

**CITY OF FAIRHOPE, ALABAMA
BID AND CONTRACT DOCUMENTS**

Bid No.: 001-17

**Fly Creek Marina Seawall Improvements
2017**

Project No.: PW001-17

**Fly Creek Marina Seawall
Improvements 2017**

KARIN WILSON, MAYOR

FAIRHOPE CITY COUNCIL

JACK BURRELL, COUNCIL PRESIDENT

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IMPORTANT

IMPORTANT

**AWARDED VENDOR ONLY
PLEASE DO THIS AS SOON AS POSSIBLE**

APPLICATION

FOR

SALES AND USE TAX CERTIFICATE OF EXEMPTION

IN ITEM XII

NEEDS TO BE INITIATED BY YOU, AND A COPY EMAILED TO DAN AMES AT dan.ames@fairhopeal.gov BEFORE YOU SUBMIT TO THE STATE. IN ORDER FOR YOU TO GET THE CERTIFICATION COMPLETED, THE STATE REQUIRES THAT THE CITY ALSO MAKE APPLICATION, AND WE, THE CITY, NEED YOUR INFORMATION TO DO THAT, BEFORE THEY GRANT YOUR CERTIFICATION.

ITEM I ADVERTISEMENT

Sealed bids 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 **9:00 a.m. on Tuesday, May 9, 2017**, 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 No.: 001-17 Fly Creek Marina Seawall Improvements 2017
Project No.: PW001-17 Fly Creek Marina Seawall Improvements 2017

The work consists of removal and replacement of approximately eighty feet of existing timber bulkhead. Approximately three feet of existing bulkhead will be removed at the east property corner to square off the bulkhead and increase slip lengths. Also included is dredging of slips 1 through 30, repairs to mooring piles and finger piers, and repair and enhancement of the fuel dock to include a fuel pump overhead cover. Work will be at the Fly Creek Marine in Fairhope, AL. Ninety (90) calendar days are allowed for the construction of the project. See Bid Response for additional data.

Plans, Drawings and Specifications are on file and may be viewed in the Purchasing Department of the City of Fairhope, Alabama, located at 555 S. Section Street. Prior to opening, copies of the bid packet, including plans, drawings and specifications will be available for purchase at **FMS Engineering LLC**, at a nonrefundable charge of \$50 per set. Please email cfaircloth@fmsengineering.com, or call 251 450-2377 to request plans. Please make checks payable to FMS Engineering LLC. Bid packages may be picked up at that location during normal operation time. No plans and specifications will be issued to contractors later than one (1) week prior to the time indicated above for receiving bids. Bid advertisement, addenda and other related documents will be posted on the City of Fairhope website: www.fairhopeal.gov. Questions or comments pertaining to this bid must be presented in writing and sent as e-mail to the attention of the Purchasing Manager, Daniel P. Ames e-mail: dan.ames@fairhopeal.gov, no later than seven (7) days 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 signed by a Bonding company authorized to do business in the State of Alabama, or a Cashier's Check payable to the City of Fairhope. NO BID SECURITY is required on bids less than \$10,000.00.

A Performance Bond in the form and terms approved by the City of Fairhope in an amount not less than the sum of the bid will be required at the signing of the CONTRACT, and in addition, a Labor and Materials Bond in the form and terms approved by the City of Fairhope in an amount not less than fifty percent (50%) of the CONTRACT price insuring payment for all labor and materials.

A MANDATORY pre-bid meeting will be held at the City of Fairhope Conference Room, 555 South Section St. Fairhope, Alabama, at **9:00 a.m. on Wednesday April 26, 2017** with a **site visit to follow**. All prospective CONTRACTORS will have a representative present at the Pre-bid Meeting.

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 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 "Sealed Bid" with Bid Name, Bid Number, City of Fairhope's name and address, and the Bidder's name, address, and General Contractor's License Number (Mandatory by State law). Each bid must be in a separate envelope. Bids made out in pencil will not be accepted. Failure to observe the instructions contained herein will constitute grounds for rejection of your bid. The CITY reserves the right to accept or reject all bids, or any portions thereof, and to waive informalities, and to furnish any item of material or work to change the amount of the CONTRACT, whichever is in the best interest of the City of Fairhope.

The CONTRACTOR must furnish to the City of Fairhope at the time of the signing of the CONTRACT, a Certificate of Insurance coverage as provided in the Contract documents which will include Comprehensive Insurance, Contractor's Automobile, and where applicable, Owner's Protective Liability insurance, Subcontractor's Public Liability and Property Damage Insurance. 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 City of Fairhope 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 bid 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 with a MAJOR classification from the Alabama Licensing Board for General Contractors, Montgomery, Alabama, as required by Chapter 8, Title 34, of the Code of Alabama, 1975. In addition, the awarded vendor, if a 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, <http://www.sos.alabama.gov/BusinessServices/ForeignCorps.aspx>. Awarded Bidder must have a current business license, or purchase a business license, with the City of Fairhope prior to work performed. No bids shall be withdrawn for the period of thirty (30) days subsequent to the opening of bids without the consent of the City of Fairhope, Baldwin County, Alabama. Once completed, a tabulation of the responsive and responsible bids will be available for public viewing by visiting the following web address: www.fairhopeal.gov.

ITEM II INSTRUCTIONS TO BIDDERS

NOTE: THIS DOCUMENT CONTAINS IMPORTANT BIDDING AND CONTRACTING INFORMATION.
ALL POTENTIAL BIDDERS SHOULD READ IT THOROUGHLY

2.00 BID INVITATION

Notice is hereby given that the City of Fairhope will receive bids on the project described herein. Qualified Bidders are invited to bid on this Contract.

2.01 **Project No.: PW001-17 Fly Creek Marina Seawall Improvements 2017**

2.02 SUMMARY:

The CITY contemplates the construction of a public works project as generally described in the Advertisement for Bid and as more particularly described, shown and depicted on the Plans, Specifications, Drawings and in the Contract documents.

2.1 DEFINITIONS: Where the following words, or the pronouns used in their stead, occur herein, they shall have the following meaning:

2.1.1 "Awarding Authority" shall mean the City of Fairhope, Alabama.

2.1.2 "Bidder" shall mean any person, firm or corporation, that is responsible, submitting a responsive bid for the Project contemplated by the contract documents, who meets the requirements set forth in the Contract documents, maintains a permanent place of business, has adequate forces and equipment to perform the work on the Project properly and within the time limit that is established, has sufficient experience in the type work provided for in the contract documents and has adequate financial status and resources to meet its obligations contingent to the work.

2.1.3 "CITY" or "OWNER" shall mean the City of Fairhope, Alabama, as the Awarding Authority or its authorized and legal representatives.

2.1.4 "Construction Manager" shall mean that person or entity if employed by the City, to provide Construction Manager services on the work or Project, who shall be the City's representative on the Project.

2.1.5 "CONTRACTOR" shall mean initially the successful or probable low Bidder and then the party of the first part to the construction agreement or the legally authorized representatives of such party, including a trade contractor.

2.1.6 "ENGINEER" shall mean an Engineer of Record, responsible for design and related services on the Project, and if no Construction Manager is employed, then the Engineer is the representative of the City of Fairhope, Alabama, on the Project.

2.1.7 "Force Account Work" _ work paid for by reimbursing for the actual cost for labor, materials and equipment usage incurred in the performance of the work, as directed, including a percentage for overhead and profit where appropriate.

2.1.8 "Gender": a word importing one gender shall if appropriate extend to and be applied to the other gender. The masculine shall include the feminine and vice versa, unless the context clearly indicates otherwise.

2.1.9 "Inspector" shall mean a representative of the Engineer of Record, Construction Manager or the CITY, as the case may be.

2.1.10 "Non-Resident Contractor" shall mean a Contractor which is neither (a) organized and existing under the laws of the State of Alabama nor (b) maintains its principal place of business in the State of Alabama. A non-resident contractor which has maintained a permanent branch office within the State of Alabama for at least five (5) continuous years shall not thereafter be deemed to be a non-resident contractor so long as the contractor continues to maintain a branch office within Alabama.

- 2.1.11 "Project" shall mean the Public Work to which these Contract Documents relate, including the labor, materials and all work to be done by Contractor that is the subject of the Bid, Plans, Specifications and Contract documents.
- 2.1.12 "Public Property": Real property which the awarding authority owns or has contractual right to own or purchase, including easements, rights-of-way, or otherwise.
- 2.1.13 "Public Work(s)" shall mean a Project consisting of the construction, repair, renovation, or maintenance of public buildings, structures, sewers, water works, roads, bridges, docks, underpasses and viaducts, as well as any other improvement to be constructed, repaired or renovated or maintained on public property to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.
- 2.1.14 "Responsible Bidder" shall mean a Bidder who, among other qualities determined necessary for performance, is competent, experienced and financially able to perform the contract.
- 2.1.15 "Responsive Bidder" shall mean a Bidder who submits a bid that complies with the terms and conditions of the Invitation for Bid, including plans, drawings, specifications and other provisions of the contract documents.
- 2.1.16 "Retainage" shall mean that money belonging to the Contractor which has been retained by the Awarding Authority conditioned upon final completion and acceptance of all work in connection with the Project.
- 2.1.17 "Singular/Plural" the singular shall include the plural and vice versa, unless the context clearly indicates otherwise.
- 2.1.18 "Trade Contracts" "Trade contracts" or "multiple prime contracts" are multiple but separate contracts with the City on the same Project that represent significant construction activities performed concurrently with and closely coordinated with construction activities performed on the Project under other trade contracts.
- 2.1.19 "Unbalanced Bid" Unbalanced bids may be considered non-responsive and may be subject to rejection. An unbalanced bid includes but is not limited to one which results in a substantial advance payment to the contractor.

2.2 BID DEADLINE

Bids will be received until 9:00 a.m. on Tuesday May 9, 2017 at the City of Fairhope offices located at 555 S. Section Street, Fairhope, Alabama, and publicly opened shortly thereafter in conference room. If sending by USPS: P.O. Drawer 429, Fairhope, AL 36533. Any unauthorized conditions, limitations or provisos attached to the bid proposal, except as otherwise provided herein, will render a bid proposal informal and may cause its rejection. Unbalanced bids may be subject to rejection. Bids without the General Contractor's license number and a copy of the license will be rejected. All Bidders are invited to be present at the opening of bids. No bids will be received after the time established for the opening of bids.

2.3 AVAILABILITY OF DOCUMENTS

Plans, Drawings and Specifications are on file and may be viewed in the Purchasing Department of the City of Fairhope, Alabama, located at 555 S. Section Street. Prior to opening, copies of the bid packet, including plans, drawings and specifications will be available for purchase at **FMS Engineering LLC**, at a nonrefundable charge of \$50 per set. Please email cfaircloth@fmsengineering.com or call 251 450-2377 to request plans. Please make checks payable to FMS Engineering LLC. Bid packages may be picked up at that location during normal operation time. No plans and specifications will be issued to contractors later than one (1) week prior to the time indicated above for receiving bids. No plans and specifications will be issued to contractors later than one (1) week prior to the time indicated above for receiving bids.

2.4 INQUIRIES

Questions or comments pertaining to this bid must be presented in writing, and sent as e-mail to the attention of the Purchasing Manager, Daniel P. Ames, at dan.ames@fairhopeal.gov, no less than seven (7) calendar days prior to the bid opening, or will be forever waived. The Bidder submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by written Addendum.

- 2.4.1 All Addenda are part of the Contract documents. Include resultant costs in the Bid. Addenda will be issued by email to all plan holders on record and posted on the CITY'S website www.fairhopeal.gov. It is the responsibility of the Bidder to verify that all Addenda have been received.

2.5 PRE-BID MEETING / SITE EXAMINATION

A **MANDATORY PRE-BID** meeting to be held at the Conference Room in the City Services and Public Utilities Bldg., 555 South Section St., Fairhope, Alabama, at **9:00 a.m. on Wednesday April 26, 2017**. All prospective CONTRACTORS will have a representative present at the Pre-bid Meeting.

Before submitting a bid proposal for the Project, each Bidder shall carefully examine the Contract Documents, including but not limited to plans, drawings, specifications, contract, etc.; visit the site, and satisfy itself as to the nature and location of the Project, and the general and local conditions, including weather, the general character of the site or building, the character and extent of existing work within or adjacent to the site, and any other work being performed or proposed thereon at the time of submission of their bids. It shall obtain full knowledge as to transportation, disposal, handling, and storage of materials, availability of water, electric power, and all other facilities in the area which will have a bearing on the performance of the Project for which they submit their bids. The submission of a bid shall be *prima facie evidence* that the Bidder has made such examination and visit and has judged for and satisfied himself as to conditions to be encountered regarding the character, difficulties, quality, and quantities of work to be performed and the material and equipment to be furnished, and as to the contract requirements and contingencies involved. It shall be the Bidder's obligation to verify for himself and to his complete satisfaction, all information concerning site and surface conditions.

2.6 SUBSURFACE REPORTS

Prior to Bid opening, the CITY will make available to prospective Bidders, upon request, any information that it may have as to subsurface conditions and surface topography at the work site. Investigations of subsurface conditions may have been made for the purpose of study and design, and neither the CITY nor its consultants that performed such testing assume any responsibility whatsoever in respect to the sufficiency or accuracy of borings, or of the logs of test borings, or of other investigations that may have been made, or of the interpretations made thereof, and there is no warranty or guarantee, either expressed or implied, that the conditions indicated by such investigations are representative of those existing throughout such area, or any part thereof, or that unforeseen developments may not occur.

- 2.6.1 Logs of test borings, geotechnical reports, or topographic maps showing a record of the data obtained by the investigations of surface and subsurface conditions that are made available shall not be considered a part of the Contract Documents, and are available only for the convenience of the Bidders. Such logs and reports represent only the opinion of the Engineer of Record or Consultant as to the character of the materials encountered by him in his investigations of the test borings.
- 2.6.2 Information derived from inspection of logs of test borings, or pits, geotechnical reports, topographic maps, or from Drawings showing location of utilities and structures will not in any way relieve the Contractor from any risk, or from properly examining the site and making such additional investigations as he may elect, or from properly fulfilling all the terms of the Contract Documents.
- 2.6.3 The CITY shall not be responsible for any interpretations or conclusions drawn from any subsurface exploration reports or borings. Each Bidder is to base his bid upon his determination of the subsurface conditions and of the types and quantities of material to be encountered or needed. Additional tests or other exploratory operations may be made at no cost to the CITY.

2.7 BID SECURITY

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 executed by a Surety company duly authorized and qualified to make bond in the State of Alabama; or a Cashier's Check payable to the City of Fairhope. No Bid Security is required on bids less than \$10,000.00. Should the successful Bidder or Bidders to whom a contract is awarded fail to execute a contract(s) and furnish acceptable contract securities and evidence of insurance, as required, within thirty (30) days after the prescribed forms have been presented to him/her, the CITY may retain from the proposal guaranty, if it is a cashier's check or recovered from the principal or the sureties, if the guaranty is a bid bond, the difference between the amount of the contract as awarded, and the amount of the proposals of the

new lowest Bidder. If no other bids are received, the full amount of the proposal guaranty may be so retained and recovered as liquidated damages for such default. Any sum so retained or recovered shall be the property of the awarding authority.

2.8 PERFORMANCE ASSURANCE AND INSURANCE

The Bidder to whom award is made shall provide a Performance Bond equal to 100% (percent) of the Contract amount and a Labor and Materials Bond equal to 50% (percent) of the Contract amount, see ITEMS VI AND VII. The accepted Bidder shall also provide insurance as required in ITEM IV, INSURANCE REQUIREMENTS.

2.9 DURATION OF OFFER

Bids may be withdrawn in written or telegraphic request received from the Bidder prior to the time fixed for opening. No bid shall be withdrawn for a period of THIRTY (30) days subsequent to the opening of bid without the consent of the City Council of the City of Fairhope.

2.10 EQUAL OPPORTUNITY

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 also encourages and supports the utilization of Minority Business Enterprises on this and all public bids

2.11 BID PREPARATION AND SUBMISSION

Sealed Bids, signed, executed, and dated will be received by the City of Fairhope as noted in section 2.2 above. Submit one copy of the executed offer, on the Bid Response Form provided, along with the required Bid Security. The bid shall be enclosed in a sealed opaque envelope approximately 9X12 inches or larger, clearly identified on the outside as a SEALED BID with PROJECT NUMBER, PROJECT NAME, OWNER'S NAME AND ADDRESS, BIDDER'S NAME AND ADDRESS, AND BIDDER'S ALABAMA CONTRACTOR'S LICENSE NUMBER.

2.11.1 Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the Invitation, these instructions, and the instructions printed on the forms is necessary. Special care should be exercised in the preparation of bids. Bidders 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 bid and guaranty forms shall be suitable filled in.

2.11.2 Fill in all blanks on the Bid Form with non-erasable ink or type. Erasers or other changes must be explained or noted over the signature of the Bidder.

2.11.3 The Bid Form may have a Contingency Allowance listed. **If so**, add this amount to the Bid Base to derive the Total Bid. The Contingency Allowance covers unforeseen conditions and shall not be used by the Contractor without the written authorization of the OWNER. At the conclusion of the project, the unused portion of the Contingency Allowance shall revert to the OWNER.

2.11.4 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 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 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 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, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

2.11.5 Each project will be bid separately unless otherwise expressly requested in the contract document. Combination bids, that is, bids on separate projects lumped together as a single bid or on all or none basis, will not be accepted unless the contract document expressly requests or permits same. Alternate bids will not be considered unless requested.

2.12 BID INELIGIBILITY

Bids that contain irregularities of any kind may be declared unacceptable at the discretion of the OWNER. The OWNER may waive any irregularities and may reject any or all bids. Bids received after the deadline will be returned to the Bidder unopened.

2.13 RESPONSIBLE BIDDERS / RESPONSIVE BIDS

The CITY reserves the right to reject any bid that is submitted by a Bidder that is determined by the CITY to not be a responsible Bidder, or whose bid is not responsive. In determining whether a Bidder or Bid is responsible/or responsive, the CITY reserves the right to also request and consider the following factors:

2.13.1 Types or kinds of materials or items best suited to the CITY'S needs for the Project.

2.13.2 A current financial statement of the Bidder and/ or bonding capability or limits.

2.13.3 An accurate inventory of equipment to be used on the Project.

2.13.4 A list of key personnel to be used on the Project and detailed histories of their experience.

2.13.5 A list of similar projects installed by the Bidder within the last five (5) years.

2.13.6 A list of five (5) references familiar with the Bidder's competence, experience, capabilities, skill and integrity.

2.13.7 A statement of Bidder pertaining to bankruptcies, judgments, liens or litigation within the last five (5) years. Such statement shall also apply to each company, officer and the key personnel on the Project.

2.13.8 The **General Contractor's State license number, and bid limit.**

2.13.9 Bidder's performance and prosecution of past projects for the CITY, or other government entities.

2.13.10 An unbalanced bid.

2.13.11 Other information supplied in the bid response.

2.13.12 The CITY may make such investigations as it deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the CITY all such information and data for this purpose as the CITY may request. The CITY reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Bidder fails to satisfy the CITY that such Bidder is properly qualified to carry out the obligations of the Contract and complete the work contemplated therein.

2.14 CONTRACT TIME

The CONTRACTOR agrees to perform the work within the time stated in the Bid Response Form, that being **NINETY (90)** calendar days. The Bidder in submitting an offer accepts the conditions of the contract period stated for performing the work.

2.15 CONSTRUCTION DOCUMENT IDENTIFICATION

The Construction documents are the Bid and Contract Documents, Specifications, Drawings, Addenda, and all other related documents bearing the Project Title and Number. Bidders shall use complete sets of Construction Documents in preparing their Bids. The CITY will not assume responsibility for errors or misinterpretation resulting from the use of incomplete sets of Construction Documents.

2.16 BID ACCEPTANCE

2.16.1 Generally: The contract will be awarded to the lowest responsible and responsive Bidder, unless the CITY determines that all the bids are unreasonable or that it is not in the best interest of the CITY to accept any of the bids.

2.16.2 Award of the contract will be made on the basis of the lowest actual bid amount for the contract, which is defined as the total of the bid option accepted and/or extended total amounts for unit price items pursuant to the provisions hereof.

- 2.16.3 The CITY reserves the right to reject all bids and/or reject and rebid the Project should it determine the same is in the best interest of the CITY.
- 2.16.4 Minor irregularities as determined by the CITY or its representatives, will not cause a bid to be non-responsive and may be waived by the CITY.
- 2.16.5 Bidder must possess all licenses and permits required by applicable law, rule or regulation for the performance of the work prior to bidding.
- 2.16.6 Where the CITY elects to prequalify contractors prior to bidding, it shall be understood that such prequalification may be general in nature and shall not limit the CITY'S right to revoke such prequalification pursuant to Ala. Code §39-2-4(d) (1975).
- 2.16.7 Joint ventures shall not generally be considered acceptable bids without special waiver from the CITY, which must be requested in writing at least thirty (30) days prior to bid opening.
- 2.16.8 No Bids or Only One Bid: In the event no bid proposals or only one bid proposal is received in response to the CITY'S Advertisement for Bids at the time stated for the opening of bids, the CITY may elect at its discretion, any of the following options:
- 2.16.8.1 Advertise for and seek other competitive bids.
- 2.16.8.2 Direct that the work shall be done by force account under its direction and control.
- 2.16.8.3 Negotiate for the work through the receipt of informal bids; provided; however, where only one responsible and responsive bid has been received. Any negotiation for the work shall be for a price lower than that bid.
- 2.17 **BIDDERS INTERESTED IN MORE THAN ONE BID**
If more than one bid is offered by any one party, by or in a name of his clerk, partner, corporation in which he has a substantial interest, or in which he is an officer, or other person, all such bids may be rejected. A party who has quoted prices on materials to a bid is not thereby disqualified from quoting prices to other Bidders or from submitting a bid directly for the materials or work. The CITY reserves the right to determine in its discretion whether the provisions of this clause have been violated by any Bidder.
- 2.18 **ERRORS IN BIDS**
Bidders or their authorized agents are expected to examine the maps, drawings, specifications, and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the Bidder's own risk. In case of error, in the extension of prices the unit price will govern.
- 2.19 **EXCEPTIONS / CHANGES TO SPECIFICATIONS**
A request for a change in the specifications to accommodate a variation must be called to the attention of the Purchasing Manager at least 72 hours before the bid opening date. All requests for such changes will be considered and the merits weighed. Only those changes in specifications deemed to be in the best interest of the CITY will be made. In the event of a change in specifications, an addendum will be supplied to Bidders. Exceptions may be accepted if they are minor, equal, or superior to that which is specified, and provided that they are listed and fully explained on a separate page entitled, "Exceptions to Specifications". The exceptions shall refer to the specification page and paragraph number The CITY shall determine which (if any) exceptions are acceptable and this determination shall be final.
- 2.20 **CONTRACT AND BOND**
The Bidder to whom award is made must, when requested, enter into written contract on the standard form as set out herein, with satisfactory security in the amount required, evidence of insurance, and all other submittals required for contract execution, within the period specified, or, if no period be specified, within 15 days after the required forms are presented for signature.
- 2.21 **COLLUSION**
If there is any reason for believing that collusion exists among the Bidders, any or all bids may be rejected, and those participating in such collusion may be barred from submitting bids on the same or other work with the CITY.

2.22 SUBLETTING OR ASSIGNING OF CONTRACT

Limitations: The CONTRACTOR shall not sublet, assign, transfer, convey, sell or otherwise dispose of any portions of the contract, his right, title, or interest therein, or his power to execute such contract, to any person, firm or corporation without written consent of the CITY, and such written consent shall not be construed to relieve the CONTRACTOR of any responsibility for the fulfillment of the contract. Unless otherwise stipulated in the proposal or special provisions, the contractor shall perform with his own organization, and with the assistance of workmen under his immediate superintendence and reported on his payroll, all contract work of a value not less than 50 percent of the total contract amount, except that any items designated in the contract as "Specialty Items" so performed by sub-contract may be deducted from the total contract amount before computing the amount of work required to be performed by the CONTRACTOR with his own organization.

2.22.1 Sub-contractor's Status: A Sub-contractor shall be recognized only in the capacity of an employee or agent of the Contractor and the Contractor will be responsible to the CITY for all of the subcontractor's work, including failures or omissions; and his removal may be required by the Project Manager, as in the case of an employee.

2.23 PROSECUTION OF WORK

The Contractor shall commence work on the date stipulated in the Notice to Proceed (NTP), or as otherwise directed in writing. Contractor is responsible for obtaining permit from the City of Fairhope Building Department prior to commencing any site activity work.

2.23.1 The Contractor shall prosecute the work continuously and diligently in the order and manner set out in his schedule as approved by the Project Manager. He shall provide sufficient satisfactory materials, labor, and equipment to insure that the work will be completed in a satisfactory manner within the time specified in the contract.

2.23.2 Should the Contractor fail to maintain a satisfactory rate of progress, the Project Manger may require that additional forces and/or equipment be placed on the work to bring the project up to schedule and maintain it at that level.

2.23.3 Should the Contractor fail to furnish sufficient satisfactory equipment and/or labor for maintaining the quality and progress of the work at satisfactory level, the Project Manager may withhold all estimates that may become due until satisfactory quality and progress are maintained; or the contract may be annulled.

2.24 MATERIALS AND WORK CREW

All materials, which the engineering plans specify or are required, will be installed as they are shown on the drawings, plans and/or specs.

