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## AGENDA

### CALL TO ORDER

### ROLL CALL

*Sophie Martin, Rick Ellis, Stacy Rakestraw, Greg Farrell, Jamie Cole, Zach Zahariadis, Kerri Pate*

### AGENDA ITEMS:

**1. Financial Update**

Finance Director, John Haggard will provide the Council with a Financial Update.

**2. Fire Station #2 - Change Order Request**

Review a request authorizing a Change Order for Fire Station #2 in the amount of \$99,000.

**3. Healthcare Affiliation Agreement RTI - Discussion**

Chief Love will review proposed Memorandum of Understanding between the City and Regional Training Institute (RTI) to provide clinical experiences for students enrolled in EMS programs. (Resolution 022624-F Authorizing a MOU With Regional Training Institute)

**4. Pro-Forma & Financial Performance Analysis**

Review agreement with Sports Facilities Advisory, LLC for Market Analysis and a Detailed Financial forecast (Pro Forma) for the new Alabaster Recreation Center complex.

**5. Sewer Hydraulic Model Proposal**

Review an agreement with InSite Engineering, LLC for the continued Inflow and Infiltration (I&I) Reduction Program – Sanitary Sewer Hydraulic Model, Annual Data Gathering and Support 2024.

**6. Declaring Items within Public Works Department as Surplus**

Declaring surplus items within the Public Works Department within the City of Alabaster. (Resolution 022624-C Declaring Items within Public Works Department as Surplus)

**7. Agreement with MBA Engineers for CMT and Inspections for the Amphitheater and Senior Center Expansion**

REVIEW: Authorizing an agreement with MBA Engineers for Construction Materials Testing (CMT) and special inspections for the new Alabaster Amphitheater and Senior Center Addition at a cost not to exceed \$34,005. (Resolution 022624-D Authorizing an Agreement with MBA Engineers for CMT and Inspections for the Amphitheater and Senior Center Expansion)

**8. Old Police Station Property Discussion**

City Administrator Brian Binzer will review findings and discuss the potential future of the old Alabaster Police Department building.

**9. \*Resolution 022624 Assessing Weed Abatement Cost for 1226 Thompson Rd**

A public hearing is set for Monday, February 26, 2024 6:30 PM to place a lien on property located at 1226 Thompson Rd for weed abatement.

**10. \*Ordinance 24-195 Authorizing Franchise Agreement with Spectrum Southeast dba Charter Communications Inc**

A public hearing is set for Monday, February 26, 2024 at 6:30 PM to consider approving the new 2024 Charter Franchise Agreement request.

**11. \*Ordinance 24-196 Cancelling Delinquent Business Licenses on March 1 of Each Year**

A public hearing is set for Monday, February 26, 2024 at 6:30 PM to amend Section 8-34 of the Alabaster Code of Ordinances relating to business licenses.

**12. Executive Session To Discuss the General Reputation and Character of an Individual and Relating to Preliminary Negotiations Involving Matters of Trade or Commerce**

Alabama Code Title § 36-25A-7 (1) To discuss the general reputation and character, physical condition, professional competence, or mental health of individuals, or, subject to the limitations set out herein, to discuss the job performance of certain public employees. However, except as provided elsewhere in this section, discussions of the job performance of specific public officials or specific public employees may not be discussed in executive session if the person is an elected or appointed public official, an appointed member of a state or local board or commission, or a public employee who is one of the classification of public employees required to file a statement of economic interests with the Alabama Ethics Commission pursuant to Section 36-25-14. Except as provided elsewhere in this section, the salary, compensation, and job benefits of specific public officials or specific public employees may not be discussed in executive session.

Alabama Code Title § 36-25A-7 (7) To discuss preliminary negotiations involving matters of trade or commerce in which the governmental body is in competition with private individuals or entities or other governmental bodies in Alabama or in other states or foreign nations or to discuss matters or information of the character defined or described in the Alabama Trade Secrets Act. Provided, however, that prior to such discussions a person involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve matter or information of the character defined or described in the Alabama Trade Secrets Act advises the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session, or would disclose information protected by the Alabama Trade Secrets Act.

**ADJOURNMENT**

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**In compliance with the Americans with Disabilities Act, those requiring accommodation for Council meetings should notify the City Clerk's Office at least 24 hours prior to the meeting by:**

**Calling Office Number:** 205-664-6800

**Or Visit:** <http://cityofalabaster.com/397/Americans-with-Disabilities-Act>

**CHANGE ORDER NO.: 1**

Owner: The City of Alabaster, Alabama  
 Engineer: InSite Engineering, LLC  
 Contractor: Wayne Davis Construction, LLC.  
 Project: 22151.00 – Alabaster Fire Station No. 2 Expansion  
 Contract Name:  
 Date Issued: Effective Date of Change Order:

The Contract is modified as follows upon execution of this Change Order:

**Description:** Demolition of existing concrete on the West side of the Existing Fire Station Building, the section adjacent to the North Sidewalk, and a 10x10 section in the center of the main fire truck drive. Dowell and epoxy new 8" Thick Wire Reinforced 4000psi Concrete where existing concrete was demolished.

Attachments: **Exhibit A**

Change in Contract Price	Change in Contract Times [State Contract Times as either a specific date or a number of days]
Original Contract Price: \$ 793,853.00	Original Contract Times: Substantial Completion: 120 Days Ready for final payment: 180 Days
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order]: \$	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order]: Substantial Completion: _____ Ready for final payment: _____
Contract Price prior to this Change Order: \$	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for final payment: _____
[Increase] [Decrease] this Change Order: \$ 99,000.00	[Increase] [Decrease] this Change Order: Substantial Completion: Add 30 Days Ready for final payment: no change
Contract Price incorporating this Change Order: \$ 892,853.00	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for final payment: _____

Recommended by Engineer (if required)

By: [Signature]  
 Title: President  
 Date: 2/22/24

Accepted by Contractor

[Signature]  
 Asst. Manager  
2/22/24

Authorized by Owner

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_



**Wayne Davis Construction, LLC**  
**13523 Highway 17 Montevallo, AL**  
**35115 #205-665-1183**

**Alabaster Fire Station 2**  
**ATTN: Chief Tim Love**  
**RE: Exhibit A**  
**2/19/24**

We are pleased to present you the following proposal

Scope of Work

- Preliminary Construction Fees
- Demolition of Existing Concrete in Highlighted Locations
- Haul Off and Dump Fees
- Dowell and Epoxy #4 Rebar in Existing Concrete
- 8" 4000psi Concrete Material and Labor
- Wire Reinforcement
- Light Broom Finish

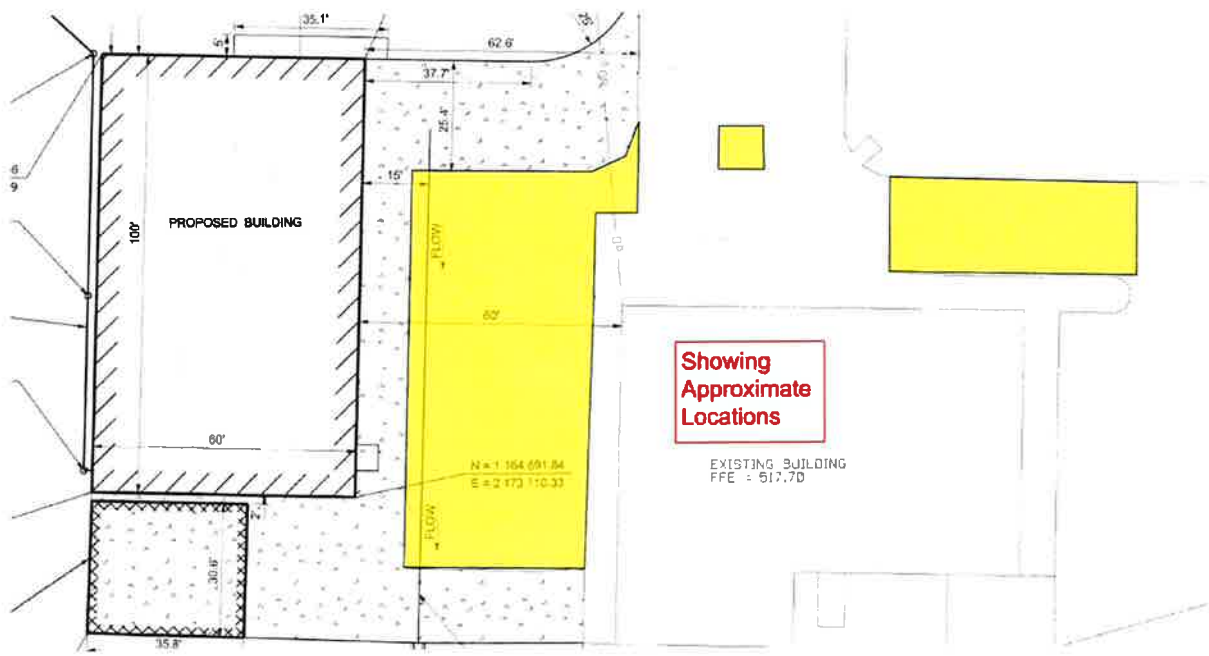
**Total:** **\$99,000.00**

Thank you for giving us the opportunity to quote this project. if you have any questions, please feel free to contact Me.

Taylor Brooks  
2057685797  
taylor@jpalabama.com

2/19/2024

**Wayne Davis Construction, LLC.**



2/19/2024

**Wayne Davis Construction, LLC.**

Council Member \_\_\_\_\_ introduced the following Resolution, which was seconded by Council Member \_\_\_\_\_.

Item 2.



**RESOLUTION 022624-E**

**RESOLUTION APPROVING CHANGE ORDER NO. 1 FOR  
FIREHOUSE #2 NEW BUILDING PROJECT**

**WHEREAS**, by Resolution Number 081423-H, the City awarded a contract for construction for the Firehouse #2 Building Expansion, to Wayne Davis Construction, LLC., and;

**WHEREAS**, Change Order No. 1 is required for the following:

- 1) Preliminary Construction Fees
- 2) Demolition of Existing Concrete in Highlighted Locations
- 3) Haul Off and Dump Fees
- 4) Dowell and Epoxy #4 Rebar in Existing Concrete
- 5) 8" 4000 PSI Concrete Material and Labor
- 6) Wire Reinforcement
- 7) Light Broom Finish

, and;

**WHEREAS**, all prices in said change order has been reviewed by the engineer and City Staff and have been recommended to the Council as reasonable, fair and equitable in the amount of \$99,000.00.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Alabaster, Alabama as follows:

- 1. The City Council finds that the requested Change Order No. 1 on the construction for the Firehouse #2 Building Expansion, to Wayne Davis Construction, LLC., contract are justified and constitute a public purpose.
- 2. The City Council finds that, upon recommendation from city staff and the engineer, the prices are reasonable, fair and equitable.
- 3. The contract is hereby amended and changed to add \$99,000.00 to the contract.

	Y / N		Y / N
Sophie Martin	_____	Jamie Cole	_____
Rick Ellis	_____	Zach Zahariadis	_____
Stacy Rakestraw	_____	Kerri Pate	_____
Greg Farrell	_____		

**ADOPTED AND APPROVED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER, ALABAMA

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED:

\_\_\_\_\_  
Scott Brakefield, Mayor

**CHANGE ORDER NO.: 1**

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Recommended by Engineer (if required)  
 By: \_\_\_\_\_  
 Title: President  
 Date: 2/22/24

Accepted by Contractor  
 \_\_\_\_\_  
 Asst. Manager  
2/22/24

Authorized by Owner  
 By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Approved by Funding Agency (if applicable)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



**Wayne Davis Construction, LLC**  
**13523 Highway 17 Montevallo, AL**  
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- Light Broom Finish

**Total:** \_\_\_\_\_ **\$99,000.00**

Thank you for giving us the opportunity to quote this project. if you have any questions, please feel free to contact Me.

Taylor Brooks  
2057685797  
taylor@jpalabama.com

2/19/2024

**Wayne Davis Construction, LLC.**



2/19/2024

**Wayne Davis Construction, LLC.**





**MEMORANDUM OF UNDERSTANDING FOR  
HEALTH CARE CLINICAL EXPERIENCE**

This Agreement for clinical Experience (the “Agreement”) is entered into by and between Regional Training Institute (hereafter “Institute”), and the City of Alabaster (hereafter “Facility”).

**RECITALS**

The Institute wishes to provide clinical experiences for students enrolled in EMS programs (hereafter “Students”). The Facility operates a healthcare facility and has the capability, through its medical records, clinical, or medical administration departments, to provide settings for clinical experiences required by such Students and desires to provide a setting for such clinical experiences in cooperation with the Institute in order to support quality education for health professionals in the community and the delivery of appropriate health services to the community.

**NOW, THEREFORE**, the parties agree as follows:

1. Responsibilities of the Facility. The Facility agrees to serve as a cooperating health care facility and provide clinical experiences for Students at the Facility in the Institute’s program. This will be accomplished by allowing Student participation in patient care as set forth in this Agreement. The Institute, in consultation with the Facility, shall schedule and arrange for the number and timing of such experiences. The Facility hereby agrees that it will provide certain services as follows:
  - a. To observe the non-discrimination policy of the Institute: that Students are accepted without discrimination as to race, color, creed, or sex, subject to the Facility’s right to terminate clinical experiences as set forth in subparagraph 3-d.
  - b. To provide clinical practice and/or observational opportunities in the appropriate service departments of the Facility.
  - c. To comply timely with the Institute’s reasonable requests to issue reviews or reports of Student performance and compliance with program requirements for the Students.
  - d. To provide adequate, qualified supervision of Students’ work at the Facility.
  - e. To ensure that Students’ presence and assistance is not used by the Facility as a replacement for employees.
  - f. To ensure that Students are provided with an educational experience and are not assigned tasks unrelated to their educational focus.
  - g. To make the Facility’s premises available to the Students and the Institute’s faculty (when applicable) for training purposes, including by providing any necessary security badges and computer access.
  - h. To allow Students, at their own expense, to use the dining and other facilities.

