

## ITEM I INVITATION TO BID

### Bid 013-21 Fairhope Connect Newsletter Printing

Sealed bids will be received, opened, and read aloud in public session for **Bid 013-21 Fairhope Connect Newsletter Printing** for the **CITY OF FAIRHOPE, AL**, at **10:00 A.M. on Tuesday, January 12, 2021**, at the Fairhope City Services and Utilities Building located at 555 S. Section St., Fairhope, Alabama.

Bid Specifications may be obtained from the Fairhope City Services and Utilities Building located at 555 S. Section St., Fairhope, Alabama located at 555 S. Section St., Fairhope, Alabama, Monday through Friday from 7:00 A.M. until 4:00 P.M., or downloaded from the City's website at [www.fairhopeal.gov](http://www.fairhopeal.gov).

Questions or comments pertaining to this bid must be presented in writing, sent as an e-mail to the attention of the Purchasing Manager, Dee Dee Brandt ([deedee.brandt@fairhopeal.gov](mailto:deedee.brandt@fairhopeal.gov)), seventy-two (72) hours prior to the bid opening or will be forever waived.

**There will be a NO 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 a **"Sealed Bid" with Bidder's Name and Number, Bidder's Name and Address, and opening time and date.** Each bid must be in a separate envelope. No responsibility will attach to the City of Fairhope for the premature opening of a bid not properly addressed or identified. 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 company that is awarded the bid must have Workman's Compensation Insurance on all of its employees if work is done on City premises. General Liability Insurance must be maintained to hold the City harmless in the event of an accident. Awarded Vendor must submit to the City, Proof of Workman's Compensation Insurance if work is done on City premises and General Liability Insurance specifying coverage. See bid packet for details.

No bids will be considered unless the bidder, whether resident or non-resident of Alabama, is properly qualified to submit a proposal for this type of work in accordance with all applicable laws of the State of Alabama. Where applicable, this shall include evidence of holding a current license from the State Licensing board for General CONTRACTORS, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, the contracted provider, if non-resident of the State, and if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama <http://sos.alabama.gov/business-entities>. 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 proposals 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 on the City of Fairhope's website, [www.fairhopeal.gov](http://www.fairhopeal.gov).

Purchasing Manager  
Posted December 22, 2020

# INVITATION TO BID

## Bid 013-21 Fairhope Connect Newsletter Printing

**INVITATION TO BID POSTING DATE:** December 22, 2020

**BID NAME AND BID No.:** **Bid 013-21 Fairhope Connect Newsletter Printing**

**PRE-BID MEETING DATE:** N/A

**PLACE OF BID OPENINGS:** Fairhope City Services and Utilities Building  
555 S. Section St.  
Fairhope, AL 36532

**QUESTIONS MUST BE SUBMITTED BY:** January 7, 2021 at 10:00 A.M. (Central)

**BID MUST BE PUBLICLY OPENED:** **January 12, 2021 at 10:00 A.M. (Central)**

All bids, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a **“Sealed Proposal” with Bidder’s Name and Number, Bidder’s Name and Address, and opening time and date.** Each bid must be in a separate envelope. No responsibility will attach to the City of Fairhope for the premature opening of a bid not properly addressed or identified. 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 portion 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.

Sealed bids will be received by the City of Fairhope Warehouse until the above time and date at which time they will be opened as soon thereafter as practicable.

Sealed proposals must be delivered to the following addresses:

City of Fairhope  
Attn: Dee Dee Brandt, Purchasing Manager  
555 S. Section St.  
Fairhope, AL 36532

Be advised that overnight delivery by express or courier to Fairhope is not guaranteed. **Faxed or e-mailed bids will not be accepted.**

Questions or comments pertaining to this ITB must be sent to the Purchasing Manager, Dee Dee Brandt ([deedee.brandt@fairhopeal.gov](mailto:deedee.brandt@fairhopeal.gov)), seventy-two (72) hours prior to the ITB opening or will be forever waived.

