	\$668,625.00
<b><u>TOTAL AMOUNT BID</u></b>				<b>\$958,330.00</b>

**City of Mountain Brook  
Public Works Department**

**STREET RESURFACING PROJECT M110-2020 MANUAL**

**OWNER:**                      **The City of Mountain Brook, Alabama**

**CONTRACTOR:**              **Dunn Construction Company, Inc.**

# **CONTRACT DOCUMENTS**

## **I Invitation for Bids (Advertisement)**

## **II Specifications & Conditions**

- 1. General Requirements**  
(Includes 2020 Street List & Quantities &  
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 M110-2020 Contract

## I. INVITATION FOR BIDS - ADVERTISEMENT

### CITY OF MOUNTAIN BROOK INVITATION FOR BIDS STREET RESURFACING PROJECT – M110-2020

**Bid Submission Deadline & Bid Opening Time:** Tuesday, April 21, 2020 – 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 May 8, 2020. 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. Bidders who plan to attend the bid opening should contact Janet Forbes at 202-802-3800 to receive access to City Hall and other information about that opening.

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, [johnstonh@mtnbrook.org](mailto:johnstonh@mtnbrook.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@mtnbrook.org](mailto:boones@mtnbrook.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: April 5, 2020 - Birmingham News, Huntsville Times, & Mobile Press-Register*

## II. SPECIFICATIONS & CONDITIONS

### 1. 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 (2020), 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 designate the streets that it desires be repaved during the second and third years of the Contract, respectively.

C. Estimated Quantities. The Quantities shown on the Street List 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 (2020). These estimations are given for the sole purpose of awarding the contemplated contract. The City does not warrant the accuracy of these estimates and

### STREET LIST & QUANTITIES

	Street Name*	Reference Point	OPERATIONS Mill, Level & Seal	MILL Square Yards	PAVING Square Yards
1	Sheridan Drive			2192	2192
2	Crestwood Drive			2478	2478
3	Crestview Drive & Crestview Circle			7001	7001
4	Delmar Terrace			1634	1634
5	Sheridan Place			1307	1307
6	Glencoe Circle			7431	7431
7	Glenview Circle			809	809
8	Btookwood Road	Fr Crosshill to City Limit		866	866
9	Overcrest Road			7000	7000
10	Crosshill	Fr Brookwood to Rockhill		3434	3434
11	Orleans Road			2880	2880
12	Cross Ridge Road			4534	4534
			TOTALS	41,566	41,566

\* Unless indicated above, the entire length of the Street will be paved.

approximations, that these estimated quantities will be required to complete the Work in 2020, 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 M110-2020 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 M110-2020 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 Resurfacing Project M110-2020 Contract; (2) Special Conditions; (3) General Conditions; and (4) General Requirements.

**F. 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, 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 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 for it 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:

\$100.00 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:

\$200.00 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 Leveling 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 term of the Contract per 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.

"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:

- 0.00035 per degree F (0.00063 per degree C) for petroleum oils having a specific gravity above 0.966 at 60 °F/60 °F (16 °C/16 °C);
- 0.00040 per degree F (0.00072 per degree C) for petroleum oils having a specific gravity between 0.850 and 0.966 at 60 °F/60 °F (16 °C/16 °C);
- 0.00025 per degree F (0.00045 per degree C) for emulsified asphalts.

★ 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 101.01(c)1.

(d) REPAIR OR RENEWAL OF DEFECTIVE WORK.

The payment of any current estimate shall in no way affect 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 plant mix bases and pavements, surface treatments and tack coat are

1-71

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 extensions) the dollar amount of adjustment will be determined by multiplying the increase or decrease of the current (current estimate month) index from a "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 extensions) 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 extensions) 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 conversion factor of 8.51 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 rejuvenator used or for the amount of bituminous material recovered and used in surface recycling operations.

- Surface Treatments - actual gallons (liters) of asphalt used within specification requirements with volumetric correction to 60 °F (16 °C) as per Subarticle 109.02(c).

- Tack Coat - actual gallons (liters) of asphalt used within specification requirements with volumetric correction to 60 °F (16 °C) as per Subarticle 109.02(c).

**(f) 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. 2 fuel and No. 6 (3.0 % S) fuel of the "Platts Oilgram Price Report" published during the week in which the first day of the month occurs.

