



**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. Tuesday, June 25, 2024, 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. PS24-024  
Professional Architectural Services  
City of Fairhope 1<sup>st</sup> Responder Hurricane Safe Room Project  
FEMA Hazard Mitigation Grant Program (HMGP)**

The City of Fairhope is seeking qualifications from architectural firms to design a FEMA Hazard Mitigation Grant Program (HMGP) funded safe room project. The purpose of this project is to construct a 4,072 square foot 1<sup>st</sup> Responder Hurricane Safe Room that will meet FEMA 361 – 4<sup>th</sup> Edition 2021 and ICC500 standards and guidelines and provide protection against severe weather including up to 200 mph winds. The project is located on the City's Pecan Building Campus at 451 Pecan Avenue, Fairhope, AL 36532.

Request for Qualifications documents will be posted on the City of Fairhope Website: [www.FairhopeAL.gov](http://www.FairhopeAL.gov) or a copy may be obtained by e-mailing: [Purchasing@FairhopeAL.gov](mailto: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](mailto:Purchasing@FairhopeAL.gov), by Tuesday, June 18, 2024, at 11:00 A.M. or will be forever waived.

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](http://www.FairhopeAL.gov).



REQUEST FOR QUALIFICATIONS  
RFQ NO. PS24-024  
PROFESSIONAL ARCHITECTURAL SERVICES  
CITY OF FAIRHOPE 1<sup>st</sup> RESPONDER  
HURRICANE SAFE ROOM PROJECT  
FEMA HAZARD MITIGATION GRANT PROGRAM (HMGP)

PUBLIC WORKS PROJECT NO. PWI2022 004A

CITY OF FAIRHOPE  
SHERRY SULLIVAN, MAYOR

**RFQ NO. PS24-024**  
**REQUEST FOR QUALIFICATIONS (RFQ)**  
**PROFESSIONAL ARCHITECTURAL SERVICES**  
**CITY OF FAIRHOPE 1<sup>ST</sup> RESPONDER HURRICANE SAFE ROOM PROJECT**  
**FEMA HAZARD MITIGATION GRANT PROGRAM (HMGP)**

**Invitation to Provide Qualifications**

The City of Fairhope is seeking Qualifications from architectural firms to design a FEMA Hazard Mitigation Grant Program (HMGP) funded safe room project. The purpose of this project is to construct a 4,072 square foot 1<sup>st</sup> Responder Hurricane safe room that will meet FEMA 361 and ICC500 standards and guidelines and provide protection against severe weather including up to 200 mph winds. The project is located on the city's Pecan Building campus at 451 Pecan Avenue, Fairhope, AL 36532.

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, Tuesday, June 25, 2024, 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](http://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](mailto:Purchasing@FairhopeAL.gov), by Tuesday, June 118, 2024, at 11:00 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.

**General Project Scope:**

1. Preliminary Design: Develop conceptual drawing and schematics for the safe room based on FEMA guidelines, local building codes, and input from the City design team.
2. Detailed Design/Engineering/Specifications: This project is FEMA funded and requires additional tasks to assure compliance with FEMA/AEMA and federal guidelines. The architect is responsible for overall design, securing the engineering team to perform (mechanical, electrical, structural, and civil engineering) to meet FEMA 361 – 4<sup>th</sup> Edition 2021 and ICC-500-2020 standards, including local codes.
3. Pre-Bid, Bid, and Construction General Contractor Agreement: Prepare project specifications for construction bid package, conduct construction general contractor pre-bid meeting, conduct construction general contractor bid opening, certification of winning general contractor, and prepare construction general contractor contracts for execution.

4. Construction/Oversight, Pay Applications, Davis Bacon Wage Certifications, and Inspections: During project completion, inspections, the architect will be responsible for inspections/certifications, and punch list completion.
5. Project Coordinate and Closeout with the City of Fairhope Project Manager/Consultant: The architect will coordinate with the City of Fairhope Project Manager/Consultant during the lifecycle of the project to assure FEMA/AEMA and federal guidelines are met including design/engineering, pay applications/Davis Bacon Wage accuracy, FEMA eligible/ineligible costs, any project scope of work changes, and EHP (Environmental/Historical) issues and coordinate with City of Fairhope Project Manager/Consultant to meet FEMA/AEMA closeout requirements.

### **Project Design Timeline**

The City anticipates awarding a contract for A&E Design Service for the 1<sup>st</sup> Responder Saferoom on or about September of 2024. Design Work should begin immediately upon execution of contract. Target date for Project Advertisement for Bid and Letting is 1<sup>st</sup> Quarter 2025 with construction beginning in 2<sup>nd</sup> Quarter of 2025.

