

REQUEST FOR PROPOSALS (RFP)
FOR
BID NO. 014-13
RFP FOR LEASE OF FLY CREEK CITY OWNED
BUILDING
FOR
CITY OF FAIRHOPE, AL
Timothy M. Kant, Mayor
Jack Burrell, Council President

Posted 03-27-2013

CONTENTS

Advertisement for RFP.....	I
Instructions to Bidders.....	II
Response Form.....	III
Bid Bond	IV
Performance Bond.....	V
Labor & Materials Bond	VI
Insurance Requirements.....	VII
Scope of Work & Specifications.....	VIII
Contract	IX
Standard Terms and Conditions.....	X
Alabama Immigration Act Contract Requirements.....	XI
Supplement "A" QUALIFICATIONS	
Supplement "B" REFERENCES	

ITEM I

March 27, 2013

ADVERTISEMENT REQUEST FOR PROPOSALS

Sealed proposals will be received by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St. Fairhope, Alabama, until 2:30 p.m. April 23, 2013, and then publicly opened thereafter, for furnishing all labor and materials, and performing all work required by the City of Fairhope and described as follows:

Bid Number 014-13, LEASE OF FLY CREEK CITY OWNED BUILDING

RFP documents will be posted on the City of Fairhope Website: www.cofairhope.com or a copy may be obtained by e-mailing: dan.ames@cofairhope.com. Specifications are on file and may be seen in the Purchasing Department of the City of Fairhope, Alabama, 555 S. Section Street. Prior to opening, RFP packages may be picked up at that location during normal operation, between 7:00 am and 4:00 pm local time.

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail to the attention of the Purchasing Manager, Daniel P. Ames, P.O. Drawer 429, 555 South Section St., Fairhope, Al 36532, e-mail: dan.ames@cofairhope.com, Seventy Two (72) hours prior to the bid opening or will be forever waived.

All bids must be on blank bid forms provided in the Bid Documents. Bids shall be accompanied by a Bid Security equal to 5% (percent) of the bid price, but in no event more than \$10,000.00. Bid Security shall be in the form of a Bid Bond or a cashier's check payable to The City of Fairhope. No Bid Security is required on bids less than \$10,000.00. **NOTE: FOR THIS RFP, BID BOND IS WAIVED.**

THERE WILL BE A MANDATORY PRE-BID MEETING ON APRIL 2, 2013, at 9:00 AM, at the fish market building site, Seacliff Drive, Fairhope, Al. 36532.

The City of Fairhope is an Equal Opportunity Employer and requires that all contractors comply with the Equal Employment Opportunity laws and the provisions of the Contract Documents in this regard. The City of Fairhope also encourages and supports the utilization of Minority Business Enterprises on this and all public bids.

All bids, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a **"Sealed Bid" with Bid Name, Bid Number, City of Fairhope's Name and Address and Bidder's Name and Address**. Each bid must be in a separate envelope. Bids made out in pencil will not be accepted.

The Contractor must furnish to the City of Fairhope at the time of the signing of the contract a certificate of insurance coverage, which will include comprehensive insurance, Contractor's Automobile Liability Insurance, and where applicable, Owner's Protective Liability insurance, subcontractor's public liability and property damage insurance. The right is reserved to reject any and/or all proposals and any portion thereof, and to waive informalities and to furnish any item of material or work to change the amount of the Contract. Failure to observe the instructions contained herein will constitute grounds for rejection of your proposal.

The company that is awarded the bid must have Workman's Compensation Insurance on all of its employees if work is to be performed on Fairhope Airport premises. General Liability Insurance, specifying coverage, must be maintained to hold the City of Fairhope harmless in the event of an accident. See bid packet for details.

No bids will be considered unless the bidder, whether resident or non-resident of Alabama, is properly qualified to submit a proposal for this type of work in accordance with all applicable laws of the State of Alabama. Where applicable, this shall include evidence of holding a current license from the State Licensing board for General Contractors, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, the awarded vendor, if non-resident of the State, and if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama. Bidder must have a current business license or purchase a business license with the City of Fairhope prior to work performed. No proposals shall be withdrawn for the period of ninety (90) days subsequent to the opening of proposals without the consent of the City of Fairhope of Fairhope, Alabama, Baldwin County, Alabama.

Daniel P. Ames,
Purchasing Manager
Posted 03-27-13

ITEM II

INSTRUCTION TO BIDDERS

2.0 PREPARATIONS FOR PROPOSALS:

- 2.0.1 Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, these instructions, and instruction printed on the forms is necessary. Special care should be exercised in the preparation of proposals. Proposers must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper space in the proposal form shall be suitably filled in. The City shall not be liable for any costs incurred by proposers in responding to this RFP. The terms "proposal" and "bid" are interchangeable as used herein.

2.1 LABOR AND MATERIALS NOT TO BE FURNISHED BY CITY OF FAIRHOPE:

- 2.1.1 The City of Fairhope, Alabama, will not furnish any labor, material, or supplies unless specifically provided for in the Contract documents.

2.2 SIGNATURE TO PROPOSALS:

- 2.2.1 Each bid must give the full business address of the Bidder and must be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person shall also be typed or printed below the signature. A bid by a person who affixes to this signature the word "president", "secretary", "agent" or other designation without disclosing his principal, may be held to be the bid of individual signing. When requested by the City of Fairhope, Alabama, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

2.3. ALTERNATE PROPOSALS:

Alternate proposals will not be considered unless called for.

2.4 CORRECTIONS:

- 2.4.1 Erasures or other changes in the proposals must be explained or noted over the signature of the bidder.

2.5 OWNER:

- 2.5.1 Where the word "Owner" appears herein, the same refers to City of Fairhope, and includes, its governing body.

2.6 INSURANCE:

- 2.6.1 The insurance policies of any insurance company shall be an admitted carrier by the State of Alabama, will be accepted as insurance as required for any bid or contract. See the instructions (VII) hereinafter contained with respect to the type, form, and amounts of required insurance policies.

2.7 **MARKING AND MAILING PROPOSALS:**

- 2.7.1 Mark and mail proposals per the instructions in Item I, Advertisement for Request for Proposals (RFP).

2.8 **TIME FOR RECEIVING PROPOSALS:**

- 2.8.1 Proposals received prior to the time of opening will be securely kept, unopened. The Owner will decide when the specified time has arrived. No responsibility will attach to the City of Fairhope, or Fairhope City Council for the premature opening of a proposal not properly addressed or identified. Unless specially authorized, telegraphic proposals will not be considered.

2.9 **WITHDRAWAL OF PROPOSALS:**

- 2.9.1 Proposals may be withdrawn on written or telegraph request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened. The contents of each vendor's Proposal, including technical specifications for the proposed services shall remain valid for a minimum of ninety (90) calendar days from the Proposal due date, and the Proposal may not be withdrawn during said ninety (90) day period without the prior written consent of the City.

2.10 **BIDDERS PRESENT:**

- 2.10.1 At the time fixed for the opening of proposals, their contents will be made public for the information of bidders and others properly interested who may be present either in person or by representation.

2.11 **AWARD OR REJECTION OF PROPOSALS:**

- 2.11.1 The Contract will be awarded to the lowest responsible Proposer complying with conditions of the request for proposal, provided his proposal is reasonable and it is in the interest of the Owner to accept it. The Proposer to whom the award is made will be notified at the earliest possible date. The Owner, however, reserves the right to reject any and all proposals and to waive any informality in proposals received whenever such rejection or waiver is in the interest of the Owner. It also reserves the right to reject the proposal of a Proposer who has previously failed to perform properly or complete on time contracts of a similar nature, or a proposal of a Proposer who is not, in the judgment of the Owner, in a position to perform the Contract. Local vendors, within the city limits of the City of Fairhope, will have a 3% favorable allowance in all proposals.

2.12 **ERRORS IN PROPOSALS:**

- 2.12.1 Proposers, or their authorized agents, are expected to examine the specifications and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the Proposer's own risk, and he cannot secure relief on the plea of error in the proposal. In case of error in the extension of prices, the unit price will govern.

2.13 **LEASE CONTRACT AND BOND:**

- 2.13.1 The Proposer to whom award is made must, when requested, enter into written contract within the period specified, or, if no period be specified, within 15 days after the required forms are presented to him for signature.

2.14 **COLLUSION:**

2.14.1 If there is any reason for believing that collusion exists among the Proposers, any or all proposals may be rejected, and those participating in such collusion may be barred from submitting proposals on the same or other work with the City of Fairhope.

2.15 **SUBLETTING OR ASSIGNING OF CONTRACT:**

2.15.1 Limitations: The Proposer shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the contract, his right, title or interest therein, of his power to execute such contract, to any person, firm or corporation without written consent of the City of Fairhope, and such written consent shall not be construed to relieve the Proposer of any responsibility for fulfillment of the contract. Unless otherwise stipulated in the proposal or special provisions, the Proposer shall perform with his own Organization, and with the assistance of workmen under his immediate superintendence and reported on his payroll, all contract requirements.

2.16 **SIGNING OF PROPOSAL:**

2.16.1 The Proposal must be signed and dated by a duly authorized representative of the vendor's company who is authorized to negotiate contracts and bind the vendor. Proposals must state the representative's name and title, and the vendor's legal name and the vendor's address, telephone and facsimile numbers and e-mail address, and the name of the person who may be contacted during the evaluation of Proposals, if necessary.

2.17 **BUSINESS LICENSE REQUIRED:**

2.17.1 The vendor selected to enter into a lease contract with the City of Fairhope must be licensed to do business in the City of Fairhope prior to commencement of any work under the contract.

2.18 **CONFLICT OF INTEREST:**

2.18.1 Each respondent shall disclose in its Proposal any potential conflict of interest with respect to the respondent's Proposal. For purposes hereof, a "conflict of interest" shall include any real or seeming incompatibility between the private interests of a respondent, or any of its principals, employees or agents, and the public interests or fiduciary duties of such respondent or person.

2.19 **COMPLIANCE WITH RFP RULES AND FORMAT:**

2.19.1 The submitted Proposal must follow the rules and format established within this RFP. Adherence to these rules will ensure a fair and objective analysis of all Proposals. Failure to complete any portion of this request may result in rejection of a Proposal.

2.20 **IDENTIFYING LIMITATIONS OR EXCEPTIONS:**

2.20.1 Proposals should respond to all requirements of this RFP to the maximum extent possible. Proposers are asked to clearly identify any limitations or exceptions to the requirements inherent in the RFP. Alternative approaches will be given consideration, if the approach clearly offers the City of Fairhope increased benefits.

