

CONTRACT DOCUMENTS

BID FORM AND SPECIFICATIONS

Bid No. 005-11

**SLUDGE REMOVAL SERVICES
for
SEWER DEPARTMENT**

CITY OF FAIRHOPE

**Timothy M. Kant, Mayor
Lonnie L. Mixon, City Council President**

Set No. _____

**Bid Posted: 12-20-10
Bids opening: 01-10-11**

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**CITY OF FAIRHOPE
BID INVITATION**

December 20, 2010

Sealed proposals will be received by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St. Fairhope, Alabama, until 2:00 P.M. January 10, 2011, 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:

Bid Number 005-11, SLUDGE REMOVAL SERVICES

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail or faxed to the attention of the Purchasing Manager, Daniel P. Ames, P.O. Drawer 429, 555 South Section St., Fairhope, AL 36532, e-mail: dan.ames@cofairhope.com, fax number: 251-990-0125, Seventy Two (72) hours prior to the bid opening or will be forever waived.

All bids must be on blank bid response forms provided in the Bid Documents. Bids shall be accompanied by a Bid Security equal to 5% (percent) of the bid price, but in no event more than \$10,000.00. Bid Security shall be in the form of a Bid Bond or a cashier's check payable to the City of Fairhope. No Bid Security is required on bids less than \$10,000.00.

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

All bids, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a **"Sealed Bid" with Item Name, Bid Number, City of Fairhope's Name and Address and Bidder'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 whichever is in the best interest of the City of Fairhope.

The company that is awarded the bid must have Workman's Compensation Insurance on all of its employees if work is done on City premises. General Liability Insurance must be maintained to hold the City harmless in the event of an accident. Proof of Workman's Compensation Insurance if work is done on City premises and General Liability Insurance specifying coverage must accompany this bid packet. See specifications for details.

No bids will be considered unless the bidder, whether resident or non-resident of Alabama, is properly qualified to submit a proposal for this type of work in accordance with all applicable laws of the State of Alabama. Where applicable, this shall include evidence of holding a current license from the State Licensing board for General Contractors, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, non-residents of the State if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama. Bidder must have a current business license or purchase a business license with the City of Fairhope prior to bid being awarded.

Daniel P. Ames,
Purchasing Manager

Posted 12-20-2010

ITEM I

INSTRUCTIONS TO BIDDERS

1.00 BID INVITATION

Notice is hereby given that the City of Fairhope ("Owner") will receive bids on the project described herein. Qualified bidders are invited to bid on this contract.

1.01 BID NO.: **005-11**

BID NAME: Sludge Removal Services

FOR: Sewer Department

1.02 SUMMARY:

In the attached Scope of Work.

1.03 BID DEADLINE

Bids will be received until 2:00 p.m. local time, Monday, January 10, 2011, by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St., Fairhope, Alabama, and publicly opened thereafter.

1.04 AVAILABILITY OF DOCUMENTS

Bid Documents may be obtained at the Fairhope Public Utilities Bldg, 555 S. Section St., Fairhope, Alabama. One set of Bid Documents can be obtained free of charge.

1.05 INQUIRIES

Direct questions to the Purchasing Manager, Dan Ames via email at danames@cofairhope.com. The phone number for Dan Ames is 251-990-0119.

1.06 MISCELLANEOUS

The City of Fairhope will not furnish any labor, material, or supplies unless specifically stated in the Contract Documents. Contractor must be properly licensed to perform the work as outlined in the Scope of Work. Bidder must have a current business license or purchase a business license with the City of Fairhope prior to commencing work. Where required by State Law, State Contractor's license is required.

1.07 BID SECURITY

Bids shall be accompanied by a Bid Security equal to 5% (percent) of the bid price, but in no event more than \$10,000.00. Bid Security shall be in the form of a Bid Bond or a

cashier's check payable to the City of Fairhope. No Bid Security is required on bids less than \$10,000.00.

1.08 PERFORMANCE ASSURANCE AND INSURANCE

The bidder to whom award is made shall provide a Performance Bond equal to 100% of the Contract Amount and a Labor and Material Bond equal to 50% of the contract amount.

The accepted Bidder shall also provide insurance as required in section 1.19.

1.09 DURATION OF OFFER

Bids may be withdrawn in written (mailed or faxed) requests received from bidder prior to the time fixed for opening. No bid shall be withdrawn for a period of thirty (30) days subsequent to the opening of bids without the consent of the Fairhope City Council.

1.10 EQUAL OPPORTUNITY

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

1.11 BID SUBMISSION AND PREPARATION

Sealed Bids, signed, executed, and dated, will be received by the City of Fairhope as noted in section 1.03 above.

Submit one copy of the executed offer on the Bid Response Form provided, signed, and with the required Bid Security. The bid shall be enclosed in a sealed opaque envelope approximately 9x12 inches or larger, clearly noted on the outside of the envelope as a **SEALED BID** with **BID NAME, BID NUMBER, CITY OF FAIRHOPE AND ADDRESS, BIDDER'S NAME AND ADDRESS, AND IF REQUIRED, BIDDER'S CONTRACTOR'S LICENSE NUMBER.**

Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, these instructions, and the instructions printed on the forms is necessary. Special care should be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper space in the bid and guaranty forms shall be suitably filled in.