Before the expiration of contract time (plus approved time extensions) the dollar amount of adjustment will be determined by multiplying the increase or decrease of the current (current estimate month) 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 2.0 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 extensions) 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 extensions) 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 tons (metric tons) of HMA placed and paid for in accordance with the requirements given in the following Sections:

- Section 327, Plant Mix Bituminous Base;
- Section 404, Paver-Laid Surface Treatment;
- Section 420, Polymer Modified Open Graded Friction Course;
- Section 423, Stone Matrix Asphalt;
- Section 424, Superpave Bituminous Concrete Base, Binder, and Wearing Surface Layers;

**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 constitute all the information which 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) 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 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. 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

(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 insure 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 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, 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 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.

(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 at 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 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 to any portion of the Work that is occasioned by any cause before acceptance.

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 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.

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 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.

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 completes 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:

(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 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 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. If, upon completion 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.

### 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.

#### 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 therefor.

## 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 – M110-2020; (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 Tuesday, April 21, 2020 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 faxed 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 April 14, 2020 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 April 17, 2020. 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 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 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:

(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. 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 M110-2020 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 guaranties 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.

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.

## 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. ESTIMATED QUANTITY IN 1 <sup>ST</sup> YEAR CONTRACT	D. ANNUAL UNIT PRICE	E. UNIT PRICE BID PER ITEM
1.01	ASPHALT MILLING	TON	5349	\$25.20	\$134,794.80
2.01	ADJUSTING MANHOLES	EACH	10	\$175.00	\$1,750.00
3.01	BITUMINOUS TRACKLESS TACT COAT	GALLON	5349	\$3.50	\$18,721.50
4.01	LEVELING COURSE BABY BINDER **	TON	300	\$82.75	\$24,825.00
4.01	SLAG SEAL WEARING COURSE **	TON	5349	\$89.50	\$478,735.50

**TOTAL AMOUNT BID: \$ 658,826.80**  
(Sum of Subtotals in Column E)

**Notes:**

1. The Item Numbers correspond to the enumerated provisions in the Special Conditions.
2. 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.
3. The Total Amount Bid is the sum of the subtotals entered by the contractor in each row of Column E.
4. 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.
5. Bidders must complete, sign, notarize and return the Bidder Affidavit and Warranty below with their Bid Responses.
6. Please see Section II 11 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").

Dunn Construction Company, Inc.  
*Name of Firm or Company Submitting Bid*

3905 Airport Highway  
*Street Address*

Birmingham AL 35222  
*City State Zip*

Evans Dunn  
*Printed Name Representative Executing for Bidder*

*[Signature]*  
*Signature of Bidder Representative*

Vice President  
*Title*

April 21, 2020  
*Date of Bid*

63-0062840  
*Tax Id # of Bidder*

www.dunnconstruction.com  
*Web Site of Bidder*

205-601-5230  
*Cell Ph. # Bidder Contact*

205-510-0256  
*Office Ph. # Bidder Contact*

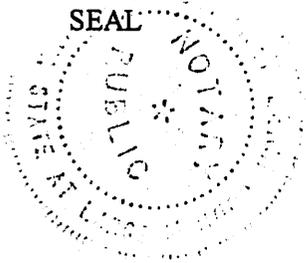
edunn@dunnconstruction.com  
*Email Address Bidder Rep.*

**This Bid Response must be notarized.**

Sworn to and subscribed before me on this 21<sup>st</sup> day of April 2020.

*Courtney Leigh Judd*  
Notary Public

10/27/21  
Commission Expiration Date



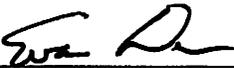
**BIDDER AFFIDAVIT AND WARRANTY**

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 M110-2020:

- (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.

Dunn Construction Company, Inc.

*Name of Firm or Company Submitting Bid*

By: 

*Signature of Bidder Representative*

Printed Name: Evans Dunn

Its: Vice President

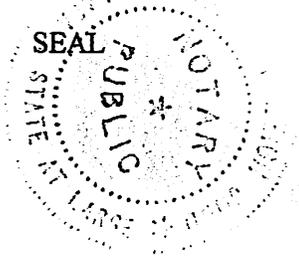
*Title*

Date: April 21, 2020

Sworn to and subscribed before me on this 21<sup>st</sup> day of April, 2020.

