

**CITY OF ALABASTER and METRO FENCE**

THIS AGREEMENT, entered into as of this \_\_\_\_ day of July 2024 between the CITY OF ALABASTER (herein called the CITY) and METRO FENCE (herein called the CONTRACTOR). Agreement concerns labor and material for fencing for three pickleball courts at Patriots Park as described in the attached price quote (herein called the PROJECT).

WITNESSETH THAT:

WHEREAS, the CITY desires to engage the CONTRACTOR to render technical, professional and construction services, hereinafter described in connection with the PROJECT as requested by the CITY officials.

NOW, THEREFORE, the CITY and the CONTRACTOR do mutually agree as follows:

**Section 1. CONTRACTOR**

The CITY agrees to engage the CONTRACTOR and the CONTRACTOR hereby agrees to perform the operations and maintenance services hereinafter set forth, within this agreement and the accompanying plans for the CITY, in a proper manner as determined by the CITY. CONTRACTOR must supply to the CITY the documents listed below and any others as required by the State of Alabama Bid Law prior to commencing work:

- A) Certificate of Insurance (with unconditional cancellation clause)
- B) Section 84 Business License, Applicable City Business License and all other licenses required by law to complete this project
- C) The CONTRACTOR shall comply with all applicable laws, ordinances, and codes of the U. S. Government, the State of Alabama, any relevant municipality, and the CITY, and, specifically and without limitation, shall comply with all provisions of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, commonly referred to as the Immigration Act, and amendments thereto adopted from time to time during the performance of this Contract, and shall document CONTRACTOR'S compliance with said law and submit to the CITY or at the direction of CITY any and all affidavits and proof as are from time to time required by law or required by CITY.

The CONTRACTOR, by the execution of this Contract, certifies and confirms that it is, at the time of the signing of this document, in full compliance with the aforesaid Beason-Hammon Alabama Taxpayer and Citizen Protection Act, and further agrees that upon request from the CITY it will execute and file and take such action as is deemed by the CITY to be necessary to verify the CONTRACTOR's continuing compliance therewith.

By signing this contract, grant, or other agreement, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, 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.

## **Section 2. Scope of Services**

The CONTRACTOR shall provide all construction services, work and labor, and other professional and technical services to complete the PROJECT herein described, which shall include, but not necessarily be limited to, the activities, plans, and specifications described in the construction drawings, specifications, bid and related documents.

## **Section 3. Time of Performance**

The CONTRACTOR shall begin work on the PROJECT upon the execution of this Contract and will continue, uninterrupted, for a period of time not to exceed ten (10) working days beginning after receiving Notice to Proceed from the CITY. Said work to be completed in a good and workmanlike manner by the CONTRACTOR within the period of time specified.

## **Section 4. General Provisions**

(a) *Personnel.* The CONTRACTOR warrants that it has the expertise, professional personnel, and adequate work force capable of performing this Contract, as called for herein, in a satisfactory and proper manner, in accord with highest industry standards, or will secure the services of such personnel as may be required to perform such services, construct said PROJECT, and perform its obligations pursuant to this Contract.

(b) *Office Space.* The CONTRACTOR agrees to provide and maintain the office space and facilities required to perform all services as called for under this Agreement, at no expense to the CITY.

(c) *Subcontracts.* None of the work or services covered by this contract shall be subcontracted without the prior approval of the CITY. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this contract.

(d) *Access to Materials.* The CITY agrees to make available to the CONTRACTOR any maps, documents, and planning materials or any other information in its possession or otherwise readily available, which has a direct bearing on the PROJECT, at no expense to the CONTRACTOR.