- i. To make available to Students emergency care and treatment in the event of illness or injury occurring in clinical areas during clinical instruction. All charges for treatment shall be the responsibility of the Students, or in the case of a minor, his or her parents.
  - j. To provide for the Students a safe work environment.
  - k. To provide information pertinent to evaluation of Students and the clinical experience in general to the Institute at the Institute's request.
  - l. To provide the Institute and Students with access to copies of the Facility's policies, procedures and regulations that is pertinent to the clinical experience.
  - m. To ensure that any data collected by the Facility from the Students is collected, processed, and maintained in accordance with Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Family Educational Rights and Privacy Act (FERPA), and all other applicable data privacy and data breach notification laws.
2. Responsibilities of the Institute. The Institute agrees that it will comply with the following:
- a. In cooperation with the Facility's input, the Institute will instruct the Students in, and require that all Students abide by, the policies, procedures, rules, and regulations of the Facility, including standards for dress, grooming, and personal hygiene.
  - b. The Institute professional liability insurance coverage of \$1,000,000 per claim and \$3,000,000 in the aggregate covering acts/or omissions by Students during practicum experiences hosted by the Facility. The Institute shall immediately notify the Facility of any changes, limitations, or termination of insurance coverage and provide evidence of such insurance upon request by the Facility.
  - c. The Institute will require Students to comply with the Facility's policies and procedures governing mandatory reporting of child and dependent adult abuse, infection control, and hazardous materials management. Upon the Facility's request, any Student that the Facility believes to be in violation of its policies and procedures shall be removed by the Institute.
  - d. The Institute will ensure compliance with all Facility requirements for verification of each Student's health and immunization status. All required verification will be maintained at the Institute and made available to the Facility upon request. Facility must notify the Institute in writing of any required verifications prior to student's clinical experience.
  - e. The Institute will provide orientation and education of all Students regarding confidentiality rules, in cooperation with the Facility, enforcement of a requirement that all Students follow the Facility's policy with regard to confidential information, including obtaining signed confidentiality agreements and compliance with all policies and procedures adopted by the Facility to comply with the privacy or security final regulations promulgated under HIPAA. Upon the Facility's request, any Student that the Facility believes to be in violation of its policies and procedures shall be removed from the Student's placement at the Facility by the Institute.
  - f. The Institute will appoint qualified staff or faculty to assist with defining the Student experience while at Facility and communicate those expectations to Facility.
  - g. The Institute shall ensure that a criminal background verification has been performed on all program participants prior to beginning a clinical rotation at the Facility. In addition, program participants shall undergo drug screening as a precondition to beginning a clinical rotation at the Facility. The Institution shall provide the results of the background and drug screening upon request of the Facility.
3. Conditions. This Agreement shall be continuously subject to the following conditions accepted by each of the parties:

- a. The Institute shall provide the Facility with estimates of the number of Students desiring to be placed in clinical departments. The Facility may close any clinical department to Students' clinical experiences at any time, without notice. At least two (2) weeks prior to the beginning of new Students' placements, the Institute shall notify the Facility's contact person of the names of each of the Students to be included in the next placement.
  - b. The Facility, the Institute and Students are independent contractors in their relationships to one another. It is understood that Students are not employees of the Facility, do not receive compensation or benefits in connection with their activities at the Facility, are not provided workers' compensation insurance, and shall not act as agents or employees of the Facility.
  - c. Each party agrees to accept and is responsible for its own acts and/or omissions in providing services under this Agreement as well as those acts or omissions of its employees and agents, as the case may be, and nothing in this Agreement shall be construed as placing any responsibility of such acts or omissions onto the other party.
  - d. The Facility has the right to terminate a Student's clinical experience whenever, in the judgment of the responsible Facility personnel, such action is necessary to preserve smooth operations and the quality of patient care, provided that, prior to any termination, the Facility has made reasonable and bona fide efforts to resolve any issues and avoid termination unless Facility has determined Students' continued attendance poses a risk to staff or patients. The Facility must notify the Institute immediately of any termination action.
  - e. The Facility and the Institute shall indemnify and hold each other harmless, their agents, students, and employees, from any and all third-party liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or personal property or otherwise which arises out of the act, failure to act, negligence, or breach of this Agreement by the Facility or the Institute, its agents and employees, in connection with or arising out of the activity which is the subject of this Agreement.
4. Term and Termination. This Agreement shall be effective when fully executed by both parties and shall remain in effect for three (3) years. This Agreement shall renew automatically for additional one (1) year periods, until either party notifies the other party hereto in writing of its intent not to renew. Either party may terminate this Agreement at any time upon thirty (30) days' notice to the other party. In the event of a termination of the Agreement, any Student(s) currently completing a clinical experience at Facility will be allowed to complete their clinical experience as previously agreed to by both parties.
5. General. The following additional conditions apply to this Agreement:
- a. Severability. In the event one or more of the provisions contained in this Agreement are declared invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be impaired thereby unless the effect of such invalidity is to substantially impair or undermine either party's rights and benefits hereunder.
  - b. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.
  - c. Assignment. This Agreement is personal to the parties and may not be assigned or transferred without written consent of the other party.
  - d. Waiver. The failure of either party to insist in any one or more instances upon performance of any terms or conditions of this Agreement shall not be construed as a waiver of future performance of any such term, covenant, or condition; but the obligations of such party with respect thereto shall continue in full force and effect.

- e. Recitals. The recitals are intended to describe the intent of the parties and the circumstances under which this Agreement is executed and shall be considered in the interpretation of this Agreement.
- f. Amendment. This Agreement may be amended only by written agreement of the parties.
- g. Applicable Law. This Agreement shall be interpreted according to the law of the state of Alabama.
- h. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and subsumes and incorporates all prior written and oral statements and understandings.
- i. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement
- j. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- k. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate on the dates set opposite their respective names.

Institute: **Regional Training Institute** and Facility: **City of Alabaster** \_\_\_\_\_

Signature: \_\_\_\_\_  
 Printed Name: Leo J. Deason  
 Title: Director of Education  
 Phone Number: (205) 542-1852  
 Email Address: Leo.deason.rti@gmail.com  
 Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 Date: \_\_\_\_\_



**RESOLUTION 022624-F**

**AUTHORIZING A MOU FOR HEALTH CARE CLINICAL EXPERIENCE BETWEEN REGIONAL TRAINING INSTITUTE AND THE CITY OF ALABASTER**

**WHEREAS**, the Mayor and City Council wish to provide clinical experiences for students enrolled in EMS programs, and

**WHEREAS**, the City agrees to serve as a cooperating health care facility and provide clinical experiences for Students at the Facility in the Institute’s program.

**WHEREAS**, The City of Alabaster, through the Alabaster Fire Department, has the capability, through its medical records, clinical, or medical administration departments, to provide settings for clinical experiences required by such Students and desires to provide a setting for such clinical experiences in cooperation with the Institute in order to support quality education for health professionals in the community and the delivery of appropriate health services to the community.

**NOW THEREFORE, BE IT RESOLVED, AS FOLLOWS:**

1. The Mayor is authorized to enter into a Memorandum of Understanding and the City Clerk to attest and file all documentation needed to enter an agreement with Regional Training Institute.
2. That the Mayor and City Clerk are authorized and directed to execute any related, and necessary documents on behalf of the City for said agreement.

**ADOPTED AND APPROVED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Matin Council President

APPROVED:

\_\_\_\_\_  
Scott Brakefield, Mayor

**THE** SPORTS FACILITIES  
**ADVISORY**<sup>TM</sup>  
**SERVICES AGREEMENT**

*Between:*

**Sports Facilities Advisory, LLC**

**&**

**City of Alabaster, AL**

FEBRUARY 15, 2024

**SERVICES AGREEMENT**

SPORTS FACILITIES ADVISORY, LLC – U.S. TAX ID: 32-0109344

17755 US Highway 19 N. Unit 300 • Clearwater, FL 33764 • P: 727.474.3845 • F: 727.462.2800

1. City of Alabaster, AL (hereinafter referred to as “Client”) hereby engages Sports Facilities Advisory, LLC (hereinafter referred to as “Consultant”) for the services set forth in this Services Agreement (hereinafter referred to as “Agreement”).
2. **Scope of Services:** The Client is engaging the Consultant to provide the services set forth on Exhibit A in the attached hereto and the Consultant is agreeing to provide the services set forth on Exhibit A in the attached hereto.
3. **Period of Performance:** The period of performance under this Agreement shall commence upon signature of this Agreement by both parties and shall continue through the delivery by Consultant of Exhibit A but in no case shall be longer than 120 days. Any services provided by Consultant to Client beyond the scope of services and period of performance described herein will be contracted separately and billed at Consultant’s hourly rates.
4. **Confidentiality, Nondisclosure, and Non-Use Covenants:** For purposes of this Agreement, the party disclosing confidential information is the “Discloser,” and the party receiving the information is the “Recipient.” Confidential information means all information concerning either party’s business including, but not limited to, all tangible, intangible, visual, electronic, present or future information such as (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data designs, and know-how; (d) business information, including operations, planning, marketing interests, and products and services; and (e) the terms of this Agreement.  
 Recipient does not have an obligation to protect confidential information that is; (a) in the public domain through no action of Recipient; (b) within the legitimate possession of Recipient, with no confidentiality obligations to a third party; (c) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; (d) independently developed by Recipient without breaching the agreement or by the parties who have not had, either directly or indirectly, access to or knowledge of the confidential information; or (e) disclosed with the prior written consent of Discloser. If confidential information is required to be produced by law, court order or government authority, Recipient must immediately notify Discloser of that obligation. Recipient will not produce or disclose confidential information in response to that obligation until Discloser has requested protection from the court or other legal or governmental authority issuing the process and the request has been denied, or consented in writing to the production or disclosure of the confidential information in response to the process, or taken no action to protect its interests in the confidential information within 14 business days after the receipt of notice from Recipient of the obligation to produce or disclose.  
 Recipient will use the confidential information only to further the relationship between the parties. Confidential information may not be disclosed to any third party without the written consent of Discloser or used by Recipient in any manner which may be competitive to Discloser.
5. **Responsibility:** Client assumes all responsibility for financial and other risks associated with the planning, development, operations & management of the Client’s business and Consultant assumes no liability for the Client’s project. The Client agrees to seek independent accounting and legal services that are necessary for the operation of Client’s businesses.
6. **Consultant Services:** Client understands that consultant is a management consulting firm, is not licensed to sell securities, is not a licensed accounting practice nor licensed to practice law.
7. **Governing Law:** The execution, interpretation, and performance of this Agreement shall be governed by the laws of the State of Florida. Any lawsuits arising from this Agreement shall be brought before a Court of Law in Pinellas County, Florida.
8. **Construction:** The parties hereto acknowledge and agree that: (i) each party has participated in the drafting of this Agreement; (ii) no inference in favor of, or against, any party shall be drawn from the fact that one party

has drafted any portion hereof; and (iii) each party has had the opportunity to have this document reviewed by their respective legal counsel.

- 9. **Entire Agreement:** This Agreement and the attached Exhibit A contains the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or understandings, expressed or implied, written or oral, between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified or amended except by a written instrument signed by the parties hereto.
- 10. **Compensation:** Upon execution of this Agreement, the compensation for Exhibit A shall be due and owing as follows under the Payment Terms:

**Payment Terms – Exhibit A: \$35,000.00 reduced to \$27,500.00 for previous client relationship**

- **Payment 1 – (50%) \$13,750.00:** Due upon execution of Agreement. Consultant will not provide services nor book meetings until Payment 1 is made in full.
- **Payment 2 – (30%) \$8,250.00:** To be invoiced and paid to Consultant by Client upon presentation of the draft pro forma to Client. Copy of the draft deliverable(s) to be delivered to Client only upon payment.
- **Payment 3 – (20%) \$5,500.00:** To be invoiced upon presentation of the final deliverable(s). Copy of the Final deliverable(s) to be delivered to Client only upon payment.
- **Reimbursable Travel Expenses (if applicable):** To be invoiced upon completion of travel. Reimbursable travel expenses are due upon receipt of invoice. Travel expenses encompass flights, hotel accommodations, ground transportation and associated fees (parking, tolls, etc.), and meals, which will be billed at \$65 per consultant per day.

- Preferred Payment: To avoid additional processing fees, the preferred payment method is via check.
- Wire Transfers: Client is responsible for all additional fees associated with electronic wire transfers.
- Credit Card Payments: For credit card payments, Client will be responsible for a 3% processing fee.

*In the event Client fails to make any payments when due, interest will be charged on the unpaid total in the amount of 18% per annum or the maximum rate allowed under state and federal law, whichever is greater. All payment due dates, unless otherwise stated, are to be within 30 days of receipt of the invoice. Deposit (or initial) payments are the exception as these payments are immediately due to engage Consultant for services.*

**City of Alabaster, AL**  
"CLIENT"

**Sports Facilities Advisory, LLC**  
"CONSULTANT"

BY: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Jason Clement, Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client Billing Address

\_\_\_\_\_  
Invoicing/Billing Contact Name

\_\_\_\_\_  
Invoicing/Billing Contact Email/Phone



## EXHIBIT A

## SCOPE OF SERVICES

### Step 1: Project Kick-Off Call

In this step, Consultant will set up an initial phone call with the Client's team to cover six topics that allow the Consultant's team to begin its work. Those topics are:

- Introductions
- Project History
- Existing Data
- Potential Partners and Stakeholders
- Key Dates for the Project
- Other Questions & Answers

### Step 2: Existing Data Review & Market Analysis

In this step, Consultant will review any existing data, documentation, and/or resources provided related to the project. Consultant will then conduct preliminary market research, which will encompass demographics, sports participation in the region, and an analysis of existing service providers (competition).

### Step 3: Remote Development Planning Session (DPS)

The DPS is a "deep-dive" planning and strategy session that will focus on defining success and refining the vision, value propositions, financial resources and core competencies, products and services, strategic alliances, and financial success metrics. During the DPS, Consultant will also share data from its preliminary market assessment, including key demographic and socioeconomic factors, participation rates, and other market insights. This will be held via a teleconference via Zoom meeting.

### Step 4: Detailed Financial Forecast (Pro Forma)

In this step, Consultant will complete more in-depth research/analysis to produce a 5-year cash flow forecast and 20-year financial outlook. Consultant's pro forma documents are detailed, institutional-grade financial forecasts used to support decision-making and financing.

The pro forma will provide insight into the financial potential of the project and will include projections related to construction and start-up costs, revenues/expenses by product/program, EBITDA, net income, facility utilization, and more.

The pro forma will provide the Client with detailed financial projections related to and based on:

- The ideal business model
- Realistic and/or recommended debt-to-equity mix and debt service
- Right-sized program spaces and space requirements
- Construction and start-up costs based on recent, comparable projects
- Recommended parking
- Revenue by product/program
- Direct/variable costs (Cost of Goods Sold)
- Facility and operating expenses
- Management and staffing model
- Utilization Projections

**Step 5: Executive Summary & Recommendations**

In this step, Consultant will produce a summary report for the project. The summary report will include an overview of the market analysis and pro forma. Additionally, Consultant will work with the Client to provide recommendations on the existing facility and programming plan. This will also include considerations around playing surface materials, onsite amenities, parking, concessions, lighting, and more.

Council Member \_\_\_\_\_ introduced the following Resolution, which was seconded by Council Member \_\_\_\_\_:

Item 4.



**RESOLUTION 022624-B**

**AUTHORIZING AGREEMENT WITH SPORTS FACILITIES ADVISORY, LLC  
FOR DETAILED FINANCIAL FORECAST (PRO FORMA)  
FOR THE NEW ALABASTER RECREATION CENTER**

**WHEREAS**, the City of Alabaster is in need of Market Analysis and a Detailed Financial forecast (Pro Forma) for the new Alabaster Recreation Center complex; and,

**WHEREAS**, the Mayor and City Council of the City of Alabaster, Alabama, have determined that it is both wise and expedient to enter into a professional services agreement with Sports Facilities Advisory, LLC for a Pro Forma for the new 97,700 square foot Recreation Center complex; and

**WHEREAS**, services will include:

- Project Kick-Off Call
- Existing Data Review & Market Analysis
- Remote Development Planning Session (DPS)
- Detailed Financial Forecast (Pro Forma)
- Executive Summary & Recommendations

**Total \$27,500**

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Alabaster, does hereby authorize Scott Brakefield, Mayor of the City of Alabaster to sign and Mark Frey, City Clerk, to attest and file all documentation necessary to enter into said professional agreement (attached).

