

ORDINANCE NUMBER 3260

AN ORDINANCE AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A FIRST AMENDMENT TO CONTRACT BETWEEN SPECIALTY TURF AND THE CITY OF VESTAVIA HILLS TO ALLOW THE VESTAVIA HILLS BOARD OF EDUCATION TO BE A PARTY TO SAID CONTRACT BASED UPON A RECENT MEMORANDUM OF UNDERSTANDING CONCERNING SHARED FACILITY USAGE, LAND PLANNING AND FUNDING BETWEEN THE CITY AND THE BOARD

WHEREAS, on July 20, 2023, the City of Vestavia Hills (“the City”) advertised for and invited competitive bids for athletic field maintenance as required by Alabama law; and

WHEREAS, Specialty Turf Supply, Inc., was the sold bidder and determined to be the lowest and most responsive bid; and

WHEREAS, the Vestavia Hills City Council accepted the bid and a contract was signed for a term beginning October 1, 2023 until September 30, 2026; and

WHEREAS, the City and the Vestavia Hills Board of Education (“the Board”) entered a Memorandum of Understanding on February 4, 2019 which gave the parameters of a shared facility use, land planning and funding between the City and the Board; and

WHEREAS, the City Manager and the Board Superintendent have agreed that it is in the best public interest to make the Board a party to the existing contract for field maintenance with Specialty Turf Supply, Inc.; and

WHEREAS, the City Attorney has drafted a “First Amendment to Contract” (“the Contract”) which allows the Board to become a party to the existing contract between the City and Specialty Turf; and

WHEREAS, a copy of the Contract is marked as Exhibit A which is attached to and incorporated into this Ordinance Number 3260 as if written fully therein; and

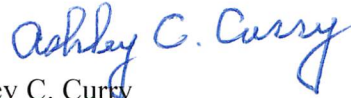
WHEREAS, the Mayor and City Council feel it is in the best public interest to accept the Contract and authorize the Mayor and City Manager to execute it.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The Mayor and City Manager are hereby authorized to execute and deliver the First Amendment of Contract between the City and Specialty Turf as detailed in the attached Exhibit A; and

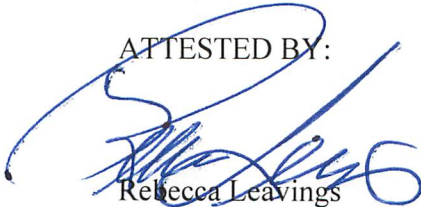
2. This Ordinance Number 3260 shall become effective immediately upon adoption and approval following posting/publishing as required by Alabama law.

ADOPTED and APPROVED this the 9th day of December, 2024.



Ashley C. Curry
Mayor

ATTESTED BY:

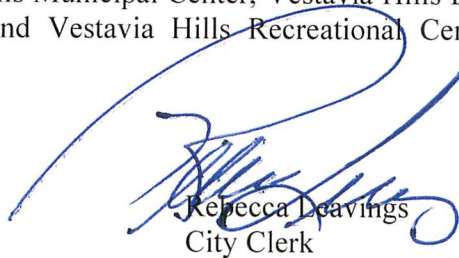


Rebecca Leavings
City Clerk

CERTIFICATION:

I, Rebecca Leavings, as City Clerk of the City of Vestavia Hills, Alabama, hereby certify that the above and foregoing copy of 1 (one) Ordinance Number 3260 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 9th day of December, 2024, as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Hills Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the 11th day of Dec, 2024.



Rebecca Leavings
City Clerk

STATE OF ALABAMA

JEFFERSON COUNTY

FIRST AMENDMENT TO CONTRACT

WITNESSETH THIS FIRST AMENDMENT TO CONTRACT DATED OCTOBER 1, 2023, by and between the City of Vestavia Hills, Alabama (“City”) and Specialty Turf Supply, Inc., an Alabama corporation (“Contractor”) made and entered into on this 16th day of December 2024 by and among the City, the Contractor and the Board of Education of the City of Vestavia Hills, Alabama (“Board”).

WITNESSETH THESE RECITALS:

WHEREAS, on February 4, 2019, the City and Board entered into a *Memorandum of Understanding for Shared Facility Use, Land Planning and Funding Between the City of Vestavia Hills and the Vestavia Hills City Schools* (“MOU”); and

WHEREAS, the MOU provides, among other things, as follows:

- A.** The City may use athletic fields owned by the Board.
- B.** The Board may use athletic fields owned by the City.
- C.** The general maintenance of any fields is the responsibility of the owner.
- D.** “Additional considerations:
 - 1.** All efforts will be made by the VHBOE and VH City Council to create specs and jointly bid for lawn maintenance for athletic fields and other shared public spaces.”; and

WHEREAS, on July 20, 2023, the City advertised for and invited competitive bids for athletic field maintenance for athletic fields owned by the City (the “work”) as required by the Alabama Competitive Bid laws set forth at Title 39-2-1, et seq., Title 41-16-50, et seq. and Title 16-13B-1, et seq., *Code of Alabama, 1975*; and

WHEREAS, Specialty Turf Supply, Inc. submitted the only bid and the City found and determined that said sole bid was the lowest, responsible and responsive bid; and