## ITEM II

### INSTRUCTIONS TO BIDDERS

#### 1.0 GENERAL REQUIREMENTS

- 1.1 All bid components will comply with all Federal, State, and Local laws, ordinances, codes, and regulations.
- 1.2 All Addenda are part of the Contract Documents. Include resultant costs in the Bid. Addenda will be issued by posting to the City of Fairhope website: [www.fairhopeal.gov](http://www.fairhopeal.gov), and posted on the City of Fairhope Warehouse bulletin board located at 555 S. Section St., Fairhope, AL. It is the responsibility of the bidder to obtain any addenda and verify that all addenda have been received.
- 1.3 The Contract documents are the ITB, Drawings (as required), Addenda, and all other related documents bearing the Bid Name and Bid Number. Bidders shall use complete sets of Contract 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.
- 1.4 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 nonresident bidder's state awards contract to Alabama contractors bidding under similar circumstances. Therefore, non-resident bidders shall submit with their bid a written opinion of an attorney at law licensed to practice law in the non-resident bidder's state of domicile as to preferences granted by that state to entities doing business in that state when letting public contracts.
- 1.5 Signed resolution disposition is required before award of contract.

#### 2.0 BID SUBMISSION AND PREPARATION

- 2.1 Sealed bids, signed, executed, and dated will be received by the City of Fairhope as noted herein. 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 Bidder's Name and Number, Bidder's Name and Address, and opening time and date**. When sent by mail, or courier service, the sealed envelope containing the proposal, marked as indicated above, shall be enclosed in another envelope for mailing.
- 2.2 Forms furnished, or copies thereof, shall be used in strict compliance with the requirements of the Bid, these instructions, and the instructions printed on the forms as necessary. Special care should be exercised in the preparation of bids. All designations and prices shall be fully and clearly set forth. The proper spaces in the bid and guaranty forms shall be suitably filled in.
- 2.3 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.
- 2.4 Each bid must give the full business address of the bidder and must be signed by him / her with his / her 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 proposal 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.

- 2.5 Bids may be withdrawn by 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.
- 2.6 The bidder agrees to perform the work within the time stated in the Bid Response Form. The bidder in submitting an offer accepts the conditions of the contract period stated for performing the work.
- 2.7 Compliance with or variations from the specifications must be noted as to each item on the Specification Sheet. This requirement must be met even though the Purchasing Manager may alter the specifications in the form of an addendum to accommodate variances. A request for a change in the specifications to accommodate a variation must be called to the attention of the Purchasing Manager at least seventy-two (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.

### **3.0 ERRORS / REJECTION OF BID**

- 3.1 Bids that contain irregularities of any kind may be declared unacceptable at the discretion of the City. The City may waive any minor irregularities and may reject any or all proposals. Bids received after the deadline will be returned to the bidder unopened.
- 3.2 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.
- 3.3 Contact initiated by a potential bidder with a City official will be only as specifically set out in this invitation. Any other contact with a City official initiated by a potential bidder or bidder regarding this bid, **between the date of this invitation to the date of bid award**, shall be deemed and treated as an attempt to unduly influence the bid award, and may be grounds for rejection of the bid submitted by the bidder initiating such other contract, at the discretion of the City of Fairhope. All questions regarding the contents of this bid should be directed to the Purchasing Manager.

- 3.4 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.
- 3.5 The City of Fairhope reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts of a similar nature, or a bid of a bidder who is not, in the judgement of the City, in a position to perform the Contract.

#### **4.0 BID ACCEPTANCE / AWARD OF CONTRACT**

- 4.1 Bids with the lowest Total Bid amount from a responsive and responsible bidder may be accepted if within the contract budget. In the event that alternates are listed on the Bid Form, the lowest combination of Total Bid and Alternate Bid accepted by the owner shall be the accepted bid. Alternates shall be awarded in the order in which they are listed on the Bid Form.
- 4.2 The bid 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, within the period specified, or, if no period be specified, within 15 days after the required forms are presented for signature.
- 4.3 If the successful bidder fails to deliver within the time specified or within reasonable times as interpreted by the City of Fairhope, or fails to make replacement of rejected articles when so requested immediately or as directed by the City, the City of Fairhope may purchase from other sources to take the place of the item rejected or not delivered. The City of Fairhope reserves the right to authorize immediate purchase from other sources against rejections on any contract when necessary.
- 4.4 A contract may be canceled for non-performance.
- 4.5 It is mutually understood and agreed that the successful bidder shall not assign, transfer, convey, sublet, or otherwise dispose of the contract of bidders right, title, or interest therein, or bidders power to execute such contract to any other person, company, or corporation without the previous written consent of the City of Fairhope.