2.24.1 Brand names, catalog numbers, weights, etc., are used to indicate levels of quality only and are not intended to restrict the bidding. If bidding on an item of another brand or manufacturer than that specified, Bidder's bid should be accompanied by brochures or other pertinent literature giving detailed specifications of the item(s) on which the bid is being made. Bids received without sufficient literature to determine equal quality may not be considered. Final determination as to equal quality will be made by the CITY.

2.24.2 Quantities: The quantities shown in the bid packet shall be considered by the contractor as the quantities required to complete the work for the purpose of bidding. During the course of work, the prices bid for adjustment items may be used by the CITY to increase or decrease the total cost for the work if the quantity of work exceeds or is less than the amount shown on plans.

2.24.3 Construction Crews: The Contractor will be required to furnish at least one separate construction crew during the work as set forth in the contract. Unless waived by the CITY, the Contractor shall perform on the sites and with his own organization and equipment, at least fifty percent of the total amount of the work to be performed under this Contract. The Contractor may only subcontract a maximum of fifty (50%) percent of the work without CITY consent. If, during the progress of the work hereunder, the Contractor requests a reduction of such percentage, and the CITY representative determines that it would be to the CITY's advantage, the percentage of the labor required to be performed by the Contractor's own organization may be reduced; PROVIDED prior written approval of such reduction is obtained by the Contractor from the CITY.

2.25 GENERAL CONTRACTOR'S LICENSE

The attention of all Bidders is called to the provisions of the State law governing general contractors as set forth in Ala. Code §34-8-1 et seq. (1975), particularly in regard to the need for and evidence of a State general contractor's license. The provisions of said statute are adopted herein by reference and form a part of the Contract with the selected Bidder should this Project be awarded. **Bidder MUST include with his bid a State of Alabama Contractor's current license number and a copy of the license. State law, Ala. Code §34-8-8(b) (1975) requires all bids to be rejected which do not contain General Contractor's license number on the outside of the bid response sealed envelope.**

2.25.1 Bidders are reminded that they will be governed by said statutes insofar as they are applicable. To summarize the above quoted statutes, Ala. Code §34-8-1, et seq. (1975) provides that no one is entitled to bid, and no contract may be awarded to anyone who does not possess a valid general contractor's permit or license, including specialty classifications for the work, as provided by the foregoing sections of the State Code, and rules and regulations promulgated pursuant thereto and that said bid may not be considered without evidence being produced that he is so qualified. Trade contractors must be duly licensed in accordance with applicable law.

2.25.2 CONTRACTOR must be properly licensed to obtain City of Fairhope permits and perform the work as outlined in the Scope of Work. Bidder must have a current business license, or purchase a business license with the City of Fairhope prior to or (upon) bid being awarded. Sub-contractors must also comply with this provision.

2.26 U. S. PRODUCTS PREFERENCE

The successful Bidder (contractor) shall comply with Ala. Code §39-3-1 (1975), shall agree to utilize in the execution of the Project, materials, supplies and products manufactured, mined, processed or otherwise produced in the United States or its territories, if the same are available at reasonable and competitive prices and not contrary to any sole source specifications. It is further stipulated that a breach of the foregoing provision of this agreement by the contractor in failing to utilize domestic products shall result in a downward adjustment in the contract price equal to any realized savings or benefit to the Contractor.

2.27 USE OF DOMESTIC STEEL

The attention of all Bidders and that of the successful Bidder (CONTRACTOR) is drawn to Ala. Code §39-3-4 (1975), requiring the use of steel produced within the United States for municipal construction projects when specifications in the construction contract require the use of steel and domestic steel products becomes impractical as a result of national emergency, national strike or other causes. Violations of the use of domestic steel requirements shall result in a downward adjustment in the contract price to equal any savings or benefit to the CONTRACTOR.

2.28 IN STATE BIDDER PREFERENCE

Pursuant to Ala. Code §39-3-5 (1975), in the letting of public contracts in which municipal funds are utilized, except those contracts funded in whole or in part with funds received from a federal agency, preference shall be given to resident contractors, and a nonresident Bidder domiciled in a state having laws granting preference to local contractors shall be awarded Alabama public contracts only on the same basis as the nonresident Bidders' state awards contracts to Alabama contractors bidding under similar circumstances; and resident contractors in Alabama, as defined in Ala. Code §39-2-12 (1975), be they corporate, individuals or partnerships, are to be granted preference over non-residents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of the domicile of the nonresident. **The CITY may not enter into a Contract with a nonresident corporation that is not qualified under the State law to do business in Alabama.** Except for contracts funded in whole or in part by funds received from a federal agency, preference shall be given to resident contractors on the same basis as the non-resident Bidder's state awards contracts to Alabama contractors bidding under similar circumstances.

2.29 APPLICABLE LAWS

Each Bidder shall inform himself of, and the Bidder awarded a contract shall comply with federal, state, and local laws, statutes, and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning minimum wage rates, the use of domestic products, U.S. steel and resident labor, non-discrimination in the employment of labor, protection of public and employee safety and health, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees and similar subjects. The attention of all

Bidders is called to the fact that the work will be subject to compliance with all applicable CITY building and technical codes, including environmental ordinances. Project will be subject, in addition to all other inspections, to inspection by a representative of the City of Fairhope Building Inspections Department.

2.30 COMPLIANCE WITH IMMIGRATION LAW

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, to the extent allowed by Federal law (SEE ITEM X, ALABAMA IMMIGRATION ACT CONTRACT REQUIREMENTS).

[END INSTRUCTION TO BIDDER]

ITEM III
BID RESPONSE FORM

Date: _____

Bid No. 001-17 Fly Creek Marina Seawall Improvements 2017
Project No.: PW001-17 Fly Creek Seawall Improvements 2017

3.0 BIDDER'S DECLARATION AND UNDERSTANDING

- 3.0.1 The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Proposal are those named herein, that this Proposal is, in all respects, fair and without fraud, that it is made without collusion with any official of the CITY, and that the Proposal is made without any connection or collusion with any person submitting another Proposal on this Contract.
- 3.0.2 The Bidder further agrees that he has checked and verified the completeness of the Contract Documents and that he has exercised his own judgment regarding the interpretation of subsurface information utilizing all pertinent data in arriving at his conclusions. The Bidder shall be fully responsible for any damages or liability arising out of his or his subcontractors prebid investigations.
- 3.0.3 The Bidder understands and agrees that if a Contract is awarded, the CITY may elect to award all schedules under one Contract, lump sum, separately, or in any combination that best serves the interests of the CITY.
- 3.0.4 The Bidder further declares that he has carefully examined the Contract documents for the construction of the Project, and has checked and verified the completeness of the Contract Documents; that he has personally inspected the site, that he has satisfied himself as to the quantities involved, including materials and equipment, and conditions of work involved. Bidder further declares that he is fully aware of the fact that the description of the work, quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents. Bidder also declares that this Proposal is made according to the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal.

3.1 START OF CONSTRUCTION AND CONTRACT COMPLETION TIME

The Bidder further agrees to **begin work on the date stated in the Notice to Proceed** and to fully complete the work, in all respects, within the time specified in the contract documents for completion, that being NINETY (90) calendar days.

3.2 ADDENDA:

The Bidder hereby acknowledges that he has received Addenda No's. _____, _____, _____, _____, _____, _____,

Bidder shall Insert No. of each Addendum received, and agrees that all addenda issued are hereby made part of the Contract Documents, and the Bidder further agrees that his Bid(s) include(s) all impacts resulting from said addenda.

3.3 BID AMOUNTS

NOTES:

1. The following unit prices shall include **all** labor, materials, equipment removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.
2. Bidder understands that the Owner reserves the right to reject any and all bids.
3. The Bidder understands that he must submit this entire booklet with the bid.

The OWNER agrees to provide the following materials: NONE

SCOPE OUTLINE

The Contractor shall perform the following:

1. Remove existing timber bulkhead currently in place at the City of Fairhope Fly Creek Marina in the locations where new timber bulkhead system will be installed. Approximately 80' of bulkhead will be removed and replaced.
2. Dredging of slips 1 through 30 to a depth of six feet at mean low water will be required.
3. Repairs to mooring piles and finger piers.
4. Repair and enhancement of the fuel dock to include a fuel pump overhead cover.

The detailed scope of work is described in FMS Engineering Document 16211-SOW-1.

The existing water & power lines will be turned off by the City of Fairhope and removed without salvage by the contractor. The City of Fairhope will replace water & power lines prior to back filling the new wall by the contractor. The existing finger piers shall remain in place with as little damage as possible by the contractor. No effort shall be made to remove any structure beyond the face of the existing wall.

The Contractor shall remove all tie backs, including all equipment required to remove the complete existing sheet pile wall system below grade. The removal shall be such that the new bulkhead can be installed.

ITEM NO.	ITEM DESCRIPTION	QTY	UNIT	Unit Price	Total
	FMS Engineering Drawing S1.0				
1	Remove existing timber bulkhead and all components below grade to allow installation of the new bulkhead.	80	LF		
2	Install 12" diameter piles, approximately 12 feet long to depth of 10'-6" below MLLW	13	EA.		
3	Install 12" diameter piles, approximately 25 feet long to depth of 19'-6" below MLLW	13	EA		
4	Install 4"x8" whalers (2 rows) and 2"x8" bulkhead boards	80	LF		
5	Install wire rope tie-backs to piles	13	EA		
6	Dredge Material Removal	~300	CY		
7	Backfill (Sand) landside behind the new bulkhead	60	CY		
8	FMS Engineering Drawings S2.0 and S3.0				
9	Install 2-ply 2"x12" beam approx. 16'-6" long	2	EA		
10	Install 2-ply 2"x12" beam approx. 14'-0" long	2	EA		
11	Install 2-ply 2"x12" beam approx. 12'-0" long	2	EA		
12	Install 2-ply 2"x12" beam approx. 10'-6" long	2	EA		
13	Install 2"x8" Deck Joists	370	EA		
14	Install 5/4"x6" Deck Boards	950	LF		
15	Construct Fuel Dock Shelter	1	EA		
16	MOBILIZATION	1	LS		
BID TOTAL				\$	

Contractor's Name & General Contractor's License Number

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. as 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.

WITNESS our hands this _____ day of _____, 2017.

IF INDIVIDUAL

_____ Doing Business As,
(SIGNATURE of Individual Bidder) (Business name)

Business

Business Mailing Address Phone

City, State, Zip code

Alabama General Contractor License No. _____ Alabama Foreign Corporation Entity ID _____
(Attach Copy) (out of State Contractors)

Alabama General Contractor License Major Categories: _____

Alabama General Contractor Specialties _____

NOTARY FOR INDIVIDUAL

STATE OF _____ }
COUNTY OF _____ }

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

_____ As _____ of _____
PRINT name of Bid signer Title PRINT Company name

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 _____, 2017.

Notary Public _____

My Commission Expires ____/____/____

IF CORPORATION, PARTNERSHIP, OR JOINT VENTURE

Name of Corporation, Partnership or Joint Venture

BY: _____

(SIGNATURE of Officer authorized for sign Bids and Contracts for the firm) (Position or Title)

(PRINT NAME(S) OF OTHERS IF IN PARTNERSHIP)

Business Mailing Address Phone

City, State, Zip Code

Alabama General Contractor License No. _____ Alabama Foreign Corporation Entity ID _____
(Attach Copy) (out of State Contractors)

Alabama General Contractor License Major Categories: _____

Alabama General Contractor Specialties _____

NOTARY FOR CORPORATION, PARTNERSHIP OR JOINT VENTURE

STATE OF _____ }

COUNTY OF _____ }

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

_____, as _____ and _____
Print name of Bid signer **Print name of Bid signer** **Title**
of _____
Print Company

whose name(s) 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 ____, 2017.

Notary Public _____

My Commission Expires ___/___/___

ACCOUNTING OF SALES TAX
Attachment to Bid Response

To: City of Fairhope

Date: _____

Project No.: PW00-16 Fly Creek Maintenance Project

Sales Tax Accounting

Pursuant to Code of Alabama (1975) Section 40-9-14.1, the Contractor accounts for the sales tax NOT included in the bid proposal form as follows:

ESTIMATED SALES TAX AMOUNT

BASE BID: _____

\$ _____

Alternate No. 1 (.....) (add)(deduct) \$ _____
Insert keyword for alternate

Alternate No. 2 (.....) (add)(deduct) \$ _____

Alternate No. 3 (.....) (add)(deduct) \$ _____

Alternate No. 4 (.....) (add)(deduct) \$ _____

Alternate No. 5 (.....) (add)(deduct) \$ _____

Alternate No. 6 (.....) (add)(deduct) \$ _____

Failure to provide an accounting of Sales Tax shall render the bid non-responsive. Other than determining responsiveness, sales tax accounting shall not affect the bid pricing nor be considered in the determination of the lowest responsible and responsive Bidder.

Legal Name of Bidder _____

Mailing Address _____

*By (Legal Signature) _____

*Name (type or Print) _____ (Seal)

*Title _____

*Telephone _____

E-Mail _____

3.4 EXPERIENCE OF BIDDER:

Unless advised by the awarding authority in the Advertisement for Bids that the same is not required, the Bidder submits the following list of at least three clients for whom projects involving construction of similar projects have been performed within the past 5 years.

1.

Name of Client		Telephone Number
Street		City
Facility	Size	Date
Name of Engineer of Record		Telephone Number
Name of Engineering Firm		

2.

Name of Client		Telephone Number
Street		City
Facility	Size	Date
Name of Engineer of Record		Telephone Number
Name of Engineering Firm		

3.

Name of Client		Telephone Number
Street		City
Facility	Size	Date
Name of Engineer of Record		Telephone Number
Name of Engineering Firm		

3.5 PERFORMANCE OF WORK BY CONTRACTOR:

The Bidder shall perform at least 50 percent of the work with his own forces (refer to the INSTRUCTIONS TO BIDDERS).

3.6 SUBCONTRACTORS:

Unless the same information has been provided in the prequalification statement, the Bidder further certifies that if his bid is accepted, the following subcontracting firms or businesses will be awarded subcontracts for the following portions of the work:

Description of Work _____

Name

_____, _____, _____
Street City State Zip

Description of Work

Name

_____, _____, _____
Street City State Zip

Description of Work

Name

_____, _____, _____
Street City State Zip

Description of Work

Name

_____, _____, _____
Street City State Zip

Description of Work

Name

_____, _____, _____
Street City State Zip

3.7 SURETY:

If the Bidder is awarded a construction contract on this Proposal, the Surety who provides the Performance Bond and Payment Bond will be:

_____ whose address is

_____ , _____ , _____
Street City State Zip

Single Job Bond Limit _____ Aggregate Job Bond Limit _____

Attached hereto is a (Bid Bond) or (Check) for the sum of _____ (\$0.00)

_____ according to the conditions under "Instructions to Bidders" and provisions therein.

Dated this ____ day of _____ 2016

[END OF BID RESPONSE]

**ITEM IV INSURANCE
REQUIREMENTS**

4.0 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.

4.01 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.

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

4.03 **Worker's Compensation and Employer's Liability**

Part One: Statutory Benefits as required by the State of Alabama		
Part Two: Employer's Liability	\$1,000,000	each accident
	\$1,000,000	each employee
	\$1,000,000	Policy Limit

4.04 **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.

4.05 **Maritime Endorsement (Jones Act)**

Endorsement required if contract involves the use of a Vessel. Or include coverage for "Master or Member 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

4.06 **Commercial General Liability**

Coverage on an Occurrence from 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:

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

4.07 **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.

4.08 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.

- 4.08.1** The Contractor shall require certificates of insurance from sub-Contractors. Sub-Contractors 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.

**ITEM V
BID BOND**

The PRINCIPAL (Bidder's name and address)

The OWNER

City of Fairhope
P.O. Drawer 429
Fairhope, Al 36533

The PROJECT for which the Principal's Bid is submitted: (Project name as it appears in the Bid Documents)

Project No.: PW001-17 Fly Creek Maintenance Project

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned Principal and Surety, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the OWNER in the PENAL SUM of five percent (5%) of the amount of the Principal's bid, but in no event more than TEN THOUSAND DOLLARS (\$10,000.00).

THE CONDITION OF THIS OBLIGATION is that the Principal has submitted to the OWNER the attached bid, which is incorporated herein by reference, for the Project identified above.

NOW, THEREFORE, if, within the terms of the Bid Document, the OWNER accepts the Principal's bid and the Principal thereafter either:

- (a) executes and delivers a Construction Contract with the required Performance and Payment Bonds (each in the for contained in the Bid Documents and properly completed in accordance with the bid) and delivers evidence of insurance as prescribed in the Bid Documents, or fails to execute and deliver such Construction Contract with such Bonds and evidence of insurance, but pays the OWNER the difference, not to exceed the Penal Sum of this Bond, between the amount of the Principal's Bid and the larger amount for which the OWNER may award a Construction Contract for the same Work to another Bidder, then, this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that the obligation of the Surety under this Bond shall not in any manner be impaired or affected by any extension of the time within which the OWNER may accept the Principal's bid, and the Surety does hereby waive notice of any such extension.

SIGNED AND SEALED this ____ day of _____, 2017.

ATTEST

(Principal (Company))

By _____

SURETY

ATTEST

Print Name and Title

Surety Company

By _____

Print Name and Title

ITEM VI
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: **Project No.: PW001-17 Fly Creek Maintenance Project** 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 thereunder 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.

Witness our hands and seals this _____ day of _____, 2017.

INDIVIDUAL

_____, Doing Business As, _____
(Signature of Individual Bidder) (Business Name)

Business Mailing Address: _____

email _____
phone _____

CORPORATION

Name of Corporation, Partnership, or Joint Venture

Business Mailing Address: _____

email _____
phone _____

BY: _____
(Signature of Officer Authorized to sign Bids
and Contracts for the Firm)

(Position or Title)

(General Contractor's License Number)

Foreign Corporation Entity Id (Required of out-of-state-vendors)

Attest:

(Secretary)

(Name of State under the laws of which incorporated)

(Name of Surety)

BY: _____
(Attorney in Fact)

ITEM VII
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 ___/___/2017, (hereinafter called the Contract) for **Project No.: PW001-17 Fly Creek Maintenance Project**, 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 attorney's 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 Mayor of the City of Fairhope or his successor or representative 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 proceeding 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".

Witness our hands and seals this _____ day of _____, 2017.

_____, Doing Business As, _____
(Signature of Bidder) (Business Name)

Business Mailing Address: _____

Attest:

(Secretary)

(Name of State under the laws of which incorporated)

(Name of Surety)

BY: _____

(Attorney in Fact)

[END DOCUMENT]

ITEM VIII
Standard Terms and Conditions
City of Fairhope, AL

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 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 REMEDYING 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. NON EXCLUSIVE

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

38. 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.

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

40. 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.

41. 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.

42. PAYMENT WITHHELD

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

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. 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.

45. 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.

46. 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.

47. 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.

48. 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 Purchase Order and for a period of Three (3) years after 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. 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.

54. 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

55. 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.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. 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 IX
SPECIAL CONDITIONS**

1.1 OWNER

The **Owner is the City of Fairhope**, Alabama, P.O. Drawer 429, Fairhope, AL 36533

1.2 LOCAL LICENSE REQUIREMENT

Attention is called to the fact that all companies performing work on the project must obtain a Business License from the City of Fairhope available at City Hall.

1.3 SANITARY FACILITIES

The Contractor may use sanitary facilities designated for the public or provide on-site sanitary facilities.

1.4 STORAGE OF MATERIALS

All equipment and materials may be stored on the job site upon approval by the Public Works Director. Materials remain the property of the Contractor until contract completion.

1.5 TEMPORARY UTILITIES

If required, temporary water and electrical energy will be provided. Contractor will provide temporary wiring and piping as required.

1.6 DISPOSAL OF MATERIALS

All waste and excess materials shall be disposed of in a safe manner conforming to all Federal and State Occupational and Environmental Laws and Regulations including, but not limited to, the Occupational Safety and Health Act (OSHA), the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Toxic Substances Control Act (TSCA), and Alabama Department of Environmental Management (ADEM) Regulations.

1.7 COMPLIANCE WITH IMMIGRATION AND NATIONALITY ACT

The City will not intentionally award publicly funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Bid No. 02-017-5-Section 1324a (e) [Section 274A (e) of the Immigration and Nationality Act ("INA")]. The City shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A (e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A (e) of the INA shall be grounds for unilateral cancellation of this Agreement by the City.

Contractor is required to comply with the Immigration Reform and Control Act of 1986 (IRCA) which requires all individuals hired after November 6, 1986 to provide their employers with proof of citizenship or authorization to work in the United States. City may at any time request to inspect proof of citizenship.

**1.8 REQUIREMENTS FOR AWARD OF CONTRACTS, GRANTS OR INCENTIVES BY THE CITY
EFFECTIVE 1/1/2012**

Under the "Beason-Hammon Alabama Taxpayer and Citizen Protection Act," the State of Alabama requires all City contractors (including direct vendors) and their subcontractors (including sub-vendors) of any tier and all recipients of any City grant or incentive and their contractors and sub-contractors to refrain from knowingly employing any unauthorized alien in Alabama and, as a condition for the award of any contract, grant or incentive, for the contractor, grant recipient or incentive recipient to document participation in the E-Verify program of the U.S. Department of Homeland Security.

ATTESTATION AND DOCUMENTATION AS TO EMPLOYMENT POLICIES REQUIRED BY THE CITY OF ALL CONTRACTORS, GRANT RECIPIENTS, AND INCENTIVE RECIPIENTS

As a condition to the award of any contract, grant, or incentive by the City Council, each contractor, grant recipient, or incentive recipient must provide the City Clerk with a sworn affidavit attesting that the contractor, grant recipient, or incentive recipient will not knowingly employ, hire for employment, or continue to employ any unauthorized alien within the State of Alabama. The contractor, grant recipient, or incentive recipient must also provide documentation that the contractor, grant recipient, or incentive recipient is enrolled in the E-Verify program. Failure of the contractor, grant recipient, or incentive recipient to continue to participate in the E-Verify program system and to verify every employee as required under applicable federal rules and regulations during performance of the contract, grant, or incentive will be grounds for termination of the contract, grant, or incentive.

In addition, before entering into any subcontract for the performance of a contract, grant, or incentive with the City, the contractor, grant recipient, or incentive recipient and each of its subcontractors of any tier should obtain from each of their direct subcontractors a sworn affidavit attesting that the direct subcontractor will not knowingly employ, hire for employment, or continue to employ any unauthorized alien within the State of Alabama and attaching documentation establishing that the direct subcontractor is enrolled in the E-Verify system. Failure to obtain such affidavit or knowledge of violation of the employment prohibitions of the Act by the direct subcontractor may result in liability for the contractor, grant recipient, incentive recipient, or subcontractor as provided in the Act. The affidavits and documentation of subcontractors need not be filed with the City but should be retained by the contractor, grant recipient, incentive recipient, or subcontractor obtaining them.

Attached as **Appendix A** is the form of affidavit that must be provided to the City Clerk prior to the time of award of any contract, grant, or incentive by the City of Fairhope. Attached as **Appendix B** is a form of affidavit that can be obtained from subcontractors.

1.9 DRAWINGS AND CONTRACTUAL DOCUMENTS

The Contractual Documents shall consist of the Invitation for Bids, Instructions for Contractors, Bids, Bid Forms, Contract, General Conditions, Special Conditions, Technical Specifications, all amendments and addenda thereto.

1.10 TECHNICAL SPECIFICATIONS

Work for this project shall be installed in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction 2012.

Erosion control shall be implemented in accordance with the Alabama Handbook for Erosion Control, Sediment Control and Storm Water Management on Construction Sites and Urban Areas, March 2009.

Traffic Control shall be established in accordance with the Manual on Uniform Traffic Control and Devices (MUTCD) 2009.

Fairhope Utilities Board – Specification for Water and Sewer Systems – Latest Edition.

1.11 MATERIALS TESTING

Testing will be required to confirm compliance with the Plans and Specifications. Testing will be performed by a reputable testing laboratory selected by the City of Fairhope.

The testing laboratory will be retained by the City of Fairhope. The City of Fairhope will pay for initial testing, as required in the Plans and Specifications. If additional tests are required due to material or workmanship that is not in accordance with the Plans and Specifications, the Contractor shall pay for additional tests until satisfactory results are obtained.

GEOTECHNICAL REPORT



Report of Geotechnical Exploration

Proposed Seawall Improvements

Fly Creek Marina
Fairhope, Alabama
GeoCon Project No. DL 514-16

Prepared For:
City of Fairhope
c/o Mr. Trey Jinright, P.E.
Jade Consulting
Post Office Box 1929
Fairhope, Alabama 36533

Date: February 29, 2016

Prepared By:
GeoCon Engineering & Materials Testing, Inc.
22885 McAuliffe Drive
Robertsdale, Alabama 36567

GeoCon

Engineering & Materials Testing, Inc.

February 29, 2016

City of Fairhope
c/o Jade Consulting, LLC
Post Office Box 1929
Fairhope, Alabama 36533

Attn: Mr. Trey Jinright, P.E.

RE: Report of Geotechnical Exploration
Proposed Seawall Improvements
Fly Creek Marina
Fairhope, Alabama
GeoCon Project No. DL 514-16

Dear Mr. Jinright:

GeoCon Engineering & Materials Testing, Inc. is pleased to submit this report of geotechnical exploration for the above referenced project in Fairhope, Alabama. This geotechnical testing has been performed in general accordance with our signed proposal.