	Y / N		Y / N
Sophie Martin	_____	Jamie Cole	_____
Rick Ellis	_____	Zach Zahariadis	_____
Stacy Rakestraw	_____	Kerri Pate	_____
Greg Farrell	_____		

**ADOPTED AND APPROVED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED:

\_\_\_\_\_  
Scott Brakefield, Mayor



January 26, 2024

Mr. Fred Hawkins, P.E.  
Director of Engineering and Building Services  
City of Alabaster, Alabama  
1953 Municipal Way  
Alabaster, Alabama 35007

**Subject: Proposal for Professional Engineering Services  
Sanitary Sewer Hydraulic Model  
Alabaster I & I Reduction Program  
City of Alabaster, Alabama**

Dear Mr. Hawkins:

Thank you for allowing InSite Engineering, LLC to present this proposal to keep assisting with Infiltration and Inflow (“I&I”) Reduction Program and perform a Sanitary Sewer Hydraulic Model.

We understand the project is progressing as planned and that Phase 1 Planning is complete and being modified as needed; Phase 2 Data Gathering is ongoing and will be until such time as all the system has been completely videoed and inspected; Phase 3 Capital Improvements has completed 3 of the first 4 contracts with more upcoming.

Additionally, with upcoming growth and rehabilitations, pump station and force main projects, and to continue to help with the ongoing I & I search Phase 5 Sanitary Sewer Hydraulic Model is now necessary.

To perform this service, we request the following assistance from the City of Alabaster:

- Updated GIS shape files (Elevations, Locations)
- Available Manhole Inspections
- Assistance with obtaining Water Meter Data and Shapefiles, if required
- Obtaining Elevation Data if Not Present in Shapefiles
- Flow monitoring (when required)
- Providing Pump Station Information (curves, sizes, etc.) if not available



The fees for this service are listed below:

- |   |          |
|---|----------|
| ▪ Phase 2 – Annual Data Gathering / Processing / Assistance | \$32,500 |
| ▪ Phase 5 - Sanitary Sewer Model                            | \$82,500 |

Once completed a printout of the sewer model and calibration will be provided to the City of Alabaster for their files. We have included two pump station upgrade simulations in the above pricing.



Mr. Fred Hawkins  
January 26, 2024  
Page 2 of 2

As new projects for development, upgrades, rehabilitation, or future planning arise the sewer model can be utilized once the estimated flows are calculated to determine the system impact, if any, from the revision. This data is crucial in properly handling a system the size of the City of Alabasters. Additionally, it has many more beneficial uses.

This proposal for Annual Data Gathering Phase 2 (year 3) data gathering assistance, processing, and filed assistance and Phase 5 Sewer System Modeling (estimated total of \$115,5000) represents the entire understanding between The City of Alabaster and InSite Engineering, LLC in respect to the project and may only be modified in writing if signed by both of us. If you are in agreement with the scope described, you may utilize this letter as the Agreement.

To initiate our services, please sign and date in the appropriate location, keep one copy for your records, and return one to us.

We sincerely appreciate the opportunity to continue working with you on this project. If you have any questions or need any additional information, please give us a call at 205-733-9696

Sincerely,

Accepted:

InSite Engineering, LLC

\_\_\_\_\_

James M. Cassidy, P.E.

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

Title: \_\_\_\_\_

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



**RESOLUTION 022624-A**

**A RESOLUTION TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT  
WITH INSITE ENGINEERING LLC  
FOR ALABASTER INFLOW AND INFILTRATION (I & I) REDUCTION PROGRAM  
SANITARY SEWER HYDRAULIC MODEL ANNUAL DATA GATHERING & SUPPORT 2024**

**WHEREAS**, the Mayor and City Council of the City of Alabaster, Alabama, have determined that it is both wise and expedient to enter a professional services agreement with InSite Engineering, LLC for Inflow and Infiltration (I&I) Reduction Program – Sanitary Sewer Hydraulic Model, Annual Data Gathering and Support 2024; and

**WHEREAS**, said I&I Reduction Project is progressing as planned and continues the progression of leak indication for this project; and

**WHEREAS**, Agreement will include the following:

Phase 2 – Annual Data Gathering / Processing / Assistance	\$ 32,500
Phase 5 - Sanitary Sewer Model	\$ 82,500
Cost Plus 15%	\$ <u>500</u>
<b>Total</b>	<b>\$115,500</b>

and;

**WHEREAS**, Sanitary Sewer Hydraulic Model, Annual Data Gathering and Support 2024, will not exceed **\$115,500** agreement (see attached Exhibit “A”) and will be paid from the Sewer Fund.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Alabaster, does hereby authorize Scott Brakefield, Mayor of the City of Alabaster and Mark Frey, City Clerk, to sign, attest and file all documentation necessary to enter into said contract.

	Y / N		Y / N
Sophie Martin	_____	Jamie Cole	_____
Rick Ellis	_____	Zach Zahariadis	_____
Stacy Rakestraw	_____	Kerri Pate	_____
Greg Farrell	_____		

**ADOPTED AND APPROVED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED

\_\_\_\_\_  
Scott Brakefield, Mayor

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

Prepared by  
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE  
and  
Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
a practice division of the  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS  
AMERICAN COUNCIL OF ENGINEERING COMPANIES  
AMERICAN SOCIETY OF CIVIL ENGINEERS

**FOR  
Sanitary Sewer Model,  
Annual Data Gathering and Support  
2024**

EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services  
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**SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between  
The City of Alabaster, Alabama (“Owner”)  
and Insite Engineering LLC (“Engineer”)  
Engineer agrees to provide the services described below to Owner for Sanitary Sewer Model, Annual Data  
Gathering and Assistance 2024 (“Project”).  
Description of Engineer’s Services: Work will include preparation of a sewer model utilizing the City of Alabaster GIS information  
And annual data gathering and assistance for 2024

Owner and Engineer further agree as follows:

**1.01 Basic Agreement**

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

**2.01 Payment Procedures**

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

**3.01 Additional Services**

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

**4.01 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement’s terms through no fault of the terminating party.
  - b. By Engineer:
    - 1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer’s services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer’s control.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

#### 5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

#### 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

#### 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

2 of 4

EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services  
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#### 8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to the total amount of compensation received by Engineer, and (3) agree that any survey provided by the Engineer as part of this Agreement is provided solely as a convenience to the Owner at the direction of the Owner and that all liability for survey and surveying inaccuracies shall be borne fully by the surveying consultant and that Engineer has no liability for such work. Consultant shall carry insurance coverage.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

3 of 4

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**9.01 Payment (Lump Sum Basis)**

A.			
1.	A Hourly Sum not To Exceed \$	32,500	Annual Data Gathering / Processing / Assistance
2.	A Lump Sum amount of \$	82,500	Sanitary Sewer Model.
3.	Cost Plus 15% \$	500	Reimbursable Expenses (Printing / Plotting / Vehicle Mileage
	<b>Total Contract Amount \$</b>	<b>115,500</b>	

B.

OWNER UNDERSTANDS AND AGREES THAT THE OBLIGATION TO PAY FOR SERVICES IS IN NO WAY DEPENDENT ON OWNER'S ABILITY TO OBTAIN FINANCING, OBTAINING OF APPROVALS FROM ANY GOVERNMENTAL OR REGULATORY AGENCIES, REAL ESTATE CLOSING, RECEIPT OF PAYMENT FROM OTHER PARTIES, OR UPON OWNER'S SUCCESSFUL COMPLETION OF PROJECT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:	City of Alabaster, Alabama	ENGINEER:	InSite Engineering, LLC
By:	_____	By:	 _____
Title:	_____	Title:	President
Date Signed:	_____	Date Signed:	2/21/24
		License or Certificate No. and State	CA #2736 E

Address for giving notices:	Address for giving notices:
_____	5800 Feldspar Way
_____	Hoover, Alabama 35244
_____	_____

4 of 4  
 (Lump Sum Basis)  
 EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services  
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**SCHEDULE OF FEES**

**Professional and Technical Services**

The following classifications and associated unit rates are general and will be used as guidelines for the services of professional disciplines offered. Overtime is billed at 1.5 times these rates. Legal preparation and testimony are billed at 2.5 times these rates. Rates are subject to be updated once annually.

<b>Classification</b>	<b>Rate/Hour</b>
Principal Engineer	\$195.00
Sr. Professional Engineer	\$160.00
Professional Engineer	\$120.00
Engineer Intern	\$100.00
GIS/IT Engineer	\$100.00
GIS/IT Technician	\$95.00
Sr. Civil Designer	\$145.00
Civil Designer	\$100.00
CADD Technician	\$80.00
Administrative/Clerical	\$50.00
Resident Project Representative	\$80.00
Student Intern	\$50.00

<b>Reimbursable Expenses</b>	<b>Rate/Hour</b>
Automobile Travel	Current IRS Rate
Other travel and subsistence expenses	Cost + 15%
Subconsultant Services	Cost + 15%
Agency Review Fees	Cost + 15%
Outside Printing and Plotting Fees	Cost + 15%
Other Reimbursable Expenses	Cost + 15%

<b>In-House Printing and Plotting Fees:</b>	
24" x 36" Black and White Prints/Plots	\$2.00/sheet
12" x 18" Black and White Prints/Plots	\$1.00/sheet
8.5" x 11" Black and White Prints/Plots	\$0.10/page
24" x 36" Color Prints/Plots	\$16.00/sheet
12" x 18" Color Prints/Plots	\$8.00/sheet
8.5" x 11" Color Prints/Plots	\$0.45/page
Large Format Scanning	\$3.25/sheet
Small Format Scanning	\$1.00/page

Effective January 1, 2024  
 (Replaces Schedule of Fees dated February 1, 2023)

**APPENDIX 2**  
to  
**EJCDC E-520 Short Form of Agreement**  
**Between Owner and Engineer**  
**for Professional Services**

**DETAILED SCOPE OF WORK:**

1. This is an Exhibit attached to and made a part of the EJCDC E-520 Short Form of Agreement Between Owner (City of Alabaster) and Engineer (Insite Engineering, LLC) for Professional Services.
2. The ENGINEER shall perform professional services only as hereinafter stated. Professional services other than those stated hereinafter shall be considered as Extra Services and shall entitle the ENGINEER to additional compensation.
3. Annual Data Gathering / Processing / Assistance (Hourly NTE)

Items will include assistance with Data gathering from reports, tvi, field inspections, etc. Processing of data includes TVI review, rankings, logging of information. Assistance may include GIS revisions, review, processing of field data collected by Alabaster Staff, Assistance with Flow Monitoring, or other items as necessary.

4. Sanitary Sewer Model (Lump Sum)

Will include the importing of all sanitary sewer system data from GIS. Processing and Review of generated issues, adjustment, and repairs to data. Importing and development of pump station set up in models. Importing of water model data for water useages, etc.

Calibration of model using known flows and hydraulic elevations in pipes.

Modeling, once completed, shall include two review scenarios of pump station upgrades or equivalent.

Assistance Required from Alabaster

In order to keep the cost as low as possible for the City of Alabaster and to extend the funds available for future I & I rehabilitation work, the following items will need to be provided by the City of Alabaster:

- Updated GIS shape files
- Available Manhole Inspections
- Assistance with obtaining Water Meter Data and Shapefiles
- if required Obtaining Elevation Data if Not Present in Shapefiles
- Flow monitoring (when required)
  
- Providing Pump Station Information (curves, sizes, etc.) if not available

5. Reimbursable Expenses

Reimbursable expenses are billed at actual cost plus 15%. The estimated cost specified includes plotting, printing, mileage (at the current IRS rate), overnight mail, and courier services.

6. Additional Services

All OWNER requested additional services may be conducted under our normal standard hourly rates unless a specific project, owner request, or need arises for a fixed cost. These services may include easement acquisition, public meetings, coordination of utility relocations, etc.

# Memo

**To:** City Council  
**From:** John Haggard, Finance Director / Treasurer  
**Re:** Sewer Hydraulic Model  
**Date:** February 20, 2024

The Sewer Department is requesting to enter into a contract with Insite Engineering to design a sanitary sewer hydraulic model.

This is a professional service and is therefore exempt from bid law.

The sewer fund has \$6.8M of budget for FY 2024 for capital purchases. Therefore, no budget adjustment is required.

Thanks,

A handwritten signature in black ink that reads "John Haggard". The signature is written in a cursive, flowing style.

John Haggard, CPA, CGFM

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

# SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
a practice division of the  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

**FOR**

## **Sanitary Sewer Model, Annual Data Gathering and Support 2024**

# SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between

The City of Alabaster, Alabama (“Owner”)

and Insite Engineering LLC (“Engineer”)

Engineer agrees to provide the services described below to Owner for Sanitary Sewer Model, Annual Data Gathering and Assistance 2024 (“Project”).

Description of Engineer’s Services: Work will include preparation of a sewer model utilizing the City of Alabaster GIS information And annual data gathering and assistance for 2024

Owner and Engineer further agree as follows:

### 1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

### 2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer’s standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

### 3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

### 4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement’s terms through no fault of the terminating party.
  - b. By Engineer:
    - 1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer’s responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer’s services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer’s control.
    - 3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

### 5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

### 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

### 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to the total amount of compensation received by Engineer, and (3) agree that any survey provided by the Engineer as part of this Agreement is provided solely as a convenience to the Owner at the direction of the Owner and that all liability for survey and surveying inaccuracies shall be borne fully by the surveying consultant and that Engineer has no liability for such work. Consultant shall carry insurance coverage.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

### 8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment (Lump Sum Basis)

A.			
1.	A Hourly Sum not To Exceed \$	32,500	Annual Data Gathering / Processing / Assistance
2.	A Lump Sum amount of \$	82,500	Sanitary Sewer Model.
3.	Cost Plus 15% \$	500	Reimbursable Expenses (Printing / Plotting / Vehicle Mileage
	<b>Total Contract Amount \$</b>	<b>115,500</b>	

B.

OWNER UNDERSTANDS AND AGREES THAT THE OBLIGATION TO PAY FOR SERVICES IS IN NO WAY DEPENDENT ON OWNER'S ABILITY TO OBTAIN FINANCING, OBTAINING OF APPROVALS FROM ANY GOVERNMENTAL OR REGULATORY AGENCIES, REAL ESTATE CLOSING, RECEIPT OF PAYMENT FROM OTHER PARTIES, OR UPON OWNER'S SUCCESSFUL COMPLETION OF PROJECT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Alabaster, Alabama

ENGINEER: InSite Engineering, LLC

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

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

Title: \_\_\_\_\_

Title: President

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

Date Signed: 2/21/24

License or Certificate No. and State CA #2736 E

Address for giving notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:  
5800 Feldspar Way  
Hoover, Alabama 35244  
\_\_\_\_\_





**SCHEDULE OF FEES**

**Professional and Technical Services**

The following classifications and associated unit rates are general and will be used as guidelines for the services of professional disciplines offered. Overtime is billed at 1.5 times these rates. Legal preparation and testimony are billed at 2.5 times these rates. Rates are subject to be updated once annually.