Fill in all blanks on the bid form with non-erasable ink or type. Erasers or other changes must be explained or noted over the signature of the bidder.

The Bid Response Form may have a Contingency Allowance listed. Add this amount to the Base Bid to derive the Total Bid. The Contingency Allowance covers unforeseen conditions and shall not be used by the Contractor without the written authorization of the City of Fairhope. At the conclusion of the project, the unused portion of the Contingency Allowance shall revert to the City of Fairhope.

Each bid must give the full business address of the bidder and must be signed by bidder with his/her usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership, or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State of Incorporation and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person shall also be typed or printed below the signature. A bid by a person who affixes to this signature the word "president," "secretary," "agent," or other designation without disclosing his principal, may be held to be the bid of the individual signing. When requested by the City of Fairhope, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

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

Alternate bids will not be considered unless requested.

1.12 BID INELIGIBILITY

Bids that contain irregularities of any kind may be declared unacceptable at the discretion of the City of Fairhope. The City of Fairhope reserves the right to waive any irregularities and may reject any or all bids.

Bids received after the deadline will be returned to the bidder unopened.

1.13 CONTRACT TIME

The Contractor agrees to perform the work within the time stated in the Bid Form. The bidder, in submitting an offer, accepts the conditions of the contract period stated for performing the work.

1.14 INQUIRIES/ADDENDA

Questions or comments pertaining to this bid must be presented in writing, sent via email to the attention of the Purchasing Manager, Dan Ames at, danames@cofairhope.com no later than seventy two (72) hours prior to the bid opening or will be forever waived.

Phone number: 251-990-0199

Address: City of Fairhope, Purchasing Department, 555 S. Section St., Fairhope, AL 36532.

All Addenda are part of the Contract Documents. Include resultant costs in the bid. Addenda will be issued by FAX and/or Email to all plan holders on records. It is the responsibility of the bidder to verify that all addenda have been received.

1.15 BID ACCEPTANCE

Bid with lowest Total Bid amount from a responsive and responsible bidder may be accepted if within the Contract Budget. In the event that alternates are listed on the Bid Form, the lowest combination of Total Bid and Alternate Bids accepted by the City of Fairhope shall be the accepted bid. Alternates shall be awarded in the order in which they are listed on the Bid Form.

1.16 BIDDERS INTERESTED IN MORE THAN ONE BID

If more than one bid is offered by any one party, by or in a name of his clerk, partner, corporation in which he has a substantial interest, or in which he is an officer, or other person, all such bids may be rejected. A party who has quoted prices on materials to a bidder is not thereby disqualified from quoting prices to other bidders or from submitting a bid directly for the materials or work. The City of Fairhope reserves the right to determine in its discretion whether the provisions of this clause have been violated by any bidder.

1.17 ERRORS IN BIDS

Bidders or their authorized agents are expected to examine the maps, drawings, specifications and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the bidder's own risk. In case of error, in the extension of prices, the unit price will govern.

1.18 CONTRACT AND BOND

The bidder to whom award is made must, when requested, enter into written contract on the standard form as set out herein, with satisfactory security in the amount required, within the period specified, or, if no period be specified, within fifteen (15) days after the required forms are presented to him for signature.

1.19 INSURANCE REQUIREMENTS

Contractor, at its sole expense, shall obtain and maintain in full force insurance as listed under the contract to protect the Contractor and the City of Fairhope at limits and coverages specified herein. These limits and coverages specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully and adequately protect the Contractor.

All insurance will be provided by insurers licensed to conduct business in the State of Alabama and shall have a minimum A.M. Best rating of A-VII and must be acceptable to the City of Fairhope. Self-insured plans and/or group funds not having an A.M. Best rating must be submitted to the Library for prior approval.

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

Certificate of Insurance

A Certificate of Insurance evidencing the above minimum requirements as set forth in the contract must be provided to and accepted by the Library **PRIOR** to commencement of any work on the contract. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation to the City of Fairhope.

1.20

COLLUSION

If there is any reason for believing that collusion exists among the Bidders any or all bids may be rejected, and those participating in such collusion may be barred from submitting bids on the same or other work with the City of Fairhope.

1.21

SUBLETTING OR ASSIGNING OF CONTRACT

Limitations: The Contractor shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the contract, his right, title or interest therein, or his power to execute such contract, to any person, firm or corporation without written consent of the City of Fairhope, and such written consent shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract.

1.22

PROSECUTION OF WORK

The Contractor shall commence work within 10 days of issuance of the Notice to Proceed (NTP) by the City of Fairhope or as otherwise directed in writing.

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

Should the Contractor fail to maintain a satisfactory rate of progress, the City of Fairhope

may require that additional forces and/or equipment be placed on the work to bring the project up to schedule and maintain it at that level.

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

ITEM II

CITY OF FAIRHOPE, ALABAMA STANDARD TERMS AND CONDITIONS

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.