### **Architectural & Engineering Services**

The Architectural Services components of the project include but are not limited to: stakeholder engagement, architectural & structural design, mechanical/electrical/plumbing (MEP), preparation of all necessary construction plans and specifications, all required City/State/Federal Permits, the preparation of all bid documents, the supervision of the bidding process (consistent with Local, State and Federal regulations), the provision of on-site resident inspection services during the construction process and the production of regular progress reports to the City of Fairhope. Stakeholders will include, but not be limited to, City of Fairhope, Baldwin County EMA, Alabama EMA (AEMA), FEMA, the general public and other involves civic partners.

The final level and scope of services to be provided by the consultant will be determined by the City of Fairhope and will be determined post-selection. A lump sum, fixed price fee will be negotiated post-selection based on AEMA and FEMA Hazard Mitigation Grant Program (HMGP) guidelines. Full Architectural & Engineering services for all stages of design, permitting, bidding, letting and construction of the project are required. At the completion of construction of the project, the Architect shall conduct a final construction inspection and issue a final certificate of completion. As-built drawings shall be delivered to the City Public Works Department.

### **Professional Architectural & Engineering Services – Minimum Qualifications**

1. Experience: Demonstrated experience in designing and managing construction projects, particularly in the realm of disaster mitigation and safe room construction.
2. Expertise: Proficiency in FEMA guidelines and regulations pertaining to safe room design and construction.
3. Resources: Adequate Staffing, technical expertise, and access to necessary tools and software for completing the project efficiently.
4. Track Record: A history of successfully completing similar projects (specifically FEMA approved safe rooms) on time and within budget with a focus on quality and client satisfaction.
5. References: Provide references from past municipalities who can attest to the firm's capabilities and performance during safe room construction project.
6. Be full-service, licensed Architectural Firm (with access to necessary Land Survey, Professional Engineering, environmental remediation consultant, Landscape Architect & EHP Services) maintaining a main or divisional office within Gulf Coastal Region of Alabama, Florida or Mississippi.
7. Hold appropriate Licenses and/or Certifications from the Alabama Board of Architects.
8. Maintain a resident Professional Architect in a Gulf Coastal Region of Alabama, Florida or Mississippi Office with Project Experience in 1<sup>st</sup> Responders Saferoom Design and Construction.

9. Meet the City's minimum insurance coverage requirements.
10. Have Municipal experience in Baldwin or Mobile Counties, Alabama in Design Projects involving Federally Funded Grant Projects.

Automatic Disqualifier: No Architectural Firm will be considered for Qualification by the City if currently in litigation with the City of Fairhope. No reconsideration will be made by the City until twelve (12) months have passed from the time of agreeable resolution of the litigation.

The City of Fairhope is an Equal Opportunity Employer. All minority business enterprises (MBE) and disadvantaged business enterprises (DBE) are encouraged to submit an RFQ proposal.

### **Qualification Proposal Details**

To be considered, proposals shall be submitted to the City of Fairhope no later than 10:00 a.m. on Tuesday, June 25, 2024. 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 PS24-024 Professional Architectural Services for City of Fairhope 1<sup>st</sup> Responder Hurricane Safe Room Project FEMA Hazard Mitigation Grant Program (HMGP) Project No. PWI-2022 004A Architectural Service Proposal; 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.**

### **Statement Contents**

The Statement of Qualifications should be no more than twenty-five (25) 8.5" x 11" pages, inclusive of the cover letter, minimum qualifications, responses in the order presented below. Statements should be a straightforward delineation of the Respondent's capability to satisfy the intent and requirements of this RFQ and should not contain redundancies or conflicting statements. An officer (principal) authorized to make a binding commitment for the Respondent making the Statement shall sign the Statement Cover Letter.

All professional consulting firms who consider themselves qualified for this work are incited to submit their statements of qualifications. Contents of the submitted Statements must include the following to be deemed responsive for evaluation:

- A. Cover Letter including:
  - a. Primary contact for the Statement and that person's title, address, phone number, and email address.
  - b. The Respondent's Project Team. The Project Team is defined as the lead plus any key team members who are critical for consideration by the evaluation team and include relevant professional certifications.
  - c. A general statement of approach distinguishing why the Respondent is the most suitable choice for this planning effort.
  - d. Statement that the Project Team is willing to complete the Project in a timely manner.
  - e. Signed by Officer (Principal) of the firm.
- B. Statement of Minimal Qualifications (as listed above).
- C. Annual statement of qualifications and performance data (if applicable).
- D. Statements Addressing Project Specific Criterion
  - a. Knowledge of the FEMA Hazard Mitigation Grant Program (HMGP)
    - i. Respondents are requested to demonstrate their understanding of this process by submitting a narrative conceptual approach and methodology for project implementation under federal guidelines.
  - b. Resources and Availability