(e) *Communications.* The representatives of the CITY and the CONTRACTOR to whom communications regarding the PROJECT which is the subject of this contract should be directed as follows:

(1) CITY:                      City of Alabaster  
                                     Scott Brakefield, Mayor  
                                     1953 Municipal Way  
                                     Alabaster, AL 35007  
                                     Telephone: 205-378-4057

(2) CONTRACTOR:        Metro Fence  
                                     Jason Fisher, Owner  
                                     805 Pinewood Avenue  
                                     Hueytown, AL 35023  
                                     (205) 424-9400

f) The CONTRACTOR shall perform the work and complete the PROJECT in accord with all laws of the State of Alabama, all laws of the United States of America, relevant municipal laws, and to the satisfaction of the CITY. Work will be performed by the CONTRACTOR under the direct supervision of the County Engineer of the CITY, who will have sole authority of deciding if work conditions, such as weather, temperature, roadway conditions, and other details of construction are complied with by the CONTRACTOR. At the discretion of the County Engineer, work may be stopped or delayed at any time until conditions are appropriate, in the opinion of the County Engineer, in order that optimum results and work quality may be obtained from the PROJECT in the best interest of the CITY. The decision of the CITY Engineer upon any questions connected with the performance of this Contract or any failure or delay in the prosecution of the work by the CONTRACTOR shall be final and conclusive.

g) Attachment A is hereby made part of this contract.

### **Section 5. Compensation and Method of Payment**

(a) For services satisfactorily rendered under this Contract and approved by CITY, the CITY agrees to pay the CONTRACTOR for fulfillment of the terms and conditions of this Contract in the amount of fourteen thousand nine hundred thirty-six dollars and no cents (\$14,936.00) as specified in the specifications and bid documents. Such payment shall, if due, be made monthly at the end of each calendar month, but in no case later than forty-five (45) days after the acceptance by CITY that the estimate and terms of the contract providing for partial payment have been fulfilled. In preparing estimates, the material delivered on the site, materials suitably store, and insured off-site, and preparatory work done may be taken into consideration by CITY. If the amount due by CITY is not in dispute and the amount payable is not paid within the forty-five (45) day period, the CONTRACTOR shall be entitled to interest from CITY at the rate assessed for underpayment of taxes under Section 40-1-44(a), Code of Alabama 1975, on the unpaid balance due. Interest payments shall not be due on payments made after the forty-five (45) day period because of administrative or processing delays at the close of the fiscal year. In making the partial payments, there shall be retained not more than five percent (5%) of the estimated amount of work done and the value of materials stored on the site or suitably stored and insured off-site, and after fifty percent (50%) completion has been accomplished and approved by CITY, no further retainage shall be withheld. The retainage as set out herein shall be held until final completion and acceptance of all work covered by the contract. Retainage shall be held until all work has been completed to CITY's satisfaction. The CONTRACTOR immediately after the completion of the contract give notice in writing to the CITY. Upon completion and acceptance by CITY of the work, final settlement will be made as the same is due.

(b) PROVISIONS OUTLINING THE SOURCE OF SUFFICIENT FUNDS TO BE UTILIZED BY CITY TO FULFILL CITY'S OBLIGATIONS UNDER THIS CONTRACT (indicate which applies by entering an appropriate mark opposite the following):

  X   The funds to be utilized by CITY to fulfill its obligation under this contract are funds which are held by CITY at the time of the execution of this contract or will become available at a date following the execution of the contract.

       The source of funds to be utilized by CITY in fulfilling its obligation under this contract is a grant, award, or direct reimbursement from the State, federal government, or other source which will not become available until after the execution of this contract, and the provision of this contract requiring prompt payment shall not apply until CITY is in receipt of the funds as provided in the contract. Upon receipt of such funds, the forty-five (45) day requirement specified in this contract shall commence and shall be enforceable as provided herein.

## Section 6. Terms and Conditions

(a) *Termination of Contract for Cause/Breach of Contract.* If through any cause the CONTRACTOR shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the CONTRACTOR of such termination and specifying the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports, or other materials prepared by the CONTRACTOR under this Contract or during the construction performance, shall, at the option of the CITY, become its property.

Notwithstanding the above, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Contract by the CONTRACTOR, and the CITY may withhold any payments to the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the CITY from the CONTRACTOR is determined.