WHEREAS, on September 11, 2023, the City Council enacted Ordinance Number 3194 accepting the bid from Specialty Turf Supply, Inc. for “Inside the Fence Recreational Field Maintenance” for the City of Vestavia Hills for a period of three (3) years beginning October 1, 2023 and ending September 30, 2026 and directed the execution and delivery of a Contract for the Contractor to perform the work; and

WHEREAS, a copy of the Contract (“Contract”) is attached hereto, marked as Exhibit 1 and is incorporated into this First Amendment to Contract by reference as though set out fully herein; and

WHEREAS, the Contract was signed on October 1, 2023 provides in pertinent parts as follows:

“XXIII. CHANGES IN WORK

The City may make changes in the scope of the work required to be performed by the Contractor under the contract by eliminating any portion of the work and the corresponding unit price charged therefor. Any change order for additional work shall be done by mutual agreement and in writing. Any change order for deletion of work shall be in writing given by City to Contractor. The deletion of work pursuant to this contract is subject to and conditioned upon the total amount of public funds available.”

“XXVI.

8. WAIVER OF MODIFICATIONS: Any waiver, alteration or modification of any of the provisions of this Contract or cancellation or replacement of this contract shall not be valid unless in writing and signed by the City and Contractor. This contract may be amended at any time by written agreement of the parties’ signatory hereto. No claims for any extra work or materials shall be allowed unless covered by written agreement of the parties.”

WHEREAS, the Alabama Competitive Bid Law at Title 41-16-50(b), *Code of Alabama, 1975*, authorizes municipalities in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a city school board of education; and

WHEREAS, the Alabama Competitive Bid Law at Title 16-13B-1(c), *Code of Alabama, 1975*, authorizes city school boards of education in Alabama to enter into joint purchasing agreements with other enumerated governmental bodies, including a municipality; and

WHEREAS, the City of Vestavia Hills, Alabama, a municipal corporation (“City”), and the Board of Education of the City of Vestavia Hills, Alabama (“Board”) wish to enter into a joint purchasing agreement pursuant to the two statutes cited above by amending the Contract; and

WHEREAS, the statute set forth in Title 41-16-50(b), *Code of Alabama, 1975*, authorizing the City to enter into joint purchasing agreements provides in pertinent part as follows:

“Each contracting agency’s share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency.”; and

WHEREAS, the statute set forth in Title 16-13B-1(c), *Code of Alabama, 1975*, authorizing the Board to enter into joint purchasing agreements provides that:

“Each contracting agency’s share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency.”; and

WHEREAS, the Board is in need of lawn maintenance services for athletic fields located on school campuses and properties owned by it; and

WHEREAS, the Contractor is willing to perform additional lawn maintenance services for the Board based upon cost and unit prices as set forth in the Contract; and

WHEREAS, the City, Board and Contractor are willing to enter into this First Amendment to Contract to create joint purchasing agreement.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the City, Board and Contractor, hereby mutually and expressly amend the Contract as set forth below:

Notwithstanding anything contained in the Contract to the contrary, the City, Board and Contractor agree to modify the Contract by adding the following terms, provisions, limitations and conditions to said Contract:

I. RECITALS

The recitals set forth above are incorporated into this First Amendment to Contract by reference as though set out fully herein.

II. EXHIBIT

Exhibit 1 is attached hereto and incorporated into this First Amendment to Contract by reference as though set out fully herein.

III. BOARD ADDED AS PARTY TO THE CONTRACT

The Board of Education of the City of Vestavia Hills, Alabama (“Board”) is added as a party to the Contract dated October 1, 2023 (Exhibit 1 is attached).

IV. SCOPE OF WORK FOR THE BOARD

The scope of the work to be performed by the Contractor for the Board is set forth below.

Complete Management Program for the 8 fields in Vestavia Hills City Schools includes:

- Mow the fields with a reel mower 2 times per week
- Mow and maintain areas inside the fences of athletic venues and designated common spaces outside the fence at Pizitz and Dolly Ridge
- Complete fertility and weed management program
- Aerate and top-dress the fields 1 time in summer
- Apply sand as needed
- Overseed the fields with ryegrass
- Paint the fields for the programs during seasons
- Coordinate and implement schedule of the irrigation system
- Weed eating and blowing along fence lines
- Blow clippings and debris from fields
- Maintain hillside landscaping, including one annual application of straw at VHHS football stadium

The work performed by the Contractor for the Board shall be pursuant to the terms, provisions and conditions set forth in the Contract as amended by this First Amendment to Contract.

V. CONTRACT PRICE FOR BOARD

The Board shall pay to the Contractor for the work described above, the sum of

Dollars (\$ _____).

VI. LIABILITY OF CITY

The City shall not be liable to the Contractor for any amount for work performed by the Contractor for the Board. The City shall be required to pay Contractor only for the work performed on athletic fields owned by the City.

VII. LIABILITY OF BOARD

The Board shall not be liable to the Contractor for any amount for work performed by the Contractor for the City. The Board shall be required to pay Contractor only for the work performed on athletic fields owned by the Board.

VIII. INSURANCE POLICY

The Board and its public employees and public officials shall be added as additional insureds to the insurance policy to be kept and maintained by Contractor as required by Sections 16 and 17 of the Contract.