2.20.2 By submitting a Proposal in response to this RFP, each Proposer expressly represents that they have taken no exception to any term, condition, obligation or requirement contained in this RFP, unless such exception is clearly and expressly stated in its Proposal. Each Proposer further represents that they will report immediately to the City of Fairhope in writing any errors, inconsistencies, ambiguities, or terms which limit competition or which or otherwise unlawful that they discover in this RFP and supporting documentation.

2.21 PROPOSER AS PARTICIPANT IN SELECTION PROCESS:

2.21.1 By submitting a RFP the vendor agrees to participate in the selection process as described in this document.

2.22 PROPOSAL AS PUBLIC RECORD / CONFIDENTIALITY:

2.22.1 Proposals received by the City of Fairhope shall become a matter of public record and subject to public inspection. If a Proposer desires to keep certain information confidential, information shall be clearly marked in capital letters as "CONFIDENTIAL"; provided, however, and anything in this RFP to the contrary notwithstanding, each Proposer understands and acknowledges that the City of Fairhope shall only keep information confidential to the extent it is permitted to do so Under applicable law and the City of Fairhope cannot, and does not, make any representation or warranty with respect to maintaining the confidentiality of any information submitted response to this RFP. The City of Fairhope further disclaims any liability arising from or related in any way to the disclosure of any such confidential information and, by submitting a Proposal in response to this RFP, a respondent shall be deemed to have waived and released the City of Fairhope from any such liability.]

2.23 INSTRUCTIONS FORMAT

2.23.1 No representations, negotiations, decisions, or actions shall be relied upon by the vendor as a result of any discussions with a City of Fairhope official, employee and/or consultant. Only those instructions provided in written form from the contact specified in the bid packet may be relied upon.

2.24 PRE-LEASE PROPOSAL COSTS

2.24.1 The City shall not be liable for any pre-lease costs incurred by interested vendors participating in the selection process, including, but not limited to, any costs associated with proposals submitted in response to this RFP or any costs associated with meetings, travel, or negotiations.

2.25 OWNERSHIP OF PROPOSAL RESPONSES

2.25.1 Proposal responses submitted to this RFP shall become the property of the City of Fairhope and will not be returned.

2.26 QUESTIONS / COMMENTS AND ADDENDA

2.26.1 Questions or comments pertaining to this RFP must be presented in writing, sent as e-mail to The attention of the Purchasing Manager, Daniel P. Ames, P.O. Drawer 429, 555 South Section St., Fairhope, Al 36532, e-mail: dan.ames@cofairhope.com, Seventy Two (72) hours prior to the bid opening or will be forever waived. All answers to questions, clarifications and interpretations of this RFP shall be made only by addenda issued by the City.

2.26.2 The City of Fairhope reserves the right to amend this RFP by addendum, at any time, in its sole and absolute discretion, including, but not limited to, the schedule set forth herein, and the City of Fairhope will furnish such addenda as may be issued to those Proposers being furnished with a copy of this RFP.

2.26.3 All Addenda are part of the Lease Contract Documents. Include resultant costs in the Proposal. Addenda will be issued by posting to the City of Fairhope website www.cofairhope.com. Addenda will be emailed to all Proposers on record. The City assumes no responsibility for email accuracy or efficiency. It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the bid submission.

2.26.4 Commencing with the issuance of this RFP, no vendor or anyone acting on a vendor's behalf, shall make direct or indirect contact with City personnel or undertake any activities or take any action to otherwise promote its Proposal to the City of Fairhope or its personnel. All communications shall be made to the contact identified herein. Violation of this requirement may, at the City of Fairhope sole and absolute discretion, be grounds for disqualifying a vendor from further consideration.

2.27 AWARD TO ONE PROPOSER

2.27.1 The City, if it selects a Proposer through this RFP process, will award a contract to a single Proposer for all provisions of the RFP. Proposers may provide a Proposal that includes subcontractors, but the City of Fairhope will enter into a single agreement with one Proposer. The awarded Proposer will be responsible for fulfillment of all obligations under the lease contract, including but not limited to, the timeliness, quality, and deliverables provided by any subcontractors under the lease contract.

2.28 INVESTIGATING CAPABILITIES OF PROPOSERS

2.28.1 The City of Fairhope may make such independent investigations as it deems necessary to determine the capability of any Proposer to perform the work, and each Proposer shall furnish to the City of Fairhope all such information and data for this purpose as the City of Fairhope may request. Failure to furnish such information in a timely manner may be grounds for disqualifying the Proposer from further consideration.

2.29 CITY RESERVATIONS

2.29.1 Anything in this RFP to the contrary notwithstanding, the City of Fairhope reserves the right at all times and in its sole and absolute discretion, to do any one or more of the following: (i) cancel this RFP, at any time; (ii) reject any and all proposals that may be submitted; (iii) negotiate with one or more of the respondents submitting Proposals until such time as a definitive agreement is reached with a respondent or until the City of Fairhope determines to discontinue negotiations.

Any proposal containing an “escalation clause” will not be considered.

Schedule

The following is the current estimated schedule as defined by the City of Fairhope:

Selection Process Step	Date(s)
Release and Issuance of the Request for Proposal (RFP)	03-27-13
Proposals Due	04-23-13
Mandatory Pre-Bid meeting	04-02-13
Final Vendor Selection	Last week in April
City of Fairhope Approval	05-13-13

Please provide one (1) original and four (4) copies of the Response/Proposal.

ITEM III
RESPONSE FORM

Date: ____/____/____

Bid Number 014-13

Bid Name: RFP FOR LEASE OF FLY CREEK CITY OWNED BUILDING

Award Duration: FIVE (5) years from signing date of contract, with the option to renew bid or contract for FIVE (5) additional ONE (1) year periods, if terms and conditions, including pricing remain the same, and both parties are in agreement to renewing the contract.

Proposal will include all labor, materials, equipment, shipping, overhead, profit, bonds, insurance and all other costs necessary to provide the complete services outlined within this contract and scope of work. The owner agrees to provide the following materials: NONE

LEASE PRICE PER MONTH: \$ _____

TOTAL LEASE PRICE FOR 5 YEARS: \$ _____

Note: 5% of gross revenues per month will be in addition to lease price (see lease document for details).

Receipt of the following Addenda to these documents is hereby acknowledged by the undersigned (bidder to complete below):

ADDENDUM NO.	DATE ISSUED	ADDENDUM NO.	DATE ISSUED
_____	_____	_____	_____
_____	_____	_____	_____

Each bid must give the full business address of the bidder and must be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person shall also be typed or printed below the signature. A bid by a person who affixes to this signature the word "president," "secretary," "agent," or other designation without disclosing his principal, may be held to be the bid of the individual signing. When requested by the City of Fairhope, Baldwin County, Alabama, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

The undersigned agrees to furnish the goods/services as requested by you for the City of Fairhope, Baldwin County, Alabama in your invitation to bid, and certifies that they will meet or exceed the specifications called for. The undersigned has read all information pertaining to this bid and has resolved all questions. It is also understood and agreed that all prices quoted are F.O.B. described in the bid documents and specifications. The undersigned also affirms he/she has not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price or to refrain from bidding or otherwise.

If Individual

(Name of Individual or Partnership)

(Name of Partner Print)

(SIGNATURE of Representative Authorized to sign Bids and Contracts for the firm)

(Name of Partner Print)

(PRINT Name of Representative Authorized to sign Bids and Contracts for the firm)

(Address)

(Address)

(Address)

Phone Number () _____ Fax Number () _____

Primary e-mail address _____

Alabama Contractor's License No. _____

If Corporation or LLC

Company _____

State of Incorporation _____

Company Representative _____
Signature of Representative Authorized to sign Bids and Contracts for the firm)

Company Representative _____
(Print Name of Representative Authorized to sign Bids and Contracts for the firm)

Address _____

Phone Number () _____ Fax Number () _____

Primary e-mail address _____

Alabama Contractor's License No. _____

THIS MUST BE NOTARIZED!

STATE OF _____ }

COUNTY OF _____ }

I, the undersigned authority in and for said State and County, hereby certify that _____

_____ as _____ of _____, whose name is signed to the foregoing document and who is known to me, acknowledged before me on this day, that, being informed of the contents of the document they executed the same voluntarily on the day the same bears date.

Given under my hand and Notary Seal on this ____ day of _____, 2013.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

ITEM IV
BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ of
(Name of Contractor)

(Address)

as Principal, and _____ of
(Name of Surety)

_____, as Surety, are held
(Address)

WAIVED

firmly bound unto CITY OF FAIRHOPE, a Political Subdivision of and Body Corporate in the State of Alabama as Obligee, in the full and just sum of FIVE PERCENT (5%) OF _____ lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal is herewith submitting its proposal for

Bid Number 014-13 RFP FOR LEASE OF FLY CREEK CITY OWNED BUILDING

The Conditions of this obligation is such that if the aforesaid Principal shall be awarded the contract the said Principal will, within the time required, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms of and conditions of the Contract, than this obligation to be void; otherwise, the Principal and the Surety will pay unto the Obligee the difference in money between the amount of the Contract as awarded and the amount of the proposal of the next lowest bidder, which amount shall not exceed \$10,000. If no other bids are received, the full amount of the proposal guarantee shall be so retained or recovered as liquidated damages for such default.

Signed, Sealed and Delivered _____ Date _____

(Contracting Firm)

(Principal)

(Witness as to Principal)

(Name of Surety) (SEAL)

(Witness to Surety)

BIDS WILL NOT BE CONSIDERED UNLESS BID BOND IS SIGNED BY PRINCIPAL AND SURETY

ITEM V
PERFORMANCE BOND

KNOW ALL MEN: That we _____
(Insert here the name & address of legal title of the Contractor)

_____ hereinafter called the Principal, and

(Insert here the name and address of legal title of one or more sureties)

and _____ hereinafter called the Surety or
Sureties, are held and firmly bound unto The City of Fairhope, hereinafter called the Owner in the sum of
Dollars (\$ _____) for the payment whereof the Principal and the Surety or Sureties bind
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by
these presents.

WHEREAS, the Principal has, by means of a written agreement, dated _____ entered
into a contract with the Owner for:

Bid Number 014-13 RFP FOR LEASE OF FLY CREEK CITY OWNED BUILDING

which agreement is by reference made a part hereof,

NOW THEREFORE, The conditions of this obligation is such that if the Principal shall faithfully perform the
Contract on his part, and satisfy all claims and demands, incurred for the same, and shall fully indemnify
and save harmless the Owner from all cost and damage which he may suffer by reason of failure to do so,
and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making
good for any such default thence this obligation shall be null and void; otherwise, it shall remain in full force
and effect.