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.

ADDENDA

All Addenda are part of the Contract Documents. Include resultant costs in the Bid. Addenda will be issued by FAX or Email to all Bidders on record, and posted to the City of Fairhope website www.cofairhope.com. It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the bid submission

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.

APPLICABLE LAW

This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of Alabama. Any litigation arising out of the Agreement shall be heard in the Courts of Baldwin County, Alabama.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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>.

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.

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.

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.

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
- c) Name and address of the chemical manufacturer, importer, or other responsible party

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

NON-DESCRIMINATION

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.

NON EXCLUSIVE

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

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.

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.

PAYMENT

Invoices -- Upon completion of service and delivery of materials specified in the applicable purchase order, awarded vendor will submit an invoice and signed delivery ticket to:

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

All invoices must reference appropriate Purchase Order Numbers

Payment Of Invoice: All invoices received by the City of Fairhope are payable within thirty (30) days from the date of receipt by the City of Fairhope, provided they are approved by the City of Fairhope.

PAYMENT WITHHELD

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

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.

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.

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.

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.

PATENTS

Awarded Vendor guaranties 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.

PACKAGING

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

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.

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.

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.

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.

RIGHT TO AUDIT

The awarded vendor shall maintain documentation of all work performed. The awarded vendor shall make any and all documentation available to the City of Fairhope at all reasonable times, for inspections and audit by the City of Fairhope, during the entire term of the Contract / Agreement / Purchase Order and for a period of Three (3) years after the expiration of the Contract / Agreement / Purchase Order.

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.

SAFETY MEASURESThe 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.

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.

TABULATION

Bid results are posted on The City of Fairhope's web site: www.cofairhope.com . The awarded vendor will be sent a written notification via mail.

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.

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.

TERMINATION FOR DEFAULT

Performance of Work under the Contract / Agreement / Purchase Order Agreement may be terminated by the City of Fairhope, in whole or in part, in writing, whenever the City of Fairhope determines that the awarded vendor has failed to meet the requirements of the Contract / Agreement /

Purchase Order.

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.

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.

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.

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.

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.

ITEM III

BID RESPONSE FORM

Bid No.: 005-11

Bid Name: Sludge Removal Services

Base bid will include all labor, materials, equipment, shipping, overhead, profit, bonds, insurance and all other costs necessary to provide the complete services outlined within this contract and scope of work.

The owner agrees to provide the following materials: NONE

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

BID PRICE TO PROCESS, REMOVE AND DISPOSE OF SLUDGE \$ _____ per cubic yard.

Company _____

Company Representative _____
(Print)

Company Representative _____
(Signature)

Address _____

Phone Number () _____

Fax Number () _____

Alabama License No. _____

ITEM IV

PERFORMANCE BOND

KNOW ALL MEN: That we _____
(Insert here the name & address of legal title of the Contractor)
_____ hereinafter called the Principal, and

(Insert here the name and address of legal title of one or more sureties)
_____ and
_____ and

_____ hereinafter called the Surety or Sureties, are held and firmly bound unto The City of Fairhope, hereinafter called the Owner in the sum of _____ Dollars

(\$_____) for the payment whereof the Principal and the Surety or Sureties bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written agreement, dated _____ entered into a contract with the Owner for: **Sludge Removal Services** which agreement is by reference made a part hereof,

NOW THEREFORE, The conditions of this obligation is such that if the Principal shall faithfully perform the Contract on his part, and satisfy all claims and demands, incurred for the same, and shall fully indemnify and save harmless the Owner from all cost and damage which he may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good for any such default thence this obligation shall be null and void; otherwise, it shall remain in full force and effect.

PROVIDED, HOWEVER, that no suit, action or proceedings, by reason of any default whatever be brought on his Bond after twelve months from the day on which the final payment under the Contract falls due.

PROVIDED, further, that the said surety or sureties, for value received hereby stipulate and agree that no change, extension of time, or addition to the terms of the Contract or to the work to be performed there under of the Specifications thereof shall in any way effect their obligations on this bond, and they do hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the Specifications.

Signed and Sealed this _____ day of _____, 20_____.

(Individual principals sign here)

(Company Name of Contractor)

ATTEST: _____

BY: _____
(Contractor's Representative)

ITS: _____
(Representative's Title)

GENERAL CONTRACTOR'S LICENSE NUMBER: _____

**CONTRACTOR'S STATE OF ALABAMA
FOREIGN VENDOR REGISTRATION
NUMBER (Required of out-of-state-vendors):** _____

BY: _____
(Surety Sign Here)

(Witness)

LABOR AND MATERIALS BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____
_____ as Principal, and
_____ as Surety, are held and firmly bound
unto said City of Fairhope hereinafter called the Obligee, in the penal sum of
_____ Dollars (\$ _____)
lawful money of the United States, for the payment of which sum and truly to be made, we bind ourselves,
our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, said principal has entered into a certain Contract with said Obligee, dated
_____ 20____. (Hereinafter called the Contract) for **Sludge Removal Services** which
Contract and the Specifications for said work shall be deemed a part hereof as fully as if set out
herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the said Principal and
all subcontractors to whom any portion of the work in said contract is sublet and all assignees of said
Principal and of such subcontractors shall promptly make payments to all persons supplying him or them
with labor, materials, or supplies for or in the prosecution of the work provided for in such Contract, or any
amendment or extension of or addition to said Contract, and for the payment of reasonable attorneys' fees
incurred by the successful claimant or plaintiffs in suits or claims against the contractor arising out of or in
connection with the said contract, then the above obligation shall be void; otherwise to remain in full force
and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions and limitations.