IX. PERFORMANCE BOND

The performance bond required by the Contract shall be amended so as to include the work performed by the Contractor for the Board.

X. INDEMNITY

The indemnity provisions of Section XVII of the Contract shall also apply to the Board and its public employees and public officials, as well as to the City and its public employees and public officials.

XI. AFFIRMATION

The City, Board and Contractor further agree to all other aspects, terms, provisions and conditions of the original Contract and they are hereby ratified, approved and confirmed by the parties so that the same shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, the Board of Education of the City of Vestavia Hills, Alabama and Specialty Turf Supply, Inc., an Alabama corporation, have hereunto caused this First Amendment to Contract to be executed by their duly authorized officers and their respective seals to be affixed hereto on this the 16th day of December, 2024.

CITY:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By _____
Ashley C. Curry
Its Mayor

By _____
Jeffrey D. Downes
Its City Manager

ATTESTED

By _____

BOARD:
THE BOARD OF EDUCATION OF THE
CITY OF VESTAVIA HILLS, ALABAMA

By _____
Dr. Todd Freeman
Its Superintendent

ATTESTED:

By _____

CONTRACTOR:
SPECIALTY TURF SUPPLY, INC.
An Alabama Corporation

By _____
Michael Hill, Its President

ATTESTED

By _____

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley C. Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2024.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the _____ day of _____, 2024.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public, in and for said County, in said State, hereby certify that Dr. Todd Freeman, whose name as Superintendent of the Board of Education of the City of Vestavia Hills, Alabama is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that being informed of the contents of the contract, he in his capacity as such and with full authority, executed the same voluntarily for and as the act of said the Board of Education of the City of Vestavia Hills, Alabama on the day the same bears date.

Given under my hand and official seal, this the _____ day of _____, 2024.

Notary Public

My Commission Expires:

SEAL

**STATE OF ALABAMA
JEFFERSON COUNTY**

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael Hill, whose name as President of Specialty Turf Supply, Inc., an Alabama corporation, is signed to the foregoing First Amendment to Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Specialty Turf Supply, Inc., an Alabama corporation.

Given under my hand and official seal, this the _____ day of _____, 2024.

Notary Public

My Commission Expires:

SEAL

STATE OF ALABAMA

JEFFERSON COUNTY

CONTRACT

WITNESSETH THIS CONTRACT, made and entered into on this the 1st day of October, 2023, by and between the City of Vestavia Hills, Alabama, a municipal corporation, located at 1032 Montgomery Highway, Vestavia Hills, Alabama 35216 (hereinafter referred to as "City"), and SPECIALTY TURF SUPPLY, INC., an Alabama corporation (hereinafter referred to as "Contractor").

WITNESSETH THESE RECITALS:

WHEREAS, The City of Vestavia Hills, Alabama ("City") invited competitive bids for athletic field maintenance (hereinafter referred to as "the work"), which is more particularly described in Exhibit A to Section II of this Contract; and

WHEREAS, the Contractor, SPECIALTY TURF SUPPLY, submitted a bid for the completion of work described in the invitation to Bid, which the City has determined to be the lowest, best and most responsible bid received; and

WHEREAS, the City and the Contractor have agreed to the terms, provisions and conditions of this Contract and have further agreed that it is in the best interests of the parties that this Contract be reduced to writing.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the mutual covenants, promises and premises contained herein and other good and valuable consideration, the receipt and sufficiency is whereof is hereby acknowledged by each of the parties hereto, the City and Contractor mutually and expressly agree as follows:

I. **CONTRACTOR**

Contractor, SPECIALTY TURF SUPPLY, represents, covenants and warrants that it is duly licensed and qualified to furnish the equipment, labor, materials and supplies and perform the work described herein.

II. **GENERAL STATEMENT OF WORK**

The Contractor shall furnish all labor, materials, equipment, machinery, supplies, tools, power, utilities, transportation, fuel and services, and perform all labor necessary for the work described in Exhibit A, which is attached hereto and incorporated into this contract by reference as though set out fully herein.

III. **TERM OF THE CONTRACT**

The term of this contract shall be for a three (3) year period, beginning October 1, 2023, and ending on September 30, 2026. The effective date of this contract shall be October 1, 2023.

IV. **CONTRACT PRICE**

As consideration of this contract, the City agrees to pay to Contractor for the faithful performance of this contract the following sums:

- A. \$ 346,900 for the twelve (12) month period beginning October 1, 2023 and ending September 30, 2024, unless changed according to paragraph XX and XXIII; and
- B. \$ 346,900 for the twelve (12) month period beginning October 1, 2024 and ending September 30, 2025, unless changed according to paragraph XX and XXIII; and
- C. \$ 346,900 for the twelve (12) month period beginning October 1, 2025 and ending September 30, 2026, unless changed according to paragraph XX and XXIII.

V. PAYMENT OF CONTRACT PRICE

Payments will be made on a monthly basis in accordance with the City's billing and payment policy.

VI. TERMINATION OF CONTRACT

The contracting agency shall have the right at any time to cancel this contract for reasons other than breach by the contractor and require the contractor to cease work thereon. In such cases the contractor will be paid for all work actually performed the date of termination, but will not be paid for any work not performed or for any anticipated profits on work not actually performed by the termination date.