#### **5.0 PACKAGING AND DELIVERY**

- 5.1 Deliver bid items to the City of Fairhope Warehouse located at 555 S. Section St., Fairhope, AL 36532 or other designated site, maintaining product in proper state, undamaged.
- 5.2 At point of delivery, awarded vendor will present an itemized delivery ticket with the Purchase Order Number clearly referenced thereon, to City of Fairhope receiving personnel for signing.
- 5.3 F.O.B. City of Fairhope, as directed.
- 5.4 Shortages, defective or damaged items will be rejected. The awarded vendor will replace such items within ten (10) working days.

- 5.5 If applicable, 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 Owner approved delivery location.
- 5.6 The bidder shall give the City at least 24 hours' notice (weekends and holidays excluded) prior to delivery on site.

## **6.0 PAYMENT**

- 6.1 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)
- 6.2 All invoices must reference appropriate Bid Number, Contract Name, and Purchase Order.
- 6.3 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.

### ITEM III

## 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.

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.

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

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

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

Part Two: Employer's Liability	\$100,000	each accident
	\$100,000	each employee
	\$500,000	Policy Limit

#### **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.

#### **Maritime Endorsement (Jones Act)**

Endorsement required if contract involves the use of a Vessel. Or includes 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

#### **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.

**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.

**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.

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

### SCOPE OF WORK AND SPECIFICATIONS

#### 1.0 PROJECT DESCRIPTION

The City of Fairhope is seeking bids for the turnkey pricing of a monthly newsletter. The newsletter will be distributed throughout the City and mailed to customers.

The City will furnish copy and photographs of each newsletter in PDF file format. The successful bidder shall provide all labor, materials, equipment, shipping and postage, overhead, profit, insurance, and all other costs necessary to print the newsletter from the supplied PDF file (including copy and photographs) and deliver copies to the addresses provided herein.

#### 2.0 SPECIFICATIONS

##### 2.1 NEWSLETTER 1 for City Distribution

- 2.1.1 Standard printed newsletter will be one (1) page, 17" wide x 11" tall to fold to 8 ½" wide x 11" tall, printed four 4/4 (color), one sheet printed both sides, process with bleeds on 100# TEXT, and will be issued monthly per fiscal year
- 2.1.2 A 7-day turn-around time period is required from the time the awarded vendor receives the publication from the graphic artist; this includes proofing time **The final approved draft of each issue will need to be mailed on or before the 25th of the month preceding the publication date (ex.: March 25th mailing date for April publication).**
- 2.1.3 The average run for this newsletter is 17,000 copies per issue. Unit pricing per copy will be based on the volume printed per issue in accordance with responses to the Bid Response Form (ITEM V).
- 2.1.4 16,000 copies of the newsletter shall be mailed to addresses provided by the City of Fairhope. The newsletter shall be folded and self-contained for mailing; no envelopes should be used for this mailing.
- 2.1.5 1,000 copies of the newsletter shall be delivered to the following address:  
City of Fairhope  
161 N. Section St.  
Fairhope, AL 36532

#### 3.0 BILLING

- 3.1 A purchase order will be produced for each issue of the newsletter for a total of twelve (12) issues.
- 3.2 No items are to be shipped or delivered until receipt of an official purchase order from the City of Fairhope.
- 3.3 In acknowledgement of completion of the purchase order, the awarded vendor will also submit to OWNER for signature, a service ticket showing the purchase order number.

**ITEM V**  
**BID RESPONSE FORM**

Date: \_\_\_\_\_

**Bid 013-21 Fairhope Connect Newsletter Printing**

**Bid Duration:** One (1) year from signing date of contract, with the option to renew bid or contract for up to two (2) additional years if terms and conditions, including pricing remain the same, and both parties are in agreement to renewing the bid or contract.

Base bid will include all labor, materials, equipment, shipping and postage, overhead, profit, insurance, and all other costs necessary to provide the complete services outlined within this contract and scope of work, on a per unit basis. Show quantity / price breaks.

The city agrees to provide the following materials: NONE

The Bid Form must be filled out completely.

