

**BID AND BID RESPONSE FORM AND  
CONTRACT DOCUMENTS**

**BID NO.011-21 Re-plaster of Main Pool at Rec Center - RE-BID  
Project REC011-21 Re-plaster Pool**

**City of Fairhope, Alabama**

**SHERRY SULLIVAN, MAYOR**

**FAIRHOPE CITY COUNCIL**

**JACK BURRELL, COUNCIL PRESIDENT**

**SET \_\_\_\_\_**

**INVITATION TO BID POSTED:** December 15, 2020

**DEADLINE TO SUBMIT:** December 22, 2020, 4:00 PM CST

**BID NAME AND NUMBER:** Bid No. 011-21 Re-plaster of Pool at Rec Center - RE-BID

**EMAIL BIDS TO:** [purchasing@fairhopeal.gov](mailto:purchasing@fairhopeal.gov)

**DELIVER BIDS TO:** Fairhope City Services and Utility Building Conference Room  
555 S. Section St.  
Fairhope, AL 36532

**QUESTIONS MUST BE SUBMITTED BY:** December 21 2020, 12:00 PM CST

CITY OF FAIHOPE  
PARKS AND RECREATION DEPARTMENT  
INVITATION TO BID

Scope of Work & Technical Specification

Resurfacing of Recreation Center Main Pool

- All bidders shall be Licensed Commercial Swimming Pool Contractors. Provide at time of bid proof of insurance that meets or exceeds City of Fairhope insurance requirements.
- Bid Bond for the amount of 5% of total bid (located in bid documents).
- 100% Performance and Payment Bond.
- Provide experience sheet referencing last 5 years of work identical in scope.
- Complete the Recreation Center Main Pool project during 30-day period during February/March 2019, in order to minimize down-time for public use.

**Scope of Work:**

This work shall include furnishing all labor, materials, equipment and incidentals for the proper resurfacing of the main pool located at 803 North Greeno Road, Fairhope, Alabama 36532. The work includes, but is not limited to, the following:

**Recreation Center Main Pool:**

72' x 75', 3.0' shallow depth, 5.0' deep end depth, 5400 sq. ft. of surface, 300 ft. perimeter.

**Contract Time:**

Forty-Five (45) calendar days will be allocated for this project. The qualified performing contractor will have exclusive use and sole occupancy of the facility during the contracted period. No typical weather days will be considered. Only extreme events that effect the operation of the entire Recreation Center will be applicable.

Weekend work will be allowed and afforded to the qualified performing contractor. Extended work hours may be available by prior approval of the owner.

Liquidated Damages shall be calculated at \$125.00 per calendar day.

**Incidentals:**

- A. The City shall provide all required utilities to support the project.
- B. ~~Contractor shall carry pool popping insurance minimum.~~
- C. Contractor shall have on site a dumpster large enough for all construction debris removal
- D. OWNER'S AUTHORITY: The Owners Representative shall give all orders and directions contemplated under this contract and specifications, relative to the execution of the work. The Owners Representative shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Owners Representative's estimates and decisions shall be final

and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Owners Representative's shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

The Owners Representative shall decide the meaning and intent of any portion of the specifications and of any plans or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other Contractors performing work for the Owner shall be adjusted and determined by the Owners Representative.

**Warranty:**

- A. Exposed Aggregate Pool Finish – 5 - year (commercial)
- B. Workmanship and other materials – 2 - year

**Technical Specifications:**

**PART 1        General**

**1.01           Summary**

- A. Provide a Diamond Brite® plaster interior finish to the pool structure per manufacturer instructions.
- B. Provide water analysis and pre-fill requirements.
- C. The following terms also apply:
  - 1. All applicable licenses or permit fees to be acquired and paid by CONTRACTOR.
  - 2. CONTRACTOR to provide all necessary services and materials unless stated otherwise above.

**1.02           Submittals**

- A. Samples
  - 1. Submit a 10" round panel to Owner showing color and texture for the Diamond Brite® selection. If approved, the finished Diamond Brite® shall match the approved sample panel.
- B. Test Report
  - 1. Submit results of domestic water analysis and calculations of chemicals required to balance the water.

**1.03           Product Delivery and Storage**

- A. Deliver manufactured materials to site in manufacturer's original and unbroken packages or containers bearing the manufacturer's name and labels. Keep cementitious materials dry until ready to be used and stored off the ground, under cover and away from damp surfaces.