(b) *Termination for Convenience of the CITY.* The CITY may terminate this Contract at any time, with or without just cause, by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least thirty (30) days prior to the effective date of such termination. In such event, all finished or unfinished documents and other materials, as described in the above clause, shall, at the option of the CITY, become its property. If the Contract is terminated by the CITY as provided in this subparagraph (b), the CONTRACTOR shall be entitled to receive just and equitable compensation for any work satisfactorily completed on said PROJECT.

(c) *Changes.* The CITY may, from time to time, request changes of the CONTRACTOR in the scope of services to be performed hereunder. Such changes, or renegotiation, including any increase or decrease in the amount of the CONTRACTOR's compensation, which is mutually agreed upon by and between the CITY and the CONTRACTOR, shall be incorporated in written amendments to this Contract. The Contract can be extended under mutually agreed provisions through a written amendment to this document.

(d) *Assignability.* The CONTRACTOR shall not assign any interest in this Contract, and shall not transfer any interest in the same whether by assignment or novation, without the prior written consent of the CITY provided, however, that claims for money by the CONTRACTOR from the CITY under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be promptly furnished to the CITY.

This Contract shall be binding upon and inure to the benefit of any successor to the CITY and such successor shall be deemed substituted for the CITY under the terms of this Contract. As used in this Contract, the term "successor" shall include any person, firm, employer, or other business entity which at any time, whether by merger, purchase, or otherwise, which assumes or is assigned responsibility of the CITY for the covered PROJECT. This Contract shall also be binding upon and inure to the benefit of the CONTRACTOR, his successors, executors, and administrators.

(e) *Reports and Information.* The CONTRACTOR, at such times and in such forms as the CITY may require, shall furnish to the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

(f) *Findings Confidential.* All of the reports, information, data, etc., given to or prepared or assembled by the CONTRACTOR under this Contract are confidential, and the CONTRACTOR agrees that they shall not be made available to any individual or organization without the prior written approval of the CITY.

(g) *Waiver of Trial by Jury.* The parties to this Contract desire to avoid the additional time and expense related to a jury trial of any disputes arising hereunder. Therefore, it is mutually agreed by and between the parties hereto, and for their successors and assigns, that they shall and hereby waive trial by jury of any claim, counterclaim, or third-party claim, including any and all claims of injury or damages, brought by either party against the other arising out of or in any way connected with this Contract and the relationship which arises herefrom. The parties acknowledge and agree that this waiver is knowingly, freely, and voluntarily given, is desired by both parties, and is in the best interest of both parties.

(h) *Compliance with Local Laws.* The CONTRACTOR shall, throughout the performance of this Contract, comply with all applicable laws, ordinances, and codes of the U. S. Government, the State of Alabama, any relevant municipality, and the CITY, and, specifically and without limitation, shall comply with all provisions of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, commonly referred to as the Immigration Act, as amended from time to time during the performance of this Contract, and shall document CONTRACTOR's compliance with said law and submit to the CITY or at the direction of CITY any and all affidavits and proof as are from time to time required by law or required by CITY .

(i) *Audits and Inspection/Access to Records/Record Retention.* At any time during normal business hours, with prior arrangement and as often as the CITY may deem necessary, the CONTRACTOR shall make available to the CITY for examination all of its records with respect to matters covered by this Contract and will permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Contract.

The CONTRACTOR shall retain all books, documents, papers, and records which are directly pertinent to this contract for a period of six (6) years following completion of the contracted work and expiration of the Contract, unless written permission to destroy them is granted by the CITY.

(j) *Interest of Members of the CITY and Other Local Public Officials.* No officer, member, or employee of the CITY and no member of its governing body, and no other public official of the governing body of the locality or localities in which the PROJECT is situated or being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this PROJECT, shall participate in any decision relating to this Contract which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or has any personal or pecuniary interest, direct or indirect, in this Contract or the proceeds thereof. The CONTRACTOR shall take appropriate steps to assure compliance.

