



CITY OF FAIRHOPE
REQUEST FOR QUALIFICATIONS

SEALED PROPOSALS will be received by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope's City Services and Public Utilities Building located at, 555 South Section St. Fairhope, Alabama, until 10:00 A.M. Thursday, September 14, 2023, and then publicly opened thereafter, for furnishing all labor and materials, and performing all work required by the City of Fairhope and described as follows:

RFQ No. PS23-025
Professional Engineering Services for
Wastewater Treatment Plant Headworks Improvements
American Rescue Plan Act of 2021 (ARPA)

The City of Fairhope is accepting proposals from qualified firms to provide Professional Engineering Services for improvements to the Wastewater Treatment Plan Headworks. The Wastewater Treatment Plant is located at 300 North Church Street, Fairhope, Alabama. This project will be partially funded by the American Rescue Plan Act of 2021 (ARPA), as distributed by Alabama Department of Environmental Management (ADEM).

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

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail to the attention of the Purchasing Manager, Erin Wolfe, 555 South Section St., Fairhope, AL 36532, e-mail: Purchasing@FairhopeAL.gov, by Wednesday, September 6, 2023, at 10:00 A.M. or will be forever waived.

There will be a non-mandatory pre-bid meeting on Tuesday, August 29, 2023 at 10:00 a.m. at the City Services and Public Utilities Building located at 555 South Section St., Fairhope, AL 36532. Bidders are not required to attend, but attendance is highly recommended.

The City of Fairhope is an Equal Opportunity Employer and requires that all **BIDDERS** 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 must be on blank bid forms provided in the Bid Documents. 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 **Item Name, Bid Number, City of Fairhope's Name and Address and CONTRACTOR's Name and Address**. Each bid must be in a separate envelope. Bids made out in pencil will not be accepted. Failure to observe the instructions contained herein will constitute grounds for rejection of your bid. The **City** reserves the right to accept or reject all bids or any 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.

No bids will be considered unless the **CONTRACTOR**, 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 BIDDERS, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, the Awarded Vendor, if non-resident of the State, and if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama. **CONTRACTOR** 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 by visiting the following web address: www.FairhopeAL.gov.



**REQUEST FOR QUALIFICATIONS
RFQ NO. PS23-025
PROFESSIONAL ENGINEERING SERVICES
FOR WASTEWATER TREATMENT PLANT
HEADWORKS IMPROVEMENTS
AMERICAN RESCUE PLAN ACT OF 2021 (ARPA)**

**CITY OF FAIRHOPE
SHERRY SULLIVAN, MAYOR**

RFQ NO. PS23-025
REQUEST FOR QUALIFICATIONS (RFQ)
PROFESSIONAL ENGINEERING SERVICES
FOR WASTEWATER TREATMENT PLANT HEADWORKS IMPROVEMENTS
AMERICAN RESCUE PLAN ACT OF 2021 (ARPA)

The City of Fairhope has received as a Recipient a payment from the SLFRF established pursuant to Sections 602 and 603, respectively, of the Social Security Act, as added by Section 9901 of the American rescue Plan Act of 2021, Pub. L. No 117-2 (“ARPA”); and the City of Fairhope intends to pay, in part or in whole, for the cost of Engineering Services pursuant to this RFQ using monies received from SLFRF by the U.S. Department of the Treasury (“Treasury”) governing the expenditure of monies distributed from SLFRF (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021)) and Final Rule (87 Fed. Reg. 4,338 (Jan. 27, 2022)), the Award Terms and Conditions applicable to SLFRF, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from SLFRF (collectively, the “Regulatory Requirements”); and pursuant to the Regulatory Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Par 200, other than such provisions as Treasury has determined or may determine are inapplicable to SLFRF; and pursuant to 2 C.F.R. 200.327, the City must include within the Agreement applicable provisions described in Appendix II to 2 C.F.R. Part 200; and the City shall not enter into the Agreement or make any distributions of funds using monies from the SLFRF absent the Applicant’s agreement and adherence to the applicable provisions described in Appendix II to 2 C.F.R. Part 200.

Invitation to Provide Qualifications

The City of Fairhope is accepting proposals from qualified firms to provide Professional Engineering Services for the improvements to the Wastewater Treatment Plant Headworks. This project will be using funds provided through the American Rescue Plan Act (ARPA) of 2021, as distributed by Alabama Department of Environmental Management (ADEM).