## **PART 2 Products**

### **2.01 Materials**

- A. Portland Cement
  - 1. ASTM C150, Type I white Portland cement.
- B. Hydrated Lime
  - 1. ASTM C206, Type S.
- C. Water
  - 1. Clean, fresh water from potable source – City to provide.
- D. Bonding Agent
  - 1. If conventional pool plaster finish is to be used, use Scratch Kote 2000® (Multicoat®) in accordance with manufacturer's instructions.
- E. Proportions & Mixing
  - 1. Materials are specified on a volume basis and shall be measured in approved containers which will ensure that the specific proportions will be controlled and accurately maintained during the progress of the work.
  - 2. Conventional white marble pool plaster finish coat: Mix finish in proportion of one part by volume of white Portland cement to not more than two parts by volume of aggregates (specified white marble dust).
  - 3. Mixing. (If Diamond Brite, follow manufacturer's instructions). Perform mixing in approved mechanical mixers of the type in which the quantity of water can be controlled accurately and uniformly. While mixer is in continuous operation, charge approximately 90% of estimated quantity of water, half of all sand, all cement, and the other one-half of the sand into the mixer in that sequence and mix thoroughly with remainder of water until the mixture is uniform in color and consistency. Avoid excess mixing to prevent hasty solution of cement resulting in accelerated set. Do not use any caked or lumped materials. Completely empty mixer and mixing boxes after each batch is mixed and keep free of old plaster.

## **PART 3 Execution**

### **3.01 Preparation**

- A. Site Preparation

1. Drain pool - CONTRACTOR to take all safety precautions necessary to avoid damage while draining pool due to ground water and possible wash out.
2. If no hydrostat, core drill bottom of pool for water pressure purposes:
  - a. Drill through plaster/shell into dirt so ground water can leak up into pool
  - b. Pump out any ground water that leaks through
  - c. This requirement may be waived based on in situ conditions
3. This facility includes mural inset into the pool bottom. Mural shall be protected and preserved through the resurfacing process.
4. This facility includes eight (8) tiled centerline racing lanes, with tiled turn targets inset into the pool walls and bottom. These tiled features shall be protected and preserved through the resurfacing process.
5. Protect stainless gutter system with 10mm or thicker material.
6. Protect or remove stainless ladders, handrails and other pool accessories.

**B. Plaster Preparation**

1. Remove all return covers, drain covers, rope anchors, and fittings.
2. Cut and remove plaster 4-6" around perimeter of pool below SS Gutter, around all fittings, around light niches and around main drains, to ensure that the new plaster is between 1/2" to 5/8" thick at all points of pool.
3. Remove and dispose of all layers of plaster and paint back to original pool shell. Removal may be performed by chipping hammers or water blasting, or approved equivalent.
4. Check bottom of pool for delamination of old plaster and remove old plaster where delamination exists. Extent of plaster removal to be determined by OWNER.
5. Secure and protect main drain sumps and frames and any embedded fittings or items in the pool that cannot be removed during the removal.
6. Secure all pool fixtures to prevent from falling.
7. Clean the substrate from loose debris, loose substrate or any material that could interfere with the plaster's ability to bond to the substrate.
8. Pressure wash pool and then wash down pool with TSP (Tri-Sodium-Phosphate)
9. Acid-wash the pool shell and neutralize by repeated pressure washing.
10. Install bond coat (Scratch Kote 2000) per manufacturer's instructions.

**3.02 Preparation of Surfaces and Bond Coat**

- A. After complete chip-out of all plaster and paint layers, clean base surfaces of projections, dust, loose particles, grease, bond breakers and foreign matter; make sufficiently rough to provide a strong mechanical bond. Wash entire shell with acidic solution. Thoroughly neutralize the entire acidic surface with 2,000 psi high pressure water.
- B. Utilizing a hopper gun and compressor, apply the bond coat onto the pool shell. If necessary, use still bristle brush to ensure total coverage and penetration of the bond coat.

**3.03 Application for Plaster**

A. General

1. Confirm all application requirements with manufacturer. Apply finish plaster to the properly prepared substrate at the minimum thickness (1/2" to 5/8") required by the manufacturer, but no less than 3/8" thickness at any location. Apply finish plaster by hand. Do not overwork the plaster.