**Fairhope Connect Newsletter Printing**

Number of Copies	Printed and Mailed Price Per Copy (Non-Recycled Paper)	Printed and Mailed Price Per Copy (Recycled Paper)
16,000 to 17,000	\$ _____	\$ _____
17,001 to 18,000	\$ _____	\$ _____
18,001 to 19,000	\$ _____	\$ _____
19,001 to 20,000	\$ _____	\$ _____

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

<u>ADDENDUM NO</u>	<u>DATE ISSUED</u>	<u>ADDENDUM NO.</u>	<u>DATE ISSUED</u>
_____	_____	_____	_____
_____	_____	_____	_____

Each proposal must give the full business address of the proposer and must be signed by him / her with his / her usual signature. Proposals 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. Proposals 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 proposal 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 proposer 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 Request for Proposal, 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.

*Section 41-16-5, Code of Alabama 1975, requires that public contracts over \$15,000 include the following language:*

*By signing this Contract, \_\_\_\_\_ represents and*  
*COMPANY NAME*

*agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade*

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**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, If Required)

\_\_\_\_\_  
AL General Contractor License Major Categories (If Required)

\_\_\_\_\_  
AL General Contractor Specialties (If Required)

\_\_\_\_\_  
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 \_\_\_\_\_  
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 \_\_\_\_\_, 2021

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

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

**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 Corporation is held:

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 Number: \_\_\_\_\_

Email Address \_\_\_\_\_

**ITEM VI**  
**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 VII**

### **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 Definition**

**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, sub-contractor, 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 SUB-CONTRACTOR 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 sub-contractor 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 sub-contractors performing work on a project subject to the provisions of this section and not to collateral persons or business entities hired by the sub-contractor.

### 4.0 **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.

## ITEM VIII SAMPLE CONTRACT

This **CONTRACT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Fairhope (hereinafter referred to as the “**OWNER**”) and \_\_\_\_\_ (hereinafter referred to as the “**CONTRACTOR**”), for

### Bid 013-21 Fairhope Connect Newsletter Printing

The **OWNER** and the **CONTRACTOR** agree as set forth below:

1. The Contract consists of all the items contained within this bid package, associated addenda, amendments, and City of Fairhope Standard Terms and Conditions, which are attached hereto and made a part hereof, as if fully contained herein; for the performance of all work and the furnishing of all labor and materials required for completion of the WORK.
2. The **CONTRACTOR** shall perform all the WORK described herein.
3. **Term of Contract:**  
The term of the Contract shall be for a period of one (1) year commencing at 12:00 a.m., on \_\_\_\_/\_\_\_\_/\_\_\_\_, the date of contract signing, and ending at 11:59 p.m., on \_\_\_\_/\_\_\_\_/\_\_\_\_, with the option to renew contract for up to two (2) additional years if terms and conditions, including pricing, remain the same, and both parties are in agreement to renewing the contract.
4. Bid will include all labor, materials, equipment, shipping and postage, overhead, profit, insurance and all other costs necessary to provide the complete services outlined within this contract and scope of work, on a per unit basis.
5. **Pricing:**  
The **OWNER** shall pay the **CONTRACTOR** in current funds for the performance of the WORK, at the rate set forth in the following table. Rates will be based on volume of copies and type of copies printed per issue. Twelve (12) issues will be run per fiscal year.

Number of Copies	Printed Price Per Copy (Non-Recycled Paper)	Printed Price Per Copy (Recycled Paper)
16,000 to 17,000	\$	\$
17,001 to 18,000	\$	\$
18,001 to 19,000	\$	\$
19,001 to 20,000	\$	\$

6. **Ordering**  
The **OWNER** will issue a purchase order for items to be supplied by the **CONTRACTOR**. A purchase order will be produced for each issue of the newsletter for a total of twelve (12) issues.

## 7. Delivery

The final approved draft of each issue of each newsletter will need to be delivered as specified in the ITB (ITEM IV Scope of Work).

## 8. Payment

- a. CONTRACTOR is to invoice OWNER upon completion of work specified in the applicable purchase order.
- b. Purchase order number must be referenced on all communications including delivery tickets and invoices.
- c. All invoices received by the OWNER are payable within thirty (30) days from the date of receipt by the OWNER from lost on account of.