This Request for Qualifications (“RFQ”) is an initial inquiry regarding the qualifications to provide professional services and is NOT a solicitation for bids. Pricing is not requested at this stage and shall not be submitted. The City has the right to waive informalities and to accept or reject any and all submitted responses.

Responding Firms assume responsibility for all associated costs.

Deadline:

Responses to this RFQ shall be received until 10:00 a.m. local time, Thursday, September 14, 2023, at the City Services and Public Utilities Building, 555 South Section Street, Fairhope, AL 36532, and publicly opened shortly thereafter.

Envelopes shall be clearly marked with the RFQ name and number.

Availability of Documents:

RFQ Documents may be obtained on the City’s website at www.FairhopeAL.gov/purchasing/bids or at the City Services and Public Utilities Building, 555 South Section Street, Fairhope, AL. One set of RFQ Documents can be obtained free of charge.

Inquiries

Questions or comments pertaining to this RFQ must be presented in writing, sent as an email to the attention of the Purchasing Manager, Erin Wolfe, 555 Section Street, Fairhope, AL 36532, email: Purchasing@FairhopeAL.gov, by Wednesday, September 6, 2023, at 10:00 a.m. or will be forever waived.

Equal Opportunity

The City of Fairhope is an Equal Opportunity Employer and requires that all BIDDERS 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 and Disadvantaged Business Enterprises on this and all public bids.

Background and Introduction

The City of Fairhope Wastewater Treatment Plant (WWTP) is located at 300 North Church Street, Fairhope, Alabama. The lift station was originally built in the early 1970's. The WWTP was most recently upgraded in 2015.

This project will be using funds provided through the American Rescue Plan Act (ARPA) of 2021. The qualified engineer must have experience in administering bids using ARPA or other Federal grant funds.

The improvement project will address and correct the following concerns:

The Wastewater Treatment Plant (WWTP) influent structure serves as a junction box and receives wastewater flow from three (3) different collection system piping systems. From the influent structure, raw wastewater is conveyed through gravity piping to the headworks facility. In this configuration, there is no true hydraulic separation between the influent structure and the headworks facility, which causes the collection system to be influenced by the water level within the headworks channels. There are ongoing collection system projects funded by the RESTORE Act to upsize mains leading to the plant. In addition, with only one mechanical screen, limited redundancy exists and staff must be present at the plant twenty-four hours a day to manually rake debris from the bar screen when the mechanical screen is out of order. Redundancy of major mechanical parts for a wastewater plant of this size is necessary to maintain proper operations

Scope of Services

The Scope of Services will include, but may not be limited to, civil engineering, surveying, geotechnical, structural engineering, electrical engineering, environmental permitting, bidding, costing, budgeting, and construction inspection services to deliver a complete project.

The work shall include the following:

Design Engineering

The basic services provided will be as follows:

Task 1:

Survey, Geotech, Permitting, Environmental Assessments, Engineering Design, Bidding/Execution of Construction Contract Award

Schematic: Engineer will conduct all preliminary surveying, Geotech, environmental assessments, and other services and secure all necessary permits for the project. Engineer will coordinate with all relevant local, state and federal agencies to secure all necessary approvals. Engineer will provide schematic plans and specifications for review by the City to a level sufficient with preliminary costing. Engineer will develop detailed plan drawings and typical site details will be developed.

Design Development: Engineer will proceed following the City's approval of Final Schematic Designs. Detailed plan drawings and typical site details will be developed. The final deliverables for Design Development will include plans, prototypical details and finishes, enlargements, conceptual grading plans, and budget analysis.

Permitting: Engineer will conduct environmental assessments and secure all necessary permits for the project which may include, but are not limited to, environmental impact studies. Consultant will coordinate with all relevant local, state and federal agencies to secure all necessary approvals

Construction Documents: Engineer will develop construction documents. The detailed plan drawings and details will be developed that are suitable for bidding and construction of the project. The documents will include both detailed and performances plan specifications for design elements to give the contractor the maximum ability to provide solutions that meet the design intent within budget. Engineer will refine construction plans at 50% and 90% to bring project within budget. Deliverables will include all plans, elevations, details and specifications

required to permit, bid and construct the project including civil plans and construction plans. Project will be awarded in accordance with all applicable federal grant and local and state procurement procedures. The final deliverables will include three (3) fully executed construction contracts.