  
Notary Public

10/27/21  
Commission Expiration Date



**EXHIBIT B - BIDDER QUALIFICATION FORM - STREET RESURFACING PROJECT M110-2020**

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 Airport Highway  
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:	<u>Evans Dunn</u>
Title or Position with Company:	<u>Vice President</u>
Day Phone:	<u>205-510-0256</u>
Email:	<u>edunn@dunnconstruction.com</u>
Street Mailing Address of Contact:	<u>3905 Airport Highway</u> <u>Birmingham, AL 35222</u>

(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, Chief Estimator, 205-470-9752, gcaldwell@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? 142

(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 1878. We currently hold the oldest active  
General Contractors License in the State of Alabama. We hold or have held annual paving contracts with  
With the following cities: City of Hoover, City of Homewood, City of Vestavia Hills, City of Childersburg,  
City of Sylacauga, City of Jasper and the City of Birmingham. We also have contracts with Jefferson County,  
Walker County and Shelby County. Along with the municipal and county contracts currently have multiple  
Contracts with the Alabama Department of Transportation.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) How many years has your organization operated under its present business name?  
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(d) Type of Organization:

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

- (i) Date of incorporation: 1878
- (ii) State of incorporation: Delaware
- (iii) President's name: Craig Fleming
- (iv) Vice-President's name(s): Evans Dunn
- (v) Secretary's Name: Wade Edwards
- (vi) Treasurer's name: Wade Edwards

(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; 220
- (ii) the number of workers who are dedicated to field operations; 190
- (iii) the name and title of your general supervisor of field service operations; and Shane Watson
- (iv) the number of employees dedicated to administrative and office matters. 30

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**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 Alabama General Contractors License  
\_\_\_\_\_  
\_\_\_\_\_

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

- a. State of Alabama 8
- b. City of Mountain Brook Business License\* 202002390
- c. Jefferson County 00070239

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

**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: 2020 Jefferson County Phase I  
Contact at City/County: Stefan Graeber  
Title of Contract: Engineer  
Phone Number: 205-325-5404  
Type(s) of Contract (s): One Year  
Dates of Contract \_\_\_\_\_  
Location(s) of Service Various Streets in Jefferson County

City/County Name: City of Vestavia Hills - 2020 Resurfacing  
Contact at City/County: Christopher Brady  
Title of Contract: City Engineer  
Phone Number: 205-978-0198  
Type(s) of Contract(s): Annual  
Dates of Contract \_\_\_\_\_  
Location(s) of Service Various Street in the City of Vestavia

City/County Name: City of Homewood - 2020 Resurfacing  
Contact at City/County: Berkley Squires  
Title of Contract: Director  
Phone Number: 205-332-6704  
Type(s) of Contract(s): Annual  
Dates of Contract \_\_\_\_\_  
Location(s) of Service Various Streets in the City of Homewood

City/County Name: City of Hoover - 2020 Resurfacing  
Contact at City/County: Chris Reeves  
Title of Contract: Engineer  
Phone Number: 205-444-7896  
Type(s) of Contract(s): Annual  
Dates of Contract \_\_\_\_\_  
Location(s) of Service Various Streets in the City of Hoover

City/County Name: Walker County - 2020 Resurfacing  
Contact at City/County: Mike Short  
Title of Contract: County Engineer  
Phone Number: 205-384-7249  
Type(s) of Contract(s): Annual  
Dates of Contract \_\_\_\_\_  
Location(s) of Service Various Street and Highways in Walker County

**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:

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(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:

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(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:

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(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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

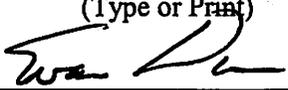
**CERTIFICATION**

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: 

Signature

Evans Dunn

Printed Name

Its: Vice President

Title of Authorized Representative

\_\_\_\_\_

Sworn to and subscribed before me on this 21st day of April 2020.

Courtney Leigh Judd  
Notary Public

10/27/21  
Commission Expiration Date



## EXHIBIT C - STREET RESURFACING PROJECT M110-2020 CONTRACT

This Street Resurfacing Project M110-2020 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
- (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@mtnbrook.org  
 Tel No: 205-802-3875

&

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

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.

**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.

**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 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 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.

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) 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.

**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 generally 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 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.

(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 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. 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)*

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: \_\_\_\_\_

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

**CITY OF MOUNTAIN BROOK, ALABAMA**

By: Stewart H. Welch, III

Its: Mayor

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

**RESOLUTION NO. 2020-057**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the execution of Amendment #1 to Retaining Wall Contract #C-20190625-523, in the form as attached hereto as Exhibit A, with respect to the Athletic Complex improvements.