Enclosed please find our report with a summary of the soil conditions encountered and soil parameters that can be used by the project Structural Engineer for wall and tie-back design. Attached to the report is the Appendix which includes a Boring Location Plan, graphical logs of the soundings, important notes about your Geotechnical Report and the Terms & Conditions that govern our work.

We appreciate the opportunity to have provided you with our geotechnical engineering services. If you have any questions concerning this report, or if we can be of any further assistance, please contact our office.

Sincerely,

GeoCon, Inc.


Jason J. Christian, P.E.
Geotechnical Engineer



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1.0 Project Description

The site is located at the Fly Creek Marina in Fairhope, Alabama. Specifically, the section of seawall subject to this report is located along the north side of Fly Creek on the north side of the marina. We understand that about 65 linear feet of seawall will be replaced.

The purpose of this geotechnical exploration was to determine the subsurface soil conditions along the seawall. The data from the geotechnical exploration was used to provide soil parameters for use by the wall designers on the new seawall.

Note: If our understanding of the above project information differs from the actual project plans and specifications or if revisions to the project plans are made after this report, we should be contacted for analysis and comment as needed.

2.0 Subsurface Exploration

Soil conditions were investigated by performing two (2) Cone Penetration Test (CPT) soundings to depths of about 21 to 33 feet below the ground surface. The approximate sounding locations are shown on the attached CPT Location Plan.

CPT testing was performed in accordance with ASTM D-5778 using a Vertek S4 electronic CPT rig. CPT testing includes pushing an electronic cone on a series of rods into the ground at a constant rate. The electronic cone collects continuous measurements of the resistance to penetration of the cone tip and side friction sleeve. Correlations between Cone Resistance values and Standard Penetration (SPT) "N" values were performed using methods developed by Robertson, Campanella and Wightman. The CPT log attached in the appendix shows the cone tip friction, sleeve friction, pore pressure, friction ratio, correlated "N" value and the soil behavior type (SBT).

3.0 Soil Conditions Encountered

The soundings initially encountered about 4 inches of gravel material followed by about 2 feet of sand material described as fill soils. Below a depth of about 2 feet, the soundings encountered silty sand soils to a depth of about 10 feet below the existing ground surface. Below a depth of about 10 feet, the soundings encountered fine grained silty clay soils to a depth of about 15 feet. Below the fine grained soils, the soundings encountered non-cohesive sand soils to sounding termination at depths of about 21 to 33 feet.

In general, the soils encountered in the upper 13 to 15 feet of the soil profile were in a very loose condition, as indicated by correlated penetration resistance values (N-values) of less than 10 blows per foot (bpf). The soils encountered below depths of about 13 to 15 feet were generally in a firm to dense condition as indicated by correlated N-values of 10 to 30 bpf. Subsurface conditions encountered are described in more detail on the attached CPT Logs.

4.0 Ground Water Conditions Encountered

Ground water was observed at a depth of about 3 feet below the existing ground surface at the time of testing. Local ground water elevations are expected to fluctuate in response to variations in precipitation and tidal movements.

5.0 Soil Parameters

We understand the project will include the construction of a new vinyl sheet pile seawall. The test soundings encountered very loose silty sand and very soft silty clay soils to a depth of about 15 feet below the existing ground surface. These very loose/very soft soils will provide little soil resistance for horizontal restraints. This should be considered in the wall design. The following are soil parameters that can be used for design with respect to horizontal earth pressures against the bulkhead and for the tie-back (horizontal restraints) design. These parameters are based on the soil conditions encountered at the two (2) soundings.

<i>Depth (ft)</i>	<i>Soil Material</i>	<i>Wet Unit Weight (pcf)</i>	<i>Cohesion (psf)</i>	<i>Friction Angle (deg)</i>
0-2	Sand w/Silt (SP-SM)	115	-	32
2-10	Silty Sand (SM)	100	-	22
10 - 15	Silty Clay (CL-ML)	100	250	-
15-20	Sand with Silt (SP-SM)	105	-	30
20-33	Sand (SP)	105	-	35

6.0 Closure and Limitations

This report has been prepared for the exclusive use of the City of Fairhope and their project design professionals for specific application to the above referenced seawall in accordance with generally accepted current standards of geotechnical engineering practices common to the local area.

The comments and recommendations of this report provide manageable and reasonable solutions to the advancement of the project based on the collected test data and the provided design information. Significant changes in site conditions or project design may result in alternative solutions to the design required or may permit more manageable and economical construction techniques. Should such significant changes occur, we will be available to offer supplemental comment.

The comments and recommendations of this report are based upon our interpretation of the information supplied by the client, the data collected at two (2) soundings and the site conditions observed at the time of testing. A significant amount of interpolation was necessary. Because it is not possible to know or predict detailed conditions hidden beneath the ground surface, our comments and recommendations are presented as opinions and judgements, as opposed to statements of fact.

Improper site preparation, extremes in climatic conditions, significant changes in grade, time, etc., can affect the ground water, surface and subsurface conditions. If conditions are encountered as the construction advances which vary significantly from those described by this report, we should be contacted for additional comment.

Again, we appreciate the opportunity to provide our geotechnical engineering services for this project. To ensure that our recommendations are correctly interpreted and followed during construction, we recommend that the owner retain GeoCon, Inc. to provide construction monitoring for the project.



GEOCON, INC.
 22885 McAuliffe Drive
 Robertsdale, Alabama 36567

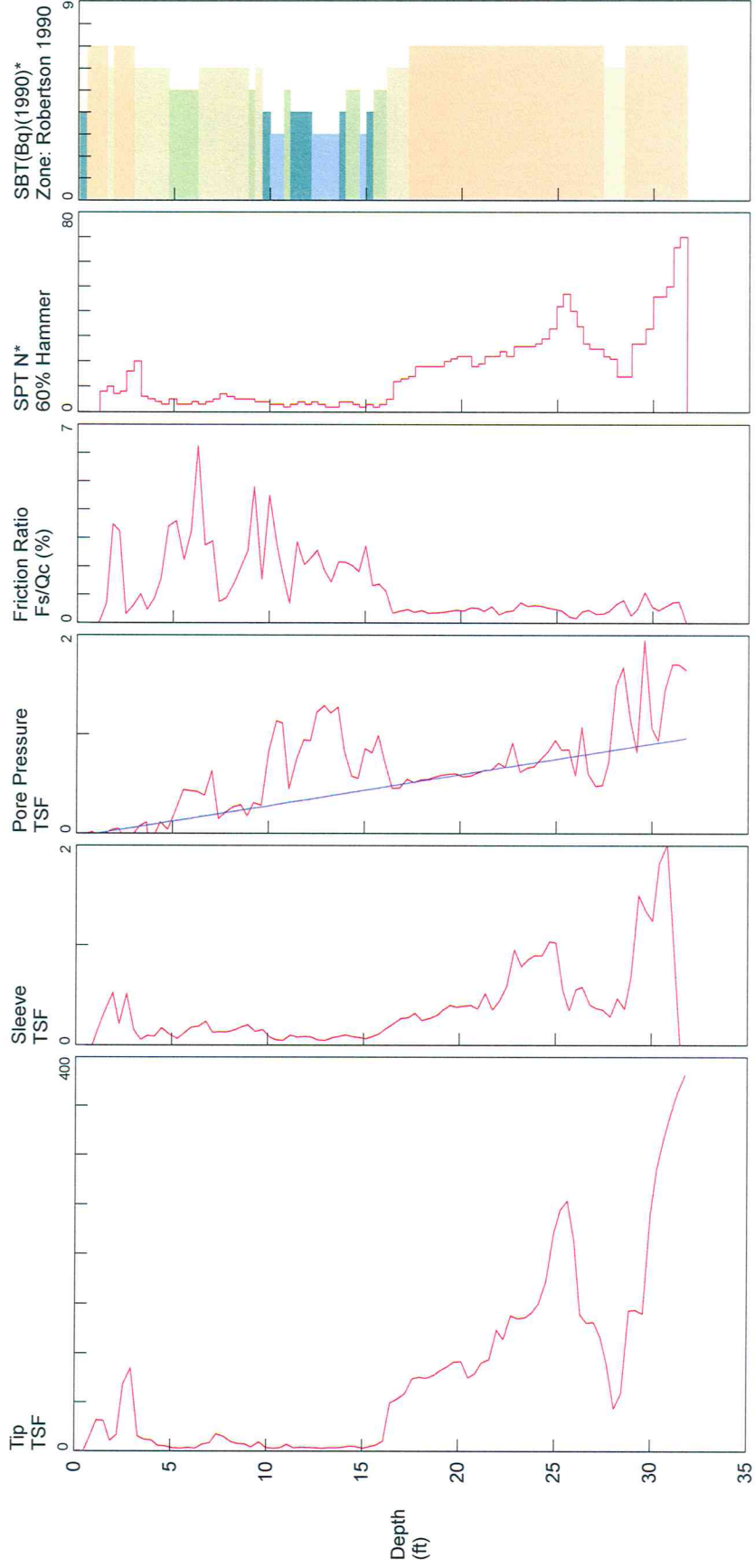
NOT TO SCALE
CPT LOCATION PLAN
 Proposed Seawall Improvements
 Fly Creek Marina
 Fairhope, Alabama
 DL 514-16

Date
 2/29/2016

GEOCON

PROJECT: DL514
 SITE: Fly Creek
 LOCATION: Fairhope, AL
 TEST ID: C-2

COMPANY: Longview
 OPERATOR: Zane Taylor
 TEST DATE: Mon 22/Feb/2016

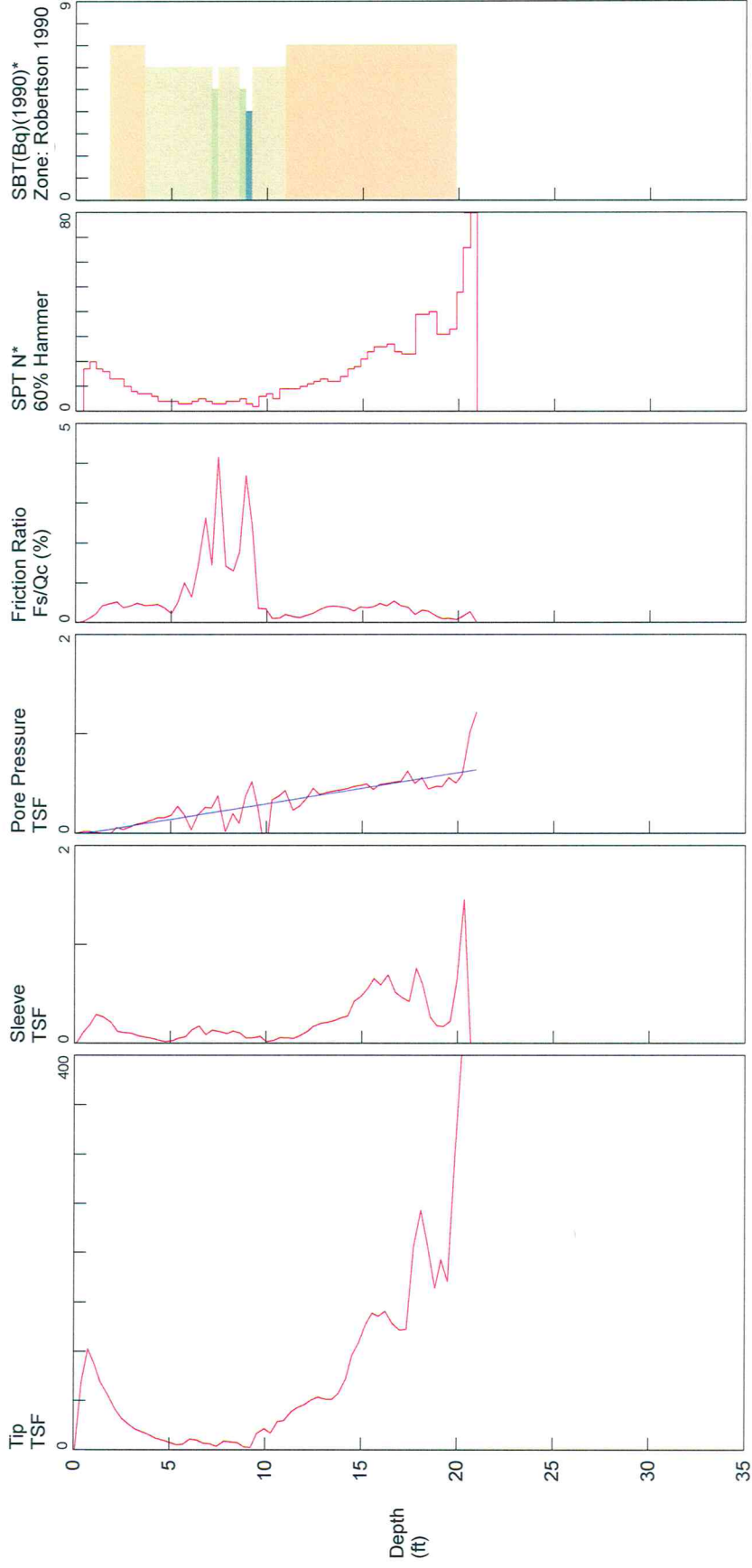


- 1 Sensitive, fine grained
 - 2 Organic soils - peats
 - 3 Clays - clay to silty clay
 - 4 Silt mixtures - clayey silt to silty clay
 - 5 Sand mixtures - silty sand to sandy silt
 - 6 Sands - clean sand to silty sand
 - 7 Gravely sand to sand
 - 8 Very stiff sand to clayey sand **
 - 9 Very stiff, fine grained **
- *SBT: Robertson 1990; **Overconsolidated or Cemented; *SBT/SPT CORRELATION: UBC-1983

SOUNDING
















PROJECT: DL514
 SITE: Fly Creek
 LOCATION: Fairhope, AL
 TEST ID: C-1

COMPANY: Longview
 OPERATOR: Zane Taylor
 TEST DATE: Mon 22/Feb/2016



- 1 Sensitive, fine grained
 - 2 Organic soils - peats
 - 3 Clays - clay to silty clay
 - 4 Silt mixtures - clayey silt to silty clay
 - 5 Sand mixtures - silty sand to sandy silt
 - 6 Sands - clean sand to silty sand
 - 7 Gravelly sand to sand
 - 8 Very stiff sand to clayey sand **
 - 9 Very stiff, fine grained **
- *SBT: Robertson 1990; **Overconsolidated or Cemented; *SBT/SPT CORRELATION: UBC-1983

UNIFIED SOIL CLASSIFICATION SYSTEM (USCS)

MAJOR DIVISION				TYPICAL NAMES	
GRAVELS More than 50% of coarse fraction larger than No. 4 sieve	CLEAN GRAVEL (little or no fines)		GW	Well graded gravels	
			GP	Poorly graded gravels	
	GRAVELS with fines			GM	Silty gravels
				GC	Clayey gravels
	SANDS More than 50% of coarse fraction smaller than No. 4 sieve	CLEAN SAND (little or no fines)		SW	Well graded sands
				SP	Poorly graded sands
SAND with fines				SM	Silty sands, sand/silt mixtures
				SC	Clayey sands, sand/clay mixtures
SILTS AND CLAYS Liquid Limit is less than 50			ML	Inorganic silts, sandy and clayey silts with slightly plasticity	
			CL	Sandy or silty clays of low to medium plasticity	
			OL	Organic silts of low plasticity	
		SILTS AND CLAYS Liquid Limit is greater than 50			MH
	CH			Inorganic clays of high plasticity, fat clays	
	OH			Organic clays of medium to high plasticity	
HIGHLY ORGANIC SOILS			PT	Peat and other highly organic soils	
MISCELLANEOUS MATERIALS				PWR (Partially Weathered Rock)	
				Rock	
				Asphalt	
				ABC Stone	
				Concrete	
				Topsoil	

Important Information about Your Geotechnical Engineering Report

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Geotechnical Services Are Performed for Specific Purposes, Persons, and Projects

Geotechnical engineers structure their services to meet the specific needs of their clients. A geotechnical engineering study conducted for a civil engineer may not fulfill the needs of a construction contractor or even another civil engineer. Because each geotechnical engineering study is unique, each geotechnical engineering report is unique, prepared *solely* for the client. No one except you should rely on your geotechnical engineering report without first conferring with the geotechnical engineer who prepared it. *And no one — not even you — should apply the report for any purpose or project except the one originally contemplated.*

Read the Full Report

Serious problems have occurred because those relying on a geotechnical engineering report did not read it all. Do not rely on an executive summary. Do not read selected elements only.

A Geotechnical Engineering Report Is Based on A Unique Set of Project-Specific Factors

Geotechnical engineers consider a number of unique, project-specific factors when establishing the scope of a study. Typical factors include: the client's goals, objectives, and risk management preferences; the general nature of the structure involved, its size, and configuration; the location of the structure on the site; and other planned or existing site improvements, such as access roads, parking lots, and underground utilities. Unless the geotechnical engineer who conducted the study specifically indicates otherwise, do not rely on a geotechnical engineering report that was:

- not prepared for you,
- not prepared for your project,
- not prepared for the specific site explored, or
- completed before important project changes were made.

Typical changes that can erode the reliability of an existing geotechnical engineering report include those that affect:

- the function of the proposed structure, as when it's changed from a parking garage to an office building, or from a light industrial plant to a refrigerated warehouse,

- elevation, configuration, location, orientation, or weight of the proposed structure,
- composition of the design team, or
- project ownership.

As a general rule, *always* inform your geotechnical engineer of project changes—even minor ones—and request an assessment of their impact. *Geotechnical engineers cannot accept responsibility or liability for problems that occur because their reports do not consider developments of which they were not informed.*

Subsurface Conditions Can Change

A geotechnical engineering report is based on conditions that existed at the time the study was performed. *Do not rely on a geotechnical engineering report* whose adequacy may have been affected by: the passage of time; by man-made events, such as construction on or adjacent to the site; or by natural events, such as floods, earthquakes, or groundwater fluctuations. *Always* contact the geotechnical engineer before applying the report to determine if it is still reliable. A minor amount of additional testing or analysis could prevent major problems.

Most Geotechnical Findings Are Professional Opinions

Site exploration identifies subsurface conditions only at those points where subsurface tests are conducted or samples are taken. Geotechnical engineers review field and laboratory data and then apply their professional judgment to render an opinion about subsurface conditions throughout the site. Actual subsurface conditions may differ—sometimes significantly—from those indicated in your report. Retaining the geotechnical engineer who developed your report to provide construction observation is the most effective method of managing the risks associated with unanticipated conditions.

A Report's Recommendations Are *Not* Final

Do not overrely on the construction recommendations included in your report. *Those recommendations are not final*, because geotechnical engineers develop them principally from judgment and opinion. Geotechnical engineers can finalize their recommendations only by observing actual

subsurface conditions revealed during construction. *The geotechnical engineer who developed your report cannot assume responsibility or liability for the report's recommendations if that engineer does not perform construction observation.*

A Geotechnical Engineering Report Is Subject to Misinterpretation

Other design team members' misinterpretation of geotechnical engineering reports has resulted in costly problems. Lower that risk by having your geotechnical engineer confer with appropriate members of the design team after submitting the report. Also retain your geotechnical engineer to review pertinent elements of the design team's plans and specifications. Contractors can also misinterpret a geotechnical engineering report. Reduce that risk by having your geotechnical engineer participate in prebid and preconstruction conferences, and by providing construction observation.

Do Not Redraw the Engineer's Logs

Geotechnical engineers prepare final boring and testing logs based upon their interpretation of field logs and laboratory data. To prevent errors or omissions, the logs included in a geotechnical engineering report should *never* be redrawn for inclusion in architectural or other design drawings. Only photographic or electronic reproduction is acceptable, *but recognize that separating logs from the report can elevate risk.*

Give Contractors a Complete Report and Guidance

Some owners and design professionals mistakenly believe they can make contractors liable for unanticipated subsurface conditions by limiting what they provide for bid preparation. To help prevent costly problems, give contractors the complete geotechnical engineering report, *but* preface it with a clearly written letter of transmittal. In that letter, advise contractors that the report was not prepared for purposes of bid development and that the report's accuracy is limited; encourage them to confer with the geotechnical engineer who prepared the report (a modest fee may be required) and/or to conduct additional study to obtain the specific types of information they need or prefer. A prebid conference can also be valuable. *Be sure contractors have sufficient time to perform additional study.* Only then might you be in a position to give contractors the best information available to you, while requiring them to at least share some of the financial responsibilities stemming from unanticipated conditions.

Read Responsibility Provisions Closely

Some clients, design professionals, and contractors do not recognize that geotechnical engineering is far less exact than other engineering disciplines. This lack of understanding has created unrealistic expectations that

have led to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their reports. Sometimes labeled "limitations" many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks. *Read these provisions closely.* Ask questions. Your geotechnical engineer should respond fully and frankly.

Geoenvironmental Concerns Are Not Covered

The equipment, techniques, and personnel used to perform a *geoenvironmental* study differ significantly from those used to perform a *geotechnical* study. For that reason, a geotechnical engineering report does not usually relate any geoenvironmental findings, conclusions, or recommendations; e.g., about the likelihood of encountering underground storage tanks or regulated contaminants. *Unanticipated environmental problems have led to numerous project failures.* If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the *express purpose* of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may have been addressed as part of the geotechnical engineering study whose findings are conveyed in this report, the geotechnical engineer in charge of this project is not a mold prevention consultant; ***none of the services performed in connection with the geotechnical engineer's study were designed or conducted for the purpose of mold prevention. Proper implementation of the recommendations conveyed in this report will not of itself be sufficient to prevent mold from growing in or on the structure involved.***

Rely on Your ASFE-Member Geotechnical Engineer for Additional Assistance

Membership in ASFE/THE BEST PEOPLE ON EARTH exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit for everyone involved with a construction project. Confer with your ASFE-member geotechnical engineer for more information.

ASFE THE GEOPROFESSIONAL BUSINESS ASSOCIATION

8811 Colesville Road/Suite G106, Silver Spring, MD 20910
Telephone: 301/565-2733 Facsimile: 301/589-2017
e-mail: info@asfe.org www.asfe.org

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TERMS AND CONDITIONS

SERVICES TO BE PROVIDED. GeoCon Engineering & Material Testing, Inc. (hereinafter GeoCon) is an independent consultant and agrees to provide Client, for its sole benefit and exclusive use, consulting services set forth in our proposal.

PAYMENT TERMS. Client agrees to pay our invoice upon receipt. If payment is not received within 30 days from the invoice date, Client agrees to pay a service charge on the past due amount at a rate of 1.5% per month, and GeoCon reserves the right to suspend all work until payment is received. No deduction shall be made from our invoice on account of liquidated damages or other sums withheld from payments to contractors or others.

TERMINATION. Either party may terminate this Agreement without cause upon 20 days advance notice in writing. In the event Client requests termination prior to completion of the proposed services, Client agrees to pay GeoCon for all costs incurred plus reasonable charges associated with termination of the work.

PROFESSIONAL LIABILITY. Notwithstanding any other provision of this Agreement, the Engineer's and GeoCon's total liability to the Owner for any loss or damages from claims arising out of or in connection with this Agreement from any cause including the Engineer's strict liability, breach of contract, or professional negligence, errors and omissions (whether claimed in tort, contract, strict liability, nuisance, by statute or otherwise) shall not exceed the lesser of the total contract price of this Agreement or the proceeds paid under Engineer's liability insurance in effect at the time such claims are made. The Owner hereby releases the Engineer from any liability exceeding such amount. In no event shall either party to this Agreement be liable to the other for special, indirect, incidental or consequential damages, whether or not such damages were foreseeable at the time of the commencement of the work under this Agreement.

SITE OPERATIONS. Client will arrange for right-of-entry to all applicable properties for the purpose of performing studies, tests and evaluations pursuant to the agreed services. Client represents that it possesses necessary permits and licenses required for its activities at the site.

OWNERSHIP AND USE OF PROJECT DOCUMENTS. All documents are instruments of service in respect to the Services, and Engineer shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the Engineer) whether or not the Services are completed. Client may make and retain copies of documents for information and reference in connection with the services by Client. Such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the services or on any other project. Any such reuse or modification without written verification or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's consultants. Client shall indemnify and hold harmless Engineer and Engineer's consultants from all claims, damages, and expenses including attorneys' fees arising out of or resulting therefrom.

ADDITIONAL SERVICES OF CONSULTANT. If authorized in writing by the Client, GeoCon shall furnish additional services that are not considered as an integral part of the Scope of Services outlined in the Proposal Acceptance Sheet. Under this Agreement, all costs for additional services will be negotiated as to activities and compensation. In addition, it is possible that unforeseen conditions may be encountered that could substantially alter the original scope of services. If this occurs, GeoCon will promptly notify and consult with Client and any additional services will be negotiated.

ASSIGNABILITY. GeoCon shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Client; provided, however, that claims for money by GeoCon against Client under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be promptly furnished to the Client.

SERVICES TO BE CONFIDENTIAL. All services, including opinions, designs, drawings, plans, specifications, reports and other services and information, to be furnished by GeoCon under this Agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the client, without prior written approval of the Client, except by testimony under oath in a judicial proceeding or as otherwise required by law. GeoCon shall take all necessary steps to ensure that no member of its organization divulges any such information except as may be required by law.