B. Workmanship

1. Unless otherwise required by the manufacturer, apply finish plaster in two coats by "double-back" method with second coat applied as soon as first coat is tamped and initially floated. Apply plaster with a sufficient pressure to provide a good bond on bases. Work plaster to screeds at intervals from 5 to 8 feet on straight surfaces. Apply smooth trowel finish without waves, cracks, trowel marks, ridges, pits, crazing, discoloration, projections, feet impressions, or other imperfections. Form plaster carefully around curves and angles, well up to screeds. Take special care to prevent sagging and consequent drooping of applications. Produce surface free of visible junction marks in finish coat where one day's work adjoins another. Finish proprietary plaster as required by the manufacturer.
2. All work to be done in a neat and professional manner.

C. Patching

1. Upon completion, cut out and patch loose, cracked, damaged or defective plaster; patches matching existing plaster in texture, color, and finish, flush with adjoining plaster. Perform pointing and patching of surfaces and plasterwork abutting or adjoining any other finish work in a neat and workmanlike manner. If 10% or more of the plaster finish is found to be defective, the plaster shall be removed and replaced complete from all surfaces. Remove plaster droppings or spattering from all surfaces in a clean and unblemished condition ready for pool filling. Remove protective coverings from adjoining surfaces. Remove rubbish and debris from site.

**3.04 Pre-Fill Specification**

- A. Contractor shall employ a qualified water testing agency (Fairhope Utilities) to analyze the domestic water with which the pool will be filled within 1 week of the plaster date and shall employ a swimming pool experienced water chemistry consultant to determine the types and quantities of chemicals required to ensure calcium-balanced water immediately upon the completion of the water filling.

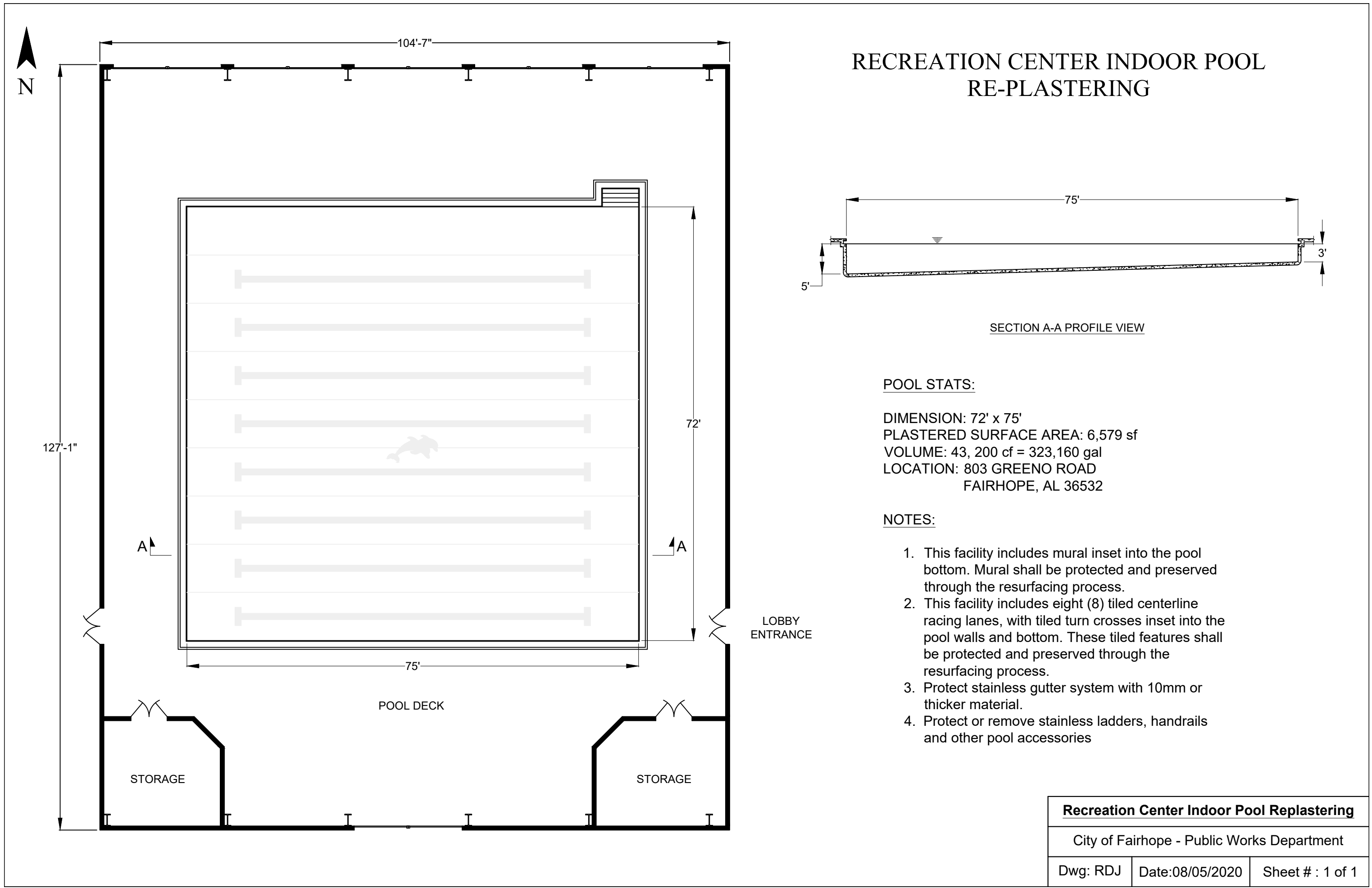
1. Have on hand quantities of the chemicals as determined above, plus 25% for overage for follow-up treatment. These chemicals, typically including calcium chloride, bicarbonate of soda, and muriatic acid are in addition to standard bromine/chlorine products and alkalizer/pH control products required for elsewhere.