(a) Any person, firm or corporation that has furnished labor, materials, or supplies for or in the prosecution
of the work provided for in said Contract shall have a direct right to action against the Principal and Surety
on this bond, which right of action shall be asserted in a
proceeding, instituted in the County in which the work provided for in said Contract is to be performed
or in any County in which said Principal or Surety does business. Such right of action shall be
asserted in a proceeding instituted in the name of the claimant or claimants for his or their use and
benefit against the Principal and Surety or either of them (but not later than one year after the final
settlement of said Contract falls due) in which action such claim or claims shall be adjusted and
judgment rendered thereon.

(b) The Principal and Surety hereby designate and appoint the City of Fairhope or their successors or
representatives as the agent of each of them to receive and accept services of process or other pleading
issued, or filed in any proceeding instituted on this bond and hereby consent that such service shall be the
same as personal service on the Principal and/or Surety.

(c) The Surety shall not be liable hereunder for any damages or compensation recoverable under
Workmen's Compensation or Employer's Liability Statute.

(d) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any
suit, action or proceeding thereon that is instituted later than one year after the final settlement of said
contract.

(e) This Bond is given pursuant to the terms of an Act of the Legislature of the State of Alabama approved
February 8, 1935, entitled: "An Act to further provide for Bonds and Contractors on State and other public
works and suits thereon".

Signed and Sealed this _____ day of _____, 20_____.

(Individual principals sign here)

(Company Name of Contractor)

ATTEST: _____

BY: _____
(Contractor's Representative)

ITS: _____
(Representative's Title)

GENERAL CONTRACTOR'S LICENSE NUMBER: _____

**CONTRACTOR'S STATE OF ALABAMA
FOREIGN VENDOR REGISTRATION
NUMBER (Required of out-of-state-vendors):** _____

BY: _____
(Surety Sign Here)

WITNESS:

(d) Owner's Protective Liability:

(Each Occurrence)
(Bodily Injury)

(Each Occurrence)
(Property Damage)

Such insurance as is afforded by the above policies covers the operations undertaken by the insured with respect to the construction of the project above designated. The insurance afforded by the above-designated policies, specimen copies of which have been filed with the City of Fairhope, and to each of which is attached for following endorsement.

The insurer agrees with the insured as follows:

1. That it will furnish to said City of Fairhope a certificate of insurance in triplicate on a form approved for such purpose by said City of Fairhope, setting forth the pertinent information regarding the policy to which this endorsement is attached, for each project of said City of Fairhope to which the policy applies.
2. That it will attach to each said certificate of insurance executed copies of any endorsement other than this endorsement which are attached to said policy at the time said policy is issued, provided only that said endorsements affect the coverage of said policy in respect of operations involved in the construction of the projects of said City of Fairhope to which the policy applies.
3. That it will mail to the City of Fairhope, three executed copies of each endorsement subsequently issued to become a part of said policy provided only that endorsement affects the coverages of said policy in respect of operations involved in the fulfillment of the contract WORK of said City of Fairhope which the policy applies, and provided further that such endorsement shall not be effective unless such notice is given to the City of Fairhope at the same time that notice thereof is given to the insured.
4. That it will mail to the City of Fairhope at least ten days before the effective date thereof notice of cancellation of said policy, provided no cancellation shall be effective unless such notice is given to the City of Fairhope.

Insurer

BY: _____
Authorized Representative

ITEM VI

CONTRACT

This **CONTRACT** is made this _____ day of _____, _____, by and between the City of Fairhope (hereinafter "**OWNER**") and _____

_____ (hereinafter "**CONTRACTOR**"), on the **WORK: Sludge Removal Services.**

The Owner and Contractor agree as set forth below:

1. Term of Agreement

- a. The term of the agreement shall be for a period of ONE (1) Year from _____ to _____, with the option to renew bid or contract for up to Two (2) additional years if terms and conditions, including pricing remain the same, and both parties are in written agreement to renewing the contract, thirty days prior to contract expiration.

2. Compensation

- a. The Owner is to be invoiced on a monthly basis, in arrears, for payment of each monthly maintenance routine.