CLAIMS. The parties agree to attempt to resolve any dispute without resort to litigation. However, in the event a claim is made that results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in defending the claim, including reasonable attorney's fees. The claim will be considered proven if the judgment obtained and retained through any applicable appeal is at least ten percent greater than the sum offered to resolve the matter prior to the commencement of trial.

SEVERABILITY. It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

SURVIVAL. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and GEOCON shall survive the completion of the services and the termination of this Agreement.

INTEGRATION. This Agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

GOVERNING LAW. This Agreement shall be governed in all respects by the laws of the State of Alabama and venue shall be in Baldwin County, Alabama.

SAMPLE

CONTRACT DOCUMENTS

and

BID RESPONSE AND SPECIFICATIONS

For

Bid No. 001-17

Fly Creek Marina Seawall Improvements 2017

Project No.: PW003-16

Fly Creek Maintenance Project

Karin Wilson, Mayor

FAIRHOPE CITY COUNCIL,

Jack Burrell, Council President

Set Number _____

**ITEM XI
CITY OF FAIRHOPE
CONTRACT AGREEMENT**

STATE OF ALABAMA }
BALDWIN COUNTY }

THIS AGREEMENT made and entered into this _____ day of _____, 2017, by and between _____ hereinafter

sometimes called the CONTRACTOR, as party of the first part, and the CITY OF FAIRHOPE, Alabama, a Municipal Corporation, hereinafter sometimes called the CITY or OWNER, as party of the second part,

W-I-T-N-E-S-S-E-T-H:

In consideration of the amounts herein named and of the mutual agreements and provisions herein contained, the CONTRACTOR and the CITY agree in regard to a public works project (hereinafter either the "work" or the "Project") as described in the Advertisement for Bids pertaining to:

Project No.: PW003-16 Fly Creek Maintenance Project

The CONTRACTOR will perform the work and/or construct the Project as well as furnish at his own cost and expense all labor, tools, equipment and transportation as are herein and in the Contract documents required to be furnished by the CONTRACTOR, and shall perform all the work in a manner and form required to construct the Project described in and shown on the contract documents as the same are hereinafter more specifically described and as provided by the plans, specifications and documents which are attached hereto and made a part hereof, as if fully set out herein and addenda together with all plans and drawings on file in the office specified below.

**ARTICLE I GENERAL
CONDITIONS**

- 1.0 **Contract Documents:** As used throughout the documents constituting the contract, the term "Contract Documents" shall mean and include the following: Advertisement for Bids, Addenda (if issued), the Instructions to Bidders, the Bid Proposal, the General Specifications, the Detail Specifications, Supplemental and Special Conditions (if attached), together with this Contract Agreement and any modifications, including change orders, if made, and the drawings, plans and profiles that are now on file in the office referred to in the advertisement, the Performance Bond and the Labor and Material Bond, executed by the CONTRACTOR in connection with this Contract and insurance requirements and certificates.
- 1.0.1 All such documents hereinabove enumerated are adopted herein by reference and constitute the Contract between the parties to the same extent as if each were set out in full in this agreement.
- 1.1 Independent Contractor: The CONTRACTOR enters into this Contract with the CITY as an independent contractor and, as such, agrees that neither the CITY nor its officers, agents, employees or inspectors shall be responsible for the acts or omissions of the CONTRACTOR, or any subcontractor, or any of the CONTRACTOR'S or subcontractor's agents or employees, or any other persons performing any of the work pursuant to this Contract. The CONTRACTOR shall be solely responsible for controlling construction manner, means and techniques consistent with the contract documents, plans and specifications.
- 1.2 Order of Precedence: Should there be a direct conflict between the various elements of the contract documents to the extent that the same cannot be reconciled to be read *in para materia*, then precedence shall be given the same in the following order:
 - 1.2.1 Subsequent modifications (change orders or amendments) to contract agreement after execution

- 1.2.2 Addenda (if issued)
- 1.2.3 Supplemental general conditions and special conditions (if included)
- 1.2.4 The Contract Agreement
- 1.2.5 Instructions to Bidders
- 1.2.6 Advertisement for bids
- 1.2.7 Proposal (Bid)
- 1.2.8 General and technical specifications
- 1.2.9 Large Scale Drawings (if included)
- 1.2.10 Enlarged Plans (if included)
- 1.2.11 Plans (if included)
- 1.2.12 Where more than one document relates to the same matter, if both can be given reasonable effect, both are to be retained. Written specifications will take precedence over drawings.

1.3 Integration: Contract Terms and Construction:

- 1.3.1 Integration: This Agreement, together with all documents which constitute the "Contract Documents," constitute the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. All understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.
- 1.3.2 Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement or change order, in writing, properly executed by all of the parties.
- 1.3.3 Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns.
- 1.3.4 Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.
- 1.3.5 Construction: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.
- 1.3.6 Mandatory and Permissive: "Shall," "will," and "agrees" are mandatory; "may" is permissive.
- 1.3.7 Governing Laws: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.
- 1.3.8 Ownership of Contract Documents: The Contract Documents, and copies of parts thereof, are furnished and owned by the CITY. All portions of the Contract Documents, and copies of parts thereof, are the instruments of service for this Project. They are not to be used on other work and are to be returned to the CITY on request at the completion of the Project. Any reuse of these materials without specific written verification or adaptation by the CITY will be at the risk of the user and without liability or legal expense to the City or Engineer of Record. Such user shall hold the CITY and Engineer of Record harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the CITY to further compensation at rates to be agreed upon by the user and the CITY.

1.4 Rules of Construction: For the purposes of this contract, except as otherwise provided or unless the context otherwise requires:

- 1.4.1 Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.
- 1.4.2 All references herein to designated "articles," "sections," and other subdivisions or to lettered exhibits are to the designated articles, sections and subdivisions hereof and the exhibits annexed hereto unless expressly otherwise designated in context. All article, section, other subdivision and exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect this agreement.
- 1.4.3 The terms "include," "including," and similar terms shall be construed as if followed by the phrase, "without being limited to".
- 1.4.4 The terms "herein," "hereof," and "hereunder," and other words of similar import refer to this agreement as a whole and not to any particular article, section, other subdivision or exhibit.

- 1.4.5 All recitals set forth in, and all exhibits to, this agreement are hereby incorporated in this agreement by reference.
- 1.4.6 No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.
- 1.4.7 All references in this agreement to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.
- 1.5 **Coordination of Plans, Specifications, etc.:** The specifications, the plans, drawings and all supplementary documents are essential parts of the Contract, and requirements occurring in one are as binding as though occurring in all. They are intended to be comprehensive to describe and provide a complete work. In case of discrepancy, figured dimensions shall govern.
- 1.6 **Corrections of Plans, etc.:** Should any portions of the plans, specifications or drawings be obscure or in dispute, they shall be referred to the Engineer of Record and he shall decide as to the true meaning and intent. The Engineer of Record shall also have the right to correct any errors or omissions at any time when such corrections are necessary for the proper fulfillment of said plans and specifications.
- 1.7 **Taxes and Charges:** See ITEM XI. CONTRACTOR shall withhold and pay all withholding taxes, whether local, state or federal and pay all Social Security taxes and also all State Unemployment Compensation taxes, and pay or cause to be withheld, as the case may be, any and all taxes, charges, or fees or sums whatsoever, which are now or may hereafter be required to be paid or withheld under any laws. Pursuant to Ala. Code §39-1-3 (1975), CONTRACTOR shall be reimbursed for any additional severance, sales or uses taxes incurred as a result of an increase in such taxes during performance of the contract.
- 1.8 **Shop Drawings and Submittals.** The CONTRACTOR shall submit shop drawings, samples and submittals depicting or representing the construction of portions of the Project in accordance with the plans and specifications to the Engineer of Record and if there is no Engineer on the Project, to the CITY representative. The CONTRACTOR shall pay for or the cost may be withheld from payments to the CONTRACTOR for more than two (2) reviews of the shop drawings, samples or submittals or similar element of work by the Engineer, or CITY representative.
- 1.9 **Alabama Immigration Law.** 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, to the extent allowed by Federal law. **See ITEM XII.**

**ARTICLE II
PAYMENTS, CLAIMS AND CHARGES, ETC.**

- 2.0 **Contract Price:** The CITY will pay and the CONTRACTOR will accept in full consideration for the performance of the work/Project, subject to additions and deductions (including but not limited to liquidated damages) as provided in the Contract documents and herein, the sum of _____ (\$ _____) and/or in unit prices as shown in Bidder's schedule for the base bid amount of \$ _____ (\$ _____) being the amount of the CONTRACTOR'S bid as awarded by the CITY.
- 2.1 **Estimated Quantities and Unit Prices:** If award was made in whole or in part based upon unit prices, the CONTRACTOR agrees that the prices given in the Proposal are unit prices. The estimated quantities as stated in the Advertisement for Bids and in the Proposal and as indicated on the plans or in other places are approximate only, are subject either to increase or decrease and are only for the purpose of comparing on uniform basis the bids offered for the Project under this contract. The CONTRACTOR further agrees that should the quantities of any of the items of the work be increased, he will do the additional work at the unit prices set out in the Proposal and should the quantities be decreased, payment will be made on actual quantities at the unit prices and he will make no claim for anticipated profits for any decrease in the quantities. Actual quantities will be determined upon completion of the Project.

- 2.2 **Overtime Work by CONTRACTOR:** If the CONTRACTOR for his convenience, and at his own expense, should desire to carry on his work at night or outside regular hours, he shall submit written notice to the Engineer of Record and he shall allow ample time for satisfactory arrangements to be made for inspecting the work in progress. At no time shall the notice be given less than 24 hours before such overtime work is started. The CONTRACTOR must obtain, through the Engineer/ Architect, the CITY'S approval for work at night, on Saturdays, Sundays or legal holidays. The shall light the different parts of the Project as required to comply with all applicable federal and state regulations and with all applicable requirements of the CITY.
- 2.2.1 Overtime hours shall be considered any hours worked by the CONTRACTOR on Saturday, Sunday and legal holidays, which in the Engineer of Record's opinion requires the Engineer resident observers' presence to observe such overtime work. Overtime hours requiring the CITY inspectors shall be considered any hours worked by the CONTRACTOR in excess of eight (8) hours during any working day and/or in excess of forty (40) hours from Monday through Friday and/or any time on Saturday, Sunday or legal holiday. In general, it should be expected that the Engineer of Record's resident observer(s) or CITY'S inspectors will be present at all times that the CONTRACTOR is working.
- 2.2.2 If the CONTRACTOR elects to schedule and perform overtime work, the CONTRACTOR shall pay the CITY for the CITY'S resident inspector's salary plus costs for each hour of overtime work. Overtime shall be rounded up to the nearest whole hour. This amount shall include the inspector's salary at overtime rate, labor additive, which includes insurance, social security, workmen's compensation, sick pay, paid holidays, vacation pay and his vehicle and equipment. Payment to the CITY shall be made by a deduction from the CONTRACTOR'S monthly payment invoice for any overtime worked.
- 2.3 **Payments on Account/Payments Withheld/Retainage:** Upon presentation of a verified application for payment, which shall include a "CONTRACTOR'S Affidavit of Payment of Debts and Claims," then usually by the fifteenth (15th) day of each calendar month or as soon thereafter as is practical, as the Project progresses, the CITY shall make partial payments to the CONTRACTOR of the billable work performed less payments already made and less deductions for any incomplete, unaccepted or defective work. In making partial payments to the CONTRACTOR, there shall be retained five (5%) percent of the estimated amount of work done and value of materials stored on the site or suitably stored and insured off-site. Provided; however, after fifty (50%) percent of the Project has been satisfactorily completed, no further retainage will be withheld.
- 2.3.1 Retainage shall be held until final completion and acceptance of all work covered by the Contract Documents unless escrow or deposit arrangements are agreed to by the CITY. When maintenance periods are included in the Contract Documents covering highways, bridges or similar structures, such period shall be considered a component part of the contract and retainage will be held until the expiration of such periods.
- 2.3.2 On completion and acceptance of each separate building, public work or other separately identifiable and complete division of the Project in regard to which a separate price has been stated in the Contract Documents or can be separately ascertained, payment may be made in full including retainage but less deductions. Provided however, the CITY will not consider making such payment on any such item of work if it is an integral part of a complete project.
- 2.3.3 All materials and work covered by partial payments as provided for herein shall become the sole property of the CITY; provided, however, the CONTRACTOR shall not be relieved from the sole responsibility for the care and protection of materials and work upon which payments have been made and for the restoration of any damaged work.
- 2.3.4 The CITY may also withhold from time to time from payment to the CONTRACTOR such an amount or amounts as may be necessary to pay and fully satisfy all claims and demands for labor and services rendered in and about the Project, including any such amount or amounts due to be paid to or by any subcontractor or supplier, amounts for CITY'S or Engineer of Record's observers or inspectors for CONTRACTORS' overtime as herein provided, or for engineering or design services associated with CONTRACTOR initiated change orders or submittals in excess of that permitted herein. The CONTRACTOR hereby authorizes the CITY as its agent, to apply such amounts so withheld to the payment of any amount so due to be paid and all other just and lawful claims other than claims for damages for tort. In case of disagreement with reference to any such claim or claims, the CITY may keep such amounts so withheld on account of such claim or claims until such disagreement is finally settled and determined.

- 2.4.5 In addition, the CITY may also withhold payment of the whole or any part of a verified or approved application for payment from the CONTRACTOR to such an extent as may be necessary to protect itself from loss on account of any of the following causes discovered subsequent to its verification or approvals:
- 2.4.5.1 Defective work.
 - 2.4.5.2 Evidence indicating probable filing of claims by other parties against the CONTRACTOR.
 - 2.4.5.3 Failure of the CONTRACTOR or subcontractor to promptly make payments to subcontractors or for materials, labor, food stuffs and supplies.
 - 2.4.5.4 Damage to another contractor under separate contract with the CITY.
 - 2.4.5.5 Assessment of liquidated damages.
- 2.4.6 When the above grounds are removed, applications for payment will then be verified and/or approved for amounts not previously verified and approved because of them.
- 2.4.7 The CONTRACTOR shall not attempt to withdraw at any time during the term of this contract or any extensions thereof, without the expressed written consent of the CITY, the whole or any part of the amounts so retained by the CITY from payments due the CONTRACTOR by the establishment of an escrow account or by depositing securities in lieu thereof, pursuant to Ala. Code §39-2-12(e), or (f), or any amendments thereto or any equivalent law, ordinance or regulation. It is expressly agreed between the parties hereto that should the CITY elect not to consent to the same, then the CONTRACTOR shall not elect to, attempt to or in any manner endeavor to withdraw such retained amounts.
- 2.5 **Claims for Extra Cost:** If the CONTRACTOR claims that any instructions by drawings or otherwise involve extra cost or any extension of time, he shall notify the CITY in writing within ten (10) days after the receipt of such instructions and in any event before proceeding to execute the Project, the procedure shall be the same as that for change orders. No such claim shall be valid unless made in accordance with the terms of this section. There shall be no damages for delay.
- 2.5.1 Except as otherwise herein provided, no charge for any extra work will be allowed unless the same has been duly authorized in writing by the CITY and the price stated in such order.
- 2.6 **Differing Site Conditions:** If, in the performance of the Contract, subsurface or latent conditions are found to be materially different from those indicated by the plans and specifications, or unknown conditions of an unusual nature are disclosed differing materially from conditions usually inherent in work of the character shown and specified, the CONTRACTOR shall immediately notify the Engineer/Architect in writing regarding such conditions but in no event later than forty-eight (48) hours after discovery of such conditions by the CONTRACTOR.
- 2.6.1 The written Notice shall describe the conditions and other pertinent information, and in not event shall such notice be later than forty-eight (48) hours before such conditions are disturbed. Upon such notice, or upon such observation of conditions, the Engineer/Architect will promptly make such changes in the plans and/or Specifications as he finds necessary (if any are necessary) to conform to the different conditions, and any increase or decrease in the cost of the Project resulting from such changes may be adjusted as provided under Change Orders or Claims for Extra Cost as set forth in the Contract documents.
- 2.7 **Change Orders:** Change orders shall be allowed only under the following conditions:
- 2.7.1 Minor changes for a total monetary amount less than that required for competitive bidding; or
 - 2.7.2 Changes for matters incidental to the original contract necessitated by unforeseeable circumstances arising in the course of work under the contract; or
 - 2.7.3 Changes due to emergencies; or
 - 2.7.4 Changes provided for in the original bidding and original Contract Documents as alternates;
 - 2.7.5 Changes of relatively minor items not contemplated when the plans and specifications were prepared and the Project was bid and which are in the public interest and generally do not exceed 10 percent of the Contract Price, subject to Alabama Bid Law exceptions.
 - 2.7.6 The CONTRACTOR or successful bidder is expected to complete the Project as bid and specified within the financial parameters stated therein. However, if it shall be determined that a change order condition possibly exists in any given case during the performance of the contract, the CONTRACTOR shall promptly notify in writing the representative of the CITY and shall not implement such change until having notified the representative of the CITY. If the change is minor in the opinion of the representative of the CITY and does not involve,

- 2.7.6.1 an adjustment in the contract sum or construction bid price, or
 - 2.7.6.2 result in extension of the contract time, or
 - 2.7.6.3 a material change in the Contract scope of services, then the CITY representative may authorize the change in writing to the CONTRACTOR. The CONTRACTOR shall not perform such change until receipt of such written change order.
- 2.7.7 In the event the change order requested by the CONTRACTOR involves,
- 2.7.7.1 an increase in the contract sum or construction bid price,
 - 2.7.7.2 extend the contract time, or
 - 2.7.7.3 materially change the CONTRACTOR'S scope of work or services, then the CONTRACTOR shall request a change order in writing and present the same to the CITY representative.
- 2.7.8 The representative of the CITY shall determine whether this is a change order which can be allowed and, if so, what exception it would fall under. The representative of the CITY shall then document the same, attach the same to the CONTRACTOR'S request for a change order and submit the same with his recommendation to the CITY Council at its next or any subsequent regularly scheduled Council meeting for approval.
- 2.7.9 The CITY reserves the right to institute change orders as the OWNER pursuant to the aforesaid terms and conditions.
- 2.7.10 In no event is a change order to be executed by the CONTRACTOR prior to approval thereof by the CITY, except for emergencies.
- 2.8 **Determination of Adjustment of the Contract Sum:** The adjustment of the Contract Sum resulting from a change in the Work shall be determined by one of the following methods as determined by OWNER:
- 2.8.1. By mutual agreement to a lump sum based on or negotiated from an itemized cost proposal from the CONTRACTOR.
 - 2.8.2. Additions to the Contract Sum shall include the CONTRACTOR'S direct costs plus a maximum 15% markup for overhead and profit. Where subcontract work is involved, the total mark-up for the CONTRACTOR and a subcontractor shall not exceed 25%. No allowance for overhead and profit shall be figured on a change which involves a net credit to the OWNER. For the purposes of this method of determining an adjustment of the Contract Sum, "overhead" shall cover the CONTRACTOR'S indirect costs of the change, such as the cost of bonds, superintendent and other job and home office expenses.
- 2.9 **Construction Schedule and Periodical Estimates:** Immediately after execution and delivery of the Contract and before the first partial payment is made, the CONTRACTOR shall deliver to the CITY and Engineer of Record and/or Construction Manager, a construction schedule in a form satisfactory to the CITY or Construction Manager, which may include CPM for all major trades, showing the proposed dates of commencement and completion of each of the various activities, of work required under the Contract documents, the interrelationship of each activity, sequences, resources for each and the anticipated amount of each monthly payment that will become due the CONTRACTOR in accordance with the progress schedule. The CONTRACTOR shall also furnish (1) a detailed estimate giving a complete breakdown on the contract price, and, (2) periodical itemized estimates of the work done for the purpose of making partial payments, however the same will not be considered as fixing a basis for additions to or deductions from the contract price. Scheduling is particularly critical if CONTRACTOR is a trade CONTRACTOR and adherence to the Construction Manager progress schedule is required.

NOTE: Depending upon the complexity of the work the CITY may require CPM or equivalent meeting all criteria above.

ARTICLE III TIME

- 3.0 **Time for Completion/Delays:** The CONTRACTOR hereby agrees to commence work under this contract on the date to be specified in a written "Notice to Proceed" or thirty (30) days from the date of contract execution, if no notice is issued, and to fully complete the Project within NINETY (90) calendar days thereafter. The CONTRACTOR further agrees to pay to the CITY, Two Hundred Dollars

(\$200.00) liquidated damages for each consecutive calendar day thereafter as hereinafter provided. Time is of the essence and a material element to this agreement.

- 3.0.1 NOTE: When maintenance periods are included in the contract for highways, bridges or similar structures, such periods shall be considered component parts of the contract. To the extent the construction schedule contains "float," the parties agree that the same belongs to the Project and may be utilized by either party.
- 3.1 **Delay:** If the CONTRACTOR is delayed at any time in the progress of work by any of the following causes, the CONTRACTOR may be entitled to a reasonable extension of time as determined by the CITY in which to complete the Project. Provided, however, no such delay nor the extension of time if granted shall be grounds for a claim by the CONTRACTOR for damages or for additional cost, expenses, overhead or profit or other compensation:
- 3.1.1 Fires, abnormal floods, tornadoes or other cataclysmic phenomenon of nature.
 - 3.1.2 Strikes, embargoes, lockouts, war, acts of public enemy.
 - 3.1.3 Change orders.
 - 3.1.4 Acts of performance or delays in performance by other contractors employed by the CITY or their subcontractors.
 - 3.1.5 Causes beyond the control of the CONTRACTOR.
 - 3.1.6 Provided further, that the CONTRACTOR shall immediately give notice in writing to the CITY and follow extension of time procedures as provided for herein. The CITY expressly disclaims any liability to CONTRACTOR for any cost, expense or damage caused by other contractors, subcontractors or suppliers, including those engaged by the CITY. The CITY shall not be liable for damages or cost to the CONTRACTOR sustained due to any interference from utilities or appurtenances or from the operations of relocating the same.
- 3.2 **Extensions of Time:** All written requests for extensions of time must be submitted to Engineer of Record within ten (10) days after the occurrence of the cause for delay. The Engineer of Record shall ascertain the facts and the extent of the delay and shall recommend to the CITY Council whether it should extend the time for completing the Project. Any extension of time shall be in writing and processed as a change order.
- 3.2.1 For change orders requesting extensions of time due to rain, wind, flood or other natural phenomenon, the CONTRACTOR'S written request must be accompanied, at the CITY'S request, by a detailed report of weather at this site for the last ten (10) years with averages showing means and statistical deviations from mean averages to support request for extension.
 - 3.2.2 No extension shall be made for delays due to rain, wind, flood or other natural phenomenon of normal intensity for the locality.
 - 3.2.3 In the event any material changes, alterations, or additions are made as herein specified, which in the opinion of the Engineer of Record will require additional time for execution of any work under the contract, then in that case, the time of the completion of the Project may be extended through change order. No extensions of time shall be given for any minor changes, alterations or additions. The CONTRACTOR shall not be entitled to any reparation or compensation on account of such additional time or extensions of time. To the extent that the construction schedule contains "float," the parties agree that the same belongs to the Project and may be utilized by either party.
- 3.3 **Right of the CITY to Terminate Contract:** If the CONTRACTOR should be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the CONTRACTOR or any of its property, or if it should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or if it should refuse or fail to make prompt payment to persons supplying labor for the Project under the Contract, or persistently disregard instructions of the fail or neglect to promptly prosecute or perform the Project in accordance with the Contract documents or otherwise be guilty of a substantial violation of any provision of the Contract documents, then the CITY may, on giving at least thirty (30) days' written notice to the CONTRACTOR, without prejudice to any other rights or remedies of the CITY in the premises, terminate the CONTRACTOR'S right to proceed with the Project. In such event, the CITY may take over the Project and prosecute the same to completion, by contract or otherwise, and the CONTRACTOR and its sureties shall be liable to the CITY for any and all excess cost occasioned to the CITY thereby, including attorney's fees; and in any such case, the CITY may take possession of and utilize in completing the Project such appliances and plant of the CONTRACTOR

or its subcontractors as may be on the site work and necessary or useful thereof. In the event of termination, the same shall not relieve the CONTRACTOR, nor any of its sureties of their obligation pursuant to this agreement. In the event it becomes necessary for the CITY to maintain any legal action against the CONTRACTOR, to enforce its rights herein, the CONTRACTOR shall pay the CITY all expenses associated therewith including a reasonable attorney's fee.

- 3.3.1 OWNER may at any time and for any reason terminate CONTRACTOR'S services and work at OWNER'S convenience. Upon receipt of such notice, CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement. Upon such termination, CONTRACTOR shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by CONTRACTOR as are permitted by the prime contract and approved by OWNER; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit.
- 3.4 **Liquidated Damages:** Should the work under this contract not be completed within the time specified, scheduled or as extended, it is understood and agreed that there may be deducted by the CITY or Engineer/Architect from the partial and/or final payments to the CONTRACTOR or otherwise charged to the CONTRACTOR, a sum computed at the rate of **Two Hundred Dollars (\$200.00) per day** beginning from the stated or extended date of completion and continuing for so long as the Project remains incomplete. It is understood and agreed that the above deduction is not a penalty, but money due to reimburse the CITY/OWNER for inconvenience and damage to the general public, due to the delay in the completion of the Project and is reasonable. The collection of liquidated damages by the CITY shall not constitute an election or waiver by the CITY of recovery of additional delay or non- delay related damages from the CONTRACTOR, and the CITY expressly reserves the right to recover actual damages for other harms resulting from delay. The provisions of the liquidated damage clause shall apply and continue to apply even if the CONTRACTOR terminates or abandons the Project prior to the scheduled completion dates.
- 3.4.1 The amounts of such liquidated damages and actual damages incurred by reason of failure to complete the work stipulated in the Contract are hereby agreed upon as reasonable estimates of the costs which may be accrued by the CITY. It is expressly understood and agreed that these amounts are not to be considered in the nature of penalties, but as damages which have accrued against the CONTRACTOR. The CITY shall have the right to deduct such damages from any amount due, or that may become due the CONTRACTOR, or the amount of such damages shall be due and collectible from the CONTRACTOR or Surety.