Task 2:

Project Construction and Construction-Phase Professional Services – Construction Engineering and Inspection Services (CE&I) Award

Construction Engineering and Inspection Services will be provided by the Engineer to assure the project is being built according to the design plans, to help assure adherence to the Construction schedule and to help assure the project is built within the construction budget. Inspection reports will be completed and filed with the City. Engineer will be responsible for conducting Pre-Construction Conference and other required meetings. Engineer shall review shop and manufacturer's drawings and other submissions of the contractor for compliance with the design concepts and specification requirements. Engineer shall inspect, consult and advise during construction, including developing punch lists. Engineer shall make final inspection of the construction upon completion. Engineer shall revise the construction drawings to show project "as built," based upon information provided by the contractor. The As Built drawings shall be delivered to City within a reasonable time.

Qualification Proposal Details

To be considered, proposals shall be submitted to the City of Fairhope no later than 10:00 a.m. on Thursday, September 14, 2023. Proposals shall be hand delivered to: Ms. Erin Wolfe, Purchasing Manager, City Services and Public Utilities Building, 555 South Section Street, Fairhope, Alabama or mailed to Post Office Drawer 429, Fairhope, AL 36533. All proposals shall be sealed and labeled on the outside of the envelope, "RFQ PS23-025 Professional Engineering Services for Wastewater Treatment Plant Headworks Improvements; Attn: Purchasing." No facsimiles or emailed proposals shall be accepted. Proposers shall provide one (1) original paper copy, five (5) identical paper copies, and one (1) identical PDF copy on USB flash drive in the submittal.

Those desiring consideration shall submit proposals before the time and date stated above. All applicants shall submit their qualifications, describe approach to be taken in addressing the scope, include experience with Federally funded projects, resources and availability, understanding of the scope of services, and previous experience with similar projects. **DO NOT INCLUDE ANY PROPOSED FEES, FEE SCHEDULES, OR CONTRACT AMOUNT.**

Submittal Requirements

The following items must be included in the Statement of Qualifications. Statements of Qualifications are limited to no more than 25 single sided pages, not including covers or tabs.

The required sections and specific content must be organized in the submitted proposal as they are listed below.

Section 1 – Cover Letter

The respondent shall prepare a cover letter, not exceeding two (2) pages in length, which summarizes the key points in the proposal. It should include the full name of the firm or joint venture members and all proposed subconsultants. If the Respondent is made up of more than one firm, the legal relationship between the firms must be described. The Cover Letter should include a statement committing the availability of the key personnel to perform the work. The cover letter must be signed by a person who is also authorized to sign a contract with the City.

If the Respondent believes any information, data, process or other material in its proposal should be considered but the City to be confidential or proprietary, the Respondent shall identify that material with specificity as to the page and paragraph, and on what basis the material is believed to be proprietary or confidential.

Section 2 – Firm Profile

Include the name, address, phone number, and email address of the person(s) who will serve as the Principal Contact with the City of Fairhope. The same information shall be required for any sub-consultants working with the primary consultant.

Section 3 – Firm Experience

Clearly indicate the specific experience of the individual/firm relative to projects of similar scale and type as this project. Include descriptions of projects with respect to client, location, common issues, and services provided. Include Firm's experience with federal grant awards, especially any with American Rescue Plan Act (ARPA) funds.

Section 4 – Firm Proximity to and Familiarity with the City of Fairhope

Identify logistics for operation within the City of Fairhope. Define location of firm headquarters, offices and personnel in relation to the City of Fairhope. Specifically explain familiarity with the City's water system and list previous projects performed in or on behalf of the City.

Section 5 – Project Team

Key Personnel: Provide a complete list of key personnel who will provide the services and all subconsultants providing services. Provide their professional experience and their role/responsibilities with this project.

Disciplines: Provide a list of disciplines to be used and who will provide the services.

Section 6 – Project Approach

Provide a response that defines the methods and means by which the firm will perform the services outlines in the RFQ.