3. Payment Withheld

- a. The Owner may withhold approval for payment on any request and the Owner may withhold payment to such extent as may be necessary to protect the Owner from loss on account of:
- i. Negligence on the part of the Contractor to execute the work properly or fail to perform any provision of this Agreement.
 - ii. The Owner, after three (3) days written notice to the Contractor, may without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the overall Contract sum.
 - iii. Claims filed or reasonable evidence indicating probable filing of claims.
 - iv. Failure of the Contractor to make payments properly to Subcontractors for material or labor.
 - v. A reasonable doubt that the Agreement can be completed for the balance then unpaid.
 - vi. Damage to the building, or another contractor or another contractor's work.
- b. When the above grounds are removed, payment shall be made for the amount withheld because of them. The Contractor waives all cancellation rights under the agreement, if payment is withheld for one or more of the above reasons.

4. General Conditions

- a. **Indemnity:** The Contractor hereby agrees to indemnify and save harmless the Owner, its officers, agent, and employees, from and against any and all liabilities, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including reasonable attorneys fees for trial and on appeal, of any kind and nature, arising or growing out of, or in any way connected with the performance of this Contract, to the extent caused by a negligent act or omission of the Contractor, their agents, servants, employees, Subcontractors, or others associated with the Contractor. The Contractor shall be responsible for damage to any elevator equipment excluded from this agreement, or damage or injury caused by any equipment excluded from this agreement, to the extent that the damage or injury is caused by a negligent act or omission of the Contractor.

- b. **Notification and Accident Reports:** In the event of accidents of any kind, the Contractor shall notify the Owner immediately and furnish, without delay, copies of all such accident reports to the Owner. If in the performance of their Work, the Contractor fails to immediately report an accident to the Owner, of which the Contractor has knowledge of and which results in a fine levied against the Owner then the Contractor shall be responsible for all fines levied against the Owner.

5. Termination of Agreement

- a. **Termination for Default:** Performance of Work under this Agreement may be terminated by the Owner, in whole or in part, in writing, whenever the Owner determines that the Contractor has failed to meet the requirements of this Agreement.
- b. **Termination for Convenience:** The Owner has the absolute right to terminate the Agreement upon "Award of Contract" to another Contractor, to perform work referenced herein. In such event, payment of the monthly Contract fee shall cease on the date of cancellation of the Contract by the Owner.

6. Warranty

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

7. Time of Completion

- a. The Owner and Contractor understand and agree that time is of the essence in the performance of this Agreement. The Contractor or Owner, respectively, shall not be liable for any loss or damage, resulting from any delay or failure to perform its contractual obligations within the time specified, due to acts of God, actions or regulations by any governmental entity or representative, strikes, fire, water damage, loss of power, loss of funding or any other causes, contingencies, or circumstances not subject to the Owner or Contractor's control, respectively, whether of a similar or dissimilar nature, which prevent or hinder the performance of the Owner's or Contractor's contractual obligations, respectively. Any such causes of delay, even though existing on the date of the Contract, or on the day of the start of Work, shall extend the time of the Owner's or Contractor's performance respectively, by the length of the delays occasioned thereby, including delays reasonably incident to the resumption of normal Work schedules. **However, under such circumstances as described herein, the Owner may, at their discretion, cancel this Contract for their own convenience.**

8. Insurance Requirements

- a. Contractor, at its sole expense, shall obtain and maintain in full force the following insurance to protect the Contractor and the City of Fairhope at limits and coverages specified herein. **The City of Fairhope will be listed as "additionally insured"** on all applicable policies and certificates of insurance. These limits and coverages specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully and adequately protect the Contractor.
- b. All insurance will be provided by insurers by admitted carriers in the State of Alabama, shall have a minimum A.M. Best rating of A-VII and must be acceptable to the City. Self-insured plans and/or group funds not having an A.M. Best rating must be submitted to the City for prior approval.

- c. **NO WORK IS TO BE PERFORMED UNTIL PROOF OF COMPLIANCE WITH THE INSURANCE REQUIREMENTS HAVE BEEN RECEIVED BY THE CITY.**
- d. The Contractor shall not commence work under this Contract until it has purchased insurance for protection from any and all claims which may arise out of or result from the Contractor's operations under the Contract. The Contractor shall maintain the required insurance in the minimum amounts as described below at all times during performance of the Work.
- e. **WORKER'S COMPENSATION and EMPLOYERS LIABILITY:** The Contractor shall procure and shall maintain during the life of this Agreement Worker's Compensation Insurance for all its employees to be engaged in work on the project under this agreement.
- | | |
|--|-------------------------|
| Part One: Statutory Benefits as required by the State of Alabama | |
| Part Two: Employers Liability | \$100,000 Each Accident |
| | \$100,000 Each Employee |
| | \$500,000 Policy Limit |
- f. **COMMERCIAL GENERAL LIABILITY:** Coverage on an Occurrence form with a combined single limit (Bodily Injury and Property Damage combined) as follows:
- | | |
|--|-------------|
| Each Occurrence | \$5,000,000 |
| Personal and Advertising Injury | \$5,000,000 |
| Products/Completed Operation Aggregate | \$300,000 |
| General Aggregate | \$5,000,000 |
- Coverage to include
- o Premises and operations
 - o Personal Injury and Advertising Injury
 - o Products/Completed Operations
 - o Independent Contractors
 - o Blanket Contractual Liability
 - o Explosion, Collapse and Underground hazards
 - o Broad Form Property Damage
- g. **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE:** The Contractor agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability coverage on an occurrence basis, and providing property damage liability coverage on an accident basis. This Policy shall protect the Contractor against all liability arising out of the use of automobiles, including private, passenger, and commercial, regardless of whether such vehicles shall be owned by the Contractor, owned by others or by hire. Limits of liability for Comprehensive Automobile Liability Insurance shall equal or exceed \$200,000 each person, bodily injury; \$400,000 each occurrence, bodily injury; and \$100,000 each accident, property damage.
- h. **OWNER'S PROTECTIVE LIABILITY INSURANCE:** The Contractor shall at his expense provide Owners Protective Liability policies issued in the name of the Owner covering its liability for operation of the Contractor. This policy shall provide limits of liability in the minimum amount of \$200,000 each person; \$500,000 each accident, bodily injury; and \$100,000 each accident, property damage.
- i. The fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and its agents and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the Work.
- j. Certificate of Insurance A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the City **PRIOR** to commencement of any work on the contract. Each policy shall be endorsed to provide ten (10) days written notice of cancellation to the City.