VII. COMPLIANCE WITH APPLICABLE LAWS

The contractor at all times during the term of this contract shall observe and abide by all Federal, State and Local laws which in any way effect the conduct of the work and shall comply with all decrees and orders of courts of competent jurisdiction. The contractor shall comply fully and completely with any and all applicable state and federal statutes, rules and regulations as they relate to hiring, wages and any other applicable conditions of employment.

VIII. LICENSE

The contractor shall, at his expense, procure all necessary licenses and permits needed to contract.

IX. QUALITY OF WORK

All labor, materials and supplies applied/installed by the Contractor in the performance of this agreement shall be done in a professional, proficient and workmanlike manner.

X. CREW INFORMATION

- a) Crews will be dressed neat. Shirts shall be worn at all times.
- b) Courtesy to persons utilizing City facilities is required at all times.
- c) Breaks will be taken individually, at the discretion of the Supervisor.
- d) All refuse from lunches and breaks will be disposed of immediately.
- e) The contractor shall properly supervise its employees at all times during the work performed by the contractor. The City shall have the right to direct what work shall be performed and when. However, the contractor shall determine and decide the methodology of the work.

XI. EQUIPMENT

- a) Equipment will be mechanically sound. Inoperable equipment in the field will not be charged to the contracting agency. The contracting agency reserves the option to demand replacement of any equipment which in its opinion has a poor operational record.
- b) All equipment which is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work.
- c) Equipment can be stored on City property with consent of City, however the City will not be responsible for any damage to stored equipment.
- d) Equipment used on any portion of the project shall be such that no injury to plant materials, curbs, drives, walks, roadways, buildings or adjacent property will result from its use.
- e) Reel Mowers are preferred for mowing of all grass turf areas.
- e) Sharpen blades on cutting tools periodically to insure clean, smooth cuts and to prevent damage to plant materials.

XII. SAFETY STANDARDS

- a) All equipment to be used and all work to be performed must be in full compliance with the most current safety requirements for performing this type of work.
- b) The contractor shall be solely responsible for pedestrian and vehicular safety and control on the worksite and shall provide the necessary warning devices, barricades and ground personnel needed to give safety, protection and warning to persons and vehicular traffic within the area.

XIII. PROTECTION OF UNDERGROUND UTILITIES

The contractor shall be responsible for contacting the appropriate utility for location of any underground services which are in the work area and could be damaged by the contractor's operations.

XIV. DISCONTINUANCE OF WORK

Any practice obviously hazardous as determined by the contracting agency shall be immediately discontinued by the contractor upon receipt of either written or oral notice to discontinue such practice.

XV. INDEPENDENT CONTRACTOR

The Contractor, SPECIALTY TURF SUPPLY, is an independent contractor for purposes of this agreement. Nothing contained herein shall be construed to mean that said Contractor is the servant, agent or employee of the City of Vestavia Hills, Alabama.

XVI. IMMIGRATION

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

contracting party found to be in violation of this provision shall be deemed in breach of the contract and shall be responsible for all damages resulting therefrom.

XVII. INDEMNITY

To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City of Vestavia Hills, Alabama, a municipal corporation, and the Vestavia Hills Park and Recreation Board, as Owner, and their agents, employees and consultants, including the Mayor, elected members of the City Council, the appointed members of the Vestavia Hills Park and Recreation Board, (hereinafter collectively referred to as the "Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, or related to, or resulting from performance of the work provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destructing of tangible property, including loss of use resulting therefrom, and is caused in whole or in part by negligent acts or omissions of the Contractor, subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part, or is alleged by not legally established to have been caused in whole or in part by the negligence or other fault of a party indemnified hereunder. This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the work.

XVIII. INSURANCE

The contractor agrees to obtain and maintain in force during the terms of this agreement insurance of the type, with the coverage and in the amounts specified below:

- a) For personal injuries, including death, in an amount of not less than:
 - i) \$500,000 for any one person occurrence
 - ii) \$1,000,000 for any one occurrence
- b) For damage to property not belonging to the contractor or his subcontractors in an amount not less than:
 - i) \$500,000 for any one accident
 - ii) \$1,000,000 aggregate amount
- c) For personal injuries including death and/or for damages to property not belonging to the contractor or his subcontractors caused by automotive equipment or used by the contractor or his subcontractors in an amount not less than:
 - i) \$500,000 personal injury per person per occurrence
 - ii) \$1,000,000 personal injury per occurrence
 - iii) \$500,000 property damage per accident
- d) Workmen's Compensation, State and Federal Statutory requirements plus:
 - i) \$500,000 employer's liability per personSuch insurance shall be placed with an insurer acceptable to the contracting agency and the policies shall provide notice by the insurer to the contracting agency of cancellation, non-renewal or material change in any such policy and shall contain an endorsement naming the City of Vestavia Hills as an additional insured there under.

XIX. ADDITIONAL INSUREDS

The Contractor shall cause the commercial general liability insurance coverage and the commercial umbrella liability insurance coverage required by the contract documents to include:

- a) The City of Vestavia Hills, Alabama, a municipal corporation, and its public officials and employees, the Vestavia Hills Park and Recreation Board, and its appointed Board members as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and
- b) The insurance policy coverages shall state that these coverages shall be primary insurance for the additional insureds; and
- c) Contain no exclusions of the additional insureds relative to job accidents; and
- d) The policies must be on an "occurrence" basis.