- B. Pool shall not be plastered until directed by Owner and the filtration system and chlorination system are complete and ready for start-up. The Contractor shall supply all chemicals required for treatment of the pool water.

C. The Contractor shall submit domestic water analysis to the Owner at least 1 week prior to filling the pool.

~~D. The Contractor shall monitor and adjust chemicals, along with brushing pool for 14 consecutive days following installation.~~

- END OF SECTION -

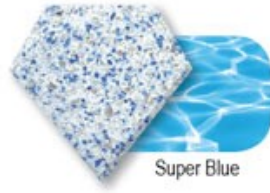




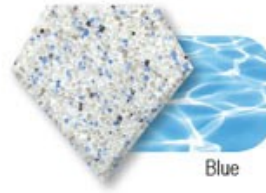
Ivory



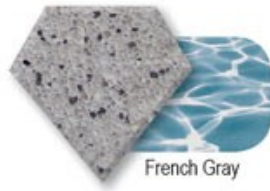
Classic



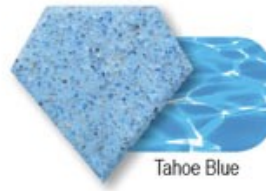
Super Blue



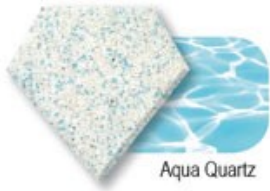
Blue



French Gray



Tahoe Blue



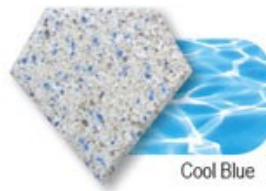
Aqua Quartz



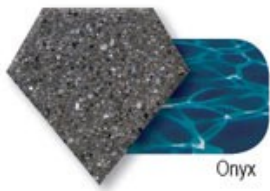
Premium White



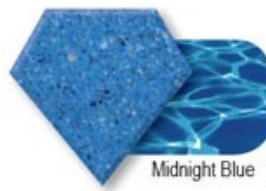
Aqua Blue



Cool Blue



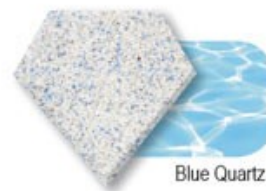
Onyx



Midnight Blue



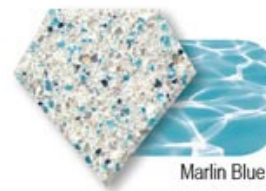
Oyster Quartz



Blue Quartz



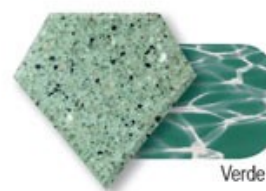
Pearl



Marlin Blue



Mojave Beige



Verde

## ITEM V

### INSURANCE REQUIREMENTS

#### 1.0 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. **Contractor shall carry pool popping insurance minimum.**