<b>Classification</b>	<b>Rate/Hour</b>
Principal Engineer	\$195.00
Sr. Professional Engineer	\$160.00
Professional Engineer	\$120.00
Engineer Intern	\$100.00
GIS/IT Engineer	\$100.00
GIS/IT Technician	\$95.00
Sr. Civil Designer	\$145.00
Civil Designer	\$100.00
CADD Technician	\$80.00
Administrative/Clerical	\$50.00
Resident Project Representative	\$80.00
Student Intern	\$50.00

<b>Reimbursable Expenses</b>	<b>Rate/Hour</b>
Automobile Travel	Current IRS Rate
Other travel and subsistence expenses	Cost + 15%
Subconsultant Services	Cost + 15%
Agency Review Fees	Cost + 15%
Outside Printing and Plotting Fees	Cost + 15%
Other Reimbursable Expenses	Cost + 15%

<b>In-House Printing and Plotting Fees:</b>	
24" x 36" Black and White Prints/Plots	\$2.00/sheet
12" x 18" Black and White Prints/Plots	\$1.00/sheet
8.5" x 11" Black and White Prints/Plots	\$0.10/page
24" x 36" Color Prints/Plots	\$16.00/sheet
12" x 18" Color Prints/Plots	\$8.00/sheet
8.5" x 11" Color Prints/Plots	\$0.45/page
Large Format Scanning	\$3.25/sheet
Small Format Scanning	\$1.00/page

Effective January 1, 2024  
 (Replaces Schedule of Fees dated February 1, 2023)

**APPENDIX 2**  
**to**  
**EJCDC E-520 Short Form of Agreement**  
**Between Owner and Engineer**  
**for Professional Services**

DETAILED SCOPE OF WORK:

1. This is an Exhibit attached to and made a part of the EJCDC E-520 Short Form of Agreement Between Owner (City of Alabaster) and Engineer (Insite Engineering, LLC) for Professional Services.
2. The ENGINEER shall perform professional services only as hereinafter stated. Professional services other than those stated hereinafter shall be considered as Extra Services and shall entitle the ENGINEER to additional compensation.
3. Annual Data Gathering / Processing / Assistance (Hourly NTE)

Items will include assistance with Data gathering from reports, tvi, field inspections, etc. Processing of data includes TVI review, rankings, logging of information. Assistance may include GIS revisions, review, processing of field data collected by Alabaster Staff, Assistance with Flow Monitoring, or other items as necessary.

4. Sanitary Sewer Model (Lump Sum)

Will include the importing of all sanitary sewer system data from GIS. Processing and Review of generated issues, adjustment, and repairs to data. Importing and development of pump station set up in models. Importing of water model data for water useages, etc.

Calibration of model using known flows and hydraulic elevations in pipes.

Modeling, once completed, shall include two review scenarios of pump station upgrades or equivalent.

Assistance Required from Alabaster

In order to keep the cost as low as possible for the City of Alabaster and to extend the funds available for future I & I rehabilitation work, the following items will need to be provided by the City of Alabaster:

- Updated GIS shape files
- Available Manhole Inspections
- Assistance with obtaining Water Meter Data and Shapefiles
- if required Obtaining Elevation Data if Not Present in Shapefiles
- Flow monitoring (when required)

- Providing Pump Station Information (curves, sizes, etc.) if not available

5. Reimbursable Expenses

Reimbursable expenses are billed at actual cost plus 15%. The estimated cost specified includes plotting, printing, mileage (at the current IRS rate), overnight mail, and courier services.

6. Additional Services

All OWNER requested additional services may be conducted under our normal standard hourly rates unless a specific project, owner request, or need arises for a fixed cost. These services may include easement acquisition, public meetings, coordination of utility relocations, etc.

Council Member \_\_\_\_\_ introduced the following Resolution, which was seconded by Council Member \_\_\_\_\_



**RESOLUTION 022624-C**

**A RESOLUTION TO SUPPORT THE DECLARING AS SURPLUS AND DISPOSAL OF ITEMS WITHIN THE CITY OF ALABASTER**

**WHEREAS**, the City Administration needs to dispose of certain property within the Public Works Department, and;

**WHEREAS**, it is the desire of the City Council of the City of Alabaster to agree with this request to declare said property as surplus and allow the disposal of said items, in accordance of law, as requested, and;

**WHEREAS**, surplus material consists of 67 Rolls of Tensar H-Series Roadbed Underlayment Material that were left over from a recent paving project.

**NOW THEREFORE, BE IT RESOLVED, AS FOLLOWS:**

- 1. That the City Council of the City of Alabaster, Alabama, approves said recommendation and declares these 67 Rolls of Tensar H-Series Roadbed Underlayment Material be considered surplus and allows for the disposal of said items.
- 2. The City Council also authorizes Mayor Scott Brakefield to execute all documentation necessary to complete this transaction and City Clerk, Mark Frey, to attest and file required documentation.

**ADOPTED AND APPROVED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED:

\_\_\_\_\_  
Scott Brakefield, Mayor





January 19, 2024

Brian Binzer  
City Administrator/ City Planner  
City of Alabaster  
1953 Municipal Way  
Alabaster, Alabama 35007

Subject: Proposal for Construction Materials Testing,  
& Special Inspections for  
Alabaster Amphitheater and Senior Center  
Alabaster, Alabama  
MBA Proposal No.: G9494-24 (R1)

Dear Mr. Binzer:

We are pleased to submit this proposal to provide construction materials testing and inspection services for the Alabaster Amphitheater and Senior Center located at 1097 7<sup>th</sup> Street SW in Alabaster, Alabama. We look forward to working with you, and in this proposal, we have included the following:

- A. Description of Project**
- B. Plan of Execution**
- C. Basis of Service Estimate**
- D. Budget Estimate Schedule**
- E. Closing Remarks**

### **A. DESCRIPTION OF PROJECT**

Based on our review of the available project documents provided we understand construction will consist an addition to the existing Senior Center and a new Amphitheater:

#### Senior Center Addition:

- The new 39' by 64' addition will be located on the north side of the existing building.
- In view of the presence of soft compressible soils, the building pad will require undercut and replacement with offsite borrow material.
- The building will be on shallow foundations with concrete slab on grade. The structure has been designed as a steel frame.

#### Amphitheater:

- The new 62' by 28' amphitheater will be located to the north of the Senior Center
- The amphitheater has been designed as CMU walls to the stage elevation followed by steel framing over head of the stage.
- The building will be on shallow foundations with elevated slab (stage elevation) and a crawlspace.
- Fill soils will be observed in the general area of footings that will require over excavation.

## B. PLAN OF EXECUTION

During the construction of the proposed Amphitheater and Senior Center, our personnel will perform the following services, in accordance with the Project Specifications, ASTM Standards, and IBC Special Inspections 2018.

**Personnel Safety** – Safety on the jobsite is the first priority for MBA Engineers Inc. personnel. All personnel will follow the established safety protocols relating to individual tests or inspections. Overall safety on the jobsite associated with construction and the contractor, subcontractor, or other personnel working or visiting the jobsite shall be the responsibility of the general contractor.

**Quality Assurance and Materials Testing Oversight** – Oversight of the project materials testing, and special inspections will be performed by a qualified project manager. The project manager will be responsible for the following as they relate to testing and inspections:

- Providing oversight of testing and inspection in accordance with IBC-2018 and project documents.
- Participate in pre-construction and construction meetings as applicable.
- Perform inspections and testing as necessary or delegate the testing or inspections to a qualified technician.
- Review and manage report distribution to the project team
- Review, manage and inform client of budget status as the project progresses.

Structural testing and special inspection services are required to verify compliance with requirements specified or indicated. These services do not relieve the contractor of responsibility for compliance with other construction document requirements.

Unless otherwise directed and authorized we will perform the following tasks regarding construction materials testing, geotechnical observation, and special inspections:

### B.1. Earthwork and Foundations

- B.1.1. Laboratory classification and compaction: Perform testing of representative soils and aggregates as outlined in project specifications.
- B.1.2. Subgrade Evaluation: Perform subgrade evaluation prior to placement of compacted fill material and verify that the site has been prepared properly.
- B.1.3. Undercut Observations: An engineer will document, and quantity undercut depths at each structure.
- B.1.4. Fill Placement: Monitor placement of fill material to verify use of proper materials, densities and lift thickness during placement and compaction of compacted fill.
- B.1.5. Material Verification: Verify materials below shallow foundations are adequate to achieve the designed bearing capacity.
- B.1.6. Excavation Verification: Verify footing excavations are extended to proper dimensions and depth and have reached proper material.

### B.2. Cast-in-Place Concrete

- B.2.1. Rebar Inspection: Periodic inspection of reinforcing steel for proper placement, spacing, coverage, etc. prior to concrete placement.
- B.2.2. Concrete Mix: Periodically verify use of required mix design during concrete placement.
- B.2.3. Concrete Placement: Perform continuous observation of concrete placement for proper conveyance and placement techniques.
- B.2.4. Sampling and Testing: Obtain samples and perform tests on plastic concrete in the field including slump, air content, unit weight and temperature.
- B.2.5. Compressive Strength: Fabricate concrete specimens for compressive strength testing.
- B.2.6. Additional cylinders may be made for early breaks if requested.



**B.3. Structural Masonry**

- B.3.1. Mortar/Grout Mix: Perform periodic inspection of on-site mortar and grout mixing.
- B.3.2. Masonry Inspection: Perform periodic inspection of masonry units and verify size and location of structural elements.
- B.3.3. Reinforcing Steel: Provide periodic inspection of size, placement, positioning and lapping of reinforcing steel.
- B.3.4. Grout Placement: Provide continuous observation of grout space prior to grout placement and observe grouting.
- B.3.5. Material Storage: Perform periodic observation of material storage and protection at the project site.
- B.3.6. Sampling and Testing: Obtain field samples of mortar and grout, prepare mortar and grout specimens, perform laboratory curing and compressive strength testing and report results.

**B.4. Steel Inspections**

- B.4.1. Material and Personnel Certification: Verify material identification markings as specified and obtain manufacturer's certified mill test reports/certificates of compliance for structural steel, bolt assemblies and weld filler material.
- B.4.2. High Strength Bolt Inspection: If required, inspect installation and tightening of high-strength bolts. Verify proper tightening sequence.
- B.4.3. Field Weld Inspections: Visually inspect welds. Inspect pre-heat, post-heat and surface preparation between passes. Verify size and length of fillet welds.
- B.4.4. Moment Weld Inspections with NDT: not included in this proposal.
- B.4.5. Roof Decking: Inspect welding and side-lap fastening of metal roof deck.

**B.5. Exterior Pavement (Asphalt)**

- B.5.1. Subgrade Evaluation: Perform subgrade evaluation prior to placement of compacted fill material and verify that the site has been prepared properly.
- B.5.2. Material Verification: Verify materials used conform to approved specifications and or mix codes.
- B.5.3. Asphalt Placement: Perform continuous observation of asphalt placement for proper conveyance and placement techniques.
- B.5.4. Sampling and Testing: Unless otherwise requested, we will not collect cores of asphalt.

**B.6. Project Engineering, Management and Administration**

- B.6.1. Coordinate with owner's representative, contractor's supervising personnel and MBA Engineers' field personnel. Coordinate with field and laboratory testing
- B.6.2. Review field and laboratory reports and distribute them to the project team as applicable.
- B.6.3. Monitor budget and review invoices as the project progress and keep the client informed.

## C. BASIS OF SERVICE ESTIMATES

Based on review of the construction drawings, we have assumed the following materials testing, geotechnical observations, and special inspections. Actual required visits will be a function of the contractor's schedule and conformity. We recommend reviewing the testing quantities with the project design team, including the general contractor, to verify the anticipated schedule and testing quantities.

### C.1. Earthwork and Foundations

#### C.1.1. Laboratory Testing - Soils

- Two (2) Standard Proctors (D698) with Classification (D1140 & D4318)
- One (1) periodic visit by an Engineering Technician for sample collection.

#### C.1.2. Subgrade Evaluation / Proof Roll

- Two (2) periodic visits by a Geotechnical Professional

#### C.1.3. Undercutting of Soils

- Two (2) continuous visits by a Geotechnical Professional.

#### C.1.4. Field Placement / Density Testing

- Six (6) continuous visits by an Engineering Technician.

#### C.1.5. Footing Excavation Evaluation

- Six (6) periodic visits by a Geotechnical Staff Professional

### C.2. Cast-in-Place Concrete

#### C.2.1. Rebar Inspections:

- Ten (10) periodic visits to inspect rebar prior to concrete pour.
- We assume half (1/2) the inspections can be made on the same day as concrete pour.

#### C.2.2. Shallow Foundations:

- Six (6) periodic visits by an Engineering Technician.
- Eight (8) sets of cylinders (4x8 qty. 6)

#### C.2.3. Slab on Grade:

- Four (4) continuous visits by an Engineering Technician.
- Eight (8) sets of cylinders (4x8 qty. 6)

#### C.2.4. Concrete Pickup:

- We have assumed a trip charge for concrete pick up the day after the concrete pour.
- We assume half (1/2) the pickups can be made on the same day as other activities.

### C.3. Structural Masonry

#### C.3.1. Schedule:

- We have assumed masonry construction will require three (3) weeks in total.

#### C.3.2. Masonry / Grout Placement Inspection:

- Six (6) continuous visits by a Special Inspector.

#### C.3.3. Mortar sampling & testing:

- Assumed Three (3) sets of six (6) mortar cubes required for testing.
- Test age (3) 7-day (3) 28-day

#### C.3.4. Grout sampling & testing:

- Assumed Three (3) sets of four (4) grout prisms required for testing.
- Test age (1) 7-day (3) 28-day

#### C.3.5. Sample Pickup:

- We have assumed a trip charge for concrete pick up the day after the concrete pour.
- We assume half (1/2) the pickups can be made on the same day as other activities.

**C.4. Steel Inspections**

- C.4.1. Visual Inspection of Weld & Bolt Connections
  - Two (2) periodic visits by a Project Professional
- C.4.2. Visual inspection of Steel Decking & Trusses.
  - One (1) periodic visit by a Project Professional

**C.5. Wood Framing Inspections**

- C.5.1. Wood Framing is planned for the Senior Center Addition; however, wood framing inspections have not been included, unless otherwise requested by the design team.

**C.6. Exterior Pavement**

- C.6.1. Subgrade Evaluation & Proof Roll
  - One (1) periodic visit by a Geotechnical Professional.
- C.6.2. Density Testing – Aggregate Base
  - One (1) continuous visit by an Earthwork Technician.
- C.6.3. Laboratory Testing - Aggregate Base
  - One (1) Modified Proctor (D1557) with Gradation (C117 & C136)
- C.6.4. Asphalt Pavement:
  - Two (2) continuous visits by an Earthwork Technician.
- C.6.5. Asphalt Cores:
  - Cores will not be conducted unless otherwise requested by the design team.