XX. ADDITIONAL SERVICES

The contracting agency reserves the right to change, add or delete areas for lawn service. This is conditional upon the total amount of funds available. The City of Vestavia Hills shall give notice to the contractor of the areas to be serviced and the total amount of the annual lawn service contract. Unless otherwise authorized by the contracting agency, failure of the contractor to comply with the approved field service schedule shall be sufficient cause to give notice that the contractor is in default of the contract.

XXI. ASSIGNMENT

This contract shall not be assignable by the Contractor in any respect without having first obtained the written consent of the City evidenced by a properly enacted resolution of the City.

XXII. SUBCONTRACTORS

The contractor will not be allowed to subcontract work under this contract unless written approval is granted by the contracting agency. The subcontractor, as approved, shall be bound by the contractor. All directions given to the subcontractor in the field shall bind the contractor as if the notice has been given directly to the contractor.

XXIII. CHANGES IN WORK

The City may make changes in the scope of the work required to be performed by the Contractor under the contract by eliminating any portion of the work and the corresponding unit price charged therefor. Any change order for additional work shall be done by mutual agreement and in writing. Any change order for deletion of work shall be in writing given by City to Contractor. The deletion of work pursuant to this contract is subject to and conditioned upon the total amount of public funds available.

XXIV. REMOVAL OF DEBRIS AND CLEANING

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the project area and public rights of way reasonable clear and clean. Upon completion of the work, it shall remove all temporary construction facilities, debris and unused materials provided for the work, and put the whole site of the work and public rights of way in a neat and clean condition.

XXV. COMPLIANCE WITH TITLE 41-16-5, CODE OF ALABAMA, 1975, BOYCOTT LIMITATIONS

Act 2016-312 of the Alabama Legislature prohibits a governmental entity from entering into certain public contracts with a business entity unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, the boycott of a person or an entity based upon the person or business doing business with a jurisdiction with which the state can enjoy open trade. The prohibition does not apply if a business offers to provide goods or services for at least 20 percent less than the lowest certifying business entity or to a contract with a value less than \$15,000.00. The Contractor represents and warrants that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

XXVI. MISCELLANEOUS

- A. **NON WAIVER:** The failure of the City to insist, in any one or more instances, upon a strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect.
- B. **WAIVER OF MODIFICATIONS:** Any waiver, alteration or modification of any of the provisions of this Contract or cancellation or replacement of this contract shall not be valid unless in writing and signed by the City and Contractor. This contract may be amended at any time by written agreement of the parties' signatory hereto. No claims for any extra work or materials shall be allowed unless covered by written agreement of the parties.
- C. **NOTICES:** Any and all notices required or permitted to be given under this agreement will be sufficient if furnished in writing and sent by Registered Mail to the parties' last known address.
- D. **CONSTRUCTION OF TERMS:** The City and Contractor negotiated the terms, provisions and conditions of this contract and both parties had the equal opportunity for input for the drafting of this contract. Therefore, any ambiguities of this contract shall be construed fairly and equitably regardless of the participation of either party in drafting this contract. The reference in terms to gender and number shall be modified as may be appropriate.

- E. **GOVERNING LAW:** This contract shall be interpreted, construed and governed to the laws of the State of Alabama. The jurisdiction and venue for the resolution of any dispute shall be in Jefferson County, Alabama.
- F. **ARTICLE AND SECTION HEADINGS:** The article and section headings and captions contained herein are included for convenience only, and shall not be considered a part hereof or affect in any manner the construction or interpretation hereof.
- G. **EXECUTION IN COUNTERPARTS:** The contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- H. **BINDING EFFECT:** The contract shall inure to the benefit of, and shall be binding upon City and Contractor, and their heirs, successors and assigns.
- I. **SEVERABILITY:** In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- J. **ENTIRE AGREEMENT:** This written Contract contains the entire agreement between the City and the Contractor.

IN WITNESS WHEREOF, the City of Vestavia Hills, Alabama, a municipal corporation, and Vestavia Hills, an Alabama corporation, have hereunto caused this contract to be executed by their duly authorized officers and their respective seals to be affixed hereto on this the 1st day of October, 2023.

CITY:
CITY OF VESTAVIA HILLS, ALABAMA
A Municipal Corporation

By Ashley C. Curry
Ashley Curry
Its Mayor

By Jeffrey D. Downes
Jeffrey D. Downes
Its City Manager

ATTESTED
By [Signature]

CONTRACTOR:
Specialty Tool Supply Inc.

By [Signature]
Its Michael Neill / President

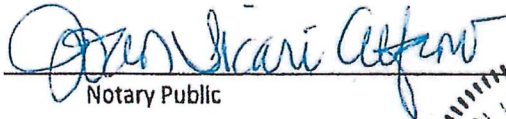
ATTESTED
By Casey Hall

STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Ashley Curry, whose name as Mayor of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

Given under my hand and official seal, this the 4 day of October, 2023


Notary Public

My Commission Expires:

4-18-2026

SEAL



STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeffrey D. Downes, whose name as City of Manager of the City of Vestavia Hills, Alabama, a municipal corporation, is signed to the foregoing Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said City of Vestavia Hills, Alabama.