PROVIDED, HOWEVER, that no suit, action or proceedings, by reason of any default whatever be brought
on his Bond after twelve months from the day on which the final payment under the Contract falls due.
PROVIDED, further, that the said surety or sureties, for value received hereby stipulate and agree that no
change, extension of time, or addition to the terms of the Contract or to the work to be performed there
under of the Specifications thereof shall in any way effect their obligations on this bond, and they do hereby
waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to
the work, or to the Specifications.

Signed and Sealed this ___ day of _____, 2013.

(Individual principals sign here)

Business Name _____

(Individual principal's signature) _____ (SEAL)

(Individual principal's printed name) _____ (SEAL)

(Individual principal's signature) _____ (SEAL)

(Individual principal's printed name) _____ (SEAL)

(Individual principal's signature) _____ (SEAL)

(Individual principal's printed name) _____ (SEAL)

In the presence of:

(Witness) _____

(Witness) _____

WAIVED

(Corporate principal signs here)

(Corporation Name) _____

(Corporate principal's signature) _____

(Corporate principal's printed name) _____

(Attest) _____

(Surety signs here) _____

(Witness to Surety) _____

ITEM VI
LABOR AND MATERIALS BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____
as Principal, and _____ as Surety, are held and
firmly bound unto said City of Fairhope hereinafter called the Obligee, in the penal sum of

_____ Dollars (\$ _____)

lawful money of the United States, for the payment of which sum and truly to be made, we bind ourselves,
our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said principal has entered into a certain Contract with said Obligee, dated _____
20____. (Hereinafter called the Contract) for **Bid Number 014-13 RFP FOR LEASE OF FLY CREEK CITY
OWNED BUILDING** which Contract and the Specifications for said work shall be deemed a part hereof as
fully as if set out herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the said Principal and all
subcontractors to whom any portion of the work in said contract is sublet and all assignees of said Principal
and of such subcontractors shall promptly make payments to all persons supplying him or them with labor,
materials, or supplies for or in the prosecution of the work provided for in such Contract, or any amendment
or extension of or addition to said Contract, and for the payment of reasonable attorneys' fees incurred by
the successful claimant or plaintiffs in suits or claims against the contractor arising out of or in connection
with the said contract, then the above obligation shall be void; otherwise to remain in full force and effect.
PROVIDED, HOWEVER, that this bond is subject to the following conditions and limitations.

(a) Any person, firm or corporation that has furnished labor, materials, or supplies for or in the prosecution
of the work provided for in said Contract shall have a direct right to action against the Principal and Surety
on this bond, which right of action shall be asserted in a proceeding, instituted in the County in which the
work provided for in said Contract is to be performed or in any County in which said Principal or Surety does
business. Such right of action shall be asserted in a proceeding instituted in the name of the claimant or
claimants for his or their use and benefit against the Principal and Surety or either of them (but not later
than one year after the final settlement of said Contract falls due) in which action such claim or claims shall
be adjusted and judgment rendered thereon.

(b) The Principal and Surety hereby designate and appoint the City of Fairhope or their successors or
representatives as the agent of each of them to receive and accept services of process or other pleading
issued, or filed in any proceeding instituted on this bond and hereby consent that such service shall be the
same as personal service on the Principal and/or Surety.

(c) The Surety shall not be liable hereunder for any damages or compensation recoverable under
Workmen's Compensation or Employer's Liability Statute.

(d) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any
suit, action or preceding thereon that is instituted later than one year after the final settlement of said
contract.

(e) This Bond is given pursuant to the terms of an Act of the Legislature of the State of Alabama approved
February 8, 1935, entitled: "An Act to further provide for Bonds and Contractors on State and other public
works and suits thereon".

Signed and Sealed this _____ day of _____, 20_____.

(Individual principals sign here)

Business Name _____

(Individual principal's signature) _____ (SEAL)

(Individual principal's printed name) _____ (SEAL)

(Individual principal's signature) _____ (SEAL)

(Individual principal's printed name) _____ (SEAL)

(Individual principal's signature) _____ (SEAL)

(Individual principal's printed name) _____ (SEAL)

WAIVED

In the presence of:

(Witness) _____

(Witness) _____

(Corporate principal signs here)

(Corporation Name) _____

(Corporate principal's signature) _____

(Corporate principal's printed name) _____

(Attest) _____

(Surety signs here) _____

(Witness to Surety) _____

ITEM VII
INSURANCE

7.0 INSURANCE REQUIREMENTS

Awarded Contractor, at its sole expense, shall obtain and maintain in full force the following insurance to protect the Contractor and the City of Fairhope at limits and coverages specified herein. The City of Fairhope will be listed as an additional insured under the Contractor's general liability insurance and automobile liability insurance policies, and all other applicable policies and certificates of insurance. These limits and coverages specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully and adequately protect the awarded bidder.

7.01 All insurance will be provided by insurers by admitted carriers in the State of Alabama, shall have a minimum A.M. Best rating of A-VII and must be acceptable to the City. Self-insured plans and/or group funds not having an A.M. Best rating must be submitted to the City for prior approval.

7.02 **NO WORK IS TO BE PERFORMED UNTIL PROOF OF COMPLIANCE WITH THE INSURANCE REQUIREMENTS HAS BEEN RECEIVED BY THE CITY.**

7.03 Worker's Compensation and Employers Liability

Part One: Statutory Benefits as required by the State of Alabama

Part Two: Employers Liability	100,000 Each Accident
	\$100,000 Each Employee
	\$500,000 Policy Limit

7.04 U.S. Longshoreman & Harbor workers Act (USL&H)-

Required if contract involves work near a navigable Waterway that may be subject to the USL&H law

7.05 Maritime Endorsement (Jones Act)-

Endorsement required if contract involves the use of a Vessel. Or include coverage for "Master or Members or Crew" under "Protection and Indemnity" coverage (P&I), unless crew is covered under Workers Compensation.

Bodily injury by accident	\$1,000,000 Each Accident
Bodily injury by disease	\$1,000,000 Aggregate

7.06 Commercial General Liability

Coverage on an Occurrence form with a combined single limit of (Bodily Injury and Property Damage combined as follows:

Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Products/Completed Operation Aggregate	\$2,000,000
General Aggregate	\$2,000,000

- Coverage to include

- o Premises and operations
- o Personal Injury and Advertising Injury
- o Products/Completed Operations
- o Independent Contractors
- o Blanket Contractual Liability
- o Explosion, Collapse and Underground hazards
- o Broad Form Property Damage
- o Railroad Protective Liability Insurance if work involves construction, demolition or maintenance operations on or within 50 feet of a railroad.

7.07 Automobile Liability

Covering all Owned, Non-Owned, and Hired vehicles with a limit of no less than \$1,000,000 combined single limit of Bodily Injury and property damage per occurrence.

7.08 Certificates of Insurance

A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the City **PRIOR** to commencement of any work on the contract. Each policy shall be endorsed to provide ten (10) days written notice of cancellation to the City.

- 7.08.1 The Contractor shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by the Contractor. These certificates shall evidence waivers of subrogation in favor of the Contractor and the City, and shall be made available to the City upon request.

NOTE: ADDITIONAL LESSEE INSURANCE REQUIREMENTS IN LEASE DOCUMENT

ITEM VIII

SCOPE OF WORK AND SPECIFICATIONS
FOR
BID NO. 014-13 RFP FOR LEASE OF FLY CREEK CITY OWNED BUILDING
FOR
THE CITY OF FAIRHOPE, AL

8.0 **SCOPE OF WORK**

8.0.1 **PURPOSE**

The City of Fairhope, Alabama is seeking proposals from qualified firms to lease and operate the Fly Creek Fish Market and provide general retail and/or commercial fish market supplies for sale to the local marine market, including the recreational and commercial fishing fleet, located on South Seacliff Drive, Fairhope, Alabama. Also, provide a retail fish market inventory for sale to the general public at the leased facility. These services will be provided in accordance with the terms, conditions, and specifications contained in this Request for Proposals (RFP). It is the intent of the City to award a single contract to the first ranked proposer responding to this RFP.

8.0.2 **NON-EXHAUSTIVE SPECIFICATIONS**

The attached specifications are intended and provided solely as a general and non-exhaustive expression of the intent and purpose of the City of Fairhope regarding this bid; said specifications should be so considered by the bidders. The use of specific names is not intended to restrict the bidder or any seller or manufacturer, but is solely for the purpose of indicating the type, size and quality of materials, product services, or equipment best suited for the City of Fairhope. Accordingly, the bidder admits and agrees that said specifications are not complete in every detail and that the work and materials not indicated or expressly mentioned in said specifications, but which are reasonably necessary for the full and faithful performance of the item(s) bid in accordance with the full and faithful intent, will be included in the bid and incorporated in the work by the bidder and at the bidder's sole expense, the same as if indicated and specified.

Minimum specifications **MUST** be met. Additional features and/or capabilities not included in the specifications may be included in the bid. The City of Fairhope reserves the right to reject any or all bids for any reason.

8.1 **SPECIFICATIONS**

Details of the specifications are in the accompanying lease contract to be signed by awarded vendor. Additional site information will be presented at the mandatory pre-bid meeting to be held as described in ITEM I, Advertisement Request For Proposals.

8.1.1 **LOCATION**

Sea Cliff Drive, Fairhope, Alabama

8.1.2 **LEASE PROPERTY DESCRIPTION (from Baldwin Co. Revenue Commissioner)**

Building	The leased property will consist of one (1) building, approximately 896 ft ² , adjusted.		
Exterior	C B Plain		
Roof Type	Flat Shed	Roof Material	Metal, Corrugated
Heat	No HT / AC		
Plumbing	None		
Electric	Maximum		
Floors	Conc Raised		
Interior	Unfinished		

No other physical areas are to be incorporated into this lease. This excludes parking lot, seawall, boat stalls, and pier from the lease.

Parking Lot **Not** included in lease. The parking lot adjacent to the building serves public and commercial vehicle parking needs associated with activities in the immediate area. Parking is on a first come, first served basis.

Pier Not included in lease. The pier serves public and commercial temporary docking needs associated with marine activities in the area, on a first come, first served basis.

8.1.3 LEASE PROPERTY FUNCTIONS

The primary function of the leased facility will be to provide fish market services and products to the community. These functions include:

- 8.1.3.1 Selling marine supplies usually provided by fish markets to recreational and commercial shrimpers and fishermen, such as, ice, and bait.
- 8.1.3.2 The service of buying and selling seafood from the commercial shrimpers and fishermen to the general public.
- 8.1.3.3 All functions must be approved in writing by the City of Fairhope.