### D. BUDGET ESTIMATE SCHEDULE

Based on the information discussed in Section C, we have prepared our budget as shown below:

Phase / Activity	Visits	Qty/Vst	Rate	Qty.	Units	Total
<b>1.0 Earthwork and Foundations</b>						
ET – Bulk Sample Collection	1.0	4.0	\$ 60.00	4.0	Hr.	\$ 240.00
ET – Proof Roll	2.0	4.0	\$ 95.00	8.0	Hr.	\$ 760.00
ET – Undercut Observation	2.0	8.0	\$ 95.00	16.0	Hr.	\$ 1,520.00
ET – Field Density Testing	6.0	8.0	\$ 60.00	48.0	Hr.	\$ 2,880.00
FN - Footing Inspection	6.0	4.0	\$ 95.00	24.0	Hr.	\$ 2,280.00
PE - Site Visit	1.0	4.0	\$ 180.00	4.0	Hr.	\$ 720.00
LAB - Soil Standard Proctor (D698)	2.0	1.0	\$ 155.00	2.0	Ea.	\$ 310.00
LAB - Soil Classification	2.0	1.0	\$ 180.00	2.0	Ea.	\$ 360.00
CMT - Soils NMD Gauge (Daily)	6.0	1.0	\$ 85.00	6.0	Day	\$ 510.00
Vehicle Charge (10 - 25 miles)	18.0	1.0	\$ 35.00	18.0	Ea.	\$ 630.00
						<b>\$ 10,210.00</b>
<b>2.0 Cast-in-Place Concrete</b>						
CC - Reinforcing Steel Special Inspection	10.0	4.0	\$ 75.00	40.0	Hr.	\$ 3,000.00
CC - Sampling & Testing	10.0	6.0	\$ 60.00	60.0	Hr.	\$ 3,600.00
CC - Sample Pickup & Log in	10.0	2.0	\$ 60.00	20.0	Hr.	\$ 1,200.00
LAB - Concrete Cylinders (4x8, set of 6)	16.0	1.0	\$ 75.00	16.0	Set	\$ 1,200.00
Vehicle Charge (10 - 25 miles)	20.0	1.0	\$ 35.00	20.0	Ea.	\$ 700.00
						<b>\$ 9,700.00</b>
<b>3.0 Structural Masonry</b>						
MN - Masonry Special Inspection	6.0	8.0	\$ 75.00	48.0	Hr.	\$ 3,600.00
MN - Sample Pickup	3.0	2.0	\$ 60.00	6.0	Hr.	\$ 360.00
MN - Grout Samples (3.5x3.5, set of 4)	3.0	1.0	\$ 140.00	3.0	Set	\$ 420.00
MN - Mortar Samples (3x6, set of 6)	3.0	1.0	\$ 60.00	3.0	Set	\$ 180.00
Vehicle Charge (10 - 25 miles)	8.0	1.0	\$ 35.00	8.0	Ea.	\$ 280.00
						<b>\$ 4,840.00</b>
<b>4.0 Steel Inspections</b>						
SS – Visual Special Inspection	2.0	8.0	\$ 105.00	16.0	Hr.	\$ 1,680.00
Vehicle Charge (10 - 25 miles)	2.0	1.0	\$ 35.00	2.0	Ea.	\$ 70.00
						<b>\$ 1,750.00</b>
<b>5.0 Exterior Pavement</b>						
ET – Proof Roll	1.0	4.0	\$ 95.00	4.0	Hr.	\$ 380.00
ET – Field Density Testing (Agg.)	1.0	8.0	\$ 60.00	8.0	Hr.	\$ 480.00
AP – Field Density Testing (Asphalt)	2.0	8.0	\$ 60.00	16.0	Hr.	\$ 960.00
CMT - Asphalt NMD Gauge (Daily)	3.0	1.0	\$ 85.00	3.0	Day	\$ 255.00
LAB - Soil Modified Proctor (D1557)	1.0	1.0	\$ 175.00	1.0	Ea.	\$ 175.00
LAB - Aggregate Sieve Analysis (C136)	1.0	1.0	\$ 105.00	1.0	Ea.	\$ 105.00
Vehicle Charge (10 - 25 miles)	4.0	1.0	\$ 35.00	4.0	Ea.	\$ 140.00
						<b>\$ 2,495.00</b>
<b>6.0 Project Engineering &amp; Management</b>						
PE – Report Review	64.0	0.25	\$ 180.00	16.0	Hr.	\$ 2,880.00
PM – Report Review	10.0	1.00	\$ 125.00	10.0	Hr.	\$ 1,250.00
PA – Report Processing	64.0	0.25	\$ 55.00	16.0	Hr.	\$ 880.00
						<b>\$ 5,010.00</b>
<b>Estimate Total:</b>						<b>\$ 34,005.00</b>

## E. CLOSING REMARKS

### E.1. Additional Notes

The personnel rates will be billed portal to portal. A minimum trip charge of four (4) hours will apply to all site visits. Overtime pay will apply to hours worked more than eight (8) hours per day, or for work performed on weekends or Federal holidays. Overtime will be billed at a rate of 1.5 times the normal unit rates.

Engineering review of typically ¼ hours per report will be added to cover report review and incidental consultation. Administrative services will be billed at a rate of ¼ hours per report to cover the cost of report preparation, and transmittal. Project coordination time will be billed according to the actual time required. Project document search, duplication, special billing requests, backup information, etc. will be charged at actual time.

Our charges will be for actual services and tests provided. The opinion of probable cost does not include charges for non-compliant items or retests. Costs for such services would be charged in accordance with our fee schedule.

Please note that the opinion of probable cost show above is only an estimate and not a not-to-exceed fee. There will likely be several factors beyond our control, such as inclement weather and the contractor's schedule that could affect the final cost for our services. We will make efforts to provide our services in a cost-efficient manner and we will look for ways to multitask and save the client money

Cancellation of services after personnel have arrived on site will be charged for actual time and vehicle charges. Cancellation prior to scheduled services will not result in charges.

### E.2. Schedule of Services

Our services will be provided as scheduled by your designated field personnel. A minimum 24-hours' notice is required to schedule our services, although we will attempt to meet requests in a shorter time frame. MBA Engineers' personnel will only provide testing when scheduled by your designated representative (i.e., contractor superintendent). The extent of our observations and documentation will be limited to items observed during the site visits as defined by the scope outlined previously. MBA Engineers' will not be responsible for tests not performed because of failure to schedule or request our services or subsequent damage caused because of the lack of testing.

*NOTE: Failure to properly schedule services can be a major problem with quality assurance as well as managing the CMT budget. We strongly recommend that these items be clearly discussed during preconstruction meetings with the contractor's field superintendent.*

*RETESTING COSTS: Our budget does not include re-testing costs and the contractor will be responsible for any additional costs related to retesting of failed work.*

### E.3. Additional Services

We will perform only those services outlined previously. Client and MBA Engineers Inc. may subsequently agree in writing to provide additional services under this agreement for additional negotiated compensation.

### E.4. Warranty

It is important to acknowledge that the presence of our field representatives and performing observation and testing services during construction does not relieve the contractor from meeting the project plans, specifications, or other contractual details regarding the project. Services provided by MBA Engineers Inc. will be consistent with the engineering standards prevailing at the time and in the area where the services are performed. No other warranty, expressed or implied, is intended. Our testing and observation services would be provided for the sole benefit of our client to assist the client in meeting the quality assurance function.

### E.5. Authorization

The attached General Terms and Conditions should be acknowledged as part of this proposal. A signed copy of the attached Proposal Acceptance Sheet returned to our office will serve as our authorization to proceed with the proposed scope of services. We appreciate the opportunity to present this proposal and would be happy to discuss the proposed scope with you. If you have any questions or need modifications to our scope of services, we would be happy to consider such changes. We look forward to working with you.

Respectfully submitted,



Drew Thornbury, P.E.  
Principal Engineer  
[Dthornbury@mbasei.com](mailto:Dthornbury@mbasei.com)

**GEOTECHNICAL & CONSTRUCTION TESTING SERVICES AUTHORIZATION SHEET**

MBA Engineers Inc. is pleased to provide the services detailed below. The purpose of this sheet is to obtain your authorization for the work requested and to confirm the terms under which these services are provided as shown below and on the attached General Terms and Conditions sheet(s).

**Please complete, sign, and return this form ONLY to authorize project.**

**PROJECT NAME/LOCATION:** Alabaster Senior Center and Amphitheater

**PROPOSAL/PROJECT #:** G9494-24      **DATE:** January 18, 2024

**OWNER/CLIENT  
(REPRESENTATIVE):** Brian Binzer with the City of Alabaster

**FOR PAYMENT OF CHARGES:**

Charge invoice to the Account of:

**Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Contact:** \_\_\_\_\_      **Title:** \_\_\_\_\_

**Phone:** \_\_\_\_\_      **E-Mail:** \_\_\_\_\_

**FOR APPROVAL OF CHARGES:**

If the invoice is to be mailed to someone other than the account charges, please indicate where to mail the invoice in the space below

**Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Contact:** \_\_\_\_\_      **Title:** \_\_\_\_\_

**Phone:** \_\_\_\_\_      **E-Mail:** \_\_\_\_\_

**REPORT DISTRIBUTION:**

**Firm:** \_\_\_\_\_      **Firm:** \_\_\_\_\_

**Contact:** \_\_\_\_\_      **Contact:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_      **E-mail:** \_\_\_\_\_

**PAYMENT TERMS:**      Net 10 days. A late payment of 18% per annum or the maximum amount allowed by law, including all costs of collection and attorney fees, may be added in the event payment is not made within 30 days after invoice date.

**PROPOSAL ACCEPTANCE:**

The Terms and Conditions of this Proposal, including the Terms on this page and the attached General Conditions are accepted this date: \_\_\_\_\_ 2024.

\_\_\_\_\_  
*Print or type individual, firm or corporate body name*

\_\_\_\_\_  
*Signature of authorized representative*

\_\_\_\_\_  
*Print or type name of authorized representative and title*

# GENERAL TERMS & CONDITIONS FOR CONSTRUCTION MATERIALS TESTING & ENGINEERING SERVICES

Item 7.

## 1. DEFINITIONS

- 1.1. Contractor. The contractor or contractors, and including its/their subcontractors of every tier, retained to perform construction for which MBA Engineers (COMPANY) is providing Services under this Agreement.
- 1.2. Day(s). Calendar day(s) unless otherwise stated.
- 1.3. Hazardous Materials. Any toxic substances, chemicals, radioactivity, pollutants, or other materials, in whatever form or state, known or suspected to impair the environment in any way whatsoever. Hazardous materials include, but are not limited to, those substances defined, designated, or listed in any federal, state, or local law, regulation or ordinance concerning hazardous wastes, toxic substances, or pollution.
- 1.4. Inspection (or Observation). Visual determination of conformance with specific or, on the basis of COMPANY's professional judgment, general requirements.
- 1.5. Services. The professional services provided by COMPANY under this Agreement, including all services described in the SCOPE OF SERVICES included in Exhibit A, and any written Task Order or amendment to this Agreement.
- 1.6. Testing. Measurement, examination, performance of tests, and any other activities to determine the characteristics or performance of materials.
- 1.7. Work. The labor, materials, equipment, and services of Contractor.

## 2. SCOPE OF SERVICES

- 2.1. Services Provided, Independent Contractor. COMPANY will provide construction materials engineering and testing services as set forth in the PROPOSAL FOR GEOTECHNICAL OBSERVATION AND CONSTRUCTION MATERIALS TESTING SERVICES. COMPANY will perform its services under this Agreement as an independent contractor.
- 2.2. Authority of COMPANY. COMPANY will report observations and data to the Client. COMPANY will report any observed work to the Client or Client's representative, which, in COMPANY's opinion, does not conform with plans, specifications, and codes applicable to the project. COMPANY has no right or responsibility to approve, accept, reject, or stop work of any agent of the Client.
- 2.3. Referenced Standards. COMPANY will perform all standard tests, inspections, and observations in general accordance with referenced standards and makes no representation regarding compliance with any other standards.
- 2.4. Variation of Material Characteristics and Conditions. Observations and standardized sampling, inspection and testing procedures employed by COMPANY will indicate conditions of materials and construction activities only at the precise location and time where and when services were performed. Client recognizes that conditions of materials and construction activities at other locations may vary from those measured or observed, and that conditions at one location and time do not necessarily indicate the conditions of apparently identical material(s) at other locations and times. Services of COMPANY, even if performed on a continuous basis, should not be interpreted to mean that COMPANY is observing, verifying, testing, or inspecting all materials on the project. COMPANY is responsible only for those data, interpretations, and recommendations regarding the actual materials and construction activities observed, sampled, inspected, or tested, and is not responsible for other parties' interpretations or use of the information developed. COMPANY may make certain

inferences based upon the information derived from these procedures to formulate professional opinions regarding conditions in other areas.

2.5. Changes in Scope. Client may request changes in the PROPOSAL FOR GEOTECHNICAL OBSERVATION AND CONSTRUCTION MATERIALS TESTING SERVICES. Such changes, including any change in COMPANY's compensation or time of performance, which are mutually agreed upon by COMPANY and Client, will be incorporated in written amendments to this Agreement. No change will be effective unless it is in writing and signed by Client and COMPANY, or if made orally, confirmed by the parties in writing within 10 days.

2.6. Excluded Services. COMPANY's services under this Agreement include only those services specified in the PROPOSAL FOR GEOTECHNICAL OBSERVATION AND CONSTRUCTION MATERIALS TESTING SERVICES. Client expressly releases any claim against COMPANY relating to any additional Services that COMPANY recommended, but that Client either did not authorize or instructed COMPANY not to perform.

## 3. PAYMENTS TO COMPANY

3.1. Basic Services. COMPANY will perform all services set forth in the PROPOSAL FOR GEOTECHNICAL OBSERVATION AND CONSTRUCTION MATERIALS TESTING SERVICES AND UNIT FEE SCHEDULE for the amount(s) set forth therein. COMPANY will give Client at least 30 days advance notice of any changes to its standard rates. Unless Client objects in writing to the amended fee structure within 30 days of notification, it will be incorporated into this Agreement and will supersede any prior fee structure.

3.2. Additional Services. Any services performed under this Agreement, except those services expressly identified otherwise in the attached SCOPE OF SERVICES in Exhibit A, will be provided on a time and materials basis unless otherwise specifically agreed to in writing by both parties.

3.3. Estimate of Fees. COMPANY will, to the best of its ability, perform the Services and accomplish the objectives defined in this Agreement within any written cost estimate provided by COMPANY. Client recognizes that unforeseen circumstances along with changes in scope and schedule can influence the successful completion of services within the estimated cost. The use of an estimate of fees or of a "not to exceed" limitation indicates that COMPANY will not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so but is not a guarantee that the services will be completed for that amount.

3.4. Rates. Client will pay COMPANY at the rates set forth in the UNIT FEE SCHEDULE, which is subject to periodic review and amendment, as appropriate to reflect COMPANY's then-current fee structure.

3.5. Prevailing Wages. Unless Client specifically informs COMPANY in writing that prevailing wage regulations cover the project and the PROPOSAL FOR GEOTECHNICAL OBSERVATION AND CONSTRUCTION MATERIALS TESTING SERVICES identifies it as covered by such regulations, Client hereby releases and agrees to reimburse COMPANY for any liability and costs it may incur resulting from a subsequent determination that prevailing wage regulations cover the project, including all costs, fines, and attorney's fees.