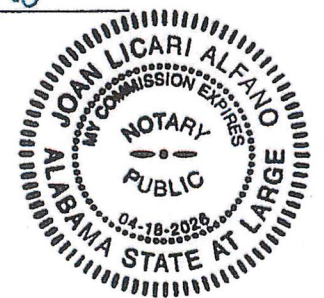
Given under my hand and official seal, this the 4 day of October, 2023


Notary Public

My Commission Expires:

4-18-2026

SEAL



STATE OF ALABAMA
JEFFERSON COUNTY

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael Hill, whose name as _____ of the _____, a Alabama corporation, is signed to the foregoing Contract, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said _____, a Alabama corporation.

Given under my hand and official seal, this the 4 day of October 2023

Casey Lauren Hall
Notary Public

My Commission Expires:
8.2.25
SEAL

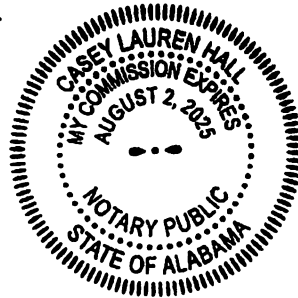


EXHIBIT A

(PROVIDED BY CONTRACTOR THROUGH THE BID)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/06/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alabama Insurance Exchange PO Box 724728 Atlanta GA 31139	CONTACT NAME: Karen Thompson
	PHONE (A/C, No, Ext): (205) 988-0800 FAX (A/C, No): (770) 858-7545 E-MAIL ADDRESS: karen@aieins.com
INSURED Specialty Turf Supply Inc 1449 Panorama Drive Birmingham AL 35216	INSURER(S) AFFORDING COVERAGE
	INSURER A: Sentry Insurance Group
	INSURER B: Sheffield Group, The
	INSURER C: Evanston Insurance Company
	INSURER D:
	INSURER E:

COVERAGES CERTIFICATE NUMBER: 2022 Ren COI REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		Y	A0093278	11/03/2022	11/03/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMPIOPAGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY			A0093278	11/03/2022	11/03/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) limit \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$ 0			A0093278	11/03/2022	11/03/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B/C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N Y	22093-00 / 3FF3824	01/01/2023	01/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Leased and Rented Equipment			A0093278	11/03/2022	11/03/2023	Leased and Rented \$300,000 Deductible \$5000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Vestavia Hills, Al, a municipal corporation, and its public officials, and employees, the Vestavia Hills Park and recreation Board, and its appointed board members is an additional insured as respects to general liability and umbrella. General liability is primary and non-contributory. Umbrella follows form.

CERTIFICATE HOLDER

City of Vestavia Hills
1032 Montgomery Hwy

Vestavia Hills AL 35216

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Michelle K. ...

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POLICY NUMBER:

COMMERCIAL AUTO
CA 20 48 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

**AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- ELECTRONIC DATA LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
- POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONTRACTORS BLANKET ADDITIONAL INSUREDS,
PRIMARY & NONCONTRIBUTORY, WAIVER OF
SUBROGATION**

This endorsement modifies the coverage provided under the following Coverage Form(s):

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Coverage enhancements are listed below. For details of each coverage, please read the corresponding policy provisions in the body of this endorsement.

- | |
|--|
| <p>1. Additional Insureds - Automatic Status for 13 Additional Insured Types</p> <ul style="list-style-type: none">A. Owners, Lessees Or Contractors - Automatic Status When Required In A Written Construction Agreement With YouB. Owners, Lessees Or Contractors - Automatic Status When Required In Written Construction Agreement With You (Completed Operations)C. State or Governmental Agency or Subdivision or Political Subdivision - Permits or AuthorizationsD. Lessor of Leased EquipmentE. Owners or Other Interests From Whom Land Has Been LeasedF. Manager or Lessor of PremiseG. Mortgagee, Assignee, or ReceiverH. Controlling InterestI. Co-owner Of Insured PremisesJ. Executors, Administrators, Trustees Or BeneficiariesK. State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To PremisesL. VendorsM. Grantor of Franchise <p>2. Primary and Noncontributory - Other Insurance Condition</p> <p>3. Waiver Of Transfer Of Rights Of Recovery Against Others To Us (Waiver Of Subrogation) - Automatic</p> |
|--|

With respect to the coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

1. Additional Insureds - Automatic Status for 13 Additional Insured Types

Section II - Who Is An Insured is amended to include the following as additional insureds when you have agreed to add that person or organization as an Additional Insured on your policy in a written contract or written agreement with that person or organization, or because of a permit issued by a state or political subdivision; provided the injury or damage occurs subsequent to the execution of the contract or agreement or issuance of the permit and while the contract, agreement or permit remains in effect.

A. Owners, Lessees Or Contractors - Automatic Status When Required In A Written Construction Agreement With You

- 1) A person or organization with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - a. Your acts or omissions; or
 - b. The acts or omissions of those acting on your behalf;in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

- 2) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- b. "Bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

B. Owners, Lessees Or Contractors - Automatic Status When Required In Written Construction Agreement With You (Completed Operations)

- 1) Any person(s) or organization(s) with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard", but only when that portion of the "products-completed operations hazard" is not excluded by endorsement.