(k) *Interest of the CONTRACTOR.* The CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. The CONTRACTOR further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

## **Section 7. Additional Services of CONTRACTOR**

If authorized in writing by the CITY the CONTRACTOR shall furnish additional services which are not considered an integral part of the Scope of Services herein. Under this Agreement, all costs for additional services will be negotiated as to activities and compensation. Upon mutual agreement between the CITY and the CONTRACTOR, and written authorization from the CITY to proceed, the CONTRACTOR will provide the additional service.

## **Section 8. Tax Responsibilities of CONTRACTOR**

The parties to this Agreement agree that the CONTRACTOR is an independent firm or person and that the relationship created by this agreement is that of an independent CONTRACTOR. Further, the parties agree that the CONTRACTOR is not an employee of The CITY, and will not be treated as such for federal income tax purposes. In this regard the CONTRACTOR acknowledges and accepts all tax responsibilities imposed by federal income tax laws, and any applicable state income tax laws, on self-employed persons, including but not limited to the responsibility of withholding from income the required amounts for federal income taxes, Social Security taxes, federal unemployment tax and applicable state and local income taxes.

## **Section 9. Non-Exclusive Contract**

The CONTRACTOR shall devote its time, attention, and energies to the fulfillment of this Contract. If, after satisfying its responsibilities to the CITY, the CONTRACTOR desires to render similar services to any other persons, or on behalf of any other firms, associations, or corporations, then the CONTRACTOR may contract for such services; provided, however, that in the event that the rendering of such additional services by the CONTRACTOR interferes, in the opinion of the CITY, with the quality of services rendered to the CITY, then the CITY shall have the option of either requesting the CONTRACTOR to cease performing such additional services or canceling this Contract.

## **Section 10. Independent CONTRACTOR Relationship**

In the performance of the work, duties and obligations evolving under this Agreement, it is mutually understood and agreed that the CONTRACTOR is at all times serving as an independent CONTRACTOR providing The CITY with services as a contractor and/or independent contractor. Amounts paid to the CONTRACTOR by The CITY as compensation for providing said services are for services purchased, and amounts paid to the CONTRACTOR shall be deemed to be fees for services to an independent CONTRACTOR and shall not be subject to any withholding. It is expressly understood that The CITY is interested only in the results to be achieved, and the conduct and control of the work will be the sole responsibility of the CONTRACTOR. CONTRACTOR is not considered to be an agent or employee of The CITY for any purpose and the CONTRACTOR will not be eligible to participate in any benefits The CITY provides for its own employees. It is further understood and agreed that The CITY does not agree to use CONTRACTOR exclusively. It is further understood and agreed that, except as provided herein, CONTRACTOR is free to contract for similar services to be performed for others during the term of this Agreement.

## **Section 11. Indemnification and Liability**

The CITY shall not be liable to or for any injury to the person or property of any person, firm or corporation, and Contractor assumes full and complete responsibility therefore. Contractor shall remain insured under terms of a public liability insurance policy as described in the "Certificate of Insurance" attached hereto as Attachment "A" during the entire term of this contract and the

performance of all work herein provided for. CONTRACTOR shall further indemnify CITY and hold CITY safe and harmless from any and all liability, lawsuits, judgments, attorney fees and other costs incurred by CITY in defending any claim or lawsuit made against CITY by any person, firm or corporation arising directly or indirectly out of any work performed by Contractor pursuant hereto or any breach or alleged breach of duty or responsibility of CONTRACTOR related thereto.

Notwithstanding any Alabama law to the contrary, the CONTRACTOR hereby agrees to be responsible to any third parties for bodily injury, death or property damage related to the CONTRACTOR'S (1) failure to follow the plans and specifications, resulting in a dangerous condition, and/or (2) any latent defects which create a dangerous condition that is a result of the work of the CONTRACTOR, unless it is proven by preponderance of the evidence that the driver was driving under the influence of alcohol or drugs, texting or driving at 25 mph over the speed limit, as set out in Alabama Act #2023-316.