3.6. Payment Timing; Late Charge. COMPANY will submit invoices to Client periodically, but no more frequently than every two (2) weeks. All invoices are due and payable upon presentation, and any amounts unpaid 30 days after the invoice date will include a late payment charge from the date of the



invoice, at 1-1/2% per month or the maximum legal rate, whichever is lower. The failure by Client to pay COMPANY within thirty (30) days of date of invoice will constitute a substantial failure of Client to perform under this Agreement. Client will reimburse COMPANY for all time spent and expenses (including fees of any attorney, collection agency, and/or court costs) incurred in connection with collecting any delinquent amount.

3.7. Payment Disputes. If Client objects to any portion of an invoice, Client must so notify COMPANY in writing within 10 days of the invoice date, identify the cause of disagreement, and pay when due the portion of the invoice not in dispute. The parties will immediately make every effort to resolve the disputed portion of the invoice. Payment thereafter will first be applied to accrued interest and then to the unpaid principal amount.

#### 4. PERFORMANCE STANDARD

4.1. Professional Standards. COMPANY will perform the services consistent with that level of care and skill ordinarily exercised by other professionals providing similar services in the same locale and under similar circumstances at the time the services are performed. No other representation, express or implied, and no warranty or guarantee is included or intended by this Agreement or any report, opinion, document, or other instrument of service.

4.2. Sampling, Inspection & Test Locations. Unless specifically stated otherwise, the PROPOSAL FOR GEOTECHNICAL OBSERVATION AND CONSTRUCTION MATERIALS TESTING SERVICES does not include surveying the site or precisely identifying sampling, inspection or test locations, depths, or elevations. Sampling, inspection and test locations, depths and elevations will be based on field estimates and information furnished by Client and its representatives. Unless stated otherwise in the report, such locations, depths, and elevations are approximate. COMPANY will take reasonable precautions to limit damage to the project site due to the performance of services, but Client understands that some damage may necessarily occur in the normal course of services, and this Agreement does not include repair of such damage unless specifically stated in the SCOPE OF SERVICES in Exhibit A.

4.3. Sample Disposal. COMPANY will dispose of all samples after submission of the report covering those samples. COMPANY will provide further storage or transfer of samples only upon Client's prior written request and agreement on appropriate compensation.

4.4. Buried Utilities & Structures, Property Restoration. If the services require borings, test pits or other invasive exploratory work, Client will provide COMPANY with all information in its possession regarding the location of underground utilities and structures. COMPANY will contact an appropriate utility locator and take into consideration utility locations shown on drawings provided to COMPANY by the Client to reduce the risk of damage or injury to underground structures, pipelines, and utilities. The Client agrees to hold COMPANY harmless for any damage to underground structures or utilities that are not called to its attention or are not correctly shown on plans or drawings furnished for the purpose of locating such structures and utilities. If Client desires COMPANY to restore the property to its former condition or better, COMPANY will provide the additional services at an additional cost.

#### 5. CONTRACTOR'S PERFORMANCE

5.1. COMPANY is not responsible for contractor's means, methods, techniques, or sequences during the performance of its work. COMPANY will not supervise or direct contractor's work, nor be liable for any failure of contractor to complete its work in

accordance with the project's plans, specifications and applicable codes, laws, and regulations. Client understands and agrees that contractor, not COMPANY, has sole responsibility for the safety of persons and property at the project site.

#### 6. CLIENT'S RESPONSIBILITIES

6.1. In addition to payment for the services performed under this Agreement, Client agrees to:

6.2. Access. Grant or obtain free access to the project site for all equipment and personnel necessary for COMPANY to perform its services under this Agreement.

6.3. Representative. Designate a representative for notices and information pertaining to the services, communicate Client's policies and decisions, and assist as necessary in matters pertaining to the project and this Agreement. Client may change its representative by written notice.

6.4. Information. Supply to COMPANY all information and documents relevant to the services. COMPANY may rely upon such information without independently verifying its accuracy. Client will notify COMPANY of any known potential or possible health or safety hazard regarding the materials to be tested, including its intended use, chemical composition, relevant MSDS, manufacturers' specifications and literature, and any previous test results.

#### 7. CHANGED CONDITIONS

7.1. If COMPANY discovers conditions or circumstances that it did not contemplate ("Changed Conditions") at the time of this Agreement, it will give Client written notice of the changed conditions. Client and COMPANY will then negotiate an appropriate amendment to this Agreement. If they cannot agree upon an amendment within 30 days after the notice, COMPANY may terminate this Agreement and be compensated as set forth in Section 12, "Suspension & Delay; Termination."

#### 8. CERTIFICATIONS

8.1. Client will not require COMPANY to execute any certification regarding services performed or Work tested or observed unless: 1) COMPANY believes that it has performed sufficient Services to provide a sufficient basis to issue the certification; 2) COMPANY believes that the services performed, and work tested or observed meet the criteria of the certification; and 3) COMPANY has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by COMPANY is limited to the expression of a professional opinion based upon the services performed by COMPANY, and does not constitute a warranty or guarantee, either express or implied. Client agrees not to condition the resolution of any dispute upon COMPANY signing a certification.

#### 9. ALLOCATION OF RISK

9.1. Limitation of Remedy. The total cumulative liability of COMPANY, its subconsultants and subcontractors, and all of their respective shareholders, directors, officers, employees and agents (collectively "COMPANY Entities") to Client arising from services under this Agreement, including attorney's fees due under this Agreement, will not exceed the gross compensation received by COMPANY under this Agreement or \$50,000, whichever is greater. This limitation applies to all lawsuits, claims, or actions that allege errors or omissions in COMPANY's services, whether alleged to arise in tort, contract, warranty, or other legal theory. Upon Client's written request, COMPANY and Client may agree to increase the limitation to a greater amount in exchange for a negotiated increase in COMPANY's fee, provided that the parties amend

this Agreement in writing, as provided in Section 14.3 "Modification of This Agreement."

9.2. Indemnification of Client. Subject to the terms and limitations of this Agreement, COMPANY will indemnify and hold harmless Client, its shareholders, officers, directors, employees, and agents from and against any and all claims, suits, liabilities, damages, expenses (including without limitation reasonable attorney's fees and defense costs) and other losses (collectively "Losses") to the extent caused by COMPANY's proven negligence in performance of this Agreement.

9.3. Indemnification of COMPANY. Client will indemnify and hold harmless COMPANY entities from and against any and all Losses except to the extent caused by the sole negligence of COMPANY entities. In addition, except to the extent caused by COMPANY's negligence, Client will defend, indemnify, and hold harmless COMPANY entities from and against any and all losses arising from or related to the existence, disposal, release, discharge, treatment or transportation of hazardous materials, or the exposure of any person to hazardous materials, or the degradation of the environment due to the presence, discharge, disposal, release of or exposure to hazardous materials.

9.4. No Personal Liability. Client and COMPANY intend that COMPANY's services will not subject COMPANY's individual employees, officers, or directors to any personal liability. Therefore, and notwithstanding any other provision of this Agreement, Client agrees as its sole and exclusive remedy to direct or assert any claim, demand, or suit only against the business entity identified as "COMPANY" on the first page of this Agreement.

9.5. Consequential Damages. Neither Client nor COMPANY will be liable to the other for any special, consequential, incidental, or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of property or facilities, shutdowns or service interruptions, loss of use, profits, revenue, or inventory, or for use charges, cost of capital, or claims of the other party and/or its customers.

9.6. Continuing Agreement. The provisions of this Section 9, "Allocation of Risk," will survive the expiration or termination of this Agreement. If COMPANY provides services to Client that the parties do not confirm through execution of an amendment to this Agreement, the provisions of this Section 9 will apply to such services as if the parties had executed an amendment.

## 10. INSURANCE

10.1. COMPANY's Insurance. If reasonably available, COMPANY will maintain the following coverages:

10.2. Statutory Workers' Compensation / Employer's Liability Insurance.

10.3. Commercial General Liability Insurance with a combined single limit of \$2,000,000.

10.4. Automobile Liability Insurance, including liability for all hired and non-owned vehicles with minimum limits of \$1,000,000 combined single limit per occurrence.

10.5. Professional Liability Insurance in amounts of at least \$3,000,000 per claim and annual aggregate.

10.6. Client's Insurance. As appropriate, Client will obtain Builder's Risk or other property insurance to protect it from injury or damage to the project, and which waives all rights of subrogation against COMPANY. Proceeds from such insurance will be held by Client as trustee and will be payable to COMPANY as its interests appear.

10.7. Certificates of Insurance. Upon request, COMPANY and Client will each provide the other with certificate(s) of insurance evidencing the existence of the policies required herein. Except for Professional Liability and Workers' Compensation Insurance, all policies required under this Agreement shall contain a waiver of subrogation.

## 11. OWNERSHIP AND USE OF DOCUMENTS

11.1. COMPANY Documents. Unless otherwise agreed in writing, all documents and information prepared by COMPANY including, but not limited to, reports, boring logs, maps, field data, field notes, drawings and specifications, test data and other similar instruments of service (collectively "Documents") are the property of COMPANY. COMPANY has the right, in its sole discretion, to dispose of or retain the Documents.

11.2. Client Documents. All documents provided by Client will remain the property of Client. COMPANY will return all such documents to Client upon request but may retain copies for its files.

11.3. Use of Documents. Except as otherwise agreed to by Client and COMPANY, all Documents prepared by COMPANY are solely for use by Client and will not be provided by either party to any other person or entity without COMPANY's prior written consent.

11.4. Use by Client. Client has the right to reuse the Documents for purposes reasonably connected with this project for which the services are provided, including without limitation design and licensing requirements of the project.

11.5. Use by COMPANY. COMPANY retains the right of ownership with respect to any patentable concepts or copyrightable materials arising from services and the right to use the Documents for any purpose.

11.6. Electronic Media. COMPANY may agree at Client's request to provide documents and information in an electronic format as a courtesy. However, the paper original issued by COMPANY will remain the final product of the services. COMPANY makes no warranties, either express or implied, regarding the fitness or suitability of any electronic documents or media.

11.7. Unauthorized Use. No party other than Client may rely on the documents without COMPANY's prior written consent and receipt of additional compensation. Client waives any and all claims against COMPANY resulting from the unauthorized use or alteration of documents by Client or any party obtaining them through Client. Client will defend, indemnify, and hold harmless COMPANY from and against any claim, action or proceeding brought by any party claiming to rely upon information or opinions contained in documents without having obtained COMPANY's prior written consent.

## 12. SUSPENSION & DELAY; TERMINATION

12.1. Suspension & Delay. Client may, upon 10 days written notice at any time, suspend COMPANY's services. COMPANY may terminate this Agreement if Client suspends the services for more than 60 days, in which case Client will pay COMPANY as provided in Section 12.4. If Client suspends the services, or if Client or others delay COMPANY's services, Client and COMPANY agree to equitably adjust the time for completion of the services and COMPANY's compensation for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, and any charges incurred by COMPANY for demobilization and subsequent remobilization.

12.2. Termination for Convenience. COMPANY and Client may terminate this Agreement for convenience upon 10-days written notice delivered or mailed to the other party.

12.3. Termination for Cause. In the event of material breach of this Agreement, the non-breaching party may terminate this Agreement if the breaching party fails to cure the breach within 10 days following delivery of the non-breaching party's written notice of the breach to the breaching party. The termination notice must state the basis for the termination. The Agreement may not be terminated for cause if the breaching party cures the breach within the 10-day period.

12.4. Payment on Termination. Following termination other than for COMPANY's breach of this Agreement, Client will pay COMPANY for the services performed prior to the termination notice date, and for any necessary services and expenses incurred in connection with the termination of the Project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination of subcontractor contracts in accordance with COMPANY's then-current UNIT FEE SCHEDULE.

12.5. Force Majeure. In the event that COMPANY is prevented from completing performance of its obligations under this Agreement by adverse weather or other occurrence beyond the control of COMPANY, then COMPANY will be excused from any further performance of its obligations and undertakings. In the event of a force majeure delay that does not result in termination of the Agreement, the schedules will be equitably adjusted.

### 13. DISPUTES

13.1. Mediation. All disputes between COMPANY and Client are subject to mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated within 45 days of service of notice. No action or suit may be commenced unless the parties fail to conduct the mediation within 45 days after service of notice; or mediation occurred but did not resolve the dispute; or a statute of limitation would elapse if suit was not filed prior to 45 days after service of notice.

13.2. Choice of Law; Venue. This Agreement will be construed in accordance with and governed by the laws of the state in which the project is located.

13.3. Statutes of Limitations. Any applicable statute of limitations will be deemed to commence running on the earlier of the date of substantial completion of COMPANY's Services under this Agreement or the date on which claimant knew, or should have known, of facts giving rise to its claims.

### 14. MISCELLANEOUS

14.1. Assignment and Subcontracts. During the term of this Agreement and following its expiration or termination for any reason, neither party may assign this Agreement or any right or claim under it, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Any assignment that fails to comply with this paragraph will be void and of no effect. COMPANY may subcontract for the services of others without obtaining Client's consent if COMPANY deems it necessary or desirable for others to perform certain services.

14.2. Integration and Severability. This Agreement reflects the parties' entire agreement with respect to its terms and limitations and supersedes all prior agreements, written and oral. If any portion of this Agreement is found void or voidable, such portion will be deemed stricken and the Agreement reformed to as closely approximate the stricken portions as law allows. These terms and conditions survive the completion of the Services under and the termination of the Agreement, whether for cause or for convenience.

14.3. Modification of This Agreement. This Agreement may not be modified or altered, except by a written agreement signed by authorized representatives of both parties and referring specifically to this Agreement.

14.4. Notices. Any and all notices, requests, instructions, or other communications given by either party to the other must be in writing and either hand delivered to the recipient or delivered by first-class mail (postage prepaid) or express mail (billed to sender) at the addresses given in this Agreement.

14.5. Headings. The headings used in this Agreement are for convenience only and are not a part of this Agreement.

14.6. Waiver. The waiver of any term, condition or breach of this Agreement will not operate as a subsequent waiver of the same term, condition, or breach.

14.7. Precedence. These GENERAL CONDITIONS take precedence over any inconsistent or contradictory provisions contained in any other agreement term, proposal, purchase order, requisition, notice to proceed, or other document regarding COMPANY's services.

14.8. Incorporation of Provisions Required By Law. Each provision and clause required by law to be inserted in this Agreement is included herein, and the Agreement should be read and enforced as though each were set forth in its entirety herein.

## End of General Terms & Conditions



**RESOLUTION 022624-D**

**A RESOLUTION TO ENTER INTO A PROFESSIONAL AGREEMENT WITH MBA ENGINEERING LLC  
CONSTRUCTION MATERIALS TESTING (CMT) AND SPECIAL INSPECTIONS  
FOR THE NEW ALABASTER AMPHITHEATER AND SENIOR CENTER ADDITION**

**WHEREAS**, the Mayor and City Council of the City of Alabaster, Alabama, have determined that it is both wise and expedient to enter into said professional agreement with MBA Engineers, Inc., for Construction Materials Testing (CMT) and special inspections for the new Alabaster Amphitheater and Senior Center Addition within the City of Alabaster, Alabama; and

**WHEREAS**, the amount of this service agreement will not to exceed **\$34,005** which includes:

**SCOPE OF SERVICES / FEE SUMMARY**

- Earthwork and Foundations \$10,210
- Cast-in-Place Concrete \$9,700
- Structural Masonry \$4,840
- Steel Inspections \$1,750
- Exterior Pavement \$2,495
- Project Engineering & Management \$5,010

**Total Lump Sum/Hourly Estimate Fee and Reimbursable Estimate \$34,005.**

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Alabaster, does hereby authorize Scott Brakefield, Mayor of the City of Alabaster and Mark Frey, City Clerk, to sign, attest and file all documentation necessary to enter into said contract.