**ADOPTED:** This 27th day of April, 2020.

\_\_\_\_\_  
Council President

**APPROVED:** This 27th day of April, 2020.

\_\_\_\_\_  
~~Oden~~, Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on April 27, 2020, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

**AMENDMENT #1 TO RETAINING WALL CONTRACT # C-20190625-523**

This **Amendment #1 to Retaining Wall Contract # C-20190625-523** ("Amendment #1") is entered between the **City of Mountain Brook, Alabama** ("City") and **Morris-Shea Bridge Company** ("Contractor") effective as of the last date signed below by either party ("Effective Date").

WHEREAS, on or about July 22, 2019, the City and Contractor previously entered into Contract # C-20190625-523 ("Contract") that provided for Contractor to construct two retaining walls in the vicinity of Fields 3 & 4 at the Mountain Brook High School Athletic Complex ("Project");

WHEREAS, the parties desire to enter into this Amendment #1 to change the scope of work and certain Contract Specifications for the Project;

WHEREAS, per those Specifications, the locations of the two walls that initially were contemplated to be constructed are shown in Orange on the Drawing attached as **Exhibit A**;

WHEREAS, although the initial Specifications contemplated installation of Geostone 4" Block material for both walls, the parties have determined that certain interlocking Stone Strong System 24 SF Blocks (or the functional equivalent of such System or Blocks ) having a grey and chiseled granite pattern (the "Interlocking Block") provide a superior engineering solution and a better end product, and can be more readily installed at the Project Site than the originally contemplated Geostone 4" Block;

WHEREAS, by agreement of the parties, Contractor has constructed the long retaining wall that is approximately 260 LF and generally runs outside and along the right field section of Field 3 ("Completed Long Wall") utilizing Interlocking Block that Contractor has supplied at its expense;

WHEREAS, work has not commenced to construct the second, U- shaped, short wall that was intended to be approximately 115 LF and is shown on Exhibit A as generally lying along the third base side of Field 3 between Fields 3 and 4 (the "Planned Shorter Wall");

WHEREAS, instead of constructing the Planned Shorter Wall, the parties have determined that the Contractor should construct a different retaining wall that is approximately 248 LF using the Interlocking Block in the location marked in Purple on the attached Exhibit A ("New Wall")

Now wherefore, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree to amend the Contract as follows:

1. Notwithstanding any provisions in the Specifications, plans, drawings or other Contract Documents to the contrary, the understandings, conditions and terms hereinafter apply for the contemplated Project and, where appropriate, supplement, replace, govern, and supersede any conflicting provisions in the Contract pertaining to the following subject matters:

- a. The Planned Short Wall will not be constructed;
- b. Contractor will construct the New Wall pursuant to the plans, drawings and other specifications that are attached as **Exhibit B**;
- c. The Interlocking Block (or functional equivalent thereof) is approved and specified to be for use on the Completed Long Wall and New Wall;
- d. At its expense, the City will purchase and arrange to deliver to the Project Site sufficient quantities of the Interlocking Block (or functional equivalent thereof) required for the New Wall;
- e. Contractor's lump sum charge to complete the Project (i.e., \$59,000) remains unchanged;
- f. No Liquidated Damages will be assessed with respect to delays encountered to date in completing the Project; and
- g. Contractor will use its good faith commercial efforts to complete the Project within thirty (30) days after the City supplies the Interlocking Block (or functional equivalent thereof) required for the New Wall;

2. The Defined Terms used herein have the same meaning as in the Contract Documents.

3. Except as set forth in this Amendment #1, all other terms, conditions and specifications forth in the Contract are reaffirmed and shall remain in effect for the duration of the Contract and Project.