8.1.4 LEASE PROPERTY OPERATIONS

- 8.1.4.1 The Proposer must provide and maintain, at its own cost and expense, all equipment required to operate the fish market. In the event of lost, stolen, or damaged equipment or facilities, any required repairs or replacement of equipment or facilities shall be at the expense of the Proposer.

.All improvements and additions to the leased premises shall become the property of the City, with the exception of furniture or trade fixtures. All equipment provided by the Proposer will remain the property of the Proposer and any maintenance required thereon shall be at the sole expense of the Proposer. The City shall incur no obligation for repairs to equipment provided by the Proposer. During the term hereof, Proposer, at Proposer's sole expense, shall, to the satisfaction of the City, keep and maintain the premises and all improvements and City provided equipment thereon in good and sanitary order, condition, and repair, consistent with similar operations in Baldwin County Alabama. Upon expiration or termination hereof, Proposer shall surrender and deliver up to the City the premises and all appliances and equipment provided by the City, if any, in good and usable condition, ordinary wear and tear excepted.

8.1.5 PROPOSER'S ADDITIONAL RESPONSIBILITIES

- 8.1.5.1 The Proposer, its representatives, and employees shall adhere to all State, County, and City laws and regulations relating to the laws currently in force and those adopted and amended hereafter.
- 8.1.5.2 Proposer hereby waives all claims for damages to or loss of any property belonging to Proposer that may be in or about the premises.
- 8.1.5.3 The Proposer will be responsible for all damage to City property caused by the Proposer, its employees, or its agents. Any such damage shall be promptly corrected at the expense of the Proposer.
- 8.1.5.4 The Proposer shall maintain the equipment in a good state of repair at all times, and shall repair and replace broken or damaged equipment. Cost relating to the repair or replacement of such items, stolen, lost, or damaged, shall be at the expense of the Proposer.
- 8.1.5.5 The Proposer shall furnish the necessary janitorial services to maintain all areas in a proper state of cleanliness, i.e. litter and debris, as a result of this operation.
- 8.1.5.6 The Proposer hereby agrees to indemnify, defend, and hold harmless the City and its respective agents, officials, employees, and representatives from any and all claims of liability for damages by or in connection with any activities conducted pursuant to this Agreement. The City assumes no responsibility whatsoever for any property located on the premises **that does not belong to the City** and the City is hereby expressly relieved and discharged from any and all liability for

any loss, injury, or damage to persons or property that may be sustained by any reason of the occupancy under the lease contract.

8.1.6.7 After reasonable notice to the Proposer, the City of Fairhope may review any of the Proposer's internal records, reports or insurance policies applicable to the contract, during the term of this contract.

8.16.8 The Proposer will provide the required services, and will not subcontract or assign the services without written approval by the City of Fairhope.

8.16.9 Both the Proposer and the City of Fairhope agree that the Proposer is neither an employee nor an agent of the City of Fairhope for any purpose.

8.1.7 **CAPITAL UPGRADES**

8.17.1 The successful Proposer shall be required to make an initial investment in capital improvements. Proposer is to submit with this proposal a list of capital improvements that he/she proposes to furnish under this requirement. Final listing shall be mutually agreed upon by the Proposer and the City. Said capital improvements shall become the property of the City upon completion of the contract.

8.17.2 Upon final termination of the lease, whether for the original term or the extended term, Landlord shall pay to the Tenant for the approved improvements and additions, a sum equal to the original cost or the original value of the improvements and additions, whichever is less, when purchased or incorporated into the property, less depreciation calculated on a twenty (20) year straight line depreciation schedule. For example, if the lease is cancelled at the end of the initial five year term, tenant shall receive 50% of said amount or if the lease is renewed for an additional five (5) year term, tenant shall receive nothing at the end of said term.

8.1.8 **SECURITY**

The Proposer must provide, and have sole responsibility for, all security measures, which may be required to protect the leased area, equipment and materials. Said security measures may not violate other restrictions of this agreement.

8.1.9 **ADVERTISING**

During the entire term of this lease, any renewal, or extension thereof, the City must approve all advertising.

8.1.10 **FUTURE EQUIPMENT**

The successful proposer agrees to supply, at no cost to the City, any future equipment needed for any mutually agreed to, new or expanding facility.

8.1.11 **REMOVAL**

At the termination of contract, the existing vendor shall have thirty (30) days from the proposal award to remove all existing equipment from the facility. and shall leave in place a minimum of three (3) feet of wiring above ground, for all underground installations, for the purpose of reconnection.

8.1.12 **THE CITY RESERVES THE RIGHT TO:**

Request use of a specific product by Proposer at a price to be competitive with market price. The City may enter into agreements with other vendors that require exclusive use or sale of certain products on all City properties. Where applicable, and at the written direction of the City, Proposer will comply with such requirements.

8.1.13 **PROPOSALS EVALUATION**

8.1.13.1 **Determination of Qualifications of Proposers**

The City of Fairhope, at its sole discretion, shall determine whether particular proposers have the basic qualifications to provide food and/or beverage concessions for the City facilities. In determining whether a proposer possesses the basic qualifications, the City will

also consider the submittals that adhere to the terms stated in the request. Following receipt of written proposals, the City will review all proposals and eliminate those that do not meet the minimum standards.

8.1.13.2 Rejection of Proposals

Proposals shall remain open for acceptance and irrevocable for a period of thirty (30) calendar days from the closing date. The City reserves the right to reject any and all proposals. The City may request additional information it deems necessary.

8.1.13.3 Execution of Proposal

The City, after reviewing proposals, may select those proposals which, in the sole judgment of the City, qualify as finalists and requests that those proposers make an oral presentation to the City prior to the final selection of the successful proposer.

8.1.13.4 Awarding of Contract

After evaluation of all documents, the City will make a final decision to award contract to the successful proposer.

END
SCOPE OF WORK AND SPECIFICATIONS

ITEM IX

FLY CREEK CITY OWNED BUILDING LEASE

STATE OF ALABAMA
COUNTY OF BALDWIN

This LEASE AGREEMENT, entered into this ____ day of _____, 2013, by the City of Fairhope of Baldwin County, Alabama, hereinafter called the "Landlord" or "Lessor", Party of the First Part, and _____, a corporation organized and existing under the laws of the State of Alabama, hereinafter called the "Tenant" or "**Lessee**", Party of the Second Part, on the

Bid Number 014-13, RFP FOR LEASE OF FLY CREEK CITY OWNED BUILDING

The **LESSOR** and the **LESSEE** agree as set forth below:

The contract consists of all of the items contained within this contract, the associated bid package, addenda, amendments drawings, charts and appendices, if any.

WITNESSETH: That the parties hereto do mutually agree as follows:

1. Premises and Term. Landlord does hereby lease and demise unto Tenant that premises situated in Baldwin County, Alabama, commonly known as the "Fly Creek Fish Market" and which is described in attached Exhibit "A", which is made a part hereof and incorporated herein by this reference, for continuous use and occupancy for and during the term of five years, beginning _____, 20__, and ending _____, 20__. (At the option of the Landlord and upon written request of the tenant, made not less than one hundred and twenty (120) days prior to the end of this lease, the lease may be extended for an additional five-year period or any lesser period.) This period is herein referred to as the "term" or "period" of said lease and shall include any extensions. Upon final termination of the lease, whether for the original term or the extended term, Landlord shall pay to the Tenant for the approved improvements and additions, a sum equal to the original cost or the original value of the improvements and additions, whichever is less, when purchased or incorporated into the property, less depreciation calculated on a twenty (20) year straight line depreciation schedule. For example, if the lease is cancelled at the end of the initial five year term, tenant shall receive 50% of said amount or if the lease is renewed for an additional five (5) year term, tenant shall receive nothing at the end of said term.
2. Rent. Tenant promises and agrees to pay to Landlord for the term of this lease the sum of _____ DOLLARS (\$_____) per month payable monthly in advance on the first day of each month. Further, Tenant agrees to pay to Landlord, five (5) per cent of Tenant's gross revenues, per month payable monthly, on or before the tenth (10th) day of each month for the previous month, if said amount is more than \$200. Tenant shall make available to Landlord, at Landlord's primary place of business, and at Landlord's request, all of Tenants records, tax filings, and books of accounts for the previous month or months for the purpose of confirming Tenant's gross receipts. In addition, Tenant shall file with Landlord, a copy of Tenants annual tax return, filed with the Internal Revenue Service and the Alabama State Department of Revenue within thirty (30) days of the annual filing. The five (5%) percent of gross receipts shall be paid by Tenant for or on behalf of every person, firm, company or corporation doing gainful business or performing gainful work on the leased premises, whether they be independent contractors or employees of Tenant, except, however, this provision shall not apply to any work performed personally by the owner of any vehicle or watercraft nor where the said owner shall contract with any third party for work where the tenant herein does not profit thereby. This provision shall not be construed to permit any assignment of the leased premises by the Tenant without the express written consent of the Landlord. Tenant shall provide to Landlord, each month, a list of all independent contractors and employees who have performed any work or done any business on the leased premises for third parties.

3. Improvements and Services. Among other things, Tenant shall furnish and provide the following improvements, facilities and services on the leased premises, during the term of this lease:

- (a) An ice machine to provide reasonably priced ice to fisherman, crabbers and shrimpers;
- (b) Access to tourists;
- (c) Provide bait and tackle to recreational fishermen;
- (d) Refurbish the existing building in compliance with all building codes and flood plain requirements;

The improvements, and additions required hereinabove, and all other improvements and additions to the leased premises, must have the prior written approval of the Landlord.

All improvements and additions required herein shall be completed within six (6) months of the execution date hereof and thereafter all improvements, facilities and services shall remain available to the public, during the entire term of this lease and any extension thereof.

The failure of Tenant to provide the improvements, facilities and services during the term of this lease or to obtain the prior written consent of Landlord for any improvements or additions shall constitute a default herein and, at the option of the Landlord, shall constitute a default as hereinafter provided.

4. Use of Premises. The premises, during the term of this, lease shall be used and occupied solely for the purposes set forth above; and, Tenant shall not use nor permit the same to be used for any other purpose or purposes without the prior written consent of the Landlord. Tenant at all times shall fully comply with all laws, ordinances and regulations of any lawful authority having jurisdiction of said premises including, but not limited to, such as shall relate to health, safety, sanitation and cleanliness. Tenant will not commit any waste to said property nor permit the same to be done and will take good care of said premises at all times, and will not, by any act or omission, render Landlord liable for any violation thereof.
5. Condition of, Damage to and Maintenance of Premises. Tenant shall examine said premises before taking possession, and Tenant's entry into possession shall constitute conclusive evidence that, as of the date thereof, the said premises were in good order and satisfactory condition. Landlord does not warrant the condition of the premises or that the property is fit for any particular purpose, except as hereinafter set out.