	Y / N		Y / N
Sophie Martin	_____	Jamie Cole	_____
Rick Ellis	_____	Zach Zahariadis	_____
Stacy Rakestraw	_____	Kerri Pate	_____
Greg Farrell	_____		

**ADOPTED AND APPROVED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST: CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED

\_\_\_\_\_  
Scott Brakefield, Mayor

Having been previously introduced during the **February 12, 2024**, Council Meeting, Council Member \_\_\_\_\_ introduced the following Resolution, which was seconded by Council Member \_\_\_\_\_.



**RESOLUTION 022624**

**RESOLUTION AUTHORIZING THE PLACEMENT OF LIEN  
ON PROPERTY LOCATED AT 1226 THOMPSON RD**

**WHEREAS**, on **Monday November 27, 2023**, with Resolution 112723, the Council, upon recommendation of the Fire Marshal and Code Enforcement, declared **1226 THOMPSON RD/PIN 23 2 10 1 007 061.000**, in the City of Alabaster, Alabama, **Owner IMAX Marketing LLC**, to be a public nuisance; and,

**WHEREAS**, the Fire Marshal and Code Enforcement has made a report to the Council of the cost of abatement on said property in the total amount of **\$482.13** for the abatement of weeds; and,

**WHEREAS**, the Administration advised the Council that an additional cost of **\$426.61** for advertising, legal fees, recording fees and postage are associated with this abatement; and,

**NOW, THEREFORE, AFTER DUE CONSIDERATION, BE IT RESOLVED,**

1. That costs in the amount of **\$908.74** are hereby assessed against **1226 THOMPSON RD/PIN 23 2 10 1 007 061.000**, in the City of Alabaster, Alabama.
2. That the Clerk is to hereby publish a copy of this resolution in the manner prescribed.
3. That the Clerk is hereby directed to mail a certified copy of this resolution by certified or registered mail to the person last assessed for ad valorem taxes on the property.
4. That the Clerk is hereby directed to file a certified copy of this resolution in the Probate Court of Shelby County, Alabama.

**ADOPTED AND APPROVED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER, ALABAMA

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED:

\_\_\_\_\_  
Scott Brakefield, Mayor

Having previously been introduced at the **February 12, 2024**, council meeting, Council Member \_\_\_\_\_ moved the adoption of the following Ordinance, which was seconded by Council Member \_\_\_\_\_:



**ORDINANCE 24-195**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE RIGHT-OF-WAY USE AGREEMENT TO SPECTRUM SOUTHEAST, LLC d/b/a CHARTER COMMUNICATIONS, INC, FOR THE PURPOSE OF PROVIDING SERVICES, FACILITIES AND EQUIPMENT NECESSARY TO MEET THE CURRENT AND FUTURE CABLE-RELATED NEEDS OF THE COMMUNITY WITHIN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF ALABASTER, ALABAMA**

**WHEREAS**, Spectrum Southeast, LLC d/b/a Charter Communications, Inc. (hereinafter referred to as the “the Company”) desires to continue to provide services, facilities and equipment necessary to meet the current and future needs of the community, and on public rights-of-way within the City of Alabaster, Alabama; and

**WHEREAS**, the Company agrees and recognizes that it is required to obtain consent in the form of a right-of-way use agreement from the City of Alabaster in order to construct and maintain the transmission lines within the corporate limits of the City of Alabaster; and

**WHEREAS**, the City Council wishes to accommodate the Company’s request and grant a right-of-way use agreement for the provision of cable services to the community in accordance with the terms and conditions contained herein.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALABASTER AS FOLLOWS:**

The City Council of the City of Alabaster does hereby grant Spectrum Southeast, LLC dba Charter Communications, Inc., at execution of this Ordinance by the Company, a non-exclusive right-of-way use agreement granting the limited authority to construct and maintain cable transmission lines in the City of Alabaster in and along the rights-of-way of the City, subject to the terms and conditions set forth in the following agreement:

**AGREEMENT**

THIS AGREEMENT (“Agreement”) dated February 26, 2024 is made by and between Spectrum Southeast, LLC d/b/a Charter Communications, Inc. (“Charter”), a Delaware corporation and Alabaster, Alabama, (“City”) and applies to subscribers within the City.

### RECITALS

**WHEREAS**, the City recognizes that Charter has substantially complied with the material terms of the current Franchise under applicable laws, and that the financial, legal and technical ability of Charter is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

**WHEREAS**, the City and Charter have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal; and

**WHEREAS**, the Parties believe that the system and services that Charter will use in the City to provide Cable Services as defined in 47 U.S.C. 522 (6) are subject to Title VI of the Communications Act of 1934, as amended ("Title VI"); and

**WHEREAS**, the Parties acknowledge and agree that by entering into this Agreement the City reserves all rights it may have to regulate Charter's use of the right-of-way to the maximum extent permissible under the law and the City does not, in any way, waive or surrender any of its regulatory rights in the right-of-way by virtue of executing this Agreement.

**NOW, THEREFORE**, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, the City and Charter agree as follows.

1. **Terms.** Words used in this Agreement which are not defined shall have the meaning ascribed to them in the Cable Communications Act of 1984, as amended by the Cable Communications Policy Act of 1992, the Telecommunications Act of 1996 and as amended from time to time. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. As used herein, the term "Video Cable" shall mean "Cable Service" as defined in the foregoing acts.
2. **Requirements.** The City hereby grants to Charter a nonexclusive Franchise which authorizes Charter to erect, construct, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during its terms; any poles, wires, cable, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, State or local law.
  - a. **Police Powers and Conflicts with Franchise.** Charter agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of Charter that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the City's lawful exercise of its general police power, the City may not take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to this Franchise must be made in writing signed by Charter and the City. In the event of any conflict between this Franchise and any City ordinance or regulation, this Franchise will prevail.

- b. The City shall maintain its police powers in a nondiscriminatory manner over installation of facilities in the public rights of way.
- c. Charter agrees that it must locate its Cable Service equipment in the right-of-way so as not to cause unreasonable interference with the rights of the traveling public on public rights of way, not to unreasonably limit the visibility of vehicular and/or pedestrian traffic, and not to cause unreasonable interference with the rights, if any, of property owners who adjoin any of the said streets, alleys or other public ways.
- d. Charter shall comply with the lawful application of all generally applicable provisions of the Code of Ordinances of the City, state and federal law with respect to the location of Charter's Cable Service equipment and facilities in the right-of-way. If the location selected by Charter for a specific Cable Service cabinet raises a reasonable public health, safety, and welfare concern, the City and Charter agree to work together to identify alternative locations, if available, to satisfy any technical specifications or limitations of the facilities or equipment to be placed in the right-of-way and that are acceptable to the City.
- e. Charter shall comply with the same terms and conditions as are applicable under its existing authorizations for Charter's facilities and equipment in the right-of-way with respect to all work involved in the construction, maintenance, repair and upgrade of the Cable System. Nothing in this Agreement shall in any way reduce or expand the City's authority over the right-of-way to the maximum extent permitted by law.
- f. The City agrees to subject the construction and installation of the Video Cable System to the same process and review as it subjects the installation and construction of Charter's existing communications infrastructure consistent with applicable provisions of the City ordinances, rules and regulations, state and federal law.
- g. In accordance with the City Ordinances, rules and regulations, the City agrees to process any and all applicable permits for the installation and construction of Cable System facilities in a timely and prompt manner consistent with reasonable City practices. City agrees not to unreasonably block, restrict, or limit the construction and installation of the Cable System.
- h. With respect to the Cable System of Charter located in the right-of-way and utilized to provide Cable Service:
- i. All construction practices for Cable System facilities shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended.
  - ii. All installation of electronic Cable System equipment shall be installed in accordance with the provisions of the National Electrical Safety Code.
  - iii. Antennas and their supporting structures (towers) used exclusively for the provision of Cable Service shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state and City directives, codes and regulations.
  - iv. All of Charter's Cable System equipment and facilities shall be installed, located, erected, constructed, reconstructed, replaced, relocated, or removed in accordance and in compliance with all generally applicable City Resolutions, rules and regulations, including the Uniform Regulations Pursuant to Authorization of *Ala. Code §11-88-14* Concerning Location of Utilities on City Rights-Of-Way. All such work must be performed so as not to unreasonably interfere with road improvements the City may deem appropriate to make, or unlawfully hinder or obstruct the rights of the traveling public. All cables and other Cable System equipment shall be properly installed and shall not be left unburied, unstrung, or otherwise in an incomplete state so as to interfere with the health, safety and welfare of the City or the public. In the event of a required pole relocation, Charter shall make any and all necessary adjustments within sixty (60) days of being notified by its pole provider of the completion of said pole relocations. Nothing in this Section shall be construed to limit Charter's rights to access and make use of its own or general utility easements in accordance with the terms of such easements so long as such use is consistent with applicable law.



v. Charter shall at all times employ ordinary care and shall use commonly accepted methods and devices.

vi. Charter shall comply with the provisions of the City Resolutions, rules and regulations regarding tree trimming on public rights of way.

3. Compensation to City.

3.1 During the term of this Agreement, Charter shall pay to the City a franchise fee equal to 5% of the Gross Revenue, as defined herein, which fee shall be paid quarterly and transmitted by electronic funds transfer to a bank account designated by City. Such fees shall be paid to the City within 45 days after the end of the preceding calendar quarter for which payment is made. Charter may designate that portion of the subscriber's bill attributable to fees imposed pursuant to this Agreement and recover such amount from the subscriber as a separate line item of the bill.

3.2 Payment shall be accompanied by a written statement setting forth the Gross Revenue for the quarter for which the payment is submitted. In the event that a Franchise Fee or other sum due is not received by the City on or before the date due, Charter shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the prime rate plus one percent (1%) as of the date upon which the payment was due.

3.3 Gross revenues shall mean all revenues, calculated in accordance with generally accepted accounting principles (GAAP), derived from the operation of the cable system for the provision of cable services within the City. This gross revenue definition will exclude non-subscriber based revenue sources, such as advertising and home shopping network fees. Gross revenues shall include the following:

- a. Recurring charges for cable or video service.
- b. Event-based charges for video service, including, but not limited to, pay-per-view and video-on-demand charges.
- c. Rental of cable boxes and other services or video service equipment required to receive cable or video Service.
- d. Service charges related to the provision of cable service or video service including but not limited to activation, installation and repair charges.
- e. Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.
- f. Late payment fees or charges.
- g. In the case of video service or cable Service that is bundled or integrated functionally with other services, capabilities or applications, the portion of the video provider's revenue attributable to the other services, capabilities or applications shall be included in the gross revenue unless the cable provider can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

3.4 For purposes of this Agreement, Gross Revenues do not include:

- a. uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected fees, less expenses of collection, shall be included in Gross Revenues in the period collected;
- b. discounts, refunds, and other price adjustments that reduce the amount of compensation received by Charter;
- c. Any tax, fee, or assessment of general applicability imposed on the consumer or the transaction by a Federal, State, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes, and utility user taxes;

d. revenue from the sale or rental of capital assets to non-subscribers; or

e. any revenues received by Charter for the provision of information services, or the provision of directory or Internet advertising (including yellow pages, white pages, banner advertisement, and electronic publishing).

4. Public, Educational and Governmental Programming

4.1 Upon written notice by the City to Charter to provide capacity for the City's public, educational and governmental ("PEG") programming through Charter's Cable System, the City and Charter will meet to discuss construction, equipment and costs associated with launching a PEG channel for the City, provided, however, that all costs associated with the operation of the PEG channel and the transmission of PEG programming from the City's origination point to Charter's headend or hubsite shall be the responsibility of the City. Following discussions between the City and Charter, if technically feasible, within one hundred twenty days (120) days Charter will provide one (1) downstream PEG access channel on the Cable System for use by the City for non-commercial, video programming for PEG access programming. The PEG channel may be placed on any tier of service available to subscribers in compliance with applicable law.

Upon the City demonstrating that the first channel is substantially utilized as defined below, and that upon activation of a second channel it will also be substantially utilized. The City may request, and Charter shall provide, a second PEG Channel upon 180 days advance written notice by the City. "Substantially Utilized" shall be defined as 15 continuous hours each calendar day with at least seventy-five percent (75%) of this block must be original, non-duplicated content. The second channel must also be substantially utilized in order for the City to have access to this second PEG channel. The City may be required to support a change in or addition to current City equipment now in use for PEG programming to make it compatible with Charter's cable technology.

Any operation of any PEG access channel by City shall be the responsibility of the City, and Charter's only obligation, if any, is the responsibility for the downstream transmission of such channel from its headend or hubsite to subscribers. The City will be responsible to ensure that all transmissions, retransmissions, content, or programming that may be requested to be transmitted over a channel or facility by Charter in the future, if any, are provided or submitted to Charter, at the Charter designated connection point, in a manner or form that is capable of being accepted and transmitted by Charter, without requirement for additional alteration or change in the format or content by Charter, over the network of Charter, and which is compatible with the technology or protocol utilized by Charter to deliver Cable Service.

4.2 If the City elects to activate a PEG Channel in accordance with Section 4.1 above, Charter shall pay the City a PEG fee determined by the City as reasonable to meet the needs and interests of the cable-related community, taking into account the costs of meeting those needs and interests, and following a public hearing, which fee shall not exceed one percent of Charter's Gross Revenues as defined by paragraph (3.3) of this Agreement for PEG. The City shall provide Charter written notice forty-five (45) days in advance of the date on which it seeks to start collecting the fee setting forth the percentage it seeks to collect. All fees paid to the City under this section shall be paid in accordance with 47 U.S.C. Section 531 (a) (4) (B) and may be used by the City as allowed by 47 USC 542 (g); further, the PEG fee shall not be offset, deducted or chargeable as a credit against franchise fee payments required by Section 3 of this Agreement provided that this PEG fee is being used in accordance with federal law. Payments made for PEG support shall be collected and paid in the same manner as outlined in Section 3 of this Agreement. The provider may designate that portion of the subscriber's bill attributable to fees imposed pursuant to this Agreement and recover such amount from the subscriber as a separate line item of the bill.

5. Emergency Message If Charter provides access to an Emergency Alert System ("EAS") to the City, then the City shall permit only appropriately trained and authorized persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of Charter's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The City shall hold

Charter, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys’ fees and costs.