ARTICLE IV WORK AND MATERIALS

- 4.0 **Cooperation of CONTRACTOR:** The CONTRACTOR shall have available on the job site, at all times, at least one (1) copy of the plans and specifications, if prepared, for the Project.
- 4.0.1 He shall give the Project the constant attention necessary to facilitate the progress thereof and shall cooperate with the CITY, and Engineer of Record and with other contractors in every way possible. The CONTRACTOR shall at all times have a superintendent, capable of acting as his agent on the Project, who shall receive communications from the Engineer of Record, or his authorized representatives, or, the CITY'S authorized representative. The superintendent shall have full authority to give and execute orders relating to the Project without delay and to promptly supply such tools, plant equipment, materials and labor as may be required.
- 4.0.2 The CITY reserves the right to utilize its own forces on the site or those of another contractor and to communicate through its representative directly with the CONTRACTOR.
- 4.1 **Superintendence:** The CONTRACTOR shall assign to and keep at the Project site competent supervisory personnel. The CONTRACTOR shall designate, in writing, before starting work, an authorized representative who shall be an employee of the CONTRACTOR and shall have complete authority to represent, to receive notice for, and to act for the CONTRACTOR. The CONTRACTOR shall not permit or allow any work to be conducted upon the Project site without the presence of supervisory personnel. The Engineer of Record shall be notified in writing prior to any change in

superintendent assignment. Using his best skill and attention, the CONTRACTOR shall give efficient supervision to the Project. The CONTRACTOR shall be solely responsible for all construction means, methods, techniques, and procedures, for providing adequate safety precautions, and for coordinating all portions of the Project under the Contract. It is specifically understood and agreed that neither the Engineer of Record nor the CITY shall not have control or charge of and shall not be responsible for the construction means, methods, techniques, or procedures, or for providing adequate safety precautions in connection with the Project under the Contract.

- 4.2 **CONTRACTOR'S Tools and Equipment:** The CONTRACTOR'S tools and equipment used on the Project shall be furnished in sufficient quantity and of a capacity and type that will adequately and safely perform the work specified, and shall be maintained and used in a manner that will not create a hazard to persons or property, or cause a delay in the progress of the Project.
- 4.3 **Furnishing Labor and Equipment:** The CONTRACTOR shall furnish and pay for all equipment, labor and supervision, and all such materials as required to be furnished in the Notice to Bidders and as may otherwise be necessary to the completion of the Project and the operation of each construction crew required.
- 4.4 **Employees:** The CONTRACTOR shall employ only competent, skillful workers on the Project, and whenever any person shall appear to be incompetent or to act in a disorderly, unsafe improper manner, such person shall promptly be removed from the Project by the CONTRACTOR.
- 4.5 **Materials and Appliances:** Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all other materials, water, heating, lighting, fuel, power, transportation, machinery, appliances, telephone, sanitary facilities, temporary facilities and other facilities and incidentals necessary for the execution and completion of the Project.
 - 4.5.1 The CONTRACTOR warrants to the CITY and the Engineer of Record that, unless otherwise specified, all materials and equipment furnished under this contract shall be new, and both workmanship and materials shall be of good quality, free of faults and defects, and in conformance with the Contract Documents. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials. In selecting and/or approving equipment for installation in the Project, neither the CITY nor Engineer of Record assume responsibility for injury or claims resulting *from failure of the equipment to comply with applicable federal, state, and local safety codes or requirements*, or the safety requirements of a recognized agency, or failure due to faulty design concepts, or defective workmanship and materials. Material and/or equipment damaged by flooding or other causes during the construction period shall be subject to rejection by the Engineer of Record; reconditioning and/or repairing material and/or equipment is not acceptable.
- 4.6 **Asbestos and Hazardous Materials:** Unless specifically authorized and instructed to the contrary by the CITY, the CONTRACTOR shall not permit, allow, place, install or incorporate into the Project or upon the work site, any hazardous material(s), including, but not limited to, any products or materials that contain asbestos in any quantity. It shall be the responsibility of the CONTRACTOR to inspect all materials and products delivered for incorporation or installation in the Project to ensure that they contain no hazardous materials or asbestos. Where the CONTRACTOR or any subcontractor has or should have a reasonable suspicion that any product or material contains asbestos or other hazardous material, the CONTRACTOR shall immediately inspect the material or product, obtain a product or material data sheet, and notify the CITY'S representative prior to installation or incorporation of the same into the Project. Any product or material determined to contain asbestos or other hazardous material shall be removed from the Project immediately and properly disposed of as required by law. Products or material to which the CONTRACTOR should pay particular attention to avoid the presence of asbestos incorporated therein include, but are not limited to the following: concrete, batt insulation, roof insulation, building felts, mastics, water proofing products, adhesives, resilient flooring products, ceiling tiles, interior coatings, exterior coatings, roofing, pipe installation, duct installation and pre-assembled items of equipment.
 - 4.6.1 At the completion of the Project, the CONTRACTOR shall submit a duly executed Asbestos Affidavit in the form as attached hereto prior to final payment.
 - 4.6.2 The CONTRACTOR is responsible for insuring that all of its employees and subcontractors are adequately trained to handle hazardous materials in accordance with 49 CFR §172(g).

- 4.7 **Protection of Work and Property:** The CONTRACTOR shall furnish and install all necessary temporary works for the protection of the Project. The CONTRACTOR shall at all times adequately maintain, guard and protect his own work from damage, and safely guard and protect private, commercial, industrial, the CITY'S and others' property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the plans or specifications or caused by agents or employees of the CITY.
- 4.7.1 The CONTRACTOR shall protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which are not required to be removed or do not unreasonably interfere with construction, as may be determined by the Engineer of Record, and be responsible for all cutting or damaging of trees and shrubs or grassed areas, including damage due to careless operation of equipment, stockpiling of materials or equipment.
- 4.7.2 Care shall be taken by the CONTRACTOR in felling trees that are to be removed to avoid any unnecessary damage to vegetation or other trees that are to remain in place. Any limbs or branches unavoidably broken during such operations shall be trimmed with a clean cut and painted with an approved tree priming compound. The CONTRACTOR may be required to replace or restore at his own expense all vegetation not protected and preserved, as above required, that may be destroyed or damaged.
- 4.7.3 The CONTRACTOR shall provide and maintain all passageways, guard fences, lights, and other facilities required for protection by federal, state or municipal laws and regulations or local conditions.
- 4.7.4 The CONTRACTOR shall comply with local and state regulations governing the operation of premises which are occupied and shall perform the contract in such a manner as not to interrupt or interfere with the operation of other facilities.
- 4.7.5 The CONTRACTOR shall store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the Project as will not unduly interfere with the progress of his work or the work of any other contractor.
- 4.7.6 Necessary crossings of curbs, sidewalks, roadways or parkways shall be protected against and any damage shall be repaired by or at the expense of the CONTRACTOR.
- 4.7.7 The CONTRACTOR shall not place upon the Project or any part thereof, loads inconsistent with the design or safety of that portion of the Project.
- 4.7.8 The CONTRACTOR shall provide and maintain access to all public and private properties at all times and be responsible for any damage caused by his operation to existing driveways, yards, streets, parking lots, utilities, railroads, etc., and such damage shall be corrected at the CONTRACTOR'S expense. Roadways authorized closed by State or Local authorities shall be maintained to provide access to all fire, police, and other emergency vehicles and all individuals having private property in the closed area. The CONTRACTOR shall notify at least 24 hours in advance the Fire, Police, and Transportation Departments having local jurisdiction, the OWNER and any other individuals, businesses, or agencies that may be affected.
- 4.8 **Protection of Existing Utilities.** CONTRACTOR shall be responsible for any damage to existing structures or the interruption of any utility services which shall be repaired or restored promptly by and at the expense of the CONTRACTOR.
- 4.8.1 To that extent, the CONTRACTOR shall provide whatever measures are necessary to properly protect and maintain all existing utilities encountered in the course of the work. The CONTRACTOR shall be exclusively responsible to the utility owner for any and all damages to the various utilities caused by the CONTRACTOR'S actions or lack of actions to adequately protect the same.
- 4.8.2 The CONTRACTOR shall determine the exact location of all existing utilities before commencing work and agrees hereby to be fully responsible and liable for any and all damages which might occur by his failure to exactly locate and/or preserve the location of any and all underground or overhead utilities. The CONTRACTOR shall be solely and directly responsible to the utility owner for any and all damages to the various utilities, caused by the CONTRACTOR'S actions or lack of actions to adequately protect such utilities. If any utilities are to be affected during the course of construction, the CONTRACTOR shall so notify the OWNER thereof at least seventy-two (72) hours prior to any such construction activity. The CONTRACTOR shall fully cooperate and coordinate with all utility owners in the event of an interruption to any utility service. The cost for locating, uncovering and protecting underground and/or overhead utilities is included within the CONTRACTOR'S bid price for various other items of work.
- 4.8.3 The CONTRACTOR shall maintain all storm sewers, drains and/or ditches so that flow is not disturbed or impeded. The CONTRACTOR shall protect storm drains, inlets and/or ditches, lawns, landscaping and other facilities, from damage during the testing, and flushing.

4.9 **Limiting Exposures:** The CONTRACTOR shall prosecute the work on the Project to insure that no part of the construction, complete or in progress, is subject to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to the following:

Excessive static or dynamic loading	Chemicals	Improper lubrication
Excessive internal or external pressures	Light	Unusual wear or other misuse
Excessively high or low temperatures	Puncture	Contact between incompatible materials
Thermal shock	Abrasions	Destructive testing
Excessively high or low humidity	Heavy traffic	Misalignment
Air contamination or pollution	Soiling, staining & corrosion	Excessive weathering
Water or ice	Bacteria	Unprotected storage
Solvents	Rodent and insect infestation	Improper shipping or handling
	Combustion	Theft
	Electrical current	Vandalism
	High speed operation	

4.9.1 The CONTRACTOR shall minimize dust and air pollution through the use of water or other devices, require the use of properly operating combustion emission control devices and by encouraging the shutdown of construction vehicles when not in use.

4.10 **Safety:** The completed Project shall include all necessary permanent safety devices, such as machinery guards and similar ordinary safety items as may be appropriate or required by law. Further, any feature of the Project (including CITY-furnished or CITY-selected equipment) subject to such safety regulations shall be fabricated, furnished, and installed in compliance with these requirements. Contractors and manufacturers of equipment shall be held responsible for compliance with the requirements included herein. CONTRACTOR shall notify all equipment suppliers and subcontractors of the provisions of this Article.

4.10.1 In selecting and/or accepting equipment for installation in the Project, neither the CITY nor Engineer/Architect assume responsibility for any personal injury, property damage, or any other damages or claims resulting from failure of the equipment to comply with applicable safety codes or requirements, or the safety requirements of a recognized agency, or failure due to manufacturer's faulty design concepts, or defective workmanship and materials. The CONTRACTOR shall indemnify and hold the CITY, Program Coordinator, and Engineer/Architect harmless against any and all liability, claims, suits, damages, costs, or expenses without limitation arising out of the installation or use of such equipment.

4.10.2 The CONTRACTOR shall take all necessary precautions for the safety of employees on the Project and shall comply with all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on or about or adjacent to the premises where the Project is being performed. He shall erect and properly maintain at all times, as required by conditions, and progress of the Project, all necessary safeguards for the protection of workmen and the public, and shall post danger signs warning against the hazards created by features of construction and the site.

4.10.3 Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the State Accident Prevention in Construction provisions to the extent that such provisions are not in contravention with applicable laws.

4.10.4 The CONTRACTOR shall do whatever work is necessary for safety and be solely and completely responsible for conditions of the jobsite, including safety of all persons (including but by no means limited to the public, site personnel, visitors, or employees) and property during the Contract period. The contract period shall include any subsequent warranty or other period associated with Project deficiency or repair and all hours including, and in addition to, normal working hours.

4.10.5 Safety provisions shall conform to the Federal and State Departments of Labor and the Occupational Safety and Health Act (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, the requirements set forth herein, and any regulations that may be specified in other parts of these Contract Documents. Where any of these are in conflict, the more stringent requirement shall be followed. The CONTRACTOR'S failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.

- 4.10.6 The CONTRACTOR shall at all times provide proper facilities for safe access to the work by authorized government officials (federal, state, county and local) and representatives of the OWNER.
- 4.11 **Traffic Control:** The CONTRACTOR shall be responsible for traffic control, including plan and devices to the extent the same is required due to work in, upon or in proximity to public right-of-way, streets, roads or vehicular traffic. The traffic control plan and all traffic control devices shall conform at a minimum to the Manual on Uniform Traffic Control Devices for Streets and Highways, Latest Edition, Federal Highway Administration. A copy of which is on file in the office of the CITY of Fairhope Director of the Department of Transportation for examination. Copies may be obtained from the Alabama Department of Transportation. Should the appropriate public authority determine a greater degree of traffic control is required, then the CONTRACTOR shall promptly provide same. The CONTRACTOR shall submit a plan to the Engineer of Record for approval before commencing construction.
- 4.12 Reasonable means of ingress and egress by vehicular and/or pedestrian traffic to property adjacent to the Project shall be maintained at all times. The CONTRACTOR shall indemnify and hold the CITY harmless for any claims or causes of action including but not limited to those for inverse condemnation and/or lost profits arising out of or in any manner associated with access to or the restriction or prevention thereof to adjoining property. Traffic control and erosion control is of paramount importance during the construction of this Project and the terms and conditions in the contract documents in regard to these matters must be strictly adhered to.
- 4.13 **Responsibility to Act in Emergency:** In case of an emergency which threatens loss or damage to property, and/or safety, the CONTRACTOR shall act, without previous instructions from the CITY or Engineer of Record, as the situation may warrant. The CONTRACTOR shall notify the Engineer of Record thereof immediately thereafter. Any claim for compensation by the CONTRACTOR, together with substantiating documents in regard to expense, shall be submitted to the CITY through the Engineer of Record. The claim will be handled in accordance with the provisions for extra work. However, if the emergency is created or aggravated by the CONTRACTOR, he shall be liable for the resulting damages. If the CONTRACTOR fails to take necessary action as required by such an emergency, the CITY may assign another CONTRACTOR or use his own forces to perform the emergency work. Costs or damages arising from the failure of the CONTRACTOR to act in an emergency may be deducted from the CONTRACTOR'S request for payment.
- 4.14 **Sanitary Regulations:** The CONTRACTOR shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements and regulations of the local and State Department of Health. At a minimum, necessary sanitary conveniences for the use of the laborers on the work shall be erected and maintained by the CONTRACTOR, in such a manner and at such points as shall be approved by the Engineer of Record. Their use shall be strictly enforced. In the Construction Manager format, the CITY may provide sanitary accommodations through the Construction Manager.
- 4.15 **Cutting, Patching, etc.:** Unless otherwise stated in the contract documents, the CONTRACTOR shall do all necessary cutting, fitting and patching of the Project that may be required to properly receive the work, to make its several parts join together properly, receive and provide for the work of various trades, and be received by the work of other contractors, or as required by drawings and specifications to complete the Project. After such cutting, he shall replace or restore or repair and make good all defective or patched work as required by the Engineer of Record. He shall not cut, excavate or otherwise alter any work in any manner or by a method or methods that will endanger the Project, adjacent property, workmen, the public or the work of any other contractor. The CONTRACTOR shall check the location of all sleeves, openings, slots, etc., for the piping, ducts, breeching, conduits, louvers, grills, fans, etc., as they are laid out on the job.
- 4.15.1 Provisions for openings, holes and clearances through walls, beams, floors, ceilings and partitions shall be made and checked by the CONTRACTOR and/or his subcontractor in advance of constructing such parts of the Project and unnecessary, superfluous or dangerous cutting shall be avoided.
- 4.15.2 Pipes passing through concrete or masonry walls shall be protected by pipe sleeves two sizes larger than the pipe, plus its installation to provide free movement.
- 4.15.3 Under no condition shall structural, framing or other parts or members subjected to computed stress be cut or disturbed without the approval of the Engineer of Record. Any plates, studs or joists, and/or rafters that are approved to be cut to execute necessary work shall be securely strapped and braced to restore their strength by approved methods.

- 4.15.4 Unless otherwise indicated in Supplemental Conditions, all road crossings and/or driveways cut by the CONTRACTOR during the performance of the Project shall be returned to service as soon as possible and replaced or repaired within seven (7) calendar days.
- 4.15.5 All major thoroughfares must be repaired the same day as cut. The CONTRACTOR shall be responsible for the safety and welfare of the traveling public while construction work is being done and until the CITY accepts the Project.
- 4.15.6 The CONTRACTOR will replace at his own expense, all pipe and accessories that may be broken, damaged, stolen or lost and all materials that may become damaged, lost, stolen or misused.
- 4.15.7 The Engineer of Record's approval shall be obtained before cutting or drilling holes in concrete or masonry that tend to damage or weaken the load capacity.

4.16 Trailers: With the approval of the CITY or Engineer of Record, the CONTRACTOR may park trailers or other structures for housing men, tools, machinery and supplies, but they will be permitted only at approved places and their surroundings shall be maintained at all times in a sanitary and satisfactory manner by the CONTRACTOR. On or before the completion of the Project, all such trailers or structures shall be removed, unless the CITY authorizes their abandonment without removal, together with all rubbish and trash, at the expense of the CONTRACTOR.

4.17 **Construction Staking:** If necessary, the Engineer or the CITY will furnish initial lines and grades to establish the initial horizontal and vertical control points and define the beginning and ending points of the Project. The CONTRACTOR is responsible for engaging the services of a qualified Engineer or land surveyor to replace and/or re-establish in accordance with the Construction plans and/or specs, all construction stakes that are disturbed, displaced or destroyed during construction.

4.17.1 If the CONTRACTOR finds any errors or discrepancies with the construction staking or the criteria upon which it is based, he/she shall promptly notify the OWNER'S representative.

4.18 **Periodic Cleanup:** The CONTRACTOR shall periodically, at least weekly, or as requested during the progress of the Project, clean up and remove from the premises, all refuse, rubbish, scrap materials and debris caused by its employees or its subcontractors resulting from its work, to the end that all times the premises are sanitary, safe, reasonably clean, orderly and workmanlike. Trash and Combustible materials shall not be allowed to accumulate inside buildings or elsewhere on the premises. At no time shall any rubbish be thrown from window openings, except during renovations with adequate precautions and into proper receptacles. The CONTRACTOR shall comply with all municipal litter and construction site ordinances.

4.18.1 Before the Project is considered as complete, all rubbish created by or in connection with the construction must be removed by the CONTRACTOR and the premises left in a condition by the CONTRACTOR satisfactory to the CITY. Street, curbs, crosswalks, pavements, sidewalks, fences and other public and private property disturbed shall be restored to their former condition or better, and final payment will be withheld until such work is finished by CONTRACTOR

4.18.2 CONTRACTOR shall conduct cleaning and disposal operations to comply with local ordinances and anti-pollution laws. No burning or burying of rubbish or waste materials is permitted on the Project site. The CONTRACTOR shall dispose of any hazardous material in a safe manner, off site, in accordance with applicable laws and regulations and shall not dispose of volatile or hazardous waste in storm or sanitary sewer drainage ditches, streams or waterways.

4.18.3 CONTRACTOR shall periodically wet down dry materials and rubbish to lay dust and prevent blowing dust; and shall provide adequate and approved containers for collection and disposal of waste material, debris and rubbish, removing grease, dust, dirt, stains, labels, fingerprints and other foreign materials from exposed and semi-exposed surfaces.

4.19 **Termite Control.** If the Project involves construction of a building or if otherwise specifically required by the CITY, then the CONTRACTOR shall provide soil treatment for termite control under all interior slabs on grade and foundation walls, and as herein specified. CONTRACTOR shall also comply with manufacturer's instructions and recommendations for work, including preparation of substrate and application and shall engage a professional pest control operator, licensed in accordance with regulations of governing authorities for application of soil treatment solution and doing business in the state where the Project is located for a minimum of five (5) years.

- 4.19.1 CONTRACTOR shall not apply soil treatment solution until excavating, filling and grading operations are completed, except as otherwise required in construction operations. To insure penetration, the soil treatment will not be applied to frozen or excessively wet soils or during inclement weather. CONTRACTOR shall comply with all handling and application instructions of the soil toxicant manufacturer. The type of materials to be used for soil poisoning shall first be submitted to the CITY for approval.
- 4.19.2 The soil treatment solution shall be an emulsible concentrate insecticide for dilution with water, specially formulated to prevent infestation by termites. Fuel oil will not be permitted as a dilutant.
- 4.19.3 CONTRACTOR shall strictly comply with the Environmental Protection Agency's (EPA) rules and regulations governing chemicals and their use. Only soil treatment solutions which are not injurious to planting shall be used. Other solutions may be used as recommended by Applicator when acceptable to the EPA, local governing authorities, and the Engineer of Record.
- 4.19.4 CONTRACTOR shall comply with the following requirements when applying the soil treatment solution:
 - 4.19.4.1 Surface Preparation: Remove foreign matter which could decrease effectiveness of treatment on areas to be treated. Loosen, rake, and level soil to be treated, except previously compacted areas under slabs and foundations. Toxicants may be applied before placement of compacted fill under slabs if recommended by toxicant manufacturer.
 - 4.19.4.2. Under slab-on-grade structures, treat soil before concrete slabs are placed using either power sprayer or tank type garden sprayer.
 - 4.19.4.2.1 Apply 4-gallons of chemical solution per 10 linear feet to soil in critical areas under slab, including entire inside perimeter inside of foundation walls, along both sides at interior partition walls, around plumbing pipes and electric conduit penetrating slab, and around interior column footings.
 - 4.19.4.2.2 Apply one gallon of chemical solution per 10 sq. ft. as an overall treatment under slab and attached slab areas where fill is soil or unwashed gravel. Apply 1-1/2 gallons of chemical solution to areas where fill is washed gravel or other coarse absorbent material.
 - 4.19.4.2.3 Apply 4 gallons of chemical solution per 10 linear feet of trench for each foot of depth from grade to footing, along outside edge of building. Dig a trench 6" to 8" wide along outside of foundation to a depth of not less than 12". Punch holes to top of footing at not more than 12" o. c. and apply chemical solution. Mix chemical solution with the soil as it is being replaced in trench. signs when areas are covered by other construction.
 - 4.19.4.3 Post Signs in area of application warning workers that soil poisoning has been applied. Remove Signs when area are covered by other construction.
 - 4.19.4.4 Reapply soil treatment solution to areas disturbed by subsequent excavation or other construction activities following application.

4.20 Erosion Control

- 4.20.1. To the extent there has been issued by the City of Fairhope Building Department a land disturbance permit in accordance with applicable ordinances, the CONTRACTOR shall conform to, and abide by all terms and conditions of such permit.
- 4.20.2. Erosion control measures shall be performed on all disturbed areas in accordance with Section 665, Alabama Highway Department Specifications. The CONTRACTOR will perform all erosion control measures necessary to prevent silt and soil from leaving construction area and entering private property or the "Waters of the State." Erosion control measures shall be in strict accordance with Alabama Non-Point Source Management Program Document and EPA Storm Water Pollution Prevention for Construction Activities.
- 4.20.3 Prior to issuance of City of Fairhope permits for site work, CONTRACTOR will be required to submit an Erosion and Sediment Control Plan for the project, as per the City of Fairhope Erosion and Sediment Control Ordinance, #1398.
- 4.20.4 Awarded Vendor is responsible for complying with all State, Federal and CITY ordinances, Including, but not limited to local ordinances: Erosion and Sediment Control Ordinance #1398; Wetland Ordinance # 1370; and Red Soil & Clay Ordinance # 1423.
- 4.20.3 In accordance with Section 665 of Alabama Highway Department Specifications, temporary erosion control work shall involve the construction of temporary berms, dikes, drains, fences, dams, etc. with the use of temporary seeding, mulching, erosion control netting, hay bales, sandbags, check dams, etc., as necessary in order to prevent silt and soil from leaving rights-of-way and entering private property or from washing into drainage structures located on State or County rights-of-way.
- 4.20.4 Erosion control measures shall be maintained by the CONTRACTOR through the warranty period of the contract. If additional measures are required to correct problems which might occur, these shall be performed by the CONTRACTOR at no additional cost to the OWNER.

