

CITY OF FAIRHOPE
BID INVITATION

June 14, 2011

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. July 12, 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 023-11, GOLF COURSE MOWER AND EQUIPMENT 4 YR. LEASE PURCHASE

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail 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, Seventy Two (72) hours prior to the bid opening or will be forever waived.

All bids must be on blank forms provided in the Bid Documents. **BID BOND IS WAIVED.**
THERE WILL BE NO PRE-BID MEETING.

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

All bids, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a "**Sealed Bid**" with **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 06-14-2011

GENERAL REQUIREMENTS

AWARD OR REJECTION OF BIDS

1. 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.

COMPLIANCE

1. All bid components will comply with all Federal, State and Local laws, ordinances, codes and regulations.
2. The awarded vendor will be responsible for insuring that all items meet specifications before delivery.
3. Awarded vendor will make no substitutions for bid items without prior written approval of the City of Fairhope Purchasing Department.

ORDERING

1. The City of Fairhope Purchasing Department will execute a contract with the awarded vendor for bid items as needed.
2. If awarded vendor fails to fill the order or deliver on time, the City of Fairhope reserves the option to procure needed, comparable items from any source, and bill the awarded vendor for associated expenses generated by such failure.

PACKAGING & DELIVERY

1. Deliver bid items to City of Fairhope Warehouse, 555 South Section Street, Fairhope, AL, or other designated City site, maintaining product in proper state, undamaged.
2. At point of delivery, awarded vendor will present an itemized delivery ticket **with the Bid Number clearly referenced thereon**, to City of Fairhope receiving personnel for signing.
F.O.B. City of Fairhope, as directed.
3. Shortages, defective or damaged items will be rejected. The awarded vendor will replace such items within ten (10) working days.
4. All Titles, fees, as well as other charges, are to be paid by awarded vendor. Awarded vendor is to furnish prepaid certificate of title in the name of the City of Fairhope, Title shall change upon acceptance of delivery at the Owner approved delivery location.

WARRANTY

1. Winning Bidder will provide written warranty for all parts and labor for the entire lease period of (1) one year commencing from date of written acceptance of delivery by City of Fairhope. Winning Bidder will provide written copies of all other applicable warranties, such as, Manufacturer's warranty. Those warranties, if any, will be in addition to the Winning Bidder's warranty, and the terms of which will not be altered by the Winning Bidder's warranty.

PAYMENT

1. Invoices -- Upon completion of initial service and delivery of materials specified in the lease agreement, awarded vendor will submit an invoice and signed delivery ticket to:

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

2. All invoices must reference appropriate Bid Number
3. 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.
4. The City of Fairhope intends to finance the equipment in one of the following manners:
 - a. Purchase outright.
 - b. Lease/Purchase with fair market buyout option at lease end using vendor supplied financing.
 - c. Lease/Purchase with fair market buyout option at lease end, using our own financing.
5. If you are unable to furnish an item as specified and desire to offer a substitute, give full description of the item. No errors will be corrected after bids are opened. No prices shall include State or Federal Excise Taxes. Municipalities are exempt from Alabama Sales Tax by state law.
6. Any attachments hereto are made and become a part of this inquiry and must be signed by bidder.
7. Our bid form must be filled in completely. All pages of this bid form must be returned. All documents requested must be attached to the back of page of such request and acknowledgement must be made where blank appears. A signed contractual agreement must be in place prior to beginning work or services.

ITEM III

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-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.

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 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.

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.

SCOPE OF WORK AND SPECIFICATIONS

For

BID NO. 023-11

GOLF COURSE MOWER AND EQUIPMENT FOUR YEAR LEASE PURCHASE

SCOPE OF WORK

1. The Contractor to provide all necessary supervision, labor, tools, materials and safety equipment to perform the following tasks:
 - a. Provide lease equipment, associated equipment and service as per specifications, for a lease period of forty-eight (48) months.
 - b. Deliver items to City of Fairhope, 555 S. Section Street, Fairhope Al, or other designated City site, with all freight FOB destination, prepaid & allowed.
 - c. Provide maintenance service as per specifications.

GENERAL SPECIFICATIONS

1. Service to include:
 - a. Mobilize, set up, activate, de-activate and demobilize equipment, and freight. Prior to acceptance, all equipment shall be assembled and fully serviced, ready for operation, including initial start up supplies.
 - b. Awarded vendor will be responsible for all necessary service above and beyond normal wear maintenance, with repairs to be accomplished within seventy two (72) hours of notification of out of service.
2. Design:
 - a. The equipment shall be of commercial design and shall be complete with all of the necessary accessories as shown and described herein. Accessories not specifically mentioned, but necessary to furnish a complete unit ready for use shall also be included. All equipment shall be new and of current production of national firms that manufacture GOLF COURSE MOWERS AND EQUIPMENT.
3. Bidder Proximity:
 - a. Awarded vendor must be a manufacturer or an authorized distributor of a manufacturer. letter of authorization from manufacturer must accompany bid showing that bidder is an authorized distributor, and that bidder is authorized to lease equipment in Baldwin County, Alabama. A
4. Patents:
 - a. The awarded vendor shall protect the City of Fairhope from any damages or liability arising from alleged infringements of patents.
5. Equipment Maintenance:
 - a. Maintenance service will be available during normal City of Fairhope working hours.
 - b. On-call remedial maintenance, including replacement of unserviceable parts. Parts will be furnished as new or equivalent to new in performance when used in this device. Removed parts are the property of the vendor, **who will dispose of such parts in a legally acceptable manner. Only**

manufacturer approved parts are to be used.