Section 7 – References

Provide names, addresses, phone numbers, and email addresses of three (3) client references for projects of comparable size and complexity. Each listed reference should include a brief description and scope of services that were provided on the project.

Section 8- Equal Opportunity

Include your firm's efforts or utilization of MBE/DBE's in your projects in your response. Demonstrate your firm's commitment and past practices that actively engage MBE/DBE subcontractors on projects. Describe your plan to utilize MBE/DBE's on this project.

Section 9- Debarment Certification (Active registration in SAM.GOV)

Provide proof of your firm's Active Registration with SAM.GOV and your Unique Entity Identifier (UEI) Number. No contractor will be selected that is presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from covered transactions by any federal or state department/agency. Proof of Active Registration in SAM.GOV must be provided in order to be selected on this project.

Selection Process/Evaluation Criteria

The City of Fairhope will evaluate the proposals. The overall process consists of two (2) steps: A review and evaluation of all responsive proposals and an interview phase for the short list of selected consultants.

The City of Fairhope reserves the right to award more than one contract for the work specified. Through the selection process, the City will identify the most qualified firm(s)/team(s) to complete the requirements of the project. The evaluation process will consider how a firm/team assembles the necessary expertise.

The City will consider the following evaluation factors of the received proposals. Each category shall be weighted as follows, and one hundred (100) points are the maximum total number of points that can be awarded to a proposal.

- | | |
|---|------------------|
| Qualifications, Knowledge, and Expertise Regarding the proposed Scope of Work | 20 Points |
| <ul style="list-style-type: none"> • Number of years of experience with the rehabilitation of pump houses • Explanation of how the firm would handle this project, and how they would support the City's needs and objectives. • A list of their firm's projects of similar size and complexity, within the past ten (10) years. • Proof of satisfactory or better performance on contracts of similar size and complexity. | |
| Experience of Proposed Key Personnel | 20 Points |
| <ul style="list-style-type: none"> • Resumes of key team members listing relevant experience and education. Indicate team members who will be assigned to the City of Fairhope project. | |
| Resources and Availability | 10 Points |
| Experience with Federally Funded Projects | 10 Points |
| Understanding and Familiarity with the Needs of the Environment of the Community | 20 Points |
| <ul style="list-style-type: none"> • Description of familiarity of the City of Fairhope and Baldwin County area. • Proximity to the project area and/or prior professional services provided in the State of Alabama. • Previous experience in working with the locality. | |
| Previous Experience in Working with Publicly Owned Utilities | 20 Points |
| <ul style="list-style-type: none"> • A list of the firm's projects with publicly owned utilities, within the past ten (10) years. • Proof of satisfactory or better performance on contracts with publicly owned utilities. A minimum of three (3) to five (5) projects shall be provided. • Name of public utility department, contact name and title, and the contact's current telephone number and email address. | |

The City may request additional submittals, interviews, sessions or negotiations to be held only with selected firms who meet requirements. The City reserves the right to limit negotiations to those proposals who received the highest rankings during the initial evaluation phase. However, the City reserves the right to award the contract, or contracts, to a firm solely based on the initial proposal submitted and without any further interview, sessions, and negotiation.

If an agreement cannot be reached on price with the most qualified Consultant, negotiations will be formally terminated with that firm. Negotiations will then be conducted with the next most qualified firm. This process will continue until a negotiated agreement is reached which the City considers to be fair and reasonable.

Consultant shall submit data and materials to provide information that the Consultant considers pertinent to its qualifications for the work. The submitted information shall include:

- A letter of transmittal for this Request for Qualifications.
- A statement of the firm/team's qualifications and experience.
- A statement of the firm/team's understanding of the project.
- A statement of the firm/team's approach to the project.
- A statement of the lead firm's company background.

Schedule

The following schedule identifies milestone dates for the project. The City of Fairhope reserves the right to adjust the schedule when necessary.