- 4.20.5 Materials used for erosion control measures shall be in accordance with Section 665.02 of Alabama Highway Department Specifications and shall include hay bales, sandbags, silt fencing rip rap, crushed stone, mulch or other materials necessary in order to accomplish erosion control.
- 4.21 **Wastewater Containment and Management Plan.** To the extent that construction activity by the CONTRACTOR involves any wastewater infrastructure or construction activities in close proximity to any wastewater infrastructure and/or to any CITY sanitary sewer assets the CONTRACTOR shall submit to the Engineer of Record, prior to commencing construction, a wastewater containment and management plan (the Plan"). The Plan shall adequately address the means, methods and techniques to be employed by the CONTRACTOR for containing and transporting wastewater in a sanitary manner without, at any time, permitting the discharge of wastewater into the environment or creating the necessity of a State required sanitary sewer overflow report. The Plan shall be submitted by the CONTRACTOR to the Engineer for review and approval before commencing any construction activity. **The Engineer of Record may waive the requirement of submitting a Plan if he/ she determines that the construction activity to which the Plan would relate does not involve any potential for the discharge of wastewater into the environment or creating the potential for the necessity of a State required sanitary sewer overflow report.**
- 4.22 **Environmental Clause/Covenant.** CONTRACTOR shall not allow any toxic, hazardous or contaminated substances or gases (including, but not limited to, asbestos and raw materials which include hazardous constituents or any other similar substances or materials which are included under or regulated by any local, state, or federal law, rule or regulation pertaining to environmental regulations, contamination, clean-up or disclosure such as, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"); the Clean Air Act (42 U.S.C. Sec. 7401 et seq.); the Clean Water Act (33 U.S.C. §1251 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.); and the Toxic Substances Control Act (42 U.S.C. §2601 et seq.) or state environmental clean-up or disclosure acts and statutes as all such acts and statutes exist now or are hereafter amended (such acts and statutes referred to herein as "Environmental Laws") (such substances or gases referred to herein as 'Hazardous Substances') to be stored, located, or discharged on the premises without specific prior written consent of the CITY. CONTRACTOR shall CITY, its officers, agents and employees harmless from and against any loss, costs, damage or expenses (including attorney's fees and expenses) arising out of the presence of Hazardous Substances (as hereinbefore described) on or about the premises or the violation of any Environmental Laws with respect thereto, the occurrence of which Hazardous Substances on the premises or the violation of any Environmental Laws shall have arisen solely from the acts or omissions of CONTRACTOR, its subcontractors, agents, invitees and employees. This indemnity shall survive the termination of this contract and shall inure to the benefit of the City of Fairhope, its successors and assigns.

ARTICLE V INSURANCE, LIABILITY, ETC.

- 5.0 **CONTRACTOR's INSURANCE** (Generally):
- 5.0.1 **Insurance Required.** The CONTRACTOR shall not commence work under this contract until it has obtained all insurance required by the Contract documents and such insurance has been accepted by the CITY. The CONTRACTOR shall maintain the required insurance during the term of the contract including any extensions of the term.
- 5.0.1.1 Insurance shall be written in comprehensive form by insurance companies rated A- or better by A. M. BEST and shall protect the CONTRACTOR and the CITY against claims for injuries to members of the public (including City employees) or damages to property of others (including City property) arising out of any act of the CONTRACTOR or any of its agents, employees or subcontractors and shall cover both on-site and off-site operations under this contract and insurance coverage shall extend to any motor vehicles or other related equipment, irrespective of whether the same is owned, non-owned or hired.
- 5.0.1.2 The obtaining and maintaining by CONTRACTOR and subcontractors of the insurance required herein does not relieve the CONTRACTOR of any responsibilities, obligations or duties to the CITY pursuant to this contract.

- 5.0.2 **Additional Insurance.** The CONTRACTOR shall have an insurance professional review the CONTRACTOR'S activities in regard to the performance of this contract, and the CONTRACTOR shall obtain any further or additional insurance or greater limits as recommended by the insurance professional.
- 5.0.3 **Insurance Limits.** Neither the setting of insurance limits or requirements nor the acceptance or approval of the same by the CITY imply or represent that the limits or the insurance carrier is sufficient or that such insurance actually has been obtained, that being the responsibility of the CONTRACTOR.
- 5.0.4 **Subcontractors.** The CONTRACTOR shall require all subcontractors to take out and maintain the type of insurance required herein to the extent of their involvement in the Project so as to be adequate to protect against liability. In the event any work under this Contract is performed by a subcontractor(s), the CONTRACTOR shall remain responsible for any liability directly or indirectly arising out of the work performed under this Contract, regardless of whether or not such work is covered by the subcontractor's insurance. The CONTRACTOR shall not allow any subcontractor to commence work on the project until all similar insurance required of the subcontractor has been obtained. All subcontractors shall maintain required insurance during the term of the contract including any extensions of the term.
- 5.0.5 **CITY'S Right to Review Coverage.** The CITY shall have the right to inspect and approve CONTRACTOR'S insurance coverage herein required. Should the CITY deem it advisable to modify the coverage in any way, it shall so request of the CONTRACTOR in writing and should the CONTRACTOR fail to modify the, then the CITY may pay the cost of any increased coverage or take credit for any decreases as may be appropriate. Review or acceptance of insurance by the CITY or representatives of the CITY shall not relieve or decrease the responsibility of the CONTRACTOR hereunder.
- 5.0.6. **Waiver of Subrogation.** To the extent that the CONTRACTOR is required to maintain insurance coverage for loss or damage to property or bodily injury, the insurance must waive and the CONTRACTOR hereby waives subrogation of claims against the CITY, its officers, agents and employees.
- 5.0.7 **CITY as Additional Insured.** The CITY shall be named as additional insured, for ongoing and completed operations for up to two (2) years, on the CONTRACTOR'S and any subcontractor's policies for any claims arising out of work performed under this Contract. The CONTRACTOR shall provide the CITY with a Certificate of Insurance naming the CITY as an additional insured using ACORD form 25 (2014/01) (or a substitute form providing equivalent coverage) naming the CITY as an additional insured, giving all parties a 30 notice of cancellation or intent not to renew the insurance, a waiver of subrogation and list any and all exclusions. The coverage available to the CITY as an additional insured shall be as specified in Item IV of the bid packet. Additional insured coverage shall apply as primary, non-contributory, insurance with any other insurance afforded to the CITY and the CONTRACTOR.
- 5.0.8. **Elevators, Hoist and Cranes.** If the CONTRACTOR or a subcontractor will utilize in connection With the performance of the work pursuant to this contract an elevator, material hoist, crane or other equipment, or conveyor, then the CONTRACTOR shall take out and maintain or require the subcontractor to take out and maintain insurance that shall protect the CONTRACTOR and the CITY against claims for injuries to members of the public (including CITY employees) or damages to property of others (including CITY property) arising out of any act of the CONTRACTOR or any of its agents, employees or subcontractors resulting from the operation of such elevator, material hoist, crane or other equipment, or conveyor.

5.1 **INSURANCE:**

5.1.1 **Workmen's Compensation Insurance:**

The CONTRACTOR shall take out and maintain during the term or any extensions of this contract Workmen's Compensation Insurance as required by Alabama law for all of its employees employed at the site of the Project or off-sites related to the Project and, in case any work is sublet, the CONTRACTOR shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR.

- 5.1.1.1 In case any class of employees engaged in any work under this contract at the site of the Project is not protected under the Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each subcontractor to provide, adequate accident insurance for the protection of its employees not otherwise protected.
- 5.1.1.2 Water or Navigational Exposure; Where work under this contract may trigger the requirement for Federal Longshoreman's and Harbor worker's Act and Federal Jones Act or insurance required by other applicable law or regulations, the CONTRACTOR shall obtain the same if required.
- 5.1.2. **Comprehensive Automobile and Vehicle Liability Insurance:**
The CONTRACTOR shall maintain during the term or any extensions of this contract, comprehensive automobile and vehicle liability insurance. The limits of liability shall be as specified in **ITEM IV** of the bid packet/
- 5.1.3. **Commercial General Liability Insurance:**
The CONTRACTOR shall maintain during the term or any extensions of this contract, Commercial General Liability Insurance, including officers, agents and employees.
- 5.1.3.1 The limits of liability shall be as specified in **ITEM IV INSURANCE REQUIREMENTS** of the bid packet.
- 5.1.4 **Miscellaneous Insurance:**
The CONTRACTOR shall provide whatever insurance may be required of the CITY or the CONTRACTOR by permits or agreements, etc., with the railroad, highways, or other utilities. The CONTRACTOR shall familiarize himself with all insurance requirements contained in easements, permits, and agreements associated with this Project. The CONTRACTOR shall provide any Railroad Protective Liability and other General Liability Insurance in the amounts contained in the agreements, permits or easements or in greater amounts if higher limits are appropriate or required elsewhere. The CONTRACTOR shall bear the cost of all required Insurance and shall include in his bid a sufficient amount to cover the cost of all required insurance. To the extent the CITY obtains permits or licenses for railroad or highway bores, crossings or other work involved in the Project, the CONTRACTOR shall obtain adequate insurance to protect itself and the CITY.
- 5.1.5. **Proof of Carriage of Insurance:**
The CONTRACTOR shall furnish the CITY with satisfactory proof of carriage of the insurance required herein, in the form of an insurance certificate or if the CITY elects in the form of a policy. Insurance shall be in a form satisfactory to the CITY.
- 5.1.5.1 The CONTRACTOR'S and any subcontractor's general liability and automobile liability insurance shall endorse the OWNER (City of Fairhope), its officers, agents and employees, as additional insured's for any claims arising out of work performed under this contract.
- 5.1.5.2 The CONTRACTOR'S insurance endorsing the OWNER and others as additional insured's shall be "primary" and non-contributory as to such endorsed insured's.
- 5.1.5.3 Cancellation: The certificate and policy, as the case may be, shall state that the CITY shall be given ten (10) days' written notice of cancellation or any change in the insurance coverage.
- 5.1.5.4 There shall be a statement that the CONTRACTOR and any subcontractors waive subrogation as to the CITY, its officers, agents, employees and Program Coordinator.
- 5.1.5.5 There shall be a statement that full aggregate limits apply per job or contract.
- 5.1.5.6 Agents verification of CONTRACTOR'S insurance on form provided by the CITY or equivalent.
- 5.1.5.7 Insurance shall contain no exclusions for X, C or U.
- 5.1.5.8 Full aggregate limits must apply per job or contract.
- 5.2 **No Personal Liability of Public Officials**
In carrying out any of the provisions hereof in exercising any authority granted by the Contract, there will be no personal liability upon any public official.
- 5.3 **Indemnity**
To the maximum extent permitted by law, the CONTRACTOR shall save harmless, indemnify and defend the CITY, its officers, agents and employees from and against any and all claims and losses, cost, expense or liability including attorney's fees and litigation costs caused by, arising out of, resulting from, or occurring in connection with the performance of the work by the CONTRACTOR or any subcontractor, regardless of the fault, breach of contract, or negligence of the CITY, its officers, agents or employees excepting only such claims or losses that have been adjudicated to have been caused solely by the negligence of the CITY and regardless of whether or not the CONTRACTOR is or can be named a party in a litigation.

5.3.1 CONTRACTOR agrees to indemnify and/or reimburse the CITY for any fines, violations, charges, suits, or sums of money imposed by the Alabama Department of Environmental Management (ADEM), Environmental Protection Agency (EPA), or any administrative agency on the CITY of Fairhope for any sewage or contaminate discharged or Wetlands regulations violation as a result of or arising out of the work by the CONTRACTOR pursuant to this agreement.

5.5 **Exclusion of CONTRACTOR Claims**

In performing its obligations, the Engineer of Record and its consultants may cause expense for the CONTRACTOR or its subcontractors and equipment or material suppliers. However, those parties and their sureties shall maintain no direct action against the CITY or its officers, employees, agents and program coordinator for any claim arising out of, in connection with, or resulting from the Engineering services performed or required to be performed where such services are performed in good faith to protect the CITY or the Public.

5.6 **Inadequate Surety/Insurance**

It is further mutually agreed between the parties hereto that if, at any time after the execution of this agreement, any of the surety bonds of the CONTRACTOR or subcontractors relating to the Project for its faithful performance shall be deemed by the CITY to be unsatisfactory, or if for any reason such bond(s) ceases to be adequate to cover the performance of the work or the surety ceases to do business by agent in Baldwin County, Alabama, the CONTRACTOR shall, at its expense, within five (5) days after the receipt of notice from the CITY so to do, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the CITY. In such event, no further payment to the CONTRACTOR shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the CITY.

5.7 **Changes**

When changes in the Scope of Work by written order, or change orders, aggregate in an amount equal to 10 percent (10%) of the total contract, including the change order or change orders, the insurance coverage included under this heading shall be increased accordingly by the CONTRACTOR. Proof of coverage shall be established by endorsement to the original policy or by re-issue of the original policy to include the added coverage, or in accordance with any other acceptable policy with the insuring company for increasing the coverage.

ARTICLE VI OBSERVATION OF THE PROJECT

6.0 Generally: The CONTRACTOR shall furnish the Engineer of Record and/or the CITY'S observer with every reasonable facility for ascertaining whether or not the work performed is in accordance with the requirements and intent of the Specifications and Contract Documents. No work shall be done without suitable inspection by the Engineer of Record's Inspector or the CITY'S observer. Payment for work or failure to reject any defective work shall not in any way prevent later rejection when such defect is discovered, nor obligate the CITY to final acceptance. All work done when not in accordance with the Plans, specifications and contract will be rejected and, without cost to the CITY, shall immediately be removed and other work done in accordance therewith by the CONTRACTOR. If the CONTRACTOR fails to remove the work as above ordered, then the Engineer of Record shall have the right and authority to stop the CONTRACTOR and his work at once and the CITY may correct the work as herein provided at the cost and expense of the CONTRACTOR.

6.0.1 Inspection is not acceptance and shall not constitute acceptance by the CITY.

6.0.2 The work shall also be subject to inspection by representatives of the City of Fairhope Building Inspection Department.

6.1 Observation of the Project: The Engineer of Record, the CITY and its observers, agents, any agency having jurisdiction, and their representatives shall have access at all times to the Project for inspection whenever it is in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and inspection. The CITY or the Engineer of Record may appoint or assign observers, with designated duties and restricted authority, to inspect the Project as may be directed, or to make

special observations requested in advance by the CONTRACTOR, and to report progress of the Project, and manner of procedure, quality of the material and workmanship, and compliance with the Contract Documents. Inspection or observation is not acceptance and shall not constitute acceptance by the CITY.

- 6.1.1 All materials, workmanship, equipment, processes of manufacture, and methods of construction, shall be subject to inspection, examination, and test by such persons at any and all places where such manufacture and/or construction are being carried on. The Engineer of Record shall have the right to reject material, workmanship and/or equipment that are defective or otherwise not in accordance with the drawings and Specifications and require its correction by the CONTRACTOR. Rejected workmanship shall be satisfactorily corrected, and rejected material shall be satisfactorily replaced with proper material by the CONTRACTOR without charge therefore, and the CONTRACTOR shall promptly segregate and remove the rejected material from the premises. Provided; however, neither the presence or absence of such observers nor the giving or failure to give such advice, direction or instruction shall in any manner relieve the CONTRACTOR from any contract requirement.
- 6.1.2 Upon rejection of material and/or workmanship by the Engineer of Record or the CITY, there may be occasion where such deficiencies may be corrected more economically and timely through modification of the design versus removal and replacement. In such instances, the Engineer of Record shall provide design services on behalf of the CITY necessary for analysis and correction of the rejected work. Costs associated with hourly fees for these professional services shall be paid by the CITY and deducted from payment to the CONTRACTOR based on the actual costs incurred. Prior to beginning any analysis and accrual of associated professional service fees, the Engineer of Record shall provide the CONTRACTOR and CITY notice in writing of the intent to begin, summary of the scope of work, estimated time to complete, and estimated total fees. Any costs associated with corrective work performed by the CONTRACTOR to remedy such deficiencies shall be the sole responsibility of the CONTRACTOR.
- 6.1.3 Neither the CITY observers nor the Engineer of Record, will be authorized to revoke, alter, relax, or waive any requirements of the Contract Documents; to issue instructions contrary to the drawings and Specifications; nor shall they direct work for the CONTRACTOR, nor unreasonably interfere with the CONTRACTOR's operations beyond the extent necessary to make certain that the Project is being carried out according to the contract requirements.
- 6.1.4 Any advice which they may give the CONTRACTOR shall not be construed as binding the CITY in any way, nor as releasing the CONTRACTOR from any of the contract requirements.
- 6.1.5 If the CONTRACTOR considers any work demanded of it to be outside the contract requirements, or any ruling of the Engineer of Record or an inspector to be unfair, it may immediately, upon such work being demanded or ruling made, request written instructions from the Engineer / Architect, or inspector, or within ten days file an appeal to the Engineer of Record or the CITY, stating clearly and in detail the basis of its objections. However, pending the decision on such appeal no work shall be done in disregard of the rulings of the Engineer of Record or inspector or his instructions on items of work affected by such appeal.
- 6.1.6 The CONTRACTOR shall furnish promptly, without extra compensation, all reasonable facilities, labor, and material necessary for safe and convenient access, inspection, and tests that may be required by the Engineer of Record.
- 6.2 Authority and Duties of Observers: If CITY or consultant inspectors for the Engineer of Record, are being utilized, they shall be authorized and permitted to inspect all work done. The Inspector shall not be authorized to alter or waive any requirements of the Specifications. He shall have authority to call the attention of the CONTRACTOR to failure of the work to conform to the specifications and Contract. He may suspend the Project until any questions at issue can be referred to and decided by the Engineer of Record or the CITY.
 - 6.2.1 Neither the Engineer of Record, Inspector, the CITY or other representatives for the CITY shall be responsible in any way for construction means, methods or techniques, nor for the safety of the construction work, progress, or employees of the CONTRACTOR or any subcontractors, except as set forth in the Construction Manager contract, if applicable.
 - 6.2.2 The presence of the Inspector shall not in any manner lessen the responsibility of the CONTRACTOR pursuant to this agreement.

- 6.3 Defective Work/Correction of Work by the CITY: The inspection of the work shall not relieve the CONTRACTOR of any of its obligations to fulfill its contract and defective work shall be made good, notwithstanding that such work has been previously inspected by the Engineer of Record and accepted or estimated for payment. The failure of the Engineer of Record or inspector to condemn improper workmanship shall not be considered as a waiver of any defect, whether known at the time or discovered later, or as preventing the CITY at any time subsequently from recovering damages for work actually defective. All work shall be guaranteed by the CONTRACTOR against defects in workmanship for a period of one year from date of final payment.
- 6.3.1 Upon failure and/or neglect by the CONTRACTOR to promptly prosecute or perform the work in accordance with the contract documents, including any requirements with respect to the construction schedule, plans or specifications, the CITY may, without prejudice to any other remedy it may have, correct such deficiencies and may deduct the actual cost thereof from payment, then or thereafter due to the CONTRACTOR.
- 6.4 Disagreement: Should any disagreement or difference arise as to the estimated quantities or classifications or as to the meaning of the drawings or specifications, or any point concerning the character, or acceptability or nature of the several kinds of work, or construction thereof, the decision of the Engineer of Record shall be final and conclusive and binding on the CONTRACTOR.
- 6.5 Stop Work Orders: During unseasonable weather all work must stop when the Engineer of Record so directs and all work must be suitably protected by CONTRACTOR at all times. However, the Engineer/Architect shall be under no obligation to stop work on the Project. If the Project is stopped, the CONTRACTOR shall not be entitled to extra compensation for delays or problems associated with the stoppage.
- 6.6 Progress Meetings: The CONTRACTOR shall conduct regular progress meetings during the course of the Project at least once a month or more often if requested by the CITY or Engineer of Record. The meetings shall be held at a site convenient to all parties and if a site cannot be agreed upon, the CITY will designate a site.
- 6.6.1 The CONTRACTOR or designated representative, the CONTRACTOR'S Superintendent, all subcontractors, engineers, inspectors, and the CITY'S representative shall attend.
- 6.6.2 The CONTRACTOR shall keep accurate written minutes of the meetings and forward copies thereof to the Engineer of Record and the CITY's representative before the next scheduled meeting.
- 6.6.3 If a trade contract, progress meetings will be conducted by the Construction Manager, who will keep minutes. All trade contractors shall attend unless excused by the Construction Manager.

ARTICLE VII PROJECT COMPLETION

- 7.0 Substantial Completion: "Substantial completion" shall be that degree of completion of the Project or a defined portion of the Project, as evidenced by the Engineer of Record's written notice of Substantial Completion, sufficient to provide the CITY, at its discretion, the full-time use of the Project or defined portion of the work for the purposes for which it was intended. "Substantial Completion" of an operating facility or operating component of the Project shall be that degree of completion that has provided a minimum of seven (7) continuous days of successful, trouble-free operation in a "fully automatic" manner acceptable to the CITY and Engineer of Record and with all redundant systems fully operational. All equipment contained in the Project, plus all other components necessary to enable the OWNER to operate the facility in the manner that was intended, shall be complete on the substantial completion date.
- 7.0.1 When the CONTRACTOR considers that the Project, or where acceptable to the CITY, a designated portion thereof is substantially complete, the CONTRACTOR shall prepare and submit to the Engineer of Record a list of items to be completed or corrected and request an inspection for Substantial Completion. The failure by the CONTRACTOR to include any items on such list does not alter the responsibility of the CONTRACTOR to complete all work in accordance with the Contract Documents. After inspection and/or if an operating facility, after a minimum of seven (7) continuous days of

successful, trouble free operation has been achieved during startup, the Engineer of Record may, at his sole discretion, issue a written notice of substantial completion for the purpose of establishing the starting date for specific equipment guarantees or warranties, and to establish the date that the CITY will assume the responsibility for the cost of operating such equipment.

- 7.0.2 Said notice shall not be considered as final acceptance of any portion of the Project or relieve the CONTRACTOR from completing the remaining work, including any remaining performance or acceptance testing, within the specified time and in full compliance with the Contract Documents. Specifically, the issuance of a written notice of Substantial Completion shall not relieve the CONTRACTOR of his obligation to promptly remedy any omissions and latent or unnoticed defects in the Project covered by the written Notice of Substantial Completion.
- 7.1 Final Inspection: Upon notice from the CONTRACTOR that its work is complete, the Engineer of Record and/or other representatives of the CITY shall make a final inspection of the work or Project and conduct test or tests if applicable. The Engineer of Record shall notify the CONTRACTOR of all apparent and/or visible instances where the Project fails to comply with the plans and specifications and contract documents, as well as any defects he may discover (punch list). The CONTRACTOR shall immediately make such alterations as are necessary to make the Project comply with the plans and specifications and to the satisfaction of the Engineer of Record.
- 7.1.1 Upon completion of all such repairs in a satisfactory manner, and when the Engineer of Record has determined that the work or Project is acceptable under the contract, including this provision and after publication of final completion and all other requirements of final payment as provided for in this agreement, then he shall issue a final certificate of payment to the CITY stating that the balance is due the CONTRACTOR, less such amounts as may have been withheld by the CITY from time to time as provided in the contract documents. In recommending to the CITY that it make such final payment to the CONTRACTOR, the Engineer of Record shall also issue a certificate of final acceptance wherein he shall recommend to the CITY that it accept the Project and/or work as final and complete pursuant to the contract documents.
- 7.1.2 Verification, approval, inspection, final inspection, issuance of final acceptance, issuance of final certificate of payment, action or approval by the CITY upon the final certificate of payment or final acceptance shall not in any way relieve the CONTRACTOR of responsibility for faulty materials or workmanship
- 7.1.3 All warranty or guarantee periods shall commence and start to run from the date of substantial completion.
- 7.2 "As Built" Drawings: Unless waived by the CITY representative, the CONTRACTOR must provide to the CITY a set of "as built" drawings acceptable to the CITY as a component part of the Project prior to final payment.
- 7.3 Final Cleanup: Before final completion and final acceptance, the CONTRACTOR shall remove from the CITY's property or rights-of-ways and from all public and private property, all tools, scaffolding, false work, temporary structures and/or utilities, including the foundations thereof (except such as the CITY permits in writing to remain); rubbish and waste materials resulting from its operation or caused by its employees; and shall remove all surplus materials, leaving the site clean and true to line and grade, and the Project in a safe and clean condition ready for use and operation. In addition to the above, the CONTRACTOR shall be responsible for the following special cleaning for all trades as the Project shall have been completed:
- 7.3.1 Cleaning of all painted, enameled, stained or baked enamel work: removal of all marks, stains, fingerprints and splatters from such surfaces.
- 7.3.2 Cleaning of all glass: cleaning and removing of all stickers, labels, stains and paint from all glass and the washing and polishing of the same on interior and exterior.
- 7.3.3 Cleaning or polishing of all hardware.
- 7.3.4 Cleaning of all tile floor finishing of all kinds; removal of all splatters, stains, paint, dirt, and dust, the washing and polishing of all floors as recommended by the manufacturer or required by the Engineer of Record.
- 7.3.5 Cleaning of all manufactured articles, materials, fixtures, appliances and equipment; removal of all stickers, rust stains, labels (except instructional and/or safety labels) and temporary covers and cleaning and conditioning of all manufactured articles, materials, fixtures, appliances, electrical, heating and air conditioning equipment as recommended or directed by the manufacturers, unless otherwise required by the Engineer of Record; blowing out or flushing out of all foreign matter from all dust pockets, piping, tanks, pumps, fans, motors, devices, switches, panels, fixtures, boilers, similar features; and freeing identification plates on all equipment or excess paint and the polishing thereof.