- c. Maximum service response time shall be forty eight (48) hours.
- d. In the event that repairs cannot be completed within one (1) City of Fairhope work day, a substitute machine approved by the City of Fairhope will be provided by the awarded vendor.

6. Training:

- a. Awarded vendor will be responsible for initial training of a minimum of two (2) operators on all aspects of the equipment, at a time and location determined by the City of Fairhope, and before operation of equipment by City of Fairhope employees.
- b. Operator / instruction manuals must be included with equipment at time of delivery.

7. Referenced Specifications:

- a. Reference to brand names and numbers is descriptive, but not restrictive. 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 manufacturer's 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 City of Fairhope 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. The name of a certain brand, make, model number, manufacturer, or definite specification is to denote the quality standard of the article desired, but does not restrict the bidder to the particular brand, make, model number, manufacturer, or specification named. It is set forth to convey the general style, character, and quality of the item desired to the prospective bidder. Whenever the words "or approved equal" appear in the specifications, they shall be interpreted to mean an item of material or equipment similar to that named, which is approved by the City of Fairhope. The burden of proof that alternate brands are in fact equal or better falls on the bidder, and proof must be to the City of Fairhope's satisfaction.
- b. Substitute Offer: The bidder has the burden of demonstrating that a substitute offer is equivalent to and meets the standard of quality indicated by the brand name and number referenced.
- c. Nonconforming Equipment: When equipment received from the lowest responsible bidder is not in accordance with the bid requirements, it will be returned to the bidder, at bidder's expense.

TECHNICAL SPECIFICATIONS

- 1. The technical specifications as noted below are being provided by the City of Fairhope Golf Department.

2. **Lease equipment** will consist of **(2) Fairway Mowers, (2) Tri-plex Greens Mower, (3) Light weight Utility Vehicle** and **(2) Diesel Zero Turning Radius Mowers**. Please make substitute offers noted where your specifications do not comply with the specific equipment.

Fairway Mower Specifications (2)

Engine:	Minimum 35 hp 3 Cylinder liquid-cooled diesel.
Fuel Capacity:	13 Gallons diesel (approx)
Cooling:	Liquid cooled
Traction Drive:	Front Drive Wheels powered by hydrostatic pump with individual wheel motors
Ground Speed:	0-10 mph forward transport; 0-8 mph mow; 0-3 mph reverse (approx)
Controls:	Single foot-operated traction pedal. Foot actuated mow speed limiter, foot actuated service and parking brake. Hand operated key ignition switch, throttle, cutting raise/lower joystick, cutting unit engage switch, and headlight switch all positioned on the right hand pivoting control console
Brakes:	Disc or drum-type front wheel brakes. Dynamic braking through hydrostatic traction drive system
Gauges:	Fuel gage, hour meter, engine coolant temperature gauge, and warning light cluster; engine oil pressure, high oil coolant temperature, battery voltage, glow plug indicator, and diagnostic indicator
Steering:	Power Steering
Tires:	Front traction tires: 26.5 x 14-12 turf tires; Rear steer tires: 20 x 12-10 (approx)
Cutting units:	22" wide 7" diameter 11 blade cutting units
Width of cut:	100"
HOC Range:	.025" to 1"
Warranty:	4 year/2400 hours limited. Pick-up and delivery free during warranty period

Greens Mower Specifications (3)

Engine:	Minimum 18 hp gasoline
Steering:	Power Steering
Fuel capacity:	7 gallon unleaded gasoline (approx)
Controls:	Raise/lower-mow joystick. Foot operated traction drive and brakes. Hour meter. Hand operated throttle and choke
Ground Speed:	Transport 8.5 mph. Mow speed 0-4 mph. Reverse 0-3 mph approx
Leak detection:	Equipped with leak detection system
Reels:	11-blade 21" in length, 5" in diameter. Sealed bearing design (approx)
Height of Cut:	.062"- 297" (approx)
Width of Cut:	59" minimum
Front rollers:	Full Front roller (set of three)
Rear Roller:	2" full diameter with sealed bearings (set of three) minimum
Warranty:	4 year/2400 hour limited. Pick-up and delivery free during warranty period
Spray Boom:	Electric lift 18.5' (approx) working width, 3 section triangular truss open boom. Bi-directional break-away. Raise cri-cross for storage and transportation.
Nozzles:	Triple nozzle bodies for mounting three different nozzle types for quick change. Include two (2) sets nozzles; one set Tee-Jet 8004 stainless (or equivalent), one set Chem-Farms whirl-jet 0.5 gpm nozzles (or equivalent)
Warranty:	4 year/2400 limited. Pick-up and delivery free during warranty period.