**CITY OF MOUNTAIN BROOK, ALABAMA**

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

Its: Mayor

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

**MORRIS SHEA BRIDGE COMPANY, INC**

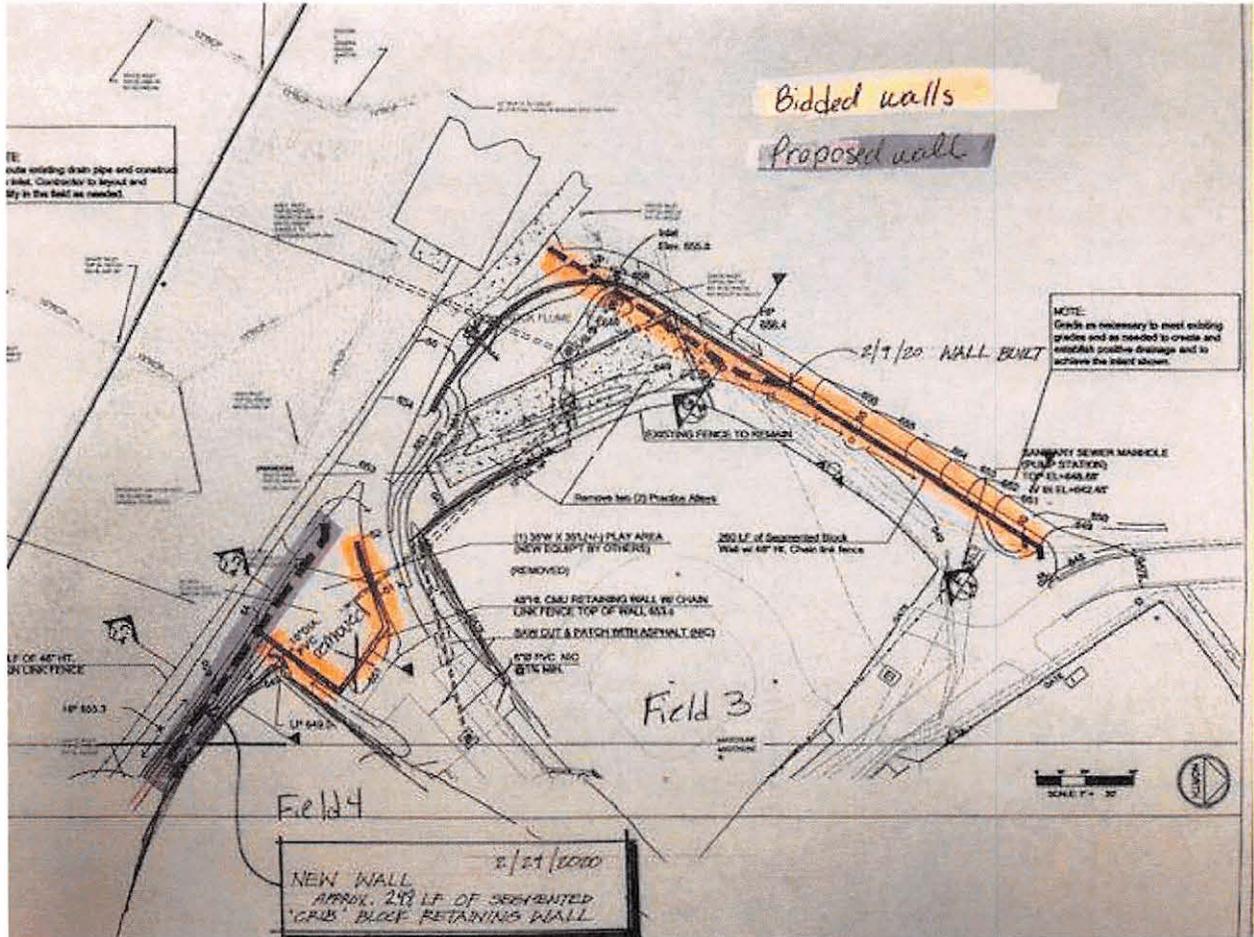
By: \_\_\_\_\_

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

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

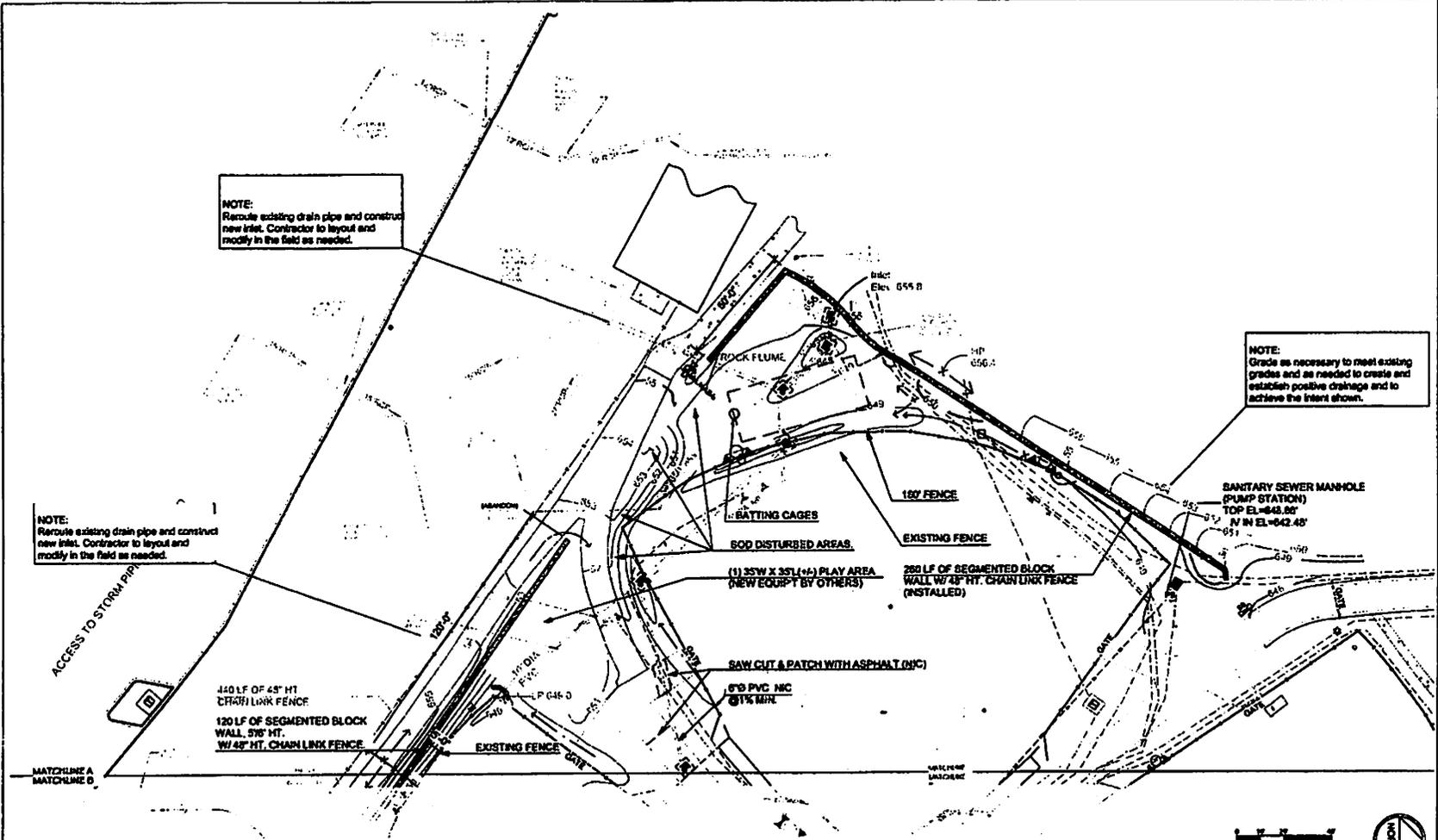
EXHIBIT A

See Attached Drawing.



**EXHIBIT B**

**See Attached Plans, Drawings & Specifications for New Wall.**

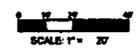


**NOTE:**  
Reroute existing drain pipe and construct new inlet. Contractor to layout and modify in the field as needed.

**NOTE:**  
Grade as necessary to meet existing grades and as needed to create and establish positive drainage and to achieve the intent shown.