- 7.3.6 In the case of failure to comply with the above requirements for any part of the Project within the time specified by the Engineer of Record, he may cause the work to be done and deduct the cost thereof from the contract price on the next or succeeding application for payment, or in the event that the cost exceeds the balance due the CONTRACTOR, bill the CONTRACTOR for the excess.
- 7.4 Notice of Completion: The CONTRACTOR shall, immediately after the completion of the Project and acceptance by the OWNER as provided for herein, give notice as required by Ala. Code §39-1-1(f) by an advertisement in some newspaper of general circulation published within the CITY or county wherein the Project has been done for a period of four (4) successive weeks. The advertisement shall advise interested parties to contact both the CONTRACTOR and the specific CITY representative. The CITY'S representative shall be named along with his proper mailing address. In no instance shall a final payment be made upon the contract until the expiration of thirty (30) days after the completion of the notice. Proof of Publication of said notice shall be made by the CONTRACTOR to the City of Fairhope by affidavit of the Publisher and a printed copy of the notice published.
- 7.4.1 Provided, however, that the requirements hereinabove stated for notice and advertisement shall not apply to contractors performing contracts of less than Fifty Thousand Dollars (\$50,000.00) in amount and the governing body of the City of Fairhope so as to expedite final payment, shall cause notice of final completion of such contract to be published one time in Baldwin County and shall post notice of final completion on the City of Fairhope's bulletin board for one (1) week and shall require the CONTRACTOR to certify under oath that all bills have been paid in full. Final settlement with such CONTRACTOR may be made at a n y time after the notice shall have been posted for one (1) entire week.
- 7.4.2 **NOTE: When maintenance periods are included in the contract for highways, bridges or similar structures, such periods shall be considered component parts of the contract.**
- 7.5 Final Payment:
Upon completion of the Project by the CONTRACTOR and acceptance by the CITY'S representatives of all work required of the CONTRACTOR for the Project, but not until thirty (30) days after completion of the notice, the amount due the CONTRACTOR pursuant to the Contract Documents shall be paid upon the presentation by the CONTRACTOR to the CITY'S representative of the following:
- 7.5.1 A properly executed and duly certified voucher for payment, verified by Engineer/Architect, or other CITY representative, including therewith evidence that all payrolls and all amounts due for labor and materials, other than claims for damages due to tort, have been fully paid and satisfied and there are no outstanding claims or demands associated with the work on the Project.
- 7.5.2 A release of all claims and claims of lien against the CITY from the CONTRACTOR and all major subcontractors (the CITY may waive the requirement for subcontractor releases) arising under and by virtue of the contract, on the form attached, duly executed by the CONTRACTOR and with the consent of the surety. The CONTRACTOR may specifically except claims of the CONTRACTOR from the operation of the release if specifically excepted therefrom in stated amounts and the reason therefor. The CONTRACTOR may with the consent of the CITY representative, if any subcontractor refuses to furnish such a release, furnish a bond with surety satisfactory to the CITY representative to indemnify against such claims.
- 7.5.3 Proof of publication of Notice of Completion including Affidavit of publisher and a printed copy of the notice so published, as provided by law.
- 7.5.4 In accordance with Ala. Code §39-2-12(c), a non-resident contractor shall satisfy the CITY that he or she has paid all taxes due and payable to the State, the CITY and all applicable political subdivisions.
- 7.6 Acceptance of Final Payment Constitutes Release: The acceptance by the CONTRACTOR of the final payment shall release the CITY, the Engineer of Record, as representatives of the CITY, and their officers, employees, agents, and sub-consultants from all claims and all liability to the CONTRACTOR for all things done or furnished in connection with the Project, and every act of the CITY and others relating to or arising out of the work except claims previously made in writing and still unsettled. No payment, however, final or otherwise, shall operate to release the CONTRACTOR or his Sureties from obligations under this Contract and the Performance Bond, Payment Bond, and other bonds, warranties and guarantees as herein provide.

ARTICLE VIII WARRANTY AND GUARANTEES

- 8.0 Warranty and Guarantee:
- 8.1. Warranty: The CONTRACTOR warrants to the CITY and the Engineer of Record that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all work, materials and equipment will be of good quality, free from fault and defects and in conformance with the contract documents. The work must be safe, substantial and durable construction in all respects. All work, materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Warranties shall commence to run from the date of substantial completion.
- 8.1.1 The work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The CONTRACTOR hereby guarantees the Project and the work on the Project against defective materials or faulty workmanship for a minimum of one (1) year after final payment by the CITY and shall replace or repair any defective materials or equipment or faulty workmanship during the period of guarantee at no cost to the CITY.
- 8.2 Guarantee: If, within the designated warranty period or if not designated, within one (1) year from the date of substantial completion, any of the work, materials or equipment is found to be defective or not in accordance with the contract documents, the CONTRACTOR shall correct it promptly after receipt of written notice from the CITY to do so, unless the CITY has previously specifically given the CONTRACTOR a written acceptance of such specific condition. This obligation shall survive termination of the Contract. The CITY shall give such notice promptly after discovery of the condition.
- 8.3 Roofing Guarantee: If the Project involves a roof on a building or other structure, then the CONTRACTOR shall execute and provide the Roofing Guarantee in the form attached hereto. The guarantee shall be delivered to the CITY and Engineer of Record prior to final payment.
- 8.4 Termite Warranty: If the Project involves termite treatment as required in Article IV, then the CONTRACTOR shall furnish to the CITY a written warranty certifying that the applied soil poisoning treatment will prevent the infestation of subterranean termites and that if subterranean termite activity is discovered during the warranty period, CONTRACTOR shall re-treat the soil and repair or replace any damage caused by termite infestation. The warranty shall be for a period of five (5) years from the date of treatment signed by Applicator and CONTRACTOR.
- 8.5 Correction of Defective Work During Warranty/Guarantee Period: The CONTRACTOR hereby agrees to make, at his own expense and no cost to the CITY, all repairs or replacement necessitated by defects in materials or workmanship, provided under the terms of this Contract, and pay for any damage to other works resulting from such defects, which become evident within 1 year after the date of substantial completion unless substantial completion is established by the Engineer of Record only for specified items of equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents unless the CITY has previously given the CONTRACTOR a written acceptance of such defects. The CONTRACTOR shall promptly correct such defects upon receipt of a written notice from the CITY to do so. This obligation shall survive the termination of the Contract.
- 8.5.1 Un-remedied defects identified for correction during the warranty period described herein before, but remaining after its expiration, shall be considered as part of the obligations of the warranty. Defects in material, workmanship, or equipment which are remedied as a result of obligations of the warranty shall subject the remedied portion of the Project to an extended warranty period of 1 year after the defect has been remedied.
- 8.5.2 Repetitive malfunction of equipment shall be cause for equipment replacement and an extension of the guarantee period for the equipment to a date 1 year following acceptable replacement.
- 8.5.3 The CONTRACTOR further assumes responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of packaged equipment components. The CONTRACTOR also agrees to hold the CITY and the Engineer of Record and employees harmless from liability or damages, including the Engineer of Record's and attorneys' fees, and cost and expenses of litigation of

any kind arising from damage due to said defects. The CONTRACTOR shall make all repairs and replacements promptly upon receipt of written order for same from the CITY. If the CONTRACTOR fails to make the repairs and replacements promptly, or in an emergency where delay would cause serious risk, or loss, or damage, the CITY may have the defective work corrected or the rejected work removed and replaced, and the CONTRACTOR and his Surety shall be liable for the cost thereof. The CONTRACTOR during the warranty period shall repair/replace as rapidly as possible any and all equipment, materials, etc., which are found to be defective. Should any items not be repaired/replaced within thirty (30) days from the time it is reported to the CONTRACTOR by the CITY, then the warranty period shall be extended on that item for a period equal to the time that the item has remained defective, incomplete, or inoperable as determined by the CITY. The CONTRACTOR must certify that the item has been corrected.

- 8.5.4 The CITY'S rights under this Article shall be in addition to, and not a limitation of, any other rights and remedies available by law.

ARTICLE IX LAWS, PERMITS, ETC.

- 9.0 Laws and Regulations/Royalties, Patents, Copyrights and Permits and Rights-of-Way: The CONTRACTOR shall comply with and keep itself fully informed of all laws, ordinances and regulations of federal, state, CITY and county in any manner effecting those engaged or employed in the Project, or the materials used in the Project, or in any way affecting the conduct of the Project, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. The CONTRACTOR shall possess all permits and licenses required by applicable law, rule or regulation for the performance of the Project. If any discrepancy or inconsistency should be discovered in this contract, or in the drawings or specifications herein referred to, in relation to any law, ordinance, regulation, order or decree, it shall forthwith report the same in writing to the Engineer of Record. It shall at all times, itself, observe and comply with all such existing and future laws, ordinances and regulations.
- 9.0.1 The CONTRACTOR shall protect and indemnify the CITY, Engineer of Record, and their respective employees, officers, sub-consultants, and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations. All permits, licenses, and inspection fees necessary for prosecution and completion of the Project shall be secured and paid for by the CONTRACTOR, unless otherwise specified.
- 9.0.1.1 The CONTRACTOR shall obtain and pay for all licenses and permits and shall pay all fees and charges for connection to outside service and the use of property required for the execution and completion of the Project.
- 9.0.2 The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules, regulations, and code requirements applicable in or bearing on the conduct of the Project unless in conflict with contract requirements. If the CONTRACTOR ascertains at any time that any requirements of the Contract is at variance with applicable laws, ordinances, regulations, or building code requirements, it shall promptly notify the **Engineer of Record**, and any necessary adjustment of the Contract will be made as herein specified under change in orders.
- 9.0.3 The CONTRACTOR shall pay all applicable federal, state and local taxes and assessments on the Project. Wherever the law of the place of building requires a special tax, use, occupation, or other tax, the CONTRACTOR shall pay such tax.
- 9.0.4 The CONTRACTOR shall pay all royalties and license fees. The CONTRACTOR shall hold and save the CITY and its agents and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the CITY.
- 9.0.5 To the extent that the Project has not been permitted or registered by the Engineer or CITY, CONTRACTOR shall register or obtain any and all necessary National Pollutant Discharge Elimination System (NPDES) Permits required by USEPA or the Alabama Department of Environmental Management (ADEM) as well as any applicable storm water permits or registration for the construction

of the improvements specified in the Contract Documents. The CONTRACTOR shall abide by all regulations and conditions relative to the permit or registration and attachments to the permit or registration, including but not limited to sampling and monitoring. The CONTRACTOR shall fulfill for the CITY all the requirements made upon the CITY by the permit(s) or registration.

- 9.0.6 The CONTRACTOR shall be fully responsible for all aspects of erosion and sediment control. The CONTRACTOR shall utilize whatever measures are necessary to prevent pollution or siltation due to his activities. As a minimum, the CONTRACTOR shall strictly comply with the erosion control methods referenced in the Alabama Soil and Water Conservation Committee "Alabama Handbook for Erosion Control, Sediment Control, and Storm water Management on Construction Sites and Urban Areas," latest edition (referred to as the Alabama Handbook").
- 9.0.7 If the CONTRACTOR has information that any process, article or item specified or delineated by the Engineer of Record is an infringement of a patent or a copyright, it shall promptly give such information to the Engineer of Record.
- 9.1 Alabama Department of Transportation Rights-of-Way: If any portion of the Project involves work upon State right-of-way, the CONTRACTOR agrees to provide the Alabama Department of Transportation with a bond or certified check in the amount required, made payable to the Alabama Department of Transportation, to guarantee the faithful performance of the provisions of a permit and to guarantee that the CONTRACTOR shall maintain the work in a manner suitable to the Alabama Department of Transportation for a period of one (1) year. The Alabama Department of Transportation Bond Form must be used. At the end of one (1) year from the completion of this work, the Department of Transportation will return the certified check or bond to the applicant provided all provisions of this permit have been complied with. Otherwise, the Department of Transportation shall apply the certified check or bond to the cost of repairing the rights-of-way with State forces.
- 9.2 Storm Water Permit and Monitoring:
- 9.2.1. To the extent that the Project has not been permitted or registered by the Engineer of Record or the CITY, and **if** the Project is defined as a NPDES Construction Site per ADEM Admin. Code Chapter 335-6-12 (the Rule), the CONTRACTOR shall submit to the Alabama Department of Environmental Management (ADEM) a Notice of Registration (NOR) under the Rule for Storm Water Discharges during construction activities.
- 9.2.1.1 The CONTRACTOR shall strictly adhere to all requirements of the NOR and the rule regardless of which party has obtained coverage.
- 9.2.2 Compliance with all provisions of ADEM Admin. Code Chapter 335-6-12 and this registration is required, including but not limited to, the preparation and implementation of a Construction Best Management Practices Plan (CBMPP) and any other plans as may be required, the regular maintenance of the Best Management Practices (BMPs) to the maximum extent practicable and the submittal of required reports. As required by the Rule, the CONTRACTOR shall retain a Qualified Credentialed Professional (QCP) to prepare the CBMPP and to certify that it was prepared in accordance with the requirements of the "Alabama Handbook" and the Rule.
- 9.2.3 Payment
- 9.2.3.1 Payment will be made to the CONTRACTOR for obtaining the storm water NOR, as specified herein for the lump sum amount as shown in the bid schedule. If there is no line item for registration, obtaining the NOR shall be considered a subsidiary obligation of mobilization.
- 9.2.3.2 Individual erosion and sediment control items shall be paid for at the unit prices as shown in the Bid Response Form. Routine inspections will be performed by the OWNER'S representative or Engineer to verify compliance with the CBMPP and the Rule shall be the CONTRACTOR'S responsibility and shall be incidental to the storm water registration.
- 9.2.3.3 If no individual erosion and sediment control items are included in the bid schedule the cost of these items shall be incidental to the lump sum amount as shown in the bid schedule for Storm Water Monitoring and Temporary Erosion and Sediment Control and payment shall be made prorata as the Project progresses.

- 9.2.4 The CONTRACTOR shall perform all work in compliance with and as required by any State, Federal or Local registration, permit or license, the terms and conditions of which are adopted herein by reference. The CONTRACTOR agrees to indemnify and hold harmless the CITY, Engineer of Record, and their respective officers, agents and employees from any fines, penalties, damages, claims, liability or judgment arising out of or in any manner associated with the CONTRACTOR'S failure to perform work on the Project in strict accordance with all storm water registration, permit or license requirements.

ARTICLE X MISCELLANEOUS CLAUSES

- 10.0 Notice and Service thereof:
- 10.01 All notices, demands, requests, change orders, instructions, approvals and claims shall be in writing. Unless expressly otherwise provided in this agreement, any election, notice or other communication required or permitted to be given under this agreement shall be in writing and deemed to have been duly given if provided in accordance with the provisions hereof.
- 10.02 Any notice to or demand upon the CONTRACTOR shall be in writing and shall be sufficiently given if addressed to the CONTRACTOR at the address stated herein and deposited in the United States mail in a sealed envelope with sufficient postage prepaid or delivered with charges prepaid to any telegraph company for transmission to the CONTRACTOR at such address. It shall also be sufficient if such notice or demand be served upon the CONTRACTOR personally or its local representative in charge of the Project or delivered at his local office. The CONTRACTOR shall, from time to time, designate to the CITY in writing any change of address to which such notice or demand shall be sent.
- 10.03 Any notice to or demand upon the CITY shall be in writing and shall be sufficiently given if delivered to the office of the CITY's representative or if addressed to the CITY representative and deposited in the United States mail in a sealed envelope with sufficient postage prepaid or delivered with charges prepaid to any telegraph company for transmission to such representative of the CITY.
- 10.1 CITY Representative: The CITY's representative as Project Manager on this Project is hereby designated as _____
- 10.1.1 CONTRACTOR Representative: The CONTRACTOR'S representative on this Project is hereby designated as _____
- 10.1.2 ENGINEER of RECORD Representative: The CONTRACTOR'S representative on this Project is hereby designated as **Cristin Faircloth, FMS Engineering, LLC**
- 10.3 Capacity: Each party to this agreement represents and warrants to the other as follows:
- 10.3.1 That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- 10.3.2 That each has full power and capacity to enter into this agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- 10.3.3 That to the extent required, each party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.
- 10.3.4 That each party has duly authorized and empowered a representative to execute this agreement on their respective behalf and the execution of this agreement by such representative fully and completely binds the party to the terms and conditions hereof.
- 10.3.5 That absent fraud, the execution of this agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this agreement by any member thereof shall bind the party

and to the extent that the execution of agreement is limited to a manager, managing partner or specific member then the person so executing this agreement is duly authorized to act in such capacity for the party.

- 10.3.6 That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this agreement.
- 10.3.7 That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this agreement.
- 10.4 Ownership of Contract Documents: the Contract documents, and copies of parts thereof, are furnished and owned by the CITY. All portions of the Contract Documents, and copies of parts thereof, are the instruments of service for this Project. They are not to be used on other work and are to be returned to the CITY on request at the completion of the Project. Any reuse of these materials without specific written verification or adaptation by the CITY will be at the risk of the user and without liability or legal expense to the CITY or Engineer of Record. Such user shall hold the CITY, its officers, agents and employees harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the CITY to further compensation at rates to be agreed upon by the user and the CITY.
- 10.5 No Waiver of Rights: Neither the inspection by the CITY or the Engineer of Record or any of their officers, employees, agents, or sub-consultants, nor any order by the CITY for payment of money, nor any payment for, or acceptance of, the whole or any part of the Project by the CITY or Engineer of Record, nor any extension of time or change order, nor any possession taken by the CITY or its employees, or non-enforcement of any provision of this agreement by either party shall operate as a waiver of any provision of this agreement, or any power herein reserved to the CITY, or any right to damages, nor shall any waiver of any breach in this agreement be held to be a waiver of any other or subsequent breach. Acceptance or final payment shall not be final and conclusive with regards to latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the CITY'S rights under any warranty.
- 10.6. Subletting or Assigning of Contract:
- 10.6.1 Limitations: The CONTRACTOR shall not sublet, assign, transfer, convey, sell or otherwise dispose of any portion of the agreement, his obligations, right, or interest therein, or its power to execute such agreement, to any person, firm or corporation without written consent of the CITY and such written consent shall not be construed to relieve the CONTRACTOR of any duty or responsibility for the fulfillment of the agreement. A sale, conveyance or transfer of 50% or more of the stock or ownership of the CONTRACTOR shall be considered an assignment. Provided; however, in no event shall any portion of this agreement be assigned to an unsuccessful Bidder whose bid was rejected because he or she was not a responsible or responsive Bidder. Use of subcontracts up to a combined (total) value of 50 percent of the value of all work will not be construed as an assignment. Unless otherwise stipulated in the proposal or general conditions, the CONTRACTOR shall perform, with its own organization, work with the value not less than fifty (50) percent of the value of all work embraced in the contract.
- 10.6.2 Sub-Contractor's Status: A subcontractor shall be recognized only in the capacity of an employee or agent of the CONTRACTOR
- 10.7 Third Party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this agreement.
- 10.7.1. Final Integration: This Agreement constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.
- 10.7.2 Force Majeure: Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

- 10.7.3 Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.
- 10.7.4 Binding Effect: This agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns.
- 10.7.5 Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.
- 10.7.6 Construction: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.
- 10.7.7 Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory; "may" is permissive.
- 10.7.8 Governing Laws: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.
- 10.7.9 Liability of the CITY or CITY Officials. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the CITY, CITY officials or CITY employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the CITY shall ever be personally liable for the performance of any obligations hereunder.
- 10.7.10 Non Discrimination: The CONTRACTOR agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person on the basis of race color, religion, sex, age or disability. (The CONTRACTOR shall fully comply with the Americans with Disabilities Act), the Fair Labor Standards Act and all other applicable laws and regulations).
- 10.7.11 Fines and Penalties: The CONTRACTOR shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the OWNER and/or CONTRACTOR which are related to the CONTRACTOR's operations. The OWNER shall deduct the amount of the levied fine or penalty from the Contract amount.
- 10.7.12 Agreement Date/Counterparts: The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.
- 10.7.13 Use of Words and Phrases. The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.
- 10.7.13.1 The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.
- 10.7.14 Severability. Each provision of this agreement shall be considered to be severable and, if for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this agreement that are valid, but this agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

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

THE CITY OF FAIRHOPE, ALABAMA

KARIN WILSON, Mayor

ATTEST: _____
LISA A. HANKS, MMC, City Clerk

NOTARY FOR OWNER (CITY OF FAIRHOPE)

STATE OF ALABAMA}
COUNTY OF BALDWIN}

I, the undersigned authority in and for said State and County, hereby certify that KARIN WILSON as Mayor of the City of Fairhope 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 she executed the same voluntarily on the date the same bears date.

Given under my hand and Notaries Seal on this ____ day of _____, 2017

NOTARY PUBLIC _____

MY COMMISSION EXPIRES: _____

INDIVIDUAL OR PARTNERSHIP

(Individual or Partnership)

(Print Name of Partner)

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

(Print Name of Partner)

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

(Address)

(Address)

Phone _____ Fax Number () _____

Primary e-mail address _____

Alabama Contractor's License No. _____ Foreign Corporation Entity ID _____
(If required)_

IF CORPORATION OR LLC

Company _____

State of Incorporation _____

Company Representative _____

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

Company Representative _____

(**Signature** 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) _____ Foreign Corporation Entity ID _____

NOTARY FOR CORPORATION or Individual

STATE OF _____ }
COUNTY OF _____ }

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

as _____ respectively, of _____
title company name

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 _____, 2017

Notary Public
My Commission expires ____/____/____

[END OF CONTRACT AGREEMENT]

ITEM XII
Sales Tax Exemption Requirements and Procedure

At the time of Bid, provide an accounting of sales tax on the form provided in ITEM III BID RESPONSE FORM. Failure to provide an accounting of sales tax shall render the bid non-responsive. Other than **determining responsiveness**, sales tax accounting shall not affect the bid pricing nor be considered in the determination of the lowest responsible and responsive Bidder.

1.0 BACKGROUND

Legislative Act 2013-205, Code of Alabama (1975) Section 40-9-14.1, is applicable to certain construction contracts with the City of Fairhope, Alabama. This law allows a sales and use tax exemption. When applicable, all business entities entering into construction contracts with the City of Fairhope, Alabama, will comply with the requirements of Section 40-9-14.1.

Code of Alabama (1975) Section 40-9-14.1

Certificates of exemption to governmental entities, contractors, etc., for certain tax exempt projects.

(a) For the purposes of this section, the term governmental entity means the State of Alabama and its political subdivisions, including a county, a municipality, and an industrial or economic development board or authority. A governmental entity shall also include an educational institution of any of the foregoing Alabama political subdivisions including a public college or university, a county or city board of education, and the State Board of Education.

(b)(1) The Department of Revenue shall issue a certificate of exemption to the governmental entity for each tax exempt project.

(2) The Department of Revenue shall grant a certificate of exemption from state and local sales and use taxes to any contractor licensed by the State Licensing Board for General Contractors, or any subcontractor working under the same contract, for the purchase of building materials, construction materials and supplies, and other tangible personal property that becomes part of the structure that is the subject of a written contract for the construction of a building or other project, not to include any contract for the construction of any highway, road, or bridge, for and on behalf of a governmental entity which is exempt from the payment of sales and use taxes.

(c) The use of a certificate of exemption for the purchase of tangible personal property pursuant to this section shall include only tangible personal property that becomes part of the structure that is the subject of the construction contract. Any contractor or subcontractor purchasing any tangible personal property pursuant to a certificate of exemption shall maintain an accurate cost accounting of the purchase and use of the property in the construction of the project.

(d) A contractor who has an exemption from sales and use tax for the purchase of materials to use on a government project shall file, in a manner as prescribed by the department, reports of all exempt purchases. The reports shall be filed as a prerequisite to renewal of a certificate of exemption.

(e)(1) The department may assess any contractor or subcontractor with state and local sales or use taxes on any item purchased with a certificate of exemption not properly accounted for and reported as required.

(2) Any contractor or subcontractor who intentionally uses a certificate of exemption in violation of this section shall, in addition to the actual sales or use tax liability due, be subject to a civil penalty levied by the department in the amount of not less than a minimum of two thousand dollars (\$2,000) or two times any state and local sales or use tax due for the property and, based on the contractor's or subcontractor's willful misuse of the certificate of exemption, may be barred from the use of any certificate of exemption on any project for up to two years.

(f) The department may adopt rules to implement this section in order to effectuate the purposes of this section and to provide for accurate accounting and enforcement of this section.

(g) In bidding the work on a tax exempt project, the bid form shall provide for an accounting for the tax savings.

(h) The intent of this section is to lower the administrative cost for the governmental entity, contractor, and subcontractor for public works projects. It is not the intent of this section to change the basis for determining professional services from fair market value, which may include sales and use taxes.

(i) This section shall be operative for contracts entered into January 1, 2014, or thereafter, and shall not apply to any contract entered into prior to January 1, 2014. In addition, this section shall not apply to any contract change orders or contract extensions, including revised, renegotiated, or altered contracts, when the original contract was entered into prior to January 1, 2014. The Department of Revenue may adopt rules to implement this section after October 1, 2013. (*Act 2013-205, §1.*)

2.0 PROCEDURE

2.0.1 Each contractor and subcontractor must make application for qualification of the Sales and Use Tax exemption using Alabama Dept. of Revenue **Form ST: EXC-01** for each tax-exempt project. The application is available on the Alabama Dept. of Revenue's website at <http://revenue.alabama.gov/salestax/ST-EXC-01.pdf>. Applications should be submitted directly to the Sales and Use Tax Division Central Office, P.O. Box 327710, Montgomery, AL 36132-7710.