1. Issue Request for Qualifications – 08/11/2023
2. RFQ Questions Deadline – 09/06/2023
3. Proposals Due – 09/14/2023
4. Consultant Interviews – Week of 09/25/2023
5. Selection of Consultant – 10/09/2023
6. Contract Negotiation with Selected Consultant – 10/16/2023
7. Notice to Proceed – 11/01/2023

Miscellaneous

1. A cost proposal is intentionally excluded from this submittal.
2. RFQ is not to be construed as a contract or a commitment of any kind, nor does it commit the City of Fairhope to pay any costs incurred in the preparation of a submission or of any costs incurred prior to the execution of a formal contract.
3. No debriefings by City staff to unsuccessful submitters will occur until after the award of a contract to the recommended firm.
4. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. (Please complete the certification form in Attachment A and submit with the Company's proposal). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Questions or Additional Information

Questions are due by: Wednesday, September 6, 2023 at 10:00 a.m.

Please submit questions to:

Erin Wolfe
Purchasing Manager
City of Fairhope
555 South Section Street
Fairhope, AL 36532
Email: Purchasing@FairhopeAL.gov



ITEM VII

CITY OF FAIRHOPE

STANDARD TERMS AND CONDITIONS FOR FEDERAL EXPENDITURES

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. 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 United States of America and 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.

Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City of Fairhope may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the City of Fairhope

that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

Opportunity to Cure (General Provision)

The City of Fairhope, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor three (3) calendar days in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the City of Fairhope's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) calendar days after receipt by Contractor of written notice from the City of Fairhope setting forth the nature of said breach or default, City of Fairhope shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City of Fairhope from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach

In the event that the City of Fairhope elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the City of Fairhope shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

Termination for Convenience (Professional or Transit Service Contracts)

The City of Fairhope, by written notice, may terminate this contract, in whole or in part, when it is in the City of Fairhope's interest. If this contract is terminated, the City of Fairhope shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the City of Fairhope may terminate this contract for default. The City of Fairhope shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Fairhope.

Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the City of Fairhope may terminate this contract for default. The City of Fairhope shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while the Contractor has possession of the City of

Fairhope goods, the Contractor shall, upon direction of the City of Fairhope, protect and preserve the goods until surrendered to the City of Fairhope or its agent. The Contractor and City of Fairhope shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the City of Fairhope.

Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, City of Fairhope may terminate this contract for default. The City of Fairhope shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the City of Fairhope may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the City of Fairhope resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City of Fairhope in completing the work. The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the City of Fairhope, acts of another contractor in the performance of a contract with the City of Fairhope, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of City of Fairhope, the delay is excusable, the time for completing the work shall be extended. The judgment of the City of Fairhope shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the City of Fairhope.

Termination for Convenience or Default (Architect and Engineering)

The City of Fairhope may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The City of Fairhope shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall 1. immediately discontinue all services affected (unless the notice directs otherwise), and 2. deliver to the City of Fairhope's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. City of Fairhope has a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials. If the termination is for the convenience of the City of Fairhope, the City's Contracting Officer

shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If the termination is for failure of the Contractor to fulfill the contract obligations, the City of Fairhope may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the City of Fairhope. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of City of Fairhope.

Termination for Convenience or Default (Cost Type Contracts)

The City of Fairhope may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of the City of Fairhope or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the City of Fairhope, or property supplied to the Contractor by the City of Fairhope. If the termination is for default, the City of Fairhope may fix the fee, if the contract provides for a fee, to be paid the City of Fairhope in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Fairhope and the parties shall negotiate the termination settlement to be paid the Contractor. If the termination is for the convenience of Agency, the City of Fairhope shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a Notice of Termination for Default, the City of Fairhope determines that the Contractor has an excusable reason for not performing, the City of Fairhope, after setting up a new work schedule, may allow the City of Fairhope to continue work, or treat the termination as a Termination for Convenience.

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.

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

register to do business in Alabama with the Office of the Secretary of State. Their address is:

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

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

16. COST OF REMEDYING DEFECTS

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

17. DELIVERY OF BID

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

18. DELIVERY

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

19. ENVIRONMENTAL REQUIREMENTS

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

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

20. EQUIPMENT DEMONSTRATION

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

21. EQUIPMENT ELECTRICAL CERTIFICATION

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

22. ERRORS IN BID

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

23. FORCE MAJEURE

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

24. HAZARDOUS AND TOXIC SUBSTANCES

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

25. INDEMNITY

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

26. INSPECTION

All materials, workmanship, equipment, and supplies are subject to inspection and test at any source or time. Final inspection, acceptance or rejection will be made at delivery destination. Goods that do not meet specifications will be rejected unless substitutions have been approved by the City of Fairhope. Failure to inspect or to reject upon receipt, however, does not relieve the awarded vendor of liability. When subsequent tests, after receipt, are conducted and when such tests reveal a failure to meet specifications, the City of Fairhope will reject the goods and the awarded vendor shall immediately supply goods meeting specifications or the City of Fairhope may seek damages including but not limited to the testing expense, regardless of whether a part