9. Acceptance of Work

- a. The Owner will be deemed to have accepted the Work after the Owner agrees the Work is completed. In the event Work furnished under the Contract is found to be defective or does not

conform to the intent of the Contract, the Contractor shall, within thirty (30) days from receipt of notice from the Owner, correct the deficiencies. Failure on the part of the Contractor to properly correct the deficiencies within the time period allowed will constitute the Owner's right to cancel the Contract immediately, upon written notice to the Contractor.

10. Correction of Work

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

11. Right to Audit

- a. The Contractor shall maintain documentation of all work performed. The Contractor shall make any and all documentation available to the Owner at all reasonable times, for inspections and audit by the Owner, during the entire term of the Contract, and for a period of Three (3) years after the expiration of this Contract.

12. Intermittent Problems

- a. Intermittent problems are to be considered a single call-back until the problem is fixed.

13. Time is of the Essence

- a. The Owner and Contractor agree that time is of the essence in the performance of Work called for under this Contract. The Contractor 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.

14. Safety Measures

- a. The Contractor shall take all necessary precautions for the safety of the Owner's and Contractor'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 Contractor shall post signs warning against hazards in and around the Work site.

15. Extra Work and Associated Costs

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

16. Familiarity with the Work

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

17. Scope of Work – Please see Section VII

18. Miscellaneous Provisions

- a. The Contractor shall not employ Subcontractors without the express written permission of the Owner.
- b. The Contractor shall not assign the Contract or sublet it as a whole without the express written permission of the Owner. The Contractor shall not assign any payment due them hereunder, without the express written permission of Owner. The Owner may assign the contract, or sublet it as a whole, without the consent of the Contractor.

- c. No waiver, alteration, consent or modification of any of the provisions of the Contract shall be binding unless in writing and signed by the Owner and Contractor.
- d. The Contractor is to procure all permits, licenses, and certificates, or any approvals of plans or specifications as may be required by Federal, State, Local Laws, ordinances, rules, and regulations, for the proper execution and completion of Work covered under this Contract.
- e. The Contractor shall at all times keep the Work area free from accumulation of waste materials or rubbish caused by his operations, and promptly remove any such materials to an area designated by the Owner, or remove to a waste site as directed by the Owner. If the Contractor fails to clean up the Work site, the Owner will complete the task and charge the Contractor for such services.
- f. This Contract is considered a non-exclusive Agreement between the parties.
- g. This Contract is deemed to be under and shall be governed by and construed according to the laws of the State of Alabama.
- h. Any litigation arising out of the Contract shall be heard in the Courts of Baldwin County, Alabama.
- i. This Contract contains all terms and conditions agreed upon by the Owner and Contractor. No other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either party hereto.
- j. This Contract shall not be construed against the party or parties preparing it. It shall be construed as if all the parties and each of them jointly prepared this Contract, and any uncertainty or ambiguity shall not be interpreted against one or more parties.

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

THE CITY OF FAIRHOPE, ALABAMA

BY: _____

TIMOTHY M. KANT, Mayor

ATTEST: _____

LISA A. HANKS, City Clerk

(Name of Contractor)

ATTEST: _____

BY: _____
(Contractor's Representative)

ITS: _____
(Representative's Title)

GENERAL CONTRACTOR'S LICENSE NUMBER: _____

**CONTRACTOR'S STATE OF ALABAMA
FOREIGN VENDOR REGISTRATION
NUMBER (Required of out-of-state-vendors):** _____

**STATE OF ALABAMA}
COUNTY OF BALDWIN}**

I, the undersigned authority in and for said State and County, hereby certify that TIMOTHY M. KANT as Mayor of the City of Fairhope and LISA A. HANKS as City Clerk whose names are signed to the foregoing document and who are

known to me, acknowledged before me on this day, that, being informed of the contents of the document they executed the same voluntarily on the date the same bears date.