2.0.2 Legislative Act 2013-205 requires the Department of Revenue to issue Form STC-1, *Sales and Use Tax Certificate of Exemption for Government Entity Projects*, to all contractors and subcontractors working on qualifying governmental entity projects once the Form ST: EXC-01 is approved.

2.0.3 Contractors and sub-contractors for qualifying projects will be required to file monthly consumers use tax returns and report all exempt purchases for ongoing projects, as well as all taxable purchases on one return. These returns are required to be filed through the Alabama Dept. of Revenue's online tax return filing and payment portal, My Alabama Taxes (<https://myalabamataxes.alabama.gov>).

Tax Guidance for Contractors, Subcontractors and Alabama Governmental Entities Regarding Construction-related Contracts

Legislative Act 2013-205 requires the Department of Revenue to issue Form STC-1, *Sales and Use Tax Certificate of Exemption for Government Entity Projects*, to all contractors and subcontractors working on qualifying governmental entity projects once the **Form ST: EXC-01** is approved.

Each exempt entity, contractor and subcontractor must make application for qualification of the exemption using Form ST: EXC-01 for each tax-exempt project. The application is available on the department's website at <http://revenue.alabama.gov/salestax/ST-EXC-01.pdf>. Applications should be submitted directly to the Sales and Use Tax Division Central Office, P.O. Box 327710, Montgomery, AL 36132-7710.

The sales and use tax exemption provided for in Act 2013-205 applies to the purchase of building materials, construction materials and supplies, and other tangible personal property that become part of the structure pursuant to a qualifying contract entered into on or after January 1, 2014. Qualifying projects and contracts are those generally entered into with the following governmental entities, unless otherwise noted: the State of Alabama, a county or incorporated municipality of Alabama, an Alabama public school, or an Alabama industrial or economic development board or authority already exempt from sales and use taxes. **Please note that contracts entered into with the federal government and contracts pertaining to highway, road, or bridge construction or repair do not qualify for the exemption provided for in Act 2013-205.** [Reference: Sales and Use Tax Division Administrative Rule 810-6-3-.77 *Exemption for Certain Purchases by Contractors and Subcontractors in Conjunction with Construction Contracts with Certain Governmental Entities.*]

The Alabama Department of Revenue will assign each contractor and sub-contractor a consumers use tax account, if one is currently not in place, at the time the Form STC-1, *Sales and Use Tax Certificate of Exemption for Government Entity Projects*, is issued.

Contractors and sub-contractors for qualifying projects will be required to file monthly consumers use tax returns and report all exempt purchases for ongoing projects, as well as all taxable purchases on one return. These returns are required to be filed through the department's online tax return filing and payment portal, My Alabama Taxes (<https://myalabamataxes.alabama.gov>).

As another option for these types of contracts, as well as with other contracts entered into with other types of exempt entities, the Form ST: PAA1, *Purchasing Agent Appointment*, may be used. However, please be advised that the use of the Form ST: PAA1 option will require the exempt entity to be invoiced directly and pay for directly from their funds any construction and building material and supply purchases.

For additional information concerning this guidance, taxpayers should contact Sales and Use Tax Division representative Thomas Sims at 334-242-1574 or by email at Thomas.Sims@revenue.alabama.gov.

"An Affirmative Action / Equal
Opportunity Employer"

ACCOUNTING OF SALES TAX Attachment to Bid Response

To: City of Fairhope

Date: _____

Project No.: PW001-17 Fly Creek Marina Seawall Improvements

Sales Tax Accounting

Pursuant to Code of Alabama (1975) Section 40-9-14.1, the Contractor accounts for the sales tax NOT included in the bid proposal form as follows:

ESTIMATED SALES TAX AMOUNT

BASE BID: _____

\$ _____

Alternate No. 1 (.....) (add)(deduct) \$ _____
Insert keyword for alternate

Alternate No. 2 (.....) (add)(deduct) \$ _____

Alternate No. 3 (.....) (add)(deduct) \$ _____

Alternate No. 4 (.....) (add)(deduct) \$ _____

Alternate No. 5 (.....) (add)(deduct) \$ _____

Alternate No. 6 (.....) (add)(deduct) \$ _____

Failure to provide an accounting of Sales Tax shall render the bid non-responsive. Other than determining responsiveness, sales tax accounting shall not affect the bid pricing nor be considered in the determination of the lowest responsible and responsive Bidder.

Legal Name of Bidder _____

Mailing Address _____

*By (Legal Signature) _____

*Name (type or Print) _____ (Seal)

*Title _____

*Telephone _____



ALABAMA DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION
P.O. Box 327710 • Montgomery, AL 36132-7710

ST: EXC-01
8/16

Application For Sales and Use Tax Certificate of Exemption

FOR GOVERNMENT ENTITY PROJECT

This Certificate of Exemption will be limited to purchases which qualify for an exemption of sales and use taxes pursuant to Rule No. 810-6-3-.77

PROJECT INFORMATION:

PROJECT NAME			PROJECT OWNER'S FEIN (EXEMPT ENTITY)		
STREET ADDRESS OF PROJECT (CITY AND COUNTY INCLUDED)		CITY	ZIP	COUNTY	

APPLICANT'S INFORMATION:

RELATION: (CHOOSE ONE)
 Government Entity General Contractor Sub-Contractor

APPLICANT'S LEGAL NAME			FEIN		
DBA			CONSUMER'S USE TAX ACCOUNT NUMBER		
MAILING ADDRESS: STREET		CITY	STATE	ZIP	COUNTY
CONTACT PERSON				BUSINESS TELEPHONE NUMBER ()	
EMAIL ADDRESS					

PROJECT START DATE (PROVIDED BY GENERAL CONTRACTOR)			PROJECT COMPLETION DATE (PROVIDED BY GENERAL CONTRACTOR)		
ESTIMATED START DATE (FOR APPLICANT)			ESTIMATED COMPLETION DATE (FOR APPLICANT)		
WILL THE APPLICANT HAVE ANY SUB-CONTRACTORS ON THIS JOB? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please attach list.			NAME OF PARTY WITH WHOM YOUR CONTRACT IS WITH		

JOB DESCRIPTION

WILL ANY POLLUTION CONTROL EXEMPTION BE APPLICABLE? <input type="checkbox"/> Yes <input type="checkbox"/> No		ESTIMATED POLLUTION CONTROL COST \$
TOTAL PROJECT BID AMOUNT (APPLICANT'S PORTION OF PROJECT) \$	LABOR COST (APPLICANT'S PORTION OF PROJECT) \$	MATERIAL COST (APPLICANT'S PORTION OF PROJECT) \$

REVENUE DEPARTMENT USE ONLY

PENDING DOCUMENTATION / INFORMATION:
 GCL SBL Contract / NTP / LOI LOS Project Dates / Breakdown of Costs

Contact Dates: _____ Received Date: _____
 _____ Forwarded for Denial: _____

PROJECT NAME

PROJECT OWNER'S FEIN (EXEMPT ENTITY)

FORM OF OWNERSHIP:

Individual Partnership Corporation Multi member LLC Single member LLC Government Entity

If applicant is a corporation, a copy of the certified certificate of incorporation, amended certificate of incorporation, certificate of authority, or articles of incorporation should be attached. If the applicant is a limited liability company or a limited liability partnership, a copy of the certified articles of organization should be attached.

OWNERSHIP INFORMATION:

Corporations – give name, title, home address, and Social Security Number of each officer.

Partnerships – give name, home address, Social Security Number or FEIN of each partner.

Sole Proprietorships – give name, home address, Social Security Number of owner.

LLC – give name, home address, and Social Security Number or FEIN of each member.

LLP – give name, home address, and Social Security Number or FEIN of each partner.

NAME (PLEASE PRINT)

SIGNATURE

TITLE

DATE

REVENUE DEPARTMENT USE ONLY

PENDING OTHER:

Government Entity General Contractor Not on LOS

Contact Dates: _____ Received Date: _____

Forwarded for Denial: _____

Examiner's Remarks _____

Examiner _____ Date _____

Instructions For Preparation of Form ST: EXC-01

Sales and Use Tax Certificate of Exemption for Government Entity Project

NOTE: Exemption Certificates will be issued as of the project start date or the received date of the application. If, upon receipt of the application, the project has already commenced, the certificate will be issued as of the received date of the application. Any purchases made prior to the issuance of a certificate will not be exempt.

***** Please allow 10 to 14 business days for your application to be processed. *****

In order to expedite the processing of your application, please include the following documentation when submitting your application:

Exempt Entity:

1. Signed Application
2. Copy of Executed/Signed Contract, Letter of Intent, Notice of Award, and/or Notice to Proceed

General Contractor:

1. Signed Application
2. Copy of Executed/Signed Contract, Letter of Intent, Notice of Award, and/or Notice to Proceed
3. List of Sub-Contractors
4. Alabama Board of General Contractor's License
5. State/County Business License (usually obtained through county probate office)
6. Any other municipal business licenses associated with the project

Sub-Contractor:

1. Signed Application
2. Alabama Board of General Contractor's License
3. State/County Business License (usually obtained through county probate office)
4. Any other municipal business licenses associated with the project
5. List of Sub-Contractors (if any)

General contractors and sub-contractors:

- Any additions and/or deletions to the list of sub-contractors working on a project must be submitted to the Department within 30 days of occurrence.
- If an extension is needed for a project, please contact the Department of Revenue at the address, numbers, or emails listed below.
- Sub-Contractor's Estimated Start Date should be the date they will begin working on the project and ordering materials instead of the General Contractor's Estimated Start Date for the project.

THERE IS A FILING REQUIREMENT IF YOUR APPLICATION IS APPROVED. The return will be filed through the Consumer's Use Tax account. Please see the following page for detailed instructions and general information regarding the reporting requirements.

The application and required documentation may be mailed, faxed, or emailed to the following:

Fax: (334) 353-7867

Emails: STExemptionUnit@revenue.alabama.gov

Mailing Address: ATTN: Contractor's Exemption
Alabama Department of Revenue
Sales & Use Tax Division
Room 4303
PO Box 327710
Montgomery, AL 36132-7710

ITEM XIII
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, and 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.

EXHIBITS

INVITATION SUMMARY

Project No.: PW001-17 Fly Creek Seawall Improvements 2017

Issue Date: 4/14/2017

Bid Bond Requirements: Bid Bond 5% and no more than \$10,000

Certificate of Insurance Requirements: See Item VIII, Standard Terms and Conditions and Item IV, Insurance Requirements

MANDATORY Pre-Bid Meeting Wednesday, April 26, 2017 AT 9:00 A.M.
City of Fairhope
555 South Section St.
Fairhope, Al 36532.

Deadline for Questions Date: One (1) week before bid date

IFB Closing Date (bids opened): Friday, May 5, 2017 AT 9:00 A.M.
City of Fairhope
555 South Section St.
Fairhope, Al 36532.

City Internet Site: (for bid advertisement) www.fairhopeal.gov

Bid Packet available at: FMS Engineering, LLC
2509 Commercial Park Drive
Mobile, Al 36608
251 450-2377

Cost of Plans, Specs and Drawings \$50.00

Bid Copies: (to submit) One (1)

Purchasing Department Contact: Daniel P Ames, Purchasing Manager
dan.ames@fairhopeal.gov
(251) 928-8003

CONTRACTOR INFORMATION

Please print this section and turn in with your response

Bid No 001-17 Fly Creek Marina Seawall Improvements 2017

Business Organization

Name of Bidder (exactly as it appears on W-9):

Doing-Business-As Name of Bidder:

Principal Office Address:

Form of Business Entity [check one ("X")]

Corporation _____

Partnership _____

Individual _____

Joint Venture _____

Other (describe): _____

Corporation Statement

If a corporation, answer the following:

Date of incorporation: _____

Location of incorporation: _____

The corporation is held: Publicly ___
Privately ___

Partnership Statement

If a partnership, answer the following:

Date of organization: _____

Location of organization: _____

The partnership is: General ___
Limited ___

Joint Venture Statement

If a Joint Venture, answer the following:

Date of organization: _____

Location of organization: _____

JV Agreement recorded? Yes ___
No ___

Primary Contact _____ Title _____

Telephone Number _____ Fax _____

Email Address: _____

CITY OF FAIRHOPE
ROOFING GUARANTEE

If applicable

Project No. PW001-17 Fly Creek Seawall Improvements 2017

Name of Project _____

Location _____

OWNER City of Fairhope _____

General Contractor _____

Address _____

Date of Acceptance _____ Date of Expiration _____

1. The General Contractor does hereby certify to the City of Fairhope that the roofing work included in this contract was installed in strict accordance with all requirements of the plans and specifications.

2. The General Contractor does hereby guarantee the roofing and associated work including all flashing, both composition and metal, against leaks due to faulty workmanship for a period of five (5) years and against leaks due to faulty or defective materials for fifteen (15) years, starting on the date of acceptance of the Project by the CITY.

3. Subject to the terms and conditions listed below, the General Contractor guarantees that during the Guarantee Period he will at his own cost and expense, make or cause to be made such repairs to, or replacements of said work, as are necessary to correct faulty and defective work and materials as are necessary to maintain said work in watertight conditions, and further, to respond on or within three (3) calendar days upon proper notification of leaks or defects by the CITY or Architect.

A. Specifically excluded from this Guarantee are damages to the work, other parts of the building and building contents caused by:

Lightning, wind storm, hail storm and other unusual phenomena of elements; and, Fire. When the work has been damaged by any of the foregoing causes, the Guarantee shall be null and void until such damage has been repaired by the General Contractor, and until the cost and expense thereof has been paid by the CITY or by the responsible party so designated.

B. During the Guarantee Period, if the CITY allows alteration of the work by anyone other than the General Contractor, including cutting, patching and maintenance in connection with penetrations, and positioning of anything on the roof, this Guarantee shall become null and void upon the date of said alterations. If the CITY engages the General Contractor to perform said alterations, the Guarantee shall not become null and void, unless the General Contractor, prior to proceeding with said work, shall have notified the CITY In writing, showing reasonable cause for claim that said alterations would likely damage or deteriorate the work, thereby reasonably justifying a termination of this Guarantee.

C. Future building additions will not void this guarantee, except for that portion of the future addition that might affect the work under this contract at the point of connection of the roof areas, and any damage caused by such addition. If this contract is for roofing of an addition to an existing building, then this guarantee covers the work involved at the point of connection with the existing roof.

D. During the Guarantee Period, if the original use of the roof is changed and it becomes used for, but was not originally specified for, a promenade, work deck, spray cooled surface, flooded basin, or other use of service more severe than originally specified, this Guarantee shall become null and void upon the date of said change.

E. The **CITY** shall promptly notify the General Contractor of observed, known or suspected leaks, defects or deterioration, and shall afford reasonable opportunity for the General Contractor to inspect the work, and to examine the evidence of such leaks, defects or deterioration.

IN WITNESS THEREOF, this instrument has been duly executed this the _____
day of _____, 2017.

General Contractor's Authorized Signature

Typed Name and Title

CITY OF FAIRHOPE
ASBESTOS AFFIDAVIT

If applicable

Project No. PW001-17 Fly Creek Seawall Improvements

DATE: _____

BUILDING OWNER: _____

PROJECT: _____

TO WHOM IT MAY CONCERN:

The undersigned certifies that to the best of his knowledge, no products containing asbestos have been included in the construction of the captioned Project. Special care was exercised to avoid asbestos-containing products, including reviewing product data sheets, reviewing product labels, and visually verifying products in the field. Special care to avoid asbestos has been used in the selection, purchase, and installation of products, including, but not limited to, the following: concrete, batt insulation, roof insulation, building felts, mastics, waterproofing products, adhesives, resilient flooring products, ceiling tiles, interior coatings, exterior coatings, roofing, pipe insulation, duct insulation, and pre-assembled items of equipment.

Respectfully submitted,

Signature

Typed Name

Title

Firm Name

Address

Notary

Sworn to and subscribed before me on this the _____ day of _____, 2017.

Notary Public

My Commission Expires; _____

**CHANGE ORDER REQUEST
CITY OF FAIRHOPE**

OWNER: CITY OF FAIRHOPE

ARCHITECT/ENGINEER: FMS Engineering, LLC/ Cristin Faircloth, P.E.

CONTRACTOR: _____

PROJECT: PW001-17 Fly Creek Seawall Improvements 2017

CHANGE ORDER REQUEST NO. _____ DATE: _____

1. DESCRIPTION OF CHANGE:

2. CHANGE ORDER COSTS: _____

Proposal Attached _____ Cost Estimated/Proposal Required

<i>Item</i>	<i>Quantity</i>	<i>Material Unit Price</i>	<i>Labor (Hours)</i>	<i>Labor Unit Price</i>	<i>Sub-Total Cost</i>
a.					
b.					
c.					
d.					
e.					
f.*					
TOTAL:					

*If more than 6 items, provide attachments.

3. INSTITUTED BY:

4. JUSTIFICATION OF NEED:

5. JUSTIFICATION OF CHANGE ORDER VERSUS COMPETITIVE BIDDING:

6. COSTS REVIEW:

7. THIS CHANGE ORDER IS SUBMITTED FOR REVIEW AND APPROVAL AND IS CLASSIFIED AS THE FOLLOWING TYPE:

- Minor change of a total monetary value less than required for competitive bidding.
 - Changes for matters relatively minor and incidental to the original contract necessitated by unforeseeable circumstances arising during the course of work.
 - Emergencies arising during the course of work.
 - Change or alternates provided for in the original bidding where there is no difference in price of the Change Order from the original best bid on the Alternate.
 - Change of relatively minor terms not contemplated when the plans and specifications were prepared and the Project was bid and which are in the public interest and do not exceed 10% of the Contract Price.
-

8. EXTENSION OF TIME REQUESTED: Calendar Days:

RECOMMENDED:

APPROVED:

BY: _____
Fairhope's Consulting Engineer

BY: _____
Contractor

BY: _____
City Representative

BY: _____
OWNER's Legal Advisor

BY: _____
OWNER's Authorized Representative

CONTRACT CHANGE ORDER NO. _____

City of Fairhope, Alabama

DATE: ____/____/____

Project No.: PW001-17 Fly Creek Seawall Improvements 2017

TO: _____
(Contractor)

TERMS: You are hereby authorized, subject to the provisions of your Contract for this Project, to make the following changes thereto in accordance with the attached Change Order Request and supporting documents and to:

FURNISH the necessary labor, materials and equipment to:

TOTAL ADDITION OR REDUCTION TO CONTRACT PRICE:

(Note: Numbers in parentheses are deductions).

ORIGINAL CONTRACT PRICE	\$	__
LESS CONTINGENCY/ALLOWANCE	\$	__
NET ORIGINAL CONTRACT PRICE	\$	__
Net total of previous Change Orders	\$	__
Previous revised Contract Price	\$	__
This Change Order No. _____ <input type="checkbox"/> Add <input type="checkbox"/> Deduct	\$	__
Revised Contract Price this date	\$	__

Extension of time resulting from this Change Order _____ (Indicate number of calendar days).

The amount of this Change Order will be the responsibility of _____

This Contract Modification constitutes full and mutual accord and satisfaction for all time and all cost related to this change. By acceptance of this Contract Modification, the Contractor hereby agrees that the modification represents an equitable adjustment to the Contract, and further, agrees to waive all right to file any further claims or changes arising out of or as a result of this change, or the accumulation of executed Contract Modifications on this Contract.

The Contractor and OWNER(s) hereby agree to the terms of this Change Order as contained herein.

CONSENT OF SURETY

CONTRACTING PARTIES

(Company)

(Contractor)

By: _____

By: _____
(Authorized Representative)

RECOMMENDED

CITY OF FAIRHOPE

By: _____

By: _____
(Mayor)

(Design Engineer)

(City Clerk)

**APPLICATION and CERTIFICATION
PAYMENT**

Schedule of Values

Estimate No. _____

Date _____

To Owner:

City of Fairhope
P.O. Drawer 429
Fairhope, AL 36533

**Project: PW001-17 Fly Creek Seawall
Improvements 2017**

From Contractor:

Architect/Engineer:

FMS Engineering LLC
Cristin Faircloth, P.E.
2509 Commercial Park Dr
Mobile, AL 36606

TOTAL ORIGINAL CONTRACT \$ _____
CHANGE ORDER(S) Numbers _____ through _____ \$ _____
TOTAL CONTRACT TO DATE \$ _____

- 1. Work Completed to Date per attached Schedule of Values (_____ %) \$ _____
- 2. Stored Materials: (Attach list, Inventory of Stored Materials) \$ _____
- 3. Total Completed Work and Stored Materials \$ _____
- 4. Less Retainage (\$ _____)
- 5. Total Due \$ _____
- 6. Less Total Previous Payments (\$ _____)
- 7. Balance Due This Estimate \$ _____

CONTRACTOR'S CERTIFICATION

The undersigned Contractor certifies that to the best of his knowledge, information, and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by him for Work for which previous Certificates for Payments were issued and payments received from the Owner and that current payment shown herein has not yet been received.

By: _____ Title _____ Date: _____

Sworn and subscribed before me this ____ day of _____, 2017.

Notary _____
My commission expires ____ / ____ / ____

ARCHITECT'S/ENGINEER'S CERTIFICATION

In accordance with the Contract Documents, the Architect/Engineer certifies to the Owner that, to the best of the Architect's/Engineer's knowledge and belief, the Work has progressed to the point indicated herein, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the amount approved.

By: _____ Date _____
(Architect/Engineer)

SEAL:

APPROVALS

Approved by: _____
Project Manager

Date: _____

CITY OF FAIRHOPE

CLOSEOUT DOCUMENTS

CONSENT OF SURETY COMPANY TO FINAL PAYMENT

CONTRACTOR'S AFFIDAVIT OF PAYMENT

FINAL RELEASE OF LIENS

NOTICE OF COMPLETION ADVERTISEMENT

CITY OF FAIRHOPE

CONSENT OF SURETY COMPANY TO FINAL PAYMENT

Project No.: PW001-17 Fly Creek Marina Seawall Improvements 2017

OWNER: City of Fairhope
P.O. Drawer 429
Fairhope, Al 36533

CONTRACTOR: _____

In accordance with the provision of the Contract between the OWNER and the CONTRACTOR as indicated above, the _____, Surety Company on bond of _____ CONTRACTOR, hereby approved the final payment to the CONTRACTOR and agrees that final payment to the CONTRACTOR shall not relieve the Surety Company of any of its obligations to the City of Fairhope as set forth in said Surety Company's bond dated the ____ day of _____, 2017.

IN WITNESS WHEREOF
The Surety Company has hereunto set its hand this ____ day of _____, 2017.

ATTEST:
(Seal)

Surety Company

Signature of Authorized Representative

Title

CITY OF FAIRHOPE

CONTRACTOR'S AFFIDAVIT OF PAYMENT OF CLAIMS & DEBTS

Project No.: PW001-17 Fly Creek Marina Seawall Improvements 2017

OWNER: City of Fairhope, Alabama
P.O. Drawer 429
Fairhope, Al 36533

CONTRACTOR:

STATE OF: _____

COUNTY OF: _____

The undersigned hereby certified that, except as listed below, he has paid in full or otherwise satisfied all obligations for all materials and equipment furnished, for all work, Labor and services performed, and for all known indebtedness and claims against the CONTRACTOR for damages arising in any manner in connection with the performance of the Contract referenced above for which the OWNER or his property might in any way be held responsible.

EXCEPTION: (If none, write NONE) _____

CONTRACTOR

By: _____ Title: _____

Subscribed and sworn to and before me this ____ day of _____, 2017

Notary
My Commission expires ____/____/____

City of Fairhope

FINAL RELEASE OF LIENS

KNOW ALL MEN BY THESE PRESENTS: In consideration of, and contingent upon the receipt of total payments in the amount of _____

Under and pursuant to the following contract:

Project No.: PW001-17 Fly Creek Marina Seawall Improvements 2017

The undersigned hereby releases _____ its officers, agents and employees, of and from all liabilities, obligations, and claims whatsoever in law and in equity under or arising out of said contract. We do hereby certify that all labor, materials, equipment, supplies and etc. for this project have been paid in full and there is no outstanding indebtedness.

IN WITNESS WHEREOF, this release has been executed this ____ day of _____, 2017.

CONTRACTOR

By: SIGNATURE

PRINTED NAME

TITLE

STATE OF ALABAMA
COUNTY OF BALDWIN

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that

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

Given under my hand and seal on this the ____ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires: ____/____/____

CITY OF FAIRHOPE

NOTICE OF COMPLETION LEGAL NOTICE

Project No.: PW001-17 Fly Creek Marina Seawall Improvements 2017

In accordance with Chapter 1, Title 39, Code of Alabama, 1975, for contracts over \$50,000 and less than \$500,000, Notice is hereby given that _____, CONTRACTOR, has completed the Contract for **Project No.: PW001-17 Fly Creek Marina Seawall Improvements 2017** for the City of Fairhope, Alabama, OWNER, and has made request for final settlement of said Contract. Any claims for labor, materials or otherwise in connection with this project should be itemized, notarized, and presented to:

OWNER:

CITY OF FAIRHOPE
555 South Section Street
P.O. Drawer 429
Fairhope, AL 36533

On or before (30 days) or same will be barred.

Contractor:

Dates ad was run: (once a week for 4 weeks)

Newspapers in which ad run: (dates)

The Courier _____

Contractor to provide proof of publication of the Notice to the City by affidavit of the publisher and a printed copy of the notice published