**NOTE:**  
Reroute existing drain pipe and construct new inlet. Contractor to layout and modify in the field as needed.

**1 PLAN-A**  
SCALE: 1" = 20'



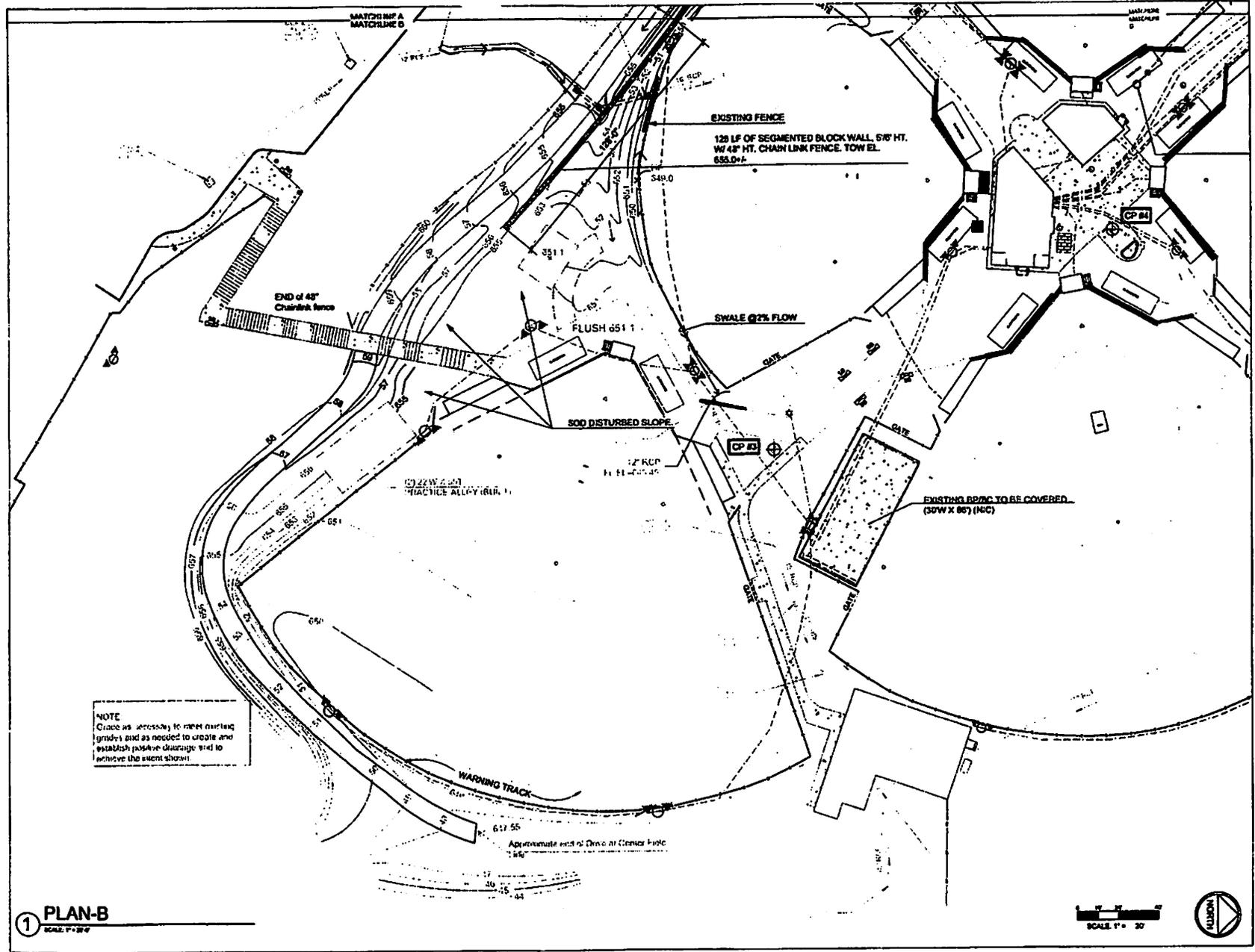
Phase 2- Fields 3, 4 & 5

**Mountain Brook Baseball Fields**

Mountain Brook, Alabama

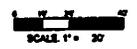
Date: May 21, 2019

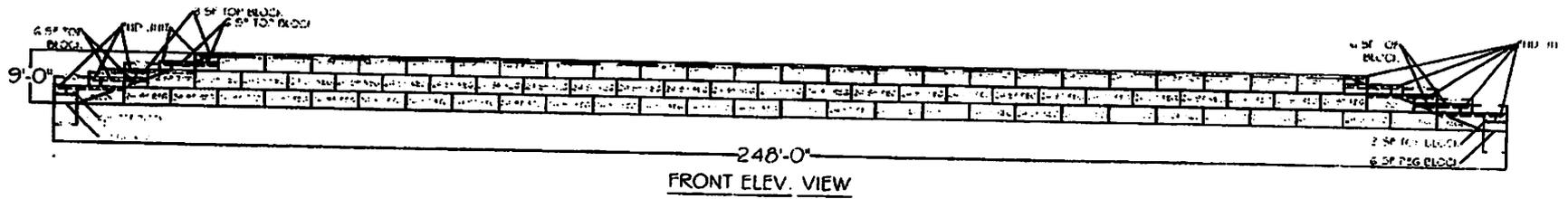

Sheet  
12 of 4



**NOTE**  
 Grade as necessary to meet parking grades and as needed to create and establish positive drainage and to achieve the intent shown.