## 9. Payment Withheld

- a. The OWNER may withhold approval for payment on any request and the OWNER may withhold payment to such extent as may be necessary to protect the OWNER from loss on account of.
- b. Negligence on the part of the CONTRACTOR to execute the work properly or fail to perform any provision of this contract.
- c. The OWNER, after three (3) days written notice to the CONTRACTOR, may without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the overall contract sum.
- d. Claims filed or reasonable evidence indicating probable filing of claims.
- e. A reasonable doubt that the Contract can be completed for the balance then unpaid.
- f. When the above grounds are removed, payment shall be made for the amount withheld because of them. The **CONTRACTOR** waives all cancellation rights under the contract, if payment is withheld for one or more of the above reasons.

## 10. General Conditions

- a. **Indemnity:** The CONTRACTOR hereby agrees to indemnify and save harmless the OWNER, 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, to the extent caused by a negligent act or omission of the CONTRACTOR, their agents, servants, employees, SUB-CONTRACTORS, or others associated with the CONTRACTOR. The CONTRACTOR shall be responsible for damage to any elevator equipment excluded from this contract, or damage or injury caused by any equipment excluded from this contract, to the extent that the damage or injury is caused by a negligent act or omission of the CONTRACTOR.
- b. **Notification and Accident Reports:** In the event of accidents of any kind, the CONTRACTOR shall notify the OWNER immediately and furnish, without delay, copies of all such accident reports to the OWNER. If in the performance of their Work, the CONTRACTOR fails to immediately report an accident to the OWNER, of which the CONTRACTOR has knowledge of and which results in a fine levied against the OWNER then the CONTRACTOR shall be responsible for all fines levied against the OWNER.

## **11. Termination of Contract**

- a. Termination for Default: Performance of Work under this Contract may be terminated by the OWNER, in whole or in part, in writing, whenever the OWNER determines that the CONTRACTOR has failed to meet the requirements of this Contract.
  - i. The Owner has a right to terminate for default if the contractor fails to make delivery of material or does not perform the work, or if the Contractor fails to perform the Work within the time specified in the Contract, or if the Contractor fails to perform any other provision of the Contract.
  - ii. Failure on the part of the Contractor to deliver or perform the Work within the time specified, or within a reasonable time as determined by the Owner, or failure on the part of the Contractor to make replacements of rejected articles, or Work when so requested, immediately or as directed by the Owner, shall constitute authority for the Owner to purchase in the open market, articles or Work of comparable grade to replace the articles or Work rejected, not delivered or completed. On all such purchases, the Contractor shall reimburse the Owner within a reasonable time specified by the Owner for any expense incurred in excess of Contract prices.
  - iii. Such purchases shall be deducted from the Contract sum. If public necessity demands it, the Owner reserves the right to utilize services or use and/or consume articles delivered, which are standard in quality, subject to an adjustment of price to be determined by the Owner.
- b. 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.

## **12. Warranty**

- a. The CONTRACTOR warrants that the Work including equipment and materials provided shall conform to the professional standards of care and practice in effect at the time the Work is performed, be of the highest quality, and be free from all faults, defects, or errors. If the CONTRACTOR is notified in writing of a fault, deficiency or error in the Work, the CONTRACTOR shall at the OWNER's option, either re-perform such portions of the Work to correct such fault, defect, or error, at no additional cost to the OWNER, or refund to the OWNER the charge paid by the OWNER, which is attributable to such portions of the faulty, defective or erroneous Work, including costs for re-performance or Work provided by other CONTRACTORS. All equipment and materials provided by the CONTRACTOR shall be merchantable and for the purpose intended and meet all industry quality standards.

## **13. Time of Completion**

The OWNER and CONTRACTOR understand and agree that time is of the essence in the performance of this Contract. The CONTRACTOR or OWNER, respectively, shall not be liable for any loss or damage, resulting from any delay or failure to perform its contractual obligations within the time specified, due to acts of God, actions or regulations by any governmental entity or representative, strikes, fire, water damage, loss of power, loss of funding or any other causes, contingencies, or circumstances not subject to the OWNER or CONTRACTOR'S control, respectively, whether of a similar or dissimilar nature, which prevent or hinder the performance of the OWNER'S or CONTRACTOR'S contractual obligations, respectively. Any such causes of delay, even though existing on the date of the CONTRACT, or on the day of the start of Work, shall extend the time of the OWNER'S or CONTRACTOR'S performance respectively, by the length of the delays occasioned thereby, including delays reasonably incident to the resumption of normal Work schedules.