At its sole cost and expense, Tenant shall maintain and keep in good repair the grounds, the interior of said premises, including floors, heating units, air conditioning units, store fixtures, store equipment, electrical fixtures and equipment, electrical installations, plumbing, plumbing equipment and fixtures, all machinery, all hardware, all interior painting or decorations of every kind, all door and window screens and replace all broken or damaged glass. Such repairs and replacements shall be made only by competent and responsible workmen.

If Tenant fails to do or undertake the replacement, maintenance and repair of the items and things herein required of Tenant, the Landlord may do and undertake the same, after two days' written notice, and the Tenant will upon demand pay the Landlord the costs and expenses thereof, together with interest thereon at the highest legal rate. Any sum thus due from Tenant to Landlord by virtue hereof shall be secured as additional rent under the terms of this lease.

Landlord shall not be liable for any loss or damage caused by, or growing out of, any breakage, leakage, disorder or defective condition of the heating, air conditioning, or mechanical installations and/or systems, electric wiring, pipes, or plumbing. Landlord shall not be liable for any damage to any property on said premises caused by, or growing out of, fire, rain, lightning, wind, high water, over-flow water, freezing or other causes.

6. Fixtures. All improvements and additions to the leased premises shall become the property of the Landlord, with the exception of furniture or trade fixtures. Said furniture and trade fixtures remain the property of the Tenant, and may be removed by the Tenant upon the expiration of this lease, provided the Tenant shall have complied with all terms, conditions and covenants of this lease. No improvements by Tenant, including painting, shall be made upon said property without the prior written consent of Landlord. Landlord shall have the right to require a written waiver of mechanics' or materialmen's liens by the contractor prior to executing written consent to place said improvements on the property.
7. Indemnity and Insurance; Waiver of Subrogation. Tenant will indemnify, protect and save harmless Landlord, its officers, officials, agents, appointees and employees, from any loss, cost, damage, liability or expense including Court costs, attorney's fees and any other legal costs, caused by injury or damage to any person or to property of any person other than Tenant while in or on said premises herein leased; and, the Landlord shall not be liable for any loss of any property of Tenant, however occurring. The Landlord, its officers, officials, agents, appointees, and employees, shall be indemnified by the Tenant against such liability arising from all causes, except the acts or omissions of Landlord. In furtherance hereof, Tenant will obtain and provide a copy to Landlord of a policy of general liability insurance subject to approval of Landlord in amounts of not less than \$1,000,000.00 showing Landlord as an additional loss payee. The amount of said insurance shall be increased by twenty (20%) percent of the original amount every two (2) years, on or before the anniversary date of this lease. The policy shall at all times provide that the Landlord shall be notified not less than thirty (30) days in advance of any proposed cancellation of the policy.

Tenant shall maintain insurance covering its stock of goods, inventory, leasehold improvements and other property located in the above described premises, and insurance covering the building and other improvements owned by either Landlord or Tenant on the above described premises for the full value of said improvements with a copy of said policy to be deposited with Landlord and non-cancelable until not less than thirty (30) days notice has been given to Landlord of the proposed cancellation. Tenant agrees not to assign to any insurance company any right or cause of action for damage to the property of Tenant located on the above described premises which Tenant now has or may subsequently acquire against Landlord during the term hereof. This agreement not to assign rights or causes of action shall apply only where such insurance as described herein and applicable law allow the Insured to enter into such an agreement; and, this agreement shall apply only as respects insured loss occurring on the property described herein.

8. Utilities. Tenant shall pay all the charges for all utilities used in and about the leased premises.
9. Overloads. Tenant will not overload the building, its floors, roof, or walls, the bulkheads, pier and concrete apron and shall be liable for all damages to the premises or other consequences of overloading.
10. Default. Upon the happening of any one or more of the events as expressed in subparagraphs hereof below (which said events shall separately and severally constitute a default hereunder at Landlord's option), the Landlord shall have the right at the option of the Landlord to: (1) annul and terminate this lease, and thereupon re—enter and take possession of said premises; or (2) re—enter and re—let said premises from time to time, as agent of the Tenant, and such re-entry and/or re-letting shall not discharge Tenant except that net rents (that is, gross rents less the expense of collecting and handling, and less commissions) collected as a result of such re—letting shall be a credit against the Tenant's liability for rents under the terms of this lease. Nothing herein shall be construed to require the Landlord to re—enter and re—let in such event. Nor shall anything herein be construed to postpone the right of the Landlord to sue for rents, whether matured by acceleration or otherwise; Landlord shall have the right to demand, collect and/or sue therefore at any time after default.

Each of the following may be treated by Landlord as a default:

Tenant's failure to pay any one or more of said installments of rent as and when the same becomes due, or failure to pay on demand any amount due Landlord and secured as additional rent hereunder.

Tenant's removal, attempt to remove or permitting of removal from said premises (except in

the usual course of trade) the goods, furniture, effects or other property of the Tenant brought thereon.

Execution or other legal process upon the goods, furniture, effects or other property of the Tenant brought on said premises or upon the interest of the Tenant in this lease.

Filing of a petition in bankruptcy or a petition under the bankruptcy laws by or against the Tenant, or commission by the Tenant of an act of bankruptcy.

An assignment for the benefit of creditors by the Tenant or appointment of a receiver of Tenant's property.

Before the expiration of the term hereof, and without the written consent of the Landlord, Tenant vacates said premises or abandons the possession thereof, or uses the same for purposes other than herein specified or ceases to use said premises for the purposes herein specified.

Tenants failure to provide records, tax filings and returns and books of account to Landlord as provided for herein.

Tenants failure to properly insure the property as provided for herein.

Tenant's violation of any other term, condition or covenant on the part of the Tenant herein contained.

Upon default, upon breach of condition, or upon any termination of this lease or re—entry of said premises, the rents hereunder or the entire rental period and any other indebtedness payable under provisions hereof shall be and become immediately due and payable and without regard to whether or not possession of the premises shall have been surrendered to or taken by the Landlord. Said sum shall bear interest at the maximum legal rate.

11. Attorney fees and exemption waiver. Tenant agrees to pay a reasonable attorney's fee and all costs, if it becomes necessary for Landlord to employ an attorney to collect any of the rent agreed to be paid, to enforce any of the provisions of this lease, to obtain possession of the leased premises, or otherwise to exercise any option or enforce any right given to Landlord upon default by Tenant. Tenant expressly waives any exemptions secured to Tenant, whether a corporation or individual, under the laws of any state or the United States of America as against the collection of any debts herein or hereby incurred or secured.
12. Relation of Parties. The execution of this lease or the performance of any act pursuant to the provisions hereof shall not be deemed or construed to create between Landlord and Tenant the relationship of principal and agent, partnership, or joint venture, and the relationship between them shall be that only of Landlord and Tenant.
13. Landlord's reservation of rights. The failure of Landlord to insist upon a strict performance of any of the covenants or conditions of this lease or to exercise any option herein conferred in any one or more instances shall not be construed as a waiver or relinquishment of any such covenants, conditions or options, but the same shall remain in full force and effect. The receipt by Landlord of rent with the knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach. No waiver of Landlord of any provisions hereof shall be deemed to have been made unless expressed in writing and signed by Landlord.
14. Signs. The Tenant shall not erect on, display on, or cause to be painted on or affixed to the demised premises any lettering, signs, advertisements, awnings, or other projections thereon, without the prior written consent of the Landlord, which consent shall not be unreasonably withheld. The Tenant's request therefore shall be in writing and shall contain such information as to the proposed lettering and/or signs as the Landlord may reasonably require.
15. Condemnation. If the whole of the demised premises shall be taken by Federal, State, County, City,

public utility, or other authority for public use or under any statute, or by right of eminent domain, the term hereby granted and all rights of the Tenant hereunder shall immediately cease and terminate, and the Tenant shall be entitled only to that part of any award that may be made for such taking, to the extent of Tenants improvements thereon. If but a part of the demises premises be taken by right of eminent domain, this lease shall continue in full force and effect as to the property remaining, provided such property remaining is capable of continued enjoyment by the Tenant for the uses and purposes provided for hereunder. Tenant shall not be entitled to any award that may be made for such taking, except to the extent of Tenants improvements thereon, nor shall such taking constitute a termination of this lease, or a constructive eviction of Tenant. However, the rent payable hereunder shall be adjusted as of the time of such taking to equitably reflect the change in the size of said remaining property.

16. Subordination to mortgage. This lease shall at all times be subject and subordinate to the lien of any bonds, warrants, or mortgages now on or hereafter placed upon the premises, and to all advances made or hereafter to be made upon the security thereof. The Tenant binds and obligates himself to execute and deliver such further instrument or instruments subordinating this lease to the lien of any such bonds, warrants, or mortgages at any time same shall be requested by the Landlord. Whether or not this lease is subordinate to any such bond, warranty or mortgage, the Tenant's right to quiet enjoyment of the premises demised hereby shall be maintained so long as Tenant shall pay all rentals and perform all duties required of Tenant hereunder.
17. Prohibition on Transfer by Tenant. Each and every transfer or assignment of this lease by the Tenant or any interest therein, and each and every subletting of said premises, or any part thereof, or any interest therein, shall be null and void, unless the prior written consent of the Landlord be obtained. Any violation hereof constitutes a substantial and material breach of condition of this lease, with all of the rights thereunto pertaining as in the case of default for any other cause hereunder.
18. Waste or Nuisance. Tenant shall not permit, cause or allow any act or omission in, on or about said premises which shall unreasonably cause or be likely to unreasonably cause injury or damage to any person, or to the premises, or to the right of way adjoining the premises. Tenant shall not allow, cause or allow any unreasonably obnoxious, disturbing or offensive odors, fumes, gases, smoke, dust, steam or vapors or any loud or disturbing noise, sound or vibration to originate on or be omitted from said premises. Tenant shall at all times keep said premises in orderly condition and shall keep the entranceways adjoining the premises free from rubbish and dirt. Tenant agrees to permit no waste of the property, but on the contrary to take good care of the same and upon termination of this lease to surrender possession of the same in as good condition as at the commencement of the term or as they may be put in during the term as reasonable use and wear thereof will permit.
19. Binding effect. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of the Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns. This provision shall not permit the assignment of the lease or subleasing of the premises, except as heretofore provided.
20. Landlord's Access. Landlord, its agents or representatives, at all reasonable times may enter said premises to inspect to insure compliance with the terms hereof and to exhibit the premises to prospective tenants or purchasers.
21. Notice. Any notices, demands, communications, or election to exercise any option herein, whether intended for the Landlord or the Tenant, shall be in writing and may be delivered in person or by registered or certified mail to the address of the party intended as the recipient thereof at such address as stated hereon, or to such other address as the parties may from time to time designate in writing.
22. Cumulative rights. All rights and remedies provided herein for the Landlord are cumulative and are in addition to any other remedies accruing to Landlord by operation of law.
23. Additional terms. Lessee agrees to comply with the following additional requirements of Lessor:

- (a) Trees on the leased premises may not be cut or removed, except those marked and approved by Lessor. Any hardwood trees, other than those approved by Lessor, which are cut or die from damage, which, if in the opinion of the Fairhope Tree Commission, was an intentional, willful, or neglect act, shall cause Lessee to pay \$2,000 per such tree into the City Tree Fund, which is maintained for the planting and preservation of trees within the municipality.
- (b) The leased premises shall be kept free of debris and litter at all times, including, but not limited to, adjacent parking areas. Sufficient containers shall be approved by Lessee in and around the leased premises to provide for proper disposal of litter and debris.

WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

SIGNATURES FOR THE CITY OF FAIRHOPE

FAIRHOPE

BY: _____
TIMOTHY M. KANT, Mayor

ATTEST: _____
LISA A. HANKS, City Clerk

NOTARIZATION FOR THE CITY:

STATE OF ALABAMA]

COUNTY OF BALDWIN]

I, _____, a Notary Public in and for said State and County, hereby certify that Timothy M. Kant, whose names as Mayor of the City of Fairhope, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and Notary seal on this the ____ day of _____ 2013

 Notary

My commission expires __/__/__

Individual or Partnership

(Individual or Partnership)

(Name of Partner Print)

(Signature of Representative Authorized to sign Bids and Contracts for the firm)

(Name of Partner Print)

(Print Name of Representative Authorized to sign Bids and Contracts for the firm)

(Address)

(Address)

(Address)

Phone Number () _____ Fax Number () _____

Primary e-mail address _____

Alabama Contractor's License No. (If required) _____

If Corporation or LLC

Company _____ State of Incorporation _____

Company Representative _____
(SIGNATURE of Representative Authorized to sign Bids and Contracts for the firm)

Company Representative _____
(PRINT Name of Representative Authorized to sign Bids and Contracts for the firm)

Address _____

Phone Number () _____ Fax Number() _____

Primary e-mail address _____

Alabama Contractor's License No. (If Required) _____

Notary for Individual or Corporation

STATE OF _____ }

COUNTY OF _____ }

I, the undersigned authority in and for said State and County, hereby certify that _____ as
_____ of _____ whose name is signed to the foregoing
title company name

document and who is known to me, acknowledged before me on this day, that, being informed of the contents of the document being informed of the contents of the document they executed the same voluntarily on the day the same bears date.

Given under my hand and Notary Seal on this ____ day of _____, 2013

Notary Public _____

My commission expires ___/___/___

**ITEM X
STANDARD TERMS AND CONDITIONS
CITY OF FAIRHOPE, ALABAMA**

1. ACCEPTANCE OF AGREEMENT

This Agreement contains all terms and conditions agreed upon by the Owner and Winning bidder. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto. The Winning Bidder shall not employ Subcontractors without the express written permission of the Owner. No waiver, alteration, consent or modification of any of the provisions of the Agreement shall be binding unless in writing and signed by the Owner and Contractor. This Agreement shall not be construed against the party or parties preparing it. It shall be construed as if all the parties and each of them jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against one or more parties.

2. ACCEPTANCE OF WORK

The City of Fairhope will be deemed to have accepted the Work after the City of Fairhope agrees the Work is completed by signature on delivery or service tickets. In the event Work furnished under the Contract / Agreement / Purchase Order is found to be defective or does not conform to the intent of the Contract / Agreement / Purchase Order, the awarded vendor shall, after receipt of notice from the City of Fairhope, correct the deficiencies. Failure on the part of the awarded vendor to properly correct the deficiencies within the time period allowed will constitute the City of Fairhope's right to cancel the Contract / Agreement / Purchase Order immediately, upon written notice to the awarded vendor.

3. ADDENDA

All Addenda are part of the Contract Documents. Include resultant costs in the Bid. Addenda will be issued by FAX or Email to all Bidders on record, and posted to the City of Fairhope website www.cofairhope.com. It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the bid submission

4. ADDITIONAL ORDERS

Unless it is specifically stated to the contrary in the bid response, the City of Fairhope reserves the option to place additional orders against a contract awarded as a result of this solicitation at the same terms and conditions; to extend the renewal date until a new bid is in place, if it is mutually agreeable.

5. APPLICABLE LAW

This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of Alabama. Any litigation arising out of the Agreement shall be heard in the Courts of Baldwin County, Alabama.

6. ASSIGNMENT

The awarded vendor shall not assign the Contract / Agreement / Purchase Order or sublet it as a whole without the express written permission of the City of Fairhope. The awarded vendor shall not assign any payment due them hereunder, without the express written permission of City of Fairhope. The City of Fairhope may assign the Contract / Agreement / Purchase Order, or sublet it as a whole, without the consent of the

awarded vendor.

7. ASSURANCE OF NON-CONVICTION OF BRIBERY

The bidder hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or Federal government.

8. AWARD CONSIDERATION

The following factors will be considered in determining the lowest **responsible** bidder: Overall quality, Conformity with specifications both general and specific, Purposes for which materials or services are required, Delivery dates and time required for delivery, Unit acquisition cost, financial ability to meet the contract, previous performance, facilities and equipment, availability of repair parts, experience, delivery promise, terms of payments, compatibility as required, other costs, and other objective and accountable factors which are reasonable.

9. AWARD OR REJECTION OF BIDS

The Bid will be awarded to the lowest responsible bidder complying with conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the City of Fairhope to accept it. The bidder to whom the award is made will be notified at the earliest possible date. The City of Fairhope, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest to the City of Fairhope.

10. BACK ORDERS

If it is necessary to back order any items, the vendor must notify the Purchasing Department and advise as to the expected shipping or delivery date. If this date is not acceptable, the City of Fairhope may seek remedies for default.

11. BID AND PERFORMANCE SECURITY

If bid security is required, a bid bond or cashier's check in the amount indicated on the bid cover must accompany the bid and be made payable to The City of Fairhope of Baldwin County, Al. Corporate or certified checks are not acceptable. Bonds must be in a form satisfactory to the City and underwritten by a company licensed to issue bonds in the State of Alabama. If bid security fails to accompany the bid, it shall be deemed unresponsive, unless the Purchasing Manager deems the failure to be non-substantial. All checks will be returned to the bidders after the contract has been approved. If a performance bond is required, the successful bidder will be notified after the awarding of the contract.

12. BRAND NAMES

Reference to brand names and numbers is descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the standards of quality thereby indicated will be considered, providing the bid clearly describes the article offered and indicates how it differs from the referenced brands.

Descriptive literature or manufacturers specifications plus any supplemental information necessary for comparison purposes should be submitted with the bid or the bid on that item may be rejected. Reference to literature submitted with a previous bid or on file with the Division of Purchasing will not satisfy this requirement. The burden is on the bidder to demonstrate that the item bid is equivalent to the item specified in the ITB. Bids without sufficient documentation to fully support equality, may be considered non-responsive. Reference by the City of Fairhope in the ITB to available existing specifications shall be sufficient to make the terms of such specifications binding on the bidder. Unless the bidder specifies otherwise in its bid, it is understood the bidder is offering a referenced brand item as specified in the ITB or is bidding as specified when no brand is referenced. Failure to examine drawings, specifications and instructions will be at the bidder's risk.

13. BUSINESS LICENSE

The vendor selected to enter into a Contract / Agreement with the City of Fairhope must be licensed to do business in the City of Fairhope prior to commencement of any work under the contract. Delivery of goods or services to the City of Fairhope by Purchase Order have detailed and varied Business License requirements. In all instances that require a business license. Awarded vendor will provide proof of possessing a current City of Fairhope Business License. Prospective bidders will not be required to possess a City of Fairhope Business License prior to award.

14. CANCELLATION OF / CONTRACT / AGREEMENT / PURCHASE ORDER / LEASE

A purchase order can be canceled in whole or in part when awarded vendor fails to deliver or perform as specified. Cancellation of a purchase order can only be made by a written purchase order change (POC) from the City of Fairhope. A term contract, lease or agreement can be canceled by the City of Fairhope, for justifiable cause, or convenience, by written notice.

15. CERTIFICATION PURSUANT TO ACT NO. 2006-557

Alabama law (section 41-4-116, code of Alabama 1975) provides that every bid submitted and contract executed shall contain a certification that the vendor, contractor, and all of its affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting, and remitting Alabama state and local sales, use, and/or lease tax on all taxable sales and leases into Alabama. By submitting this bid, the bidder is hereby certifying that they are in full compliance with act no. 2006-557, they are not barred from bidding or entering into a contract pursuant to 41-4-116, and acknowledges that the awarding authority may declare the contract void if the certification is false. All corporations must register to do business in Alabama with the Office of the Secretary of State. Their address is:

Office of the Secretary of State
P.O. Box 5616
Montgomery, AL 36103
(334) 242-5324
Fax: (334) 240-3138
<http://www.sos.state.al.us/index.aspx>

The Foreign Corporation form is online at
<http://www.sos.state.al.us/downloads/dl1.cfm>.

16. COST OF REMEDIATING DEFECTS

All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the awarded vendor.

17. DELIVERY OF BID

Bids must be received in the Purchasing Office by the date and time specified on the bid cover. All bids will be accepted until the time and date stated on the bid cover. No bids will be accepted that extend past the time and date on the bid cover. The time of receipt shall be determined by the time clock stamp in the Purchasing Department. Bids submitted by U.S. Mail must be received by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St., Fairhope, Al., unless otherwise specified.

18. DELIVERY

The number of calendar days required for delivery after receipt of a purchase order shall be stated in the RFQ / ITB / RFP and /or Purchase Orders. When no time is stated in the document, the time shall be fourteen (14) calendar days after receipt of order. If a shipment is not made within the time period specified, the Purchase Order may be canceled.

19. ENVIRONMENTAL REQUIREMENTS

All products will be clearly labeled for their intended use. Each delivery of product or materials will include a Material Safety Data Sheet (MSDS) for all materials that require an MSDS. All manufacturers/distributors of hazardous substances, including any of the items listed on this bid/quote/ contract and subsequent award must include completed material safety data sheet (MSDS) for each hazardous material. Additionally, each container of hazardous materials must be appropriately labeled with:

- a) The identity of the hazardous material,
- b) Appropriate hazard warnings, and manufacturer, importer, or other responsible party.