of or all of the goods have been consumed through the testing process. Rejected goods shall be removed by the awarded vendor promptly after rejection, at his expense. If not removed in fourteen (14) calendar days, they may be disposed of at the discretion of the City of Fairhope. Disposal costs will be the awarded vendor's responsibility.

27. INSPECTION OF PREMISES

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

28. INSURANCE

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

29. INVITATION TO BID

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

30. INVOICING, DELIVERY, PACKAGING

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

31. LABELING

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

32. LOSS OR DAMAGE IN TRANSIT

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

33. MANDATORY SITE VISIT

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

34. MONITORING OF SERVICES

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

35. NONCONFORMING MERCHANDISE

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

36. NON-DISCRIMINATION

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

37. NON-EXCLUSIVE

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

38. NOTIFICATION AND ACCIDENT REPORTS

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

39. PACKAGING

All goods must be packaged in new packing containers. Packing that meets the requirements of common carriers is acceptable, unless otherwise required. A packing slip or invoice must accompany all shipments and must reference the purchase order number. Unless otherwise specified, goods are to be packaged in cartons meeting federal specifications and shipped on non-returnable pallets.

40. PATENTS

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

41. PROMPT PAYMENT

Invoices -- Upon completion of service and delivery of materials specified in the applicable Contract / Agreement / Purchase Order, awarded vendor will submit an invoice and signed delivery ticket to:

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

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

In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

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 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. The awarded vendor will be sent a written notification.

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. TIME IS OF THE ESSENCE

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

60. TITLE

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

61. VENDOR LIST

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

62. WARRANTY

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

63. IMMIGRATION LAW

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

64. EQUAL EMPLOYMENT OPPORTUNITY

Applicable to construction work.

During the performance of this contract, the Contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals

who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency,

instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

65. DAVIS-BACON ACT Compliance with the Davis-Bacon Act.

Applicable to construction work. This requirement does not apply to Public Assistance Grants.

1. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

2. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

3. Additionally, contractors are required to pay wages not less than once a week.

66. COPELAND ANTI-KICKBACK ACT

This requirement applies to all contract for construction or repair work above \$2,000.00 in situations where the Davis-Bacon Act also applies. This requirement does not apply to Public Assistance Grants.

Compliance with the Copeland "Anti-Kickback" Act. a. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which

are incorporated by reference into this contract. b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses. c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

67. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
Compliance with the Contract Work Hours and Safety Standards Act.

Applicable to contracts that exceed \$100,000.00 that require mechanics or laborers.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

68. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Clean Air Act

This requirement applies to contract awarded by a non-federal entity of amounts in excess of \$150,000.00 under a federal grant.

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

2. The contractor agrees to report each violation to the City of Fairhope and understands and agrees that the City of Fairhope will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance funding.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the City of Fairhope and understands and agrees that the City of Fairhope will, in turn, report each violation as required to assure notification to the appropriate Federal Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance funding.

69. DEBARMENT AND SUSPENSION

Suspension and Debarment

1. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

2. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

3. This certification is a material representation of fact relied upon by City of Fairhope. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City of Fairhope, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

70. FEDERAL AGENCY SEAL, LOGO, AND FLAGS

The contractor shall not use the federal government seal(s), logos, crests, or reproductions of flags or likenesses of federal agencies officials without specific federal agency pre-approval.

71. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that federal financial assistance will be used to fund all or a portion of this contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, policies, procedures, and directives.

72. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

73. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

74. PROCUREMENT OF RECOVERED MATERIALS

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price.

2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

3. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

75. ACCESS TO RECORDS AND REPORTS

1. Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records.

2. Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

3. Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

4. Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

76. AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

77. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

78. VETERANS HIRING PREFERENCE

Veterans Employment Recipients of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

79. BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended) Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification. APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date