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

NOTARY PUBLIC

_____/_____/_____
MY COMMISSION EXPIRES:

STATE OF ALABAMA}
COUNTY OF BALDWIN}

I, the undersigned authority in and for said State and County, hereby certify that _____, as _____ respectively, of _____, whose name is signed to the foregoing document and who are known to me, acknowledged before me on this day, that, being informed of the contents of the document they executed the same voluntarily on the day the same bears date.

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

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

ITEM VII

SCOPE OF WORK & SPECIFICATIONS

1. Frequency of Processing

(a) Assuming sludge production volumes remain between 290 and 1,500 dry metric tons annually, Contractor shall process municipal biosolids (“sludge”) at least once every calendar quarter at the City’s treatment plant. Contractor shall schedule its visits with the City’s superintendent or his assistant on dates acceptable to the City.

(b) Contractor shall convert the sludge into Class A/EQ material in full compliance with 40 CFR part 503. Bulk density shall be 70 lb./ft.. Total pathogen destruction shall be in accordance with EPA’s Class A requirements. Each and every particle shall be exposed to the same temperature for the same time as required by EPA. Regarding vector attraction reduction, the pH of the product shall be greater than 12 for more than 2 hours and greater than 11.5 for 22 hours prior to beneficial use. The processed sludge shall meet or exceed Class A EPA and DPNR standards.

(c) Contractor must submit to the City PFRP permits from EPA approving Contractor’s process as set forth above.

(d) Contractor shall retain an EPA-certified lab, approved by the City, to test the processed sludge for compliance with 40 CFR part 503, including monitoring for metals, pathogens, and vector attraction reduction. Prior to selection, the lab must provide satisfactory written assurances to Contractor and the City that its testing procedures fully comply with Part 503 and any related EPA regulations.

(e) Contractor shall be responsible for obtaining and providing to the selected lab samples of the processed sludge for testing. This will be done each quarter that the sludge is processed and prior to any disposal of the processed sludge off-site. Contractor will obtain written chain of custody reports regarding the samples which are signed by Contractor and the lab and which designate that the lab is to test for metals, pathogens and vector attraction reduction. All sampling shall be conducted in accordance with EPA guidelines, including Table 6-6 under Part 503. (See attached Ex. A here to.)

(f) Contractor shall immediately upon execution provide copies of the chain of custody reports to the City’s superintendent.

(g) Contractor shall instruct the lab to provide copies of all test reports and lab analyses to both Contractor and the City’s superintendent immediately upon completion.

(h) The lab shall invoice the Contractor, and Contractor shall pay the lab directly.

(i) The lab shall certify to Contractor and the City that all tests and analyses have been conducted in compliance with EPA guidelines, including Table 6-7 under Part 503. (See attached Ex. B hereto.)

(j) Contractor shall remove the processed sludge from the City’s treatment plant and shall dispose of it in full compliance with 40 CFR part 503.

2. Compensation. Subject to the terms hereof and the obligations of Contractor set forth herein, Contractor shall be compensated as follows:

Compensation shall be made within 30 days of receipt of invoice.

3. Event of Default. Each of the following shall constitute an event of default by Contractor (an “Event of default.”)

- (a) failure to maintain the insurance that is required herein;
- (b) failure to provide or furnish any information required under this Agreement to the City;
- (c) any breach or violation of any law, statute, ordinance, rule or regulation relating to this Agreement;
- (d) any failure by Contractor to comply with any of the provisions, terms or conditions of this Agreement;
- (e) the occurrence of any event relating to the financial status of Contractor which may reasonably lead to the foreclosure or other judicial or non-judicial sale of all or any material part of the assets of Contractor
- (f) if Contractor shall make a general assignment for the benefit of creditors, shall become and be adjudicated insolvent, shall petition or apply to any tribunal for, or consent to, the appointment of, or taking possession by, a receiver, custodian, liquidator or trustee or similar official pursuant to state or local laws, ordinances or regulations of any substantial part of its property or assets;
- (g) if a writ of attachment, execution, distraint, levy, possession or any similar process shall be issued by any tribunal against all or any material part of Contractor’s property or assets which is not released within sixty (60) days;
- (h) if any creditor of Contractor petitions or applies to any tribunal for the appointment of; or taking possession by, a trustee, receiver, custodian, liquidator or similar official for Contractor or for any material parts of the property or assets of Contractor under the law of any jurisdiction, whether now or hereafter in effect, and a final order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceeding; or
- (i) any final order, judgment or decree is entered in any proceedings against Contractor decreeing the voluntary or involuntary dissolution of Contractor.

4. Enforcement and Termination of Agreement.

- (a) Notice of Event of Default. In the event of the occurrence of an Event of Default, the City shall notify Contractor in writing of the Event of Default (the “Default Notice”).
- (b) Right to Cure or Respond. Contractor shall, upon receipt of the Default Notice, immediately, and in any event within forty-eight (48) hours from receipt of the Default Notice, (the “Cure Period”)
 - (a) respond to the City by contesting the assertion of the Default Notice, (b) cure such Event of Default, or (c) in the event that, by the nature of such Event of Default, such Event of Default cannot, for reasons beyond the control of Contractor, be cured within the Cure Period, initiate reasonable steps to remedy such Event of Default and notify the City of the steps being taken and the projected date that they will be completed; provided, however that in no event shall the Cure Period extend for in excess of thirty (30) days.