20. EQUIPMENT DEMONSTRATION

The City of Fairhope may require equipment/ product materials or service techniques to be demonstrated at a time, date and location to be specified by the City of Fairhope.

21. EQUIPMENT ELECTRICAL CERTIFICATION

All electrical equipment purchased shall conform to, and be identified in, the applicable standard(s), or otherwise be certified as applicable, as of the bid opening date and time, by Underwriters Laboratories, Inc. or other recognized laboratory facility. Bidder must provide satisfactory documentation with returned bid that all such equipment meets the applicable product standard or has otherwise been certified as outlined above. Unless indicated in the bid document, the above certification shall apply to the equipment itself, not the individual components of that equipment.

22. ERRORS IN BID

Bidders are assumed to be informed regarding conditions,

requirements and specifications prior to submitting bids. Failure to do so will be at the bidder's risk. Bids already submitted may be withdrawn without penalty prior to bid opening. Errors discovered after the bid opening may not be corrected.

23. FORCE MAJEURE

Neither the City nor the awarded vendor shall be deemed in breach of any contract / Purchase Order or Agreement which may result from this proposal submission if it is prevented from performing any of the obligations hereunder by reason of Acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any similar other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other immediately in writing of the cause of such after the beginning period thereof. The awarded vendor may request cancellation and the City of Fairhope may grant the request if performance is prevented by any of the above referenced causes, or other unavoidable circumstances not attributable to the fault or negligence of the vendor. The burden of proof for such relief rests with the vendor. All correspondence pertaining to cancellation of a purchase order or term contract must be addressed to the City of Fairhope Purchasing Manager.

24. HAZARDOUS AND TOXIC SUBSTANCES

Bidder must comply with all applicable Federal, State, County and City laws, ordinances and regulations relating to hazardous and toxic substances, including such laws, ordinances and regulations pertaining to information hazardous and toxic substances, and as amended from time to time. Bidder shall provide the City of Fairhope with a "Material Safety Data Sheet" for all goods that carry one.

25. INDEMNITY

Indemnity: The awarded vendor hereby agrees to indemnify and save harmless the City of Fairhope, its officers, agent, and employees, from and against any and all liabilities, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including reasonable attorneys fees for trial and on appeal, of any kind and nature, arising or growing out of, or in any way connected with the performance of this Contract / Agreement / Purchase Order, to the extent caused by a negligent act or omission of the awarded vendor, their agents, servants, employees, Subcontractors, or others associated with the awarded vendor. The awarded vendor shall be responsible for damage to any equipment excluded from this agreement, or damage or injury caused by any equipment excluded from this agreement, only to the extent that the damage or injury is caused by a negligent act or omission of the awarded vendor, or caused by failure of the awarded vendor's supplied product to perform as specified.

26. INSPECTION

All materials, workmanship, equipment, and supplies are subject to inspection and test at any source or time. Final inspection, acceptance or rejection will be made at delivery destination. Goods that do not meet specifications will be rejected unless substitutions have been approved by the City of Fairhope. Failure to inspect or to reject upon receipt, however, does not relieve the awarded vendor of liability.

When subsequent tests, after receipt, are conducted and when such tests reveal a failure to meet specifications, the City of Fairhope will reject the goods and the awarded vendor shall immediately supply goods meeting specifications or the City of Fairhope may seek damages including but not limited to the testing expense, regardless of whether a part of or all of the goods have been consumed through the testing process. Rejected goods shall be removed by the awarded vendor promptly after rejection, at his expense. If not removed in fourteen (14) calendar days, they may be disposed of at the discretion of the City of Fairhope. Disposal costs will be the awarded vendor's responsibility.

27. INSPECTION OF PREMISES

At reasonable times, the City may inspect those areas of the awarded vendor's place of business that are related to the performance of a Contract / Agreement / Purchase Order. If the City makes such an inspection, the awarded vendor must provide reasonable assistance. The City of Fairhope reserves the right on demand and without notice all the vendor's files associated with a subsequent Contract / Agreement / Purchase Order where payments are based on the awarded vendor's record of time, salaries, materials, or actual expenses. This same clause will apply to any subcontractors assigned to the Contract / Agreement / Purchase Order.

28. INSURANCE

If a Contract / Agreement / Purchase Order results from this RFQ / ITB / RFP, or other form of solicitation, the awarded vendor shall maintain such insurance as will indemnify and hold harmless the City of Fairhope from Workmen's Compensation and Public Liability claims from property damage and personal injury, including death, which may arise from the awarded vendor's operations under this Contract / Agreement / Purchase Order, or by anyone directly or indirectly employed by him/her.

29. INVITATION TO BID

Any provisions made in the RFQ / ITB / RFP, or other form of solicitation, supersedes any provisions outlined here in the General Terms and Conditions.

30. INVOICING, DELIVERY, PACKAGING

Invoices shall be prepared only after ordered materials have been delivered. All invoices must show the purchase order number. Unless otherwise specified in writing, vendors shall not ship any material without an authorized Purchase Order from the City of Fairhope Purchasing Department. All packages delivered must show the purchase order number. The awarded vendor will be required to furnish all materials, equipment and/or service called for at the bid price quoted. In the event the awarded vendor fails to deliver within a reasonable period of time, as determined by the City of Fairhope, the right is reserved to cancel the award and subsequent purchase order and purchase from the next lowest responsible bidder the items needed. The original awarded vendor will be back charged the difference between the original contract price and the price the City of Fairhope has to pay as a result of the failure to perform by the original awarded vendor. All bids will remain firm for acceptance for 60 days from the date of bid opening. Prices shall be net F.O.B., Prepaid and Allow, City of Fairhope chosen site, Baldwin

County, Al. The title and risk of loss of the goods will not pass to the City of Fairhope until receipt and acceptance takes place at the F.O.B. point.

31. LABELING

Individual shipping cartons shall be labeled with the name "City of Fairhope", Purchase Order Number, and where applicable, Contract Number, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Bidders are encouraged to offer product packaging with recycled content.

30. LOSS OR DAMAGE IN TRANSIT

Delivery by a vendor to a common carrier does not constitute delivery to the City of Fairhope. Any claim for loss or damage incurred during delivery shall be between the vendor and the carrier. The City of Fairhope accepts title only after satisfactory receipt at the delivery point. The City of Fairhope shall note all visible damages on the freight bill and may refuse the damaged goods. The vendor shall make immediate replacement of the damaged merchandise or be subject to damages for breach of contract. If damage is to a small portion of a total shipment and the City of Fairhope will not be inconvenienced because of the shortage, the vendor may be permitted by the Purchasing Manager to deduct the amount of damage or loss from its invoice, in lieu of replacement. Risk of loss during delivery is borne by the vendor until the goods have been accepted by the City of Fairhope, unless otherwise specified in the RFQ / ITB / RFP or other form of solicitation.

31. MANDATORY SITE VISIT

If the RFQ / ITB / RFP or other form of solicitation requires a mandatory site visit, bidders must inspect the site where installation or service is to take place to obtain a full understanding of scope of work outlined therein. Date of site visit will be determined by the City of Fairhope.

32. MONITORING OF SERVICES

Performance of services will be monitored by the requisitioning department and/or the Purchasing Department, and evaluation reports may be filed with the Purchasing Department. Performance not meeting specifications will result in cancellation of Contract / Agreement / Purchase Order and may result in vendor being removed from the vendor list.

33. NONCONFORMING MERCHANDISE

When merchandise received from the lowest responsible bidder is not in accordance with the purchase order, it will be returned to the bidder, at bidder's expense.

34. NON-DISCRIMINATION

The City of Fairhope is an Equal Opportunity Employer and requires that all contractors comply with the Equal Employment Opportunity laws and the provisions of the Contract / Agreement / Purchase Order documents in this regard. The City also encourages and supports the utilization of Minority Business Enterprises on this and all public bids.

35. NON EXCLUSIVE

Unless otherwise specified, this Contract / Agreement / Purchase Order is considered a non-exclusive Contract / Agreement / Purchase Order between the parties.

36. NOTIFICATION AND ACCIDENT REPORTS

In the event of accidents of any kind, in the performance of a Contract / Agreement / Purchase Order, the awarded vendor shall notify the City of Fairhope immediately and furnish, without delay, copies of all such accident reports to the City of Fairhope. If in the performance of their Work, the awarded vendor fails to immediately report an accident to the City of Fairhope, of which the awarded vendor has knowledge of and which results in a fine levied against the City of Fairhope then the awarded vendor shall be responsible for all fines levied against the City of Fairhope.

37. PACKAGING

All goods must be packaged in new packing containers. Packing that meets the requirements of common carriers is acceptable, unless otherwise required. A packing slip or invoice must accompany all shipments and must reference the purchase order number.

38. PAYMENT

Invoices -- Upon completion of service and delivery of materials specified in the applicable purchase order, awarded vendor will submit an invoice and signed delivery ticket to:

City of Fairhope
Accounts Payable Department
P.O. Box 429
Fairhope, Al. 36533

All invoices must reference appropriate Purchase Order Numbers Payment of Invoice: All invoices received by the City of Fairhope are payable within thirty (30) days from the date of receipt by the City of Fairhope, provided they are approved by the City of Fairhope.

39. PAYMENT WITHHELD

Payment may be withheld until all items have been delivered and all requirements of the Contract / Agreement / Purchase Order have been fulfilled.

40. RECEIPT BY CITY OF FAIRHOPE

If not otherwise stated in the order, the City of Fairhope will be said to have received goods when they have been delivered, unloaded and placed on the agency's dock or if there is no dock, inside an accessible building, and signed for by an authorized City employee. Shipments will be checked against the receiving copy of the Purchase Order. If the purchase order requires grading certificates, USDA Stamps, or any proof of quality, such proof must accompany the shipment.

41. SET-UP AND INSTALLATION

Unless otherwise specified, bid / quotation to include cost of all uncrating, disposal of shipping materials, set-up, testing and initial instruction to agency personnel.

42. SPILL CLEAN UP

The awarded vendor shall be responsible for spillage caused by their negligence, which occurs during transit or unloading operations. The awarded vendor shall immediately report and

clean up any spillage. Upon failure to do so, the awarded vendor shall remain responsible for all actual related costs.

43. PRODUCT TESTING

Vendor shall incur all cost involved in obtaining an Independent Laboratory Test if the City deems necessary during the term of the Contract / Agreement / Purchase Order. The City of Fairhope reserves the right to request a demonstration of any and all items bid before making the award.

44. PATENTS

Awarded Vendor guarantees that the sale and / or use of goods will not infringe upon any U.S. or foreign patent. Awarded vendor will at his / her own expense, indemnify, protect and save harmless the City of Fairhope, on any patent claims arising from the purchase of goods or services.