- i. Respondents must identify resources and capabilities to deliver a detailed project involving the design, letting, construction oversight, and grant compliance of a 1<sup>st</sup> Responder Saferoom.
- ii. A statement that the Project Team is capable of completing the Project in a timely manner.
- iii. Availability and Identity of sub-consultants for Survey, PE, Environmental Remediation, LSA, EHP, etc.
- c. Experience of Proposed Personnel – Given the unique nature of the Project and its importance to City stakeholders, it is essential to fully understand the experience and capabilities of all key members of the Project Team. Respondent should include the following information about the Project Team:
  - i. Describe your team’s experience in specific projects relevant to Saferoom Design & Construction and other projects (including public/private developments).
  - ii. Demonstrate the ability and experience of key individuals on the Respondent’s proposed Project Team to complete projects of the scale and complexity envisioned in this RFQ on budget and on schedule.
- d. Scope of Services
  - i. Describe your Team’s ability to provide all necessary services required for design, permitting, letting, project management and construction oversight of 1<sup>st</sup> Responder Saferooms.
- e. Experience with Similar Projects
  - i. Provide at least three examples of projects that incorporated design and planning components outlined in this RFQ.
  - ii. Describe key Project Team members’ involvement in above projects including project conception through the design and implementation phase and leading to project completion and closeout.
  - iii. Provide details of any experience working in the City of Fairhope and surrounding communities in the region.
  - iv. Relate how past projects have successfully engaged diverse communities of stakeholders and engendered community ownership of the project.
  - v. Provide the names, phone numbers, and email addresses of references for at least three completed projects for which the Project Team acted as consultant and that may be considered comparable to the project envisioned in this RFQ.

**Additional Requirements**

- A. The Respondent must include the Company’s UEI number in the proposal.
- B. The Respondent must include evidence of the Company’s active registration within the System for Award Management (SAM). SAM registration is required for businesses to contract with the Federal Government, and for confirmation of debarment/suspension status. Registration can be obtained through [www.sam.gov](http://www.sam.gov).
- C. A contract award cannot be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.”

**Evaluation and Scoring**

Proposals will be evaluated and ranked on the basis of the following criteria:

- 1. Capability to perform services as described in this notice (25 points).
- 2. Recent experience in FEMA approved safe room projects comparable to the project envisioned in this RFQ (25 points).
- 3. Key personnel’s professional background and availability for the proposed project timeline (25 points).
- 4. Knowledge of FEMA regulations, policies and procedures (15 points).
- 5. Firm’s **reputation**, location, and references (10 points).

Total possible points to be achieved: 100 points

## **Selection**

All proposals will be evaluated and scored based on the criterion listed above. The highest rated respondents MAY be contacted for interviews and/or further presentation. The most highly qualified firm will be recommended to perform the services. This recommendation will be made to the Fairhope City Council, who will make the final selection. A contract will be negotiated and awarded to the qualified applicant selected by the City Council. No pre-submittal interviews will be offered. The respondents will be evaluated, scored, ranked and selected based on the written material submitted.

The City of Fairhope reserves the right to (1) reject any or all proposals not in compliance with RFQ procedures if it is in the best interest of the public to do so, (2) to take no action on the accepted RFQ's, (3) waive informalities in the proposals, (4) to select the proposals which appear to be in the best interest of the City, (5) limit the number of qualifying firms to be reviewed/selected, and (6) to negotiate with any architectural firm, after statements of qualifications are opened, if such is deemed necessary.

## **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 – 05/31/2024
2. RFQ Questions Deadline – 06/18/2024
3. Proposals Due – 06/25/2024
4. Consultant Interviews (If requested) – Week of 07/08/2024
5. Selection of Consultant – 07/22/2024
6. Contract Negotiation with Selected Consultant – 08/12/2024
7. Notice to Proceed – 09/09/2024

## **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: Tuesday, June 18, 2024 at 11:00 a.m.**

**Please submit questions to:**

Erin Wolfe

Purchasing Manager

City of Fairhope

555 South Section Street

Fairhope, AL 36532

Email: [Purchasing@FairhopeAL.gov](mailto: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](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 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](http://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.

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Signature of Contractor's Authorized Official

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Name and Title of Contractor's Authorized Official

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Date