**1 PLAN-B**  
 SCALE: 1" = 20'





248'-0"  
FRONT ELEV. VIEW

- 53- 24-44 REG BLOCKS
- 28- 24-44 TOP BLOCKS
- 6-- 3-44 SF TOP BLOCKS
- 10- END UNITS
- 8-- 6-44 SF TOP BLOCKS

NOTE: THIS IS FOR PRELIMINARY LAYOUT ONLY  
 ENGINEERING FOR THIS WALL PROVIDED BY OTHER.

C-20190625-523

**RESOLUTION NO. 2020-058**

**BE IT RESOLVED** by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby awards the bid for the purchase of interlocking retaining wall blocks to C. R. Barger & Sons, Inc., in the amount of \$36,575, being the lowest bid and having been determined to comply with the product specifications..

**ADOPTED:** This 27th day of April, 2020.

\_\_\_\_\_  
Council President

**APPROVED:** This 27th day of April, 2020.

\_\_\_\_\_  
Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on April 27, 2020, as same appears in the minutes of record of said meeting.

\_\_\_\_\_  
City Clerk

2020-058

**Purchase and Delivery of Retaining Wall Block  
Bid Opening Results (B-20200406)  
April 23, 2020**

We received two bids in accordance to the bid request. They are as follows:

**C.R. Barger & Sons, Inc.                      \$36,575.00**

**Lee's Precast Concrete, Inc.                \$43,378.28**

I recommend purchasing from C.R. Barger and Sons as they appear to be the lowest responsible bidder.

Shanda Williams  
Superintendent of Parks and Recreation

**EXHIBIT B - BID RESPONSE FORM**

Below is the firm bid of the undersigned for the PURCHASE AND DELIVERY OF RETAINING WALL BLOCK that is submitted in response to the City's Invitation to Bid for this contract. The City may use the address and contact information below for its communications with the undersigned bidder. The undersigned has read and understands the Specifications and other conditions for the award, and, except as may be listed below, submits its bid and agrees to perform its obligations in compliance with those Specifications and other requirements in the bid documents.

Lump Sum Bid - \$ 36,575.00

C.R. Barger & Sons, Inc.  
Name of Firm or Company Submitting Bid

4/23/2020  
Date of Bid

123 Pawnook Farm Rd.  
Street Address

62-0941326  
Tax Id # of Bidder

Lenoir City TN 37771  
City State Zip

BargerAndSons.com  
Web Site of Bidder

Kelly Barger  
Printed Name of Bidder Representative

865-217-6119  
Cell Ph. # Bidder Rep

Kelly Barger  
Signature Bidder Representative

865-270-8080 Ext. 5  
Office Ph. # Bidder Rep

Sales - Stone Strong  
Title

Kelly@bargerprecast.com  
Email Bidder Rep.

Sworn to and subscribed before me on this 17 day of April 2020.

Erica Wolfe  
Notary Public

August 16, 2023  
Commission Expiration Date

NOTES:

1. This Bid Response must be notarized.  
Please state any exceptions to the Specifications on a separate sheet and attach that sheet to your Bid Response.  
Each bidder must complete, sign, notarize and return the below Bidder Affidavit with its Bid.



**BIDDER AFFIDAVIT AND WARRANTY**

The undersigned warrants, represents and agrees to each of the following in connection with its Bid Response for the City of Mountain Brook's Invitation to Bid for Purchase and Delivery of Retaining Wall Block:

- (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 to 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) all the information contained in the response to the bid is true and correct; and
- (e) the City may rely on information submitted in the undersigned's Bid Response in awarding the subject contract.

C. R. Barger & Sons, Inc.  
*Name of Firm or Company Submitting Bid*

By: Kelly Barger  
*Signature of Bidder Representative*

Printed Name: Kelly Barger

Its: Sales Rep - Stone Strong  
*Title*

Date: 4/17/20

Sworn to and subscribed before me on this 17 day of April 2020.

Erica Wolfe  
*Notary Public*

August 16, 2023  
*Commission Expiration Date*