45. PACKAGING

Unless otherwise specified, goods are to be packaged in cartons meeting federal specifications and shipped on non-returnable pallets.

46. PERMITS LICENSES AND CERTIFICATES

The awarded vendor is to procure all permits, licenses, and certificates, or any approvals of plans or specifications as may be required by Federal, State, Local Laws, ordinances, rules, and regulations, for the proper execution and completion of Work covered under the Contract / Agreement / Purchase Order.

47. PREPARATION OF BID

All bids / proposals shall be typewritten or in ink on the form(s) prepared by the City of Fairhope. Bids / proposals prepared in pencil will not be accepted. All bids / proposals must be signed by officials of the corporation or company duly authorized to sign bids / proposals. Any bid / proposal submitted without being signed will automatically be rejected. All corrections or erasures shall be initialed and dated by the person authorized to sign quotations / bids / proposals. If there are discrepancies between unit prices quoted and extensions, the unit price will prevail.

48. QUESTIONS / CONTACT

Commencing with the issuance of the RFQ / ITB / RFP, or other form of solicitation, no vendor or anyone acting on a vendor's behalf, shall make direct or indirect contact with City personnel or undertake any activities or take any action to otherwise promote its quotation / bid / proposal to the City or its personnel. All communications shall be made to the contact identified in the quotation / bid / proposal documents. Violation of this requirement may, at the City's sole and absolute discretion, be grounds for disqualifying a vendor from further consideration.

49. REJECTION OF BIDS

The City of Fairhope reserves the right to accept or reject any or all bids in whole or in part for any reason, to waive technicalities or informalities, or to advertise for new proposals, if, in the judgment of the awarding authority, the best interest of the City of Fairhope will be promoted thereby. Bidders may be disqualified and rejection of proposals may be recommended for any of (but not limited to) the following causes: Failure to

use the bid forms furnished by the City of Fairhope, Lack of signature by an authorized representative on the bid form, Failure to properly complete the bid form and vendor compliance, Evidence of collusion among bidders, Unauthorized alteration of the bid form.

50. RIGHT TO AUDIT

The awarded vendor shall maintain documentation of all work performed. The awarded vendor shall make any and all documentation available to the City of Fairhope at all reasonable times, for inspections and audit by the City of Fairhope, during the entire term of the Contract / Agreement / Purchase Order and for a period of Three (3) years after the expiration of the Contract / Agreement / Purchase Order.

51. SAMPLES

Bidders will not be required to furnish samples at the time of bid opening, unless specifically called for. The City of Fairhope reserves the right to request samples after bid opening to assist in the evaluation of proposals submitted.

52. SAFETY MEASURES

The awarded vendor shall take all necessary precautions for the safety of the City of Fairhope's and awarded vendor's employees at the Work site, and shall erect and properly maintain at all times, all necessary safeguards for the protection of the workmen and the public. The awarded vendor shall post signs warning against hazards in and around the Work site.

53. SUBSTITUTIONS

Substitutions on a purchase order shall require the approval of the Originating Buyer. The City of Fairhope reserves the right to reject at destination and hold at the vendor's risk and expense any goods supplied by the vendor which do not conform to the specification or description embodied in the order or are inferior in any respect to the good specified. Any good bought by sample which is inferior in quality to the sample submitted by vendor will be rejected. Any goods delivered that do not meet specifications may be returned to the vendor at its expense. When a good is returned, the vendor must make immediate replacement with acceptable merchandise or the City of Fairhope may seek remedies for default.

54. TABULATION

Bid results are posted on The City of Fairhope's web site: www.cofairhope.com. The awarded vendor will be sent a written notification via mail.

55. TAXES

Prices quoted shall be delivered prices, exclusive of all federal or state excise, sales, and manufacturer's taxes. The City will assume no transportation or handling charges other than specified in the RFQ, ITB, RFP or other form of solicitation. The City is tax exempt by law – Code of Alabama 1975.

56. TERMINATION FOR CONVENIENCE

Any Contract / Agreement / Purchase Order may be terminated for convenience by the City of Fairhope, in whole or in part, by written notification to the awarded vendor.

57. TERMINATION FOR DEFAULT

Performance of Work under the Contract / Agreement / Purchase Order Agreement may be terminated by the City of Fairhope, in whole or in part, in writing, whenever the City of Fairhope determines that the awarded vendor has failed to meet the requirements of the Contract / Agreement / Purchase Order.

58. TERMINATION FOR NON-APPROPRIATION

Termination for Non-appropriation – The continuation of any financial obligation beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the local source, State Legislature and/or federal sources. The City of Fairhope may terminate any financial obligation, and awarded vendor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the City of Fairhope's funding from local, State and/or federal sources is not appropriated, withdrawn or limited.

59. TIME IS OF THE ESSENCE

The City of Fairhope and awarded vendor agree that time is of the essence in the performance of work called for under this Contract / Agreement / Purchase Order. The awarded vendor agrees that all work will be accomplished regularly, diligently and uninterrupted at such a rate of progress as will ensure full completion thereof within reasonable time periods.

60. TITLE

All titles, fees, as well as other charges, are to be paid by awarded vendor. Awarded vendor is to furnish prepaid certificate of title in the name of the City of Fairhope, Title shall change upon acceptance of delivery at the City of Fairhope approved delivery location.

61. VENDOR LIST

A vendor may be removed from the City of Fairhope's Bidders List if a vendor fails to respond to three (3) consecutive ITB's. A properly submitted "No Bid" is considered as a response and

the vendor will receive credit for the response.

62. WARRANTY

The awarded vendor expressly warrants that all articles, materials, and work offered shall conform to each and every specification, drawing, sample, or other description which is furnished to or adopted by the City of Fairhope, and that it will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defects. The awarded vendor further warrants all items for a period of one year, unless otherwise stated, from the date of acceptance of the items delivered and installed or work completed. All repairs, replacements, or adjustments during the warranty period will be at the awarded vendor's sole expense. Awarded vendor will provide written warranty for all parts and labor for a period of (1) one year commencing from date of written acceptance of delivery by City of Fairhope. Awarded vendor will provide written copies of all other applicable warranties, such as, Manufacturer's warranty. Those warranties, if any, will be in addition to the awarded vendor's warranty, and the terms of which will not be altered by the awarded vendor's warranty.

63. IMMIGRATION LAW

The Contractor agrees that it shall comply with all of the requirements of the **Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No 2011-535**, Alabama Code (1975) Section 31-13-1, et. Seq., (also known as the Alabama Immigration Act) see Section 31-13-9, and the provisions of said Act, including all penalties for violation thereof, are incorporated herein.

ITEM XI

Alabama Immigration Act Contract Requirements

1.0 Background

The **Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No 2011-535, as amended by Act No 2012-491, Code of Alabama (1975) Section 31-13-1 through Section 31-13-30** (also known as and hereinafter referred to as “the Alabama Immigration Act”) is applicable to contracts with the City of Fairhope, Alabama. All business entities entering into contracts with the City of Fairhope, Alabama will comply with the Alabama Immigration Act.

2.0 Definitions

ALIEN. Any person who is not a citizen or national of the United States, as described in 8 U.S.C. § 1101, et seq., and any amendments thereto.

BUSINESS ENTITY. Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit. Business entity shall include but not be limited to the following:

- a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, foreign liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.
- b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, an any business entity that is operating unlawfully without a business license.

CONTRACTOR. A person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include, but not be limited to, a general contractor, subcontractor, independent contractor, contract employee, project manager, or a recruiting or staffing entity.

EMPLOYEE. Any person directed, allowed, or permitted to perform labor or service of any kind by an employer. The employees of an independent contractor working for a business entity shall not be regarded as the employees of the business entity, for the purposes of this chapter. This term does not include any inmate in the legal custody of the state, a county, or a municipality.

EMPLOYER. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

E-VERIFY. The electronic verification of federal employment authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division c, Section 403 (a); 8 U.S.C. §1324(a), and operated by the United States Department of Homeland Security, or its successor program.

STATE-FUNDED ENTITY. Any governmental entity of the state or a political subdivision thereof or any other entity that receives any monies from the state or a political subdivision thereof; provided, however, an entity that merely provides a service or a product to any governmental entity of the state or a political subdivision thereof, and receives compensation for the same, shall not be considered a state-funded entity.

SUBCONTRACTOR. A person, business entity, or employer who is awarded a portion of an existing contract by a contractor, regardless of its tier.

UNAUTHORIZED ALIEN. An alien who is not authorized to work in the United States as defined in 8 U.S.C. § 1324a (h) (3) .

3.0 **Mandatory Clause**

All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause:

"By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

For purposes of this section, "contract" shall mean a contract awarded by the state, any political subdivision thereof, or any state-funded entity that was competitively bid or would, if entered into by the state or an agency thereof, be required to be submitted to the Contract Review Permanent Legislative Oversight Committee.

4.0 **Contracts Involving Business Entity, or Employer**

As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees within the state of Alabama, **the business entity or employer shall provide documentation establishing that the business entity or employer is enrolled in the E-Verify program.** During the performance of the contract, the business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations.

5.0 **Contracts Involving Subcontracting**

Any subcontractor on a project paid for by contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama and shall also enroll in the E-Verify program prior to performing any work on the project. Furthermore, during the performance of the contract, the subcontractor shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. This subsection shall only apply to subcontractors performing work on a project subject to the provisions of this section and not to collateral persons or business entities hired by the subcontractor.

6.0 **Proof of E-Verify documentation will be in the form of a copy of the signed Memorandum Of Understanding (MOU) generated upon completion of the E-Verify program.**

QUALIFICATIONS

City of Fairhope Qualifications RFP to Lease Fly Creek City Owned Building Property

All answers must be typed. All requested information and financial data must be provided.

1. How many calendar days from the award of Lease Contract would you need prior to initiating operations?
2. Describe your business plan, and how it meets the scope and specifications of the lease requirements. Include planned capital improvements, types of product and service to be provided, planned number of staff to employ and the tasks they will perform, projected schedule of operations (when will you be open) and your direct involvement with the operation.
3. Have you ever operated a fish market business in Baldwin County?
4. How long has or was this business in operation?
5. If this business is no longer in operation, explain why.
6. Describe your current or former fish market operation experience. Include types of product and service provided, average percent Return On Investment, number of staff employed and the tasks they performed, and your direct involvement with the operation.
7. Please provide a profit or loss statement along with your Tax Return for the last two years including 2012 or for the last two years that your business operated.
8. List the equipment you plan to use on the property.
9. Have you ever filed for Chapter 11 or Bankruptcy?

REFERENCES

1. Provide at least three business references for your past five years of business experience.
2. Provide banking references.