However, under such circumstances as described herein, the OWNER may, at their discretion, cancel this CONTRACT for their own convenience.

**14. Insurance Requirements**

See ITEM III

**15. Acceptance of Work**

The OWNER 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 CONTRACTOR shall, after receipt of notice from the City of Fairhope, correct the deficiencies. Failure on the part of the CONTRACTOR 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.

**16. Correction of Work**

The CONTRACTOR shall promptly correct all Work rejected by the OWNER as faulty, defective or failing to conform to the Contract, whether observed before or after completion of the Work. The CONTRACTOR shall bear all costs of correcting such rejected Work.

**17. Extra Work and Associated Costs**

- a. Changes in the Work: The OWNER, without invalidating the Contract, may order changes in the Work within the general scope of this Contract, consisting of additions, deletions, or other revision, the Contract price and time for execution of the Work being adjusted accordingly.
- b. All such changes in the Work shall be authorized by a written Amendment to the Contract or a separate Change Order, or Purchase Order, and shall be executed under the applicable conditions of the Contract.

**18. Familiarity with the Work**

The CONTRACTOR, by executing this Contract, acknowledges full understanding of the extent and character of the Work required and the conditions surrounding the performance thereof. The OWNER will not be responsible for any alleged misunderstanding of the Work to be furnished or completed, or any misunderstanding of conditions surrounding the performance thereof. It is understood that execution of the Contract by the CONTRACTOR serves as his stated commitment to fulfill all requirements and conditions referred to in this Contract.

**19. Scope of Work**

See ITEM IV

**20. Contractor Liability**

Nothing in this Contract shall be construed to mean that the CONTRACTOR assumes any liability for damages or otherwise, on account of accidents to persons or property, except those resulting from negligence on the part of the CONTRACTOR.

**21. Miscellaneous Provisions**

- a. The CONTRACTOR shall not employ SUB-CONTRACTORS without the express written permission of the OWNER.
- b. The CONTRACTOR shall not assign the Contract or sublet it as a whole without the express written permission of the OWNER. The CONTRACTOR shall not assign any payment due them

hereunder, without the express written permission of OWNER. The OWNER may assign the contract, or sublet it as a whole, without the consent of the CONTRACTOR.

- c. No waiver, alteration, consent or modification of any of the provisions of the Contract shall be binding unless in writing and signed by the OWNER and CONTRACTOR.
- d. The CONTRACTOR 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 this Contract.
- e. This Contract is considered a non-exclusive Contract between the parties.
- f. This Contract is deemed to be under and shall be governed by and construed according to the laws of the State of Alabama.
- g. Any litigation arising out of the Contract shall be heard in the Courts of Baldwin County, Alabama.
- h. This Contract contains all terms and conditions agreed upon by the OWNER and CONTRACTOR. No other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either party hereto.
- i. This Contract 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 Contract, and any uncertainty or ambiguity shall not be interpreted against one or more parties.

***Section 41-16-5, Code of Alabama 1975, requires that public contracts over \$15,000 include the following language:***

***By signing this Contract, \_\_\_\_\_ represents and agrees***

***COMPANY NAME***

***that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade***

IN WITNESS WHEREFORE, the parties hereto have executed this **CONTRACT** as of the day and year first above written.

**THE CITY OF FAIRHOPE, ALABAMA**

\_\_\_\_\_  
**Sherry Sullivan, 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 Sherry Sullivan, 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 Notary Seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2021

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

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

**IF CORPORATION OR LLC**

\_\_\_\_\_  
Company

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

**Company Representative**

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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

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

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

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

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

\_\_\_\_\_  
AL General Contractor License Major Categories (If Required)

\_\_\_\_\_  
AL General Contractor Specialties (If Required)

\_\_\_\_\_  
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 \_\_\_\_\_ As  
Name

\_\_\_\_\_ 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 \_\_\_\_\_, 2021

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

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