- 2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

"Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. State or Governmental Agency or Subdivision or Political Subdivision - Permits or Authorizations

Any state or governmental agency or subdivision or political subdivision, subject to the following provisions:

- 1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

- 2) This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

D. Lessor of Leased Equipment

- 1) Any person(s) or organization(s) with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).
- 2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

E. Owners or Other Interests From Whom Land Has Been Leased

- 1) Any person(s) or organization(s) with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the land leased to you by the additional insured person(s) or organization(s).

- 2) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you cease to lease that land;
- b. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured person(s) or organization(s).

F. Manager or Lessor of Premise

Any person(s) or organization(s) with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you by the additional insured person(s) or organization(s), subject to the following additional exclusions:

This insurance does not apply to:

- 1) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- 2) Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

G. Mortgagee, Assignee, or Receiver

Any person(s) or organization(s) with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of a premises by you.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured person(s) or organization(s).

H. Controlling Interest

- 1) Any person(s) or organization(s) with respect to their liability arising out of:

- a. Their financial control of you; or
- b. Premises they own, maintain or control while you lease or occupy these premises.

- 2) This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

I. Co-owner Of Insured Premises

Any person(s) or organization(s) with respect to their liability as co-owner of a premises co-owned by you and covered under this insurance.

J. Executors, Administrators, Trustees Or Beneficiaries

Any executor, administrator, trustee or beneficiary of your estate or living trust while acting within the scope of their duties as such.

K. State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises

Any state or governmental agency or subdivision or political subdivision, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

- 1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
- 2) The construction, erection or removal of elevators; or
- 3) The ownership, maintenance or use of any elevators covered by this insurance.

L. Vendors

- 1) Any person(s) or organization(s) (referred to throughout this endorsement as vendor), but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

However:

- a. The insurance afforded to such vendor only applies to the extent permitted by law; and
 - b. If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.
- 2) With respect to the insurance afforded to these vendors, the following additional exclusions apply:
 - a. The insurance afforded the vendor does not apply to:

- 1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- 2) Any express warranty unauthorized by you;
- 3) Any physical or chemical change in the product made intentionally by the vendor;
- 4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- 5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- 6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- 7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- 8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) The exceptions contained in Subparagraphs d. or f.; or

(2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

M. Grantor of Franchise

Any person(s) or organization(s) with respect to their liability as grantor of a franchise to you.

However:

1. The insurance afforded to such additional insureds only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

If there is any difference in coverage afforded to an additional insured in this endorsement and that provided under another additional insured endorsement attached to this policy, the broader coverage will apply to that additional insured.

2. Primary And Noncontributory Insurance

The following is added to the Other Insurance Condition and supersedes any provision to the contrary:

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

3. Waiver Of Transfer Of Rights Of Recovery Against Others To Us (Waiver Of Subrogation) - Automatic

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

POLICY NUMBER:

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

**AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The Transfer Of Rights Of Recovery Against Others To Us condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

CITY OF VESTAVIA HILLS

1032 Montgomery Highway

Vestavia Hills, AL 35216



LICENSE YEAR: 2023

LICENSE TYPE: General Contractor - 236200

LICENSE NUMBER: 276

EXPIRATION DATE: December 31, 2023

FEES: \$312.00

ISSUED TO: Specialty Turf Supply

CONTRACTOR ADDRESS: 1449 Panorama Drive Birmingham AL
35216

CONTRACTOR PHONE NUMBER: 2053378248

Keith Blanton
Building Official

CITY OF VESTAVIA HILLS

Bond No. 9430115

Performance Bond

CONTRACTOR:

(Name, legal status and address)

Specialty Turf Supply, Inc.
1449 Panorama Drive
Birmingham, AL 35216

OWNER:

(Name, legal status and address)

City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216

SURETY:

(Name, legal status and principal place of business)

Fidelity and Deposit Company of Maryland
1299 Zurich Way, 5th Floor
Schaumburg, IL 60196-1056
An IL Corporation

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable. This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date: October 1, 2023

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100 (\$346,900.00)

Description:

(Name and location)

Athletic Field Maintenance "Inside the Fences"
City of Vestavia Hills, Alabama

BOND

Date: October 6, 2023

(Not earlier than Construction Contract Date)

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100 (\$346,900.00)

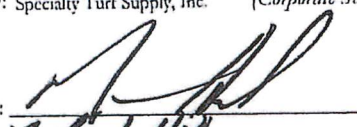
Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: Specialty Turf Supply, Inc. *(Corporate Seal)*

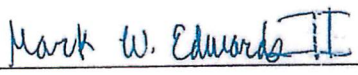
SURETY

Company: Fidelity and Deposit Company of Maryland *(Corporate Seal)*

Signature: 

Name: Michael Hill
and Title: President

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: 

Name: Mark W. Edwards, II
and Title: Mark W. Edwards, II, Attorney-in-Fact

(FOR INFORMATION ONLY— Name, address and telephone)

AGENT or BROKER:

McGriff Insurance Services, LLC
2211 7th Avenue South
Birmingham, AL 35233
205-252-9871

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



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§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.