**1.01** 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.

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

**1.03 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

**1.04 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.

**1.05 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

**1.06 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.

**1.07 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.

**1.08 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.

- 1.08.1** 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 IV  
BID RESPONSE FORM**

Date:      /      /     

**Bid No. 001-21  
Re-Plaster of Main Pool at Recreation Center**

**4.0 BIDDER'S DECLARATION AND UNDERSTANDING**

- 4.0.1 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.
- 4.0.2 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 pre-bid investigations.
- 4.0.3 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.
- 4.0.4 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.

**4.1 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 **FORTY-FIVE (45) calendar days**.

**4.2 ADDENDA:**

The Bidder hereby acknowledges that he has received Addenda # \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

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.

**4.3 BID AMOUNTS**

**4.3.1 TURNKEY BID:**

**The OWNER agrees to provide the following materials: NONE**

This work shall include furnishing all labor, materials, equipment and incidentals for the proper resurfacing (re-plastering) of the main pool located at the Fairhope Recreation Center at 803 North

Greeno Road, Fairhope, Alabama 36532. All work shall be performed by the enclosed drawings, specifications and contract documents enclosed.

### 3.4 SPECIAL CONDITIONS:

1. Contract time allowed as follows:
  - a. **Forty-Five (45) Calendar Days**
  - b. No typical weather days shall be allowed (work performed in an enclosed space)
2. **5% retainage will be withheld.**
3. **Only three pay requests will be processed:**
  - a. 30 Days (2/3 completion)
  - b. 45 Days (substantial completion)
  - c. Release of retainage (project closeout)

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### BID RESPONSE

**Lump sum for main pool resurfacing (re-plastering)**                      \$ \_\_\_\_\_  
**(includes all labor materials, equipment and incidentals)**

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### IF CORPORATION, PARTNERSHIP, OR JOINT VENTURE

\_\_\_\_\_  
Name of Corporation, Partnership, or Joint Venture

\_\_\_\_\_  
State of Incorporation

### Company Representative

\_\_\_\_\_  
Print Name of Representative Authorized to Sign  
Contracts for the firm

\_\_\_\_\_  
Position or Title

\_\_\_\_\_  
Signature of Representative Authorized to Sign  
Contracts for the firm

\_\_\_\_\_  
Print Name(s) of Others if a Partnership

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Primary E-mail Address

\_\_\_\_\_  
AL General Contractor License No. (Attach Copy)

\_\_\_\_\_  
AL General Contractor License Major Categories

\_\_\_\_\_  
AL General Contractor Specialties

\_\_\_\_\_  
AL Foreign Corporation Entity ID (Required of Out of State Vendors)

**NOTARY FOR INDIVIDUAL, PARTNERSHIP, CORPORATION, OR LLC**

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ }

I, the undersigned authority in and for said State and County, hereby certify that \_\_\_\_\_  
Name of Bid Signer

As \_\_\_\_\_ respectively of \_\_\_\_\_  
Title Company Name

Whose name is signed in the foregoing document and who is known to me, acknowledged before me on this day, 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 \_\_\_\_\_, 2020

NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_

**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		

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2.

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

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3.

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

**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).

**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 \_\_\_\_\_

**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 \_\_\_\_\_

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

Dated this \_\_\_\_ day of \_\_\_\_\_ 2020

**[ END OF BID PROPOSAL ]**

# **CITY OF FAIRHOPE**

## **STANDARD TERMS & CONDITIONS**

### **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.fairhopeal.gov](http://www.fairhopeal.gov). 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 attorney's 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, Sub-contractors, 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 sub-contractors 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. NON-CONFORMING 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. Drawer 429  
Fairhope, AL 36533  
[ap@fairhopeal.gov](mailto:ap@fairhopeal.gov)

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, during the entire term of the Contract / Agreement / 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.fairhopeal.gov](http://www.fairhopeal.gov). 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 XI

### Alabama Immigration Act Contract Requirements

#### 1.0 Background

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

#### 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

3.0 Mandatory Clause

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

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

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

4.0 Contracts Involving Business Entity, or Employer

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

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

5.0 Contracts Involving Subcontracting

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

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