The CONTRACTOR agrees to indemnify, hold harmless and defend the CITY, its employees, representatives, elected officials, and insurers, from and against any and all claims, actions, damages, liability, costs, and expenses including, but not limited to attorneys' fees, for any and all claims of bodily injury, death, or property damage related to the CONTRACTOR'S failure or alleged failure to follow the plans and specifications of the project or for any latent defect or alleged latent defect creating a dangerous condition that is a result of the work of the CONTRACTOR.

CONTRACTOR shall procure and maintain at all times Workmen's Compensation Insurance as required by Alabama law on all its employees working on this PROJECT.

IN WITNESS WHEREOF, the CITY and the CONTRACTOR have caused this agreement to be executed by their duly authorized officers on the day and year first above written.

ATTEST:

CITY OF ALABASTER

\_\_\_\_\_

\_\_\_\_\_

Date

By: Scott Brakefield, Mayor

\_\_\_\_\_

Date

ATTEST:

METRO FENCE

\_\_\_\_\_

\_\_\_\_\_

Date

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

\_\_\_\_\_

Date

ATTACHMENT "A"  
SUPPLEMENTAL CONDITIONS

- 1) Work must be coordinated with the CITY.
- 2) Construction documents, including the attached Project Plans and Specifications, are included as part of this Contract.
- 3) The CONTRACTOR must maintain work space clean and free of debris.
- 4) The CONTRACTOR's price quote dated July 2, 2024 is hereby incorporated as a part of this Contract. Construction documents, including the Project Plans and Specifications, are included as part of this Contract.
- 5) By signing this contract, CONTRACTOR represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.
- 6) The CONTRACTOR shall procure and maintain public liability insurance with a minimum of One Million Dollars (\$1,000,000.00) coverage in form and substance as approved by CITY. A "Certificate of Insurance" shall be furnished to CITY and shall specify that such insurance is not subject to cancellation without prior written notice to CITY of at least thirty (30) days. Please request the additional insured to read: City of Alabaster, its officers, agents, and employees, successors or assigns.
- 7) When required by law the CONTRACTOR shall also provide to CITY a Certificate or Proof of Workmen's Compensation Insurance in form and substance acceptable to CITY.
- 8) Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall have an officer or other managerial employee who is personally familiar with the Contractor's hiring practices to execute an affidavit to this effect on the form supplies by City of Alabaster and return the same to City of Alabaster. Contractor shall also enroll in the E-Verify Program prior to performing any work, or continuing to perform any ongoing work, and shall remain enrolled throughout the entire course of its performance hereunder, and shall attach to its affidavit the E-Verify Program for Employment Verification and Memorandum of Understanding and such other documentation as City of Alabaster may require to confirm Contractor's enrollment in the E-Verify Program. Contractor agrees not to knowingly allow any of its subcontractors, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially



similar to the paragraph. If Contractor receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the project, jobsite or premises of City of Alabaster and shall comply with the Immigration Reform and Control Act of 186, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Contractor shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If Contractor violates any term of this provision, this Agreement will be subject to immediate termination by City of Alabaster. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless City of Alabaster from any and all losses, consequential damages, expenses included but not limited to, attorney's fees, claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph. Additionally, contractor shall provide CITY proof that you are in compliance with the immigration law by including a notarized E-Verify Memorandum of Understanding and provide your subcontractors notice of their compliance obligations and obtain from each a notarized Affidavit of Immigration Law Compliance-Subcontractor.

- 9) The contractor, person, firm, or corporation undertaking or contracting to undertake the herein described public works project agrees to use in the execution of the contract materials, supplies, and products manufactured, mined, processed, or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and are not contrary to any sole source specification implemented under subsection (f) of Section 39-2-2, Code of Alabama(1975), as amended. In the event the contractor breaches the agreement to use domestic products, and domestic products are not used, there shall be a downward adjustment in the contract price equal to any realized savings or benefits to the contractor.
- 10) If work being performed interferes with normal operations of the facility or site, the work shall be scheduled after hours as necessary.