(b) Enforcement. In the event Contractor fails to remedy any Event of Default in accordance with this Agreement to the reasonable satisfaction of the City, the City may take any lawful action which it deems appropriate to enforce the City's rights under this Agreement, including, but not limited to, pursuing any or all, of the following remedies:

- (1) Seek specific performance of any provision which reasonably lends itself to such a remedy;
- (2) Make a claim against any surety or performance bond which may be required to be posted;
- (3) Restrain by injunction any Event of Default or reasonably anticipated Event of Default;
- (4) Seek monetary damages arising out of any Event of Default;
- (5) Terminate this Agreement; or
- (6) Seek any other available remedy permitted by law or in equity.

(c) Attorney's Fees. If the City is the prevailing party in any legal action in which the City seeks the enforcement of the terms of this Agreement, Contractor shall be responsible for any costs incurred by the City in such enforcement of this Agreement, including, but not limited to, reasonable attorney's fees and court costs.

5. Insurance. Contractor shall maintain in full force and effect, at its own cost and expense, both for itself and for any contractors, subcontractors or third parties who are performing work on behalf of Contractor, broad form comprehensive general liability insurance coverage in the amount of \$5,000,000 for bodily injury and property damage per person and \$5,000,000 as to each occurrence and standard workers' compensation and employers liability insurance providing coverage in an amount not less than that required by Alabama law. Such policies shall name the City as an additional insured and shall be in a form acceptable to the City. Contractor shall provide the City with certificates of insurance evidencing such coverage. An endorsement shall be included with such policy that states that the policies shall not be cancelled without giving thirty (30) days written notice of such cancellation to the City.

6. Indemnification. Contractor agrees to indemnify, defend and hold harmless the City, the City Council, the City's Water and Sewer Superintendent, the City's elected officials and its representatives, officers, agents, boards and employees (individually, an "Indemnified Party") from and against any and all claims, costs, fines, losses, expenses (including attorney's fees and other costs and expenses of litigation), demands, actions or causes of action, and any and all liability or damages which may be asserted against or incurred by an Indemnified Party arising out of, resulting from or relating to Contractor's obligations under this Agreement. The indemnification by the Contractor shall apply to all damages, penalties, fines (including governmental fines) and claims of any kind, regardless of whether any insurance policy shall have been determined to be applicable to any such damages or claims for damages.

7. Notice. All notices and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered in person to the following addresses or sent by overnight express or certified or registered mail, with charges and postage prepaid, to such addresses:

If to the City: City of Fairhope, Alabama
161 North Section Street
Fairhope, Alabama 36533

If to the Contractor: _____
Attn: _____

Either party may, by like notice, designate any further addresses to which subsequent notices shall be sent. Any notice hereunder signed on behalf of the notifying party by a duly authorized attorney at law shall be valid and effective to the same extent as if signed by such party or on behalf of such party by a duly authorized officer, employee, agent or attorney.

8. Transfer or Assignment. Contractor's interest in and obligations under this Agreement shall not be sold, transferred, assigned or otherwise encumbered or disposed of; either by forced or voluntary sale or otherwise, without the prior written consent of the City, which consent may be withheld in the sole and absolute discretion of the City.

9. No Waiver. The failure of the City to insist, in any one or more instances, upon strict performance of any of the requirements of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future, of such requirement or option, but the same shall continue and remain in full force and effect.

10. No Agency. Notwithstanding any provision of this Agreement to the contrary, the City and Contractor do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business. Neither party shall have any right, power or authority pursuant to this Agreement to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of; or to otherwise bind, the other party.

11. Contractor Responsible for Its Contractors, Etc. Contractor does hereby acknowledge and agree that it shall be solely responsible for any and all actions of its contractors, subcontractors, employees and agents and any other third parties performing work at the direction of Contractor.

12. Compliance with Law. Contractor shall at all times during the term hereof perform its obligations strictly in accordance with all applicable federal, state and local laws and regulations.

13. Governing Law. This Agreement shall be deemed to have been made in the State of Alabama and the validity of the same, its construction, interpretation, enforcement and the rights of the parties hereunder, shall be determined under, governed by and construed in accordance with the substantive laws of the State of Alabama, without giving effect to any choice of law provisions arising thereunder.

14. Severability Clause. If any part, section or subdivision of this Agreement shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Agreement, which shall continue in full force and effect notwithstanding such holding.

15. Entire Agreement. This Agreement constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations and statements are merged into this Agreement. Neither this Agreement nor any provisions hereof may be waived, modified, amended, discharged or terminated except in writing by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such writing.

16. No Third-Party Beneficiaries. This Agreement is for the benefit only of the parties hereto or their nominees, successors, beneficiaries and assignees and no other person or entity shall be entitled to rely on this Agreement, receive any benefit here from or enforce against any party to this Agreement any provision hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.