- 6. Customer Service Standards. The City acknowledges that presently there are two or more wireline providers offering service within the City. In the event Charter is the only wireline provider offering service within the City, the City will require that Charter comply with the customer service requirements set forth in 47 C.F.R. Section 76.309 (c) as a condition of this Franchise. If Charter customers contact City with a complaint or request for assistance of any kind pertaining to Cable Service, including but not limited to billing, installation, repair or service inadequacies, City will contact Charter’s customer service representative to address the customer complaint or request. Charter will address and resolve or attempt to resolve the complaint or request as soon as possible and communicate the planned actions to the City within 24 hours of Charter’s notice of the complaint if reasonably possible. The City may contact the FCC at any time regarding concerns about Charter’s customer performance.
- 7. Removal. Upon abandonment, Charter will, at the City’s written request and within a reasonable amount of time, remove from the City rights-of-way any visible equipment that Charter used exclusively for video services and restore the property at Charter’s cost. In the event that Charter fails to timely remove any such equipment, the City shall have the right to remove said equipment and restore the property at Charter’s expense.
- 8. Insurance.

8.1 Charter shall maintain throughout the term of the Agreement insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Liability (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- b. The City shall be added as an additional insured, arising out of work performed by Charter, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. Charter shall furnish the City with current certificates of insurance evidencing such coverage within thirty (30) days of the Effective Date, and thereafter upon request and naming the City as an additional insured on all such policies.

8.2 Self-Insurance. Charter maintains the option, at the Effective Date of this Agreement and at any time throughout the term of this Agreement, to self-insure any or all of the types and/or limits of insurance coverage described in this Section 8 and shall provide the City with a statement certifying such self-insurance, which self-insurance must be approved by the City. Consent by the City shall not be unreasonably withheld.

8.3 Maintenance of Insurance Policies. The liability insurance policies required under this Section shall be maintained by Charter through the term of this Agreement. A thirty (30) day notice of cancellation will be provided to the contact name and email address provided by the City. It is the responsibility of the City to provide Charter with up-to-date contact name and email address. A notice of cancellation for nonpayment of premium is not provided.

8.4 Alteration of Minimum Limits. The City may, following the Effective Date, request in writing, increasing the minimum limitation(s) of the self-insurance or insurance policy(ies) required under this

Section by a percentage not to exceed the percentage increase in the Consumer Price Index for the Birmingham Metropolitan Statistical Areas as of the Effective Date.

8.5 No Limit of Liability. The legal liability of Charter to the City and any person for any of the matters that are the subject of the insurance policy(ies) required by this Section shall not be limited by said insurance policy(ies) or by the recovery of any amounts thereunder.

9. Breach of Agreement. Should either party claim that a breach of any part of this Agreement has occurred, that party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other party shall cure such breach within 60 days.
10. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall, prior to any court action, make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties and the parties may use a mediator when such discussions have failed.
11. Non-discrimination. Charter shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, age or sex.
12. Indemnification. Charter shall, by acceptance of the Franchise granted herein, defend the City, its officers, boards, commissions, agents, and employees for all claims for injury to any Person or property caused by the negligence of Charter in the construction or operation of the Cable System and in the event of a determination of liability shall indemnify and hold City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any Person or property as a result of the negligence of Charter arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the operation of the Cable System, provided that the City shall give Charter written notice of its obligation to indemnify the City within fifteen (15) days of receipt of a claim or action pursuant to this section. In the event any such claim arises, the City shall tender the defense thereof to Charter and Charter shall have the right to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully herein. If the City determined in good faith that its interests cannot be represented by Charter, Charter shall be excused from any obligation to represent the City. Notwithstanding the foregoing, Charter shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City or for the City's use of the Cable System.

12.1 Charter shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by Charter for which Charter is legally responsible, subject to any and all defenses and limitations of liability provided at law. The City shall not be required to indemnify Charter for the above acts of Charter, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

12.2 The City shall be responsible for its own acts of negligence or willful misconduct, or breaches of obligation committed by the City for which the City is legally responsible, subject to any and all defenses and limitations of liability provided at law. Charter shall not be required to indemnify the City for the above acts of the City, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

13. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered either personally, by facsimile, by nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below or by U.S. certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to City:

City of Alabaster  
 1953 Municipal Way  
 Alabaster, AL 35007Alabaster  
 City Clerk Email: [mfrey@cityofalabaster.com](mailto:mfrey@cityofalabaster.com)

Alabaster City Attorney Email: [jbrumlow@brumlowlegal.com](mailto:jbrumlow@brumlowlegal.com)

If to Charter:

Charter Communications  
Attn: Legal Department  
601 Massachusetts Avenue NW  
Suite 400 West  
Washington, DC 20001

With copies to:

Charter Communications  
Attn.: Director, Government Relations  
151 London Parkway  
Birmingham, AL 35211  
Email: [taylor.vice@charter.com](mailto:taylor.vice@charter.com)

14. Compliance with Local and other Laws. Charter shall comply with all applicable laws, ordinances, and codes of the U. S. Government and the State of Alabama, and any relevant generally applicable, laws, codes and ordinances of the City. Furthermore, by signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not knowingly employ, hire for employment or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
15. Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551). Charter will comply with all applicable state and local privacy laws during the term of this Agreement, to the extent such laws apply to Charter and to its obligations under this Agreement.
16. Taxes. Nothing contained in this Agreement shall be construed to exempt Charter's Cable Service from any tax, levy or assessment which is or may later be properly authorized by law; provided any tax, levy or assessment on any Charter product is equally applicable to all other businesses in the City.
17. Employment. Charter hereby agrees that it shall not refuse to hire or employ, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment, because of age, race, creed, color, national origin, handicap, religious faith or sex.
18. Books and Records City's Right of Inspection and Audit
  - 18.1 Charter shall maintain books of account and records adequate to enable Charter to demonstrate that it is in compliance with the obligation to pay the fees described in Section 3.1 of this Agreement with respect to the Cable Service. Charter shall also maintain books and records to demonstrate Charter's compliance with all other terms of this Agreement. Charter shall not be required to maintain books and records for compliance purposes under this Agreement for a period longer than three (3) years.
  - 18.2 The City shall have the right to audit Charter within three (3) years from which the fee payment was due. The City may recompute any amounts determined to be payable in satisfaction of the fees described in Section 3 of this Agreement with respect to Cable Service. Any additional and valid amount due the City as a result of the audit shall be paid by Charter within thirty (30) days after Charter receives a written notice from the City. The notice that the City sends to Charter shall include a complete copy of the audit report. The City may not retain any person or entity for compensation that is dependent in any manner upon the outcome of any such audit, including the audit findings, the recovery of fees, or the recovery of any other payments.
  - 18.3 In the event that payment of any valid fees as described in Section 3.1 of this Agreement with respect to Cable Service that has been recomputed pursuant to Section 18.2 above is not made on or before the expiration of thirty (30) days following written notice by the City, Charter shall be charged

and shall pay on amounts actually owed, but not disputed amounts, in addition to the amount due, interest on the amount due equal to the prevailing prime rate plus two hundred (200) basis points of interest compounded daily from the due date for payment of the recomputed amount until paid in full. The prevailing prime rate shall be the prime rate as published by the Regions Bank of Birmingham.

18.4 Upon reasonable notice to Charter, the City or its designated representative shall have the right to examine books and records, at Charter offices or in a mutually agreeable location, directly related to Charter's compliance with its obligations under this Agreement, including the fees described in Section 3 of this Agreement. The City shall have no right to examine any aspect of the books and records that does not directly relate to Charter's obligations under this Agreement.

18.5 City acknowledges that some of the records which may be provided by Charter may be classified as confidential and therefore may subject Charter to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by Charter which are not required to be made public pursuant to applicable laws. Charter shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

19. Furnishing of Information. Each party shall cooperate to make available or cause to be made available information requested by the other Party relating to this Agreement and each Party's obligations under this Agreement to the extent such information may be requested in writing by a Party and is in the possession or the control of the other Party. Any disputes between the Parties as to any information requested pursuant to this Section shall be subject to the dispute resolution process described in Section 11 of this Agreement.

20. Termination and Revocation of this Agreement.

20.1 Prior to revocation or termination of the Franchise, the City shall give written notice to Charter of its intent to revoke the Franchise on the basis of a pattern of noncompliance by Charter, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. Charter shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Charter, it may then seek to revoke the Franchise at a public hearing. Charter shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

20.2 At the hearing, the City shall give Charter an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to Charter within ten (10) business days. The decision of the City shall be made in writing and shall be delivered to Charter. Charter may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo. Charter may continue to operate the Cable System until all legal appeals procedures have been exhausted.

20.3 Notwithstanding the above provisions, Charter does not waive any of its rights under federal law or regulation.

20.4 Upon revocation of the Franchise, Charter may sell the Cable System, remove the Cable System from the Streets of the City, or abandon the Cable System in place.

21. Inspection Rights

21.1 The City shall have the right to inspect, upon reasonable prior written notice, and at its expense, all construction and installation work performed by Charter of Cable Service specific facilities on the public rights-of-way as it shall find necessary to ensure compliance with a specified permit. Any such inspection shall be solely for the benefit of the City.

22. Amendment of this Agreement. Either Charter or the City shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days' notice to the other Party, if (a) Charter concludes in its reasonable business judgment that Cable Service in the City is no longer technically,

economically or financially consistent with Charter's business objectives; or (b) a change in state or federal law permits the City to obtain greater compensation from Charter than the compensation provided for under the terms of this Agreement.

23. Assignment

23.1 Subject to applicable law, Charter may not assign or transfer this Agreement or any interest therein, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed.

23.2 A change in the actual working control of Charter shall be considered a transfer and shall not take place without the prior written consent of the City. Such consent shall not be unreasonably withheld or delayed.

23.3 Notwithstanding anything to the contrary, no consent shall be required, however, for (1) a transfer of an agreement or any interest therein to another party owned by or under common control with Charter, or (2) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title or interest of Charter in this Agreement or the system in order to secure indebtedness.

23.4 Any request for consent to a transfer of this Agreement or change in control of Charter shall be handled by the City in accordance with applicable federal and state law.

23.5 In the event of a transfer of this Agreement the transferee or assignee must agree, in writing, to be bound by the terms of this Agreement subject to applicable law.

24. Entire Agreement. This Agreement constitutes the entire agreement between the City and Charter with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between City and Charter regarding the subject matter hereof.

25. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

26. Miscellaneous.

26.1 Charter and City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

26.2 The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

26.3 Charter and City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

26.4 Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits, or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a party to this Agreement, unless otherwise expressly set forth herein.

26.5 If any particular section of this Agreement shall be held invalid, the remaining provisions and their application shall not be affected thereby.

27. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable.

28. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

29. Compliance with this Agreement. Charter shall not be excused from complying with any of the terms, conditions, and provisions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms, conditions, or provisions.
30. Force Majeure. In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by a force majeure event, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Charter's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
31. Severability. If any particular section of this Agreement shall be held invalid, the remaining provisions and their application shall not be affected thereby.
32. Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days' written notice from the Grantor, subject to the conditions set forth below. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by electronic or certified mail, return receipt requested to the addresses set forth in Section 13 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Agreement, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.
33. Choice of Law. This Agreement shall be construed and interpreted according to the Federal law and the laws of the State of Alabama.
34. Term. The Agreement shall be for a term of five (5) years, commencing on the Effective Date of this Agreement as set forth in Section 35. This Agreement will be automatically extended for an additional term of five (5) years from such effective date, unless either party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations under the Cable Act) at least one hundred eighty days (180) before the expiration of this Franchise. If such a notice is given, the parties will then proceed under the federal Cable Act renewal procedures.
35. Effective Date. The Agreement will take effect and be in full force from such date of acceptance by Charter recorded on the signature page of this Agreement. This Agreement shall expire on February 25, 2029 unless extended in accordance with Section 34 of this Franchise or by the mutual agreement of the parties.
36. Other Agreements. If any other provider of Cable Services or video services (without regard to the technology used to deliver such services) is lawfully authorized by the City or by any other state or federal governmental entity to provide such services using facilities located wholly or partly in the public rights-of-way of the City, the City shall, within thirty (30) days of a written request from Charter, modify this Agreement to insure that the obligations applicable to Charter are no more burdensome than those imposed on the new competing provider. If the City fails to make modifications consistent with this requirement, City's Agreement shall be deemed so modified thirty (30) days after Charter's initial written notice. As an alternative to the Agreement modification request, Charter shall have the right and may choose to have this Agreement with the City deemed expired thirty (30) days after



written notice to the City. Nothing in this Agreement shall impair the right of the Charter to terminate this Agreement and, at Charter’s option, negotiate a renewal or replacement agreement, license, consent, certificate or other authorization with any appropriate government entity.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of this 26th day of February, 2024.

**Spectrum Southeast, LLC**  
**By: Charter Communications, Inc., Its Manager**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Paul Abbott  
Title: Vice President, Government Affairs

**THIS ORDINANCE IS ADOPTED AND APPROVED AND EXECUTED THIS 26TH DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

\_\_\_\_\_  
Sophie Martin, Council President

APPROVED

\_\_\_\_\_  
Scott Brakefield, Mayor

Having previously been introduced at the **February 12, 2024**, council meeting, Council Member \_\_\_\_\_ moved the adoption of the following Ordinance, which was seconded by Council Member \_\_\_\_\_:



**ORDINANCE 24-196**

**AN ORDINANCE AMENDING SECTION 8-34 OF THE ALABASTER CODE OF ORDINANCES (2015) RELATING TO PENALTIES, INTEREST AND DELINQUENT LICENSES**

THE PUBLIC GOOD REQUIRING IT, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALABASTER, ALABAMA AS FOLLOWS:

Section 1. Amending Section 8-34 of the Alabaster Code of Ordinances

Section 8-34 of the Alabaster Code of Ordinances (2015) is hereby amended to read as follows:

**Sec. 8-34. Penalties and interest and cancellation.**

- (a) All licenses not paid within 30 days from the date they fall due shall be increased by 15 percent for the first 30 days they shall be delinquent, or fraction thereof, and shall be measured by an additional 15 percent for a delinquency of 60 or more days, but this provision shall not be deemed to authorize the delay of 30 days in the payment of the license due, which may be enforced at once.
- (b) In the case of persons who began business on or after the first day of the calendar year, the license for such new business shall be increased by 15 percent for the first 15 days they shall be delinquent, and shall be measured by an additional 15 percent for a delinquency of 45 days or more.
- (c) All delinquent accounts (both license taxes and penalties) shall also be charged at the interest rate specified by the Code of Alabama.
- (d) To the extent a licensee underreports gross receipts, the licensee shall be subject to penalties and interest on the underreported amount.
- (e) All licenses not renewed by March 1 of the calendar year are deemed canceled. Any persons seeking to reinstate a cancelled license must apply for the for a new license that shall be subject to all inspections and zoning reviews prior to its issuance. If a new license is granted the licensee was doing business shall also pay any penalties and interest that have accrued from January 1 to the date of the issuance of the new license.

All other items and provisions of this Ordinance of the City of Alabaster not herein specifically amended shall remain in full force and effect.

This Ordinance shall become effective upon its passage and execution as provided by law.

**ADOPTED AND APPROVED THIS 26 DAY OF FEBRUARY 2024.**

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_  
J. Mark Frey, City Clerk

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Sophie Martin, Council President

APPROVED:

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Scott Brakefield, Mayor