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§ 16 Modifications to this bond are as follows:

Notwithstanding the provisions of the Contract, the term of this bond shall apply from 1st day of October, 2023, until 30th day of September, 2024, and may be extended by the Surety by Continuation Certificate. However, neither nonrenewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof. The liability of the Surety under this bond and all Continuation Certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Address:



Signature: _____

Name and Title:

Address:

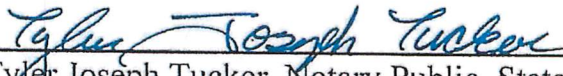


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CERTIFICATE OF ACKNOWLEDGEMENT OF ALL PURPOSE SURETY

State of Alabama)
)ss
County of Jefferson)

On this 6th day of October, 2023, before me appeared Mark W. Edwards, II, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of Fidelity and Deposit Company of Maryland, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Mark W. Edwards, II acknowledged said instrument to be the free act and deed of said corporation.



Tyler Joseph Tucker, Notary Public, State at Large
My commission expires: May 03, 2026

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Mark W. EDWARDS, II, Anna CHILDRESS, Jeffrey M. WILSON, Robert R. FREEL, Alisa B. FERRIS, William M. SMITH, Richard H. MITCHELL, all of Birmingham, Alabama, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York, the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland, and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland, in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 29th day of September, A.D. 2023.



ATTEST:
ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: *Robert D. Murray*
Vice President

By: *Dawn E. Brown*
Secretary

State of Maryland
County of Baltimore

On this 29th day of September, A.D. 2023, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, Robert D. Murray, Vice President and Dawn E. Brown, Secretary of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Genevieve M. Maison

GENEVIEVE M. MAISON
NOTARY PUBLIC
BALTIMORE COUNTY, MD
My Commission Expires JANUARY 27, 2025



Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 6th day of October, 2023.



Thomas O. McClellan
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
reports@claims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

Bond No. 9430115

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Specialty Turf Supply, Inc.
1449 Panorama Drive
Birmingham, AL 35216

OWNER:

(Name, legal status and address)

City of Vestavia Hills, Alabama
1032 Montgomery Highway
Vestavia Hills, AL 35216

SURETY:

(Name, legal status and principal place of business)

Fidelity and Deposit Company of Maryland
1299 Zurich Way, 5th Floor
Schaumburg, IL 60196-1056
An IL Corporation

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable. This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONSTRUCTION CONTRACT

Date: October 1, 2023

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100
(\$346,900.00)

Description:

(Name and location)

Athletic Field Maintenance "Inside the Fences", City of Vestavia Hills, Alabama

BOND

Date: October 6, 2023

(Not earlier than Construction Contract Date)

Amount: Three Hundred Forty Six Thousand Nine Hundred Dollars and 00/100 (\$346,900.00)

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: Specialty Turf Supply, Inc. *(Corporate Seal)*

Signature: 

Name: Michael Hill

and Title: President

(Any additional signatures appear on the last page of this Payment Bond.)

SURETY

Company: Fidelity and Deposit Company of Maryland *(Corporate Seal)*

Signature: 

Name:

and Title: Mark W. Edwards, II, Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

McGuff Insurance Services, LLC
2211 7th Avenue South
Birmingham, AL 35233
205-252-9871

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.



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§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.



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§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

Notwithstanding the provisions of the Contract, the term of this bond shall apply from 1st day of October, 2023, until 30th day of September, 2024, and may be extended by the Surety by Continuation Certificate. However, neither nonrenewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof. The liability of the Surety under this bond and all Continuation Certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Address:

Signature: _____

Name and Title:

Address:



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CERTIFICATE OF ACKNOWLEDGEMENT OF ALL PURPOSE SURETY

State of Alabama)

)ss

County of Jefferson)

On this 6th day of October, 2023, before me appeared Mark W. Edwards, II, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of Fidelity and Deposit Company of Maryland, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said Mark W. Edwards, II acknowledged said instrument to be the free act and deed of said corporation.



Tyler Joseph Tucker, Notary Public, State at Large
My commission expires: May 03, 2026

**ZURICH AMERICAN INSURANCE COMPANY
 COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
 FIDELITY AND DEPOSIT COMPANY OF MARYLAND
 POWER OF ATTORNEY**

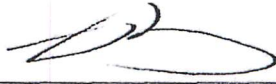
KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Mark W. EDWARDS, II, Anna CHILDRESS, Jeffrey M. WILSON, Robert R. FREEL, Alisa B. FERRIS, William M. SMITH, Richard H. MITCHELL, all of Birmingham, Alabama, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York, the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland, and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland, in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

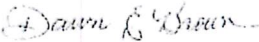
IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 29th day of September, A.D. 2023.



ATTEST:
 ZURICH AMERICAN INSURANCE COMPANY
 COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
 FIDELITY AND DEPOSIT COMPANY OF MARYLAND



 By: Robert D. Murray
 Vice President



 By: Dawn E. Brown
 Secretary

**State of Maryland
 County of Baltimore**

On this 29th day of September, A.D. 2023, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, Robert D. Murray, Vice President and Dawn E. Brown, Secretary of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Genevieve M. Maison

GENEVIEVE M. MAISON
 NOTARY PUBLIC
 BALTIMORE COUNTY MD
 My Commission Expires JANUARY 27, 2025



Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 6th day of October, 2023.



Thomas O. McClellan

Thomas O. McClellan
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790