Utility Vehicle Specifications (3)

Engine:	11.5 hp single cylinder(minimum), gasoline, Pedal start
Fuel capacity:	5.1 gallons (approx)
Speed:	16 mph maximum
Instrumentation:	Electronic fuel gauge/hour meter, low oil warning light
Steering:	Rack & pinion
Front Tires:	18 x 8.5-8 6 ply rated (approx)
Rear Tires:	18 x 8.5-8 6 ply rated (approx)
Front Suspension:	Independent leaf springs w/dual hydraulic shocks
Brakes:	4-wheel mechanical drum
Cargo Box:	48.8" x 49.8" x 10.9" Aluminum Box (approx)
Bed load capacity:	800 lb. (approx)
Warranty:	Four year limited

Zero Turning Radius Mowers (2)

Engine:	Minimum 31 hp liquid-cooled diesel engine
Fuel capacity:	12 gallon single tank (approx)
Drive Tires:	24"x12"x12" (approx)
Caster tires:	13"x 6.5" x6 Flat-free semi-pneumatic
Hydraulic Drive System:	Unitized pumps and wheel motors
60" deck:	Side discharge deck 7 gauge steel (minimum), including bull nose front bumper
Cutting HOC:	1" to 5.5" (approx)
Discharge chute:	Flexible
Spindle shaft:	solid steel 1" diameter
Steering controls:	Adjustable, dampened grips
ROPS:	Fold down Roll over protection system
Bagging system:	Mower will include a quick mounting bagging system for collecting leaves and clippings when necessary
Warranty:	4 year/2400 hour limited warranty

SPECIAL CONSIDERATIONS

AWARD OR REJECTION OF BIDS

1. The Contract 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.

COMPLIANCE

All provisions and services will comply with all Federal, State and Local laws, ordinances, codes and regulations.

1. The awarded vendor will be responsible for insuring that all products meet specifications before delivery.
2. Awarded vendor will make no substitutions for bid items without prior written approval of the City of Fairhope.
3. Awarded vendor will supply a comparable "Loaner" vehicle for all leased vehicles not repairable, or repaired within seventy- two (72) hours of notification of out of service.
4. All warranties to run concurrent with lease term.
5. Delivery will be made within TEN (10) WORKING DAYS of execution of contract.
6. The awarded vendor will be responsible for insuring that equipment meets specifications before delivery.

PACKAGING & DELIVERY

- 1 F.O.B. City of Fairhope, prepaid & allowed, as directed.
- 2 Delivery will be received at time and place set by City of Fairhope representative.
- 3 At point of delivery, awarded vendor will present an itemized delivery ticket, referencing the bid number, to City of Fairhope receiving personnel for receiving.
- 4 Shortages, defective or damaged items will be rejected. The awarded vendor will replace such items within seventy- two (72) hours.

PAYMENT

1. Invoices: The awarded vendor is to invoice the City of Fairhope monthly, or, as per terms established in the contract.
2. All invoices must reference appropriate bid number.
3. 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.

BID PROPOSAL
BID NO. 023-11

GOLF COURSE MOWER AND EQUIPMENT 4 YR. LEASE PURCHASE
FOR
FAIRHOPE RECREATION DEPARTMENT

DATE: ____/____/____

We propose to meet or exceed the above specifications at:

BID: Purchase Outright	TOTAL PURCHASE BID	\$ _____
BID: 48 month lease @		\$ _____ / month
with purchase at end of lease using vendor supplied financing		\$ _____
	TOTAL LEASE PLUS PURCHASE BID	\$ _____

Makes & Models Being Bid :

DELIVERY (ARO) _____ Days

Each bid must give the full business address of the bidder and must be signed by him with his 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, Baldwin County, Alabama, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished. The undersigned agrees to furnish the goods/services as requested by you for the City of Fairhope, Baldwin County, Alabama in your invitation to bid, and certifies that they will meet or exceed the specifications called for. The undersigned has read all information pertaining to this bid and has resolved all questions. It is also understood and agreed that all prices quoted are F.O.B. described in the bid documents and specifications. The undersigned also affirms he/she has not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition, by agreement to bid at a fixed price or to refrain from bidding or otherwise.

Equipment Company _____

State of Incorporation _____

Company Representative _____
(Signature)

Title _____

Company Representative _____
(print)

Company Address _____

Phone _____

Fax _____

Federal ID Number _____

Foreign Vendor Alabama Registration Number, if applicable _____

Alabama State Contractor's License Number, if applicable _____

THIS MUST BE NOTARIZED!

NOTARY FOR EQUIPMENT COMPANY

STATE OF _____ }
_____ } ss:
COUNTY OF _____ }

I, the undersigned authority in and for said State and County, hereby certify that

_____, as _____
(Print name of bid signer here) (Print bid signers Title here)

respectively, of _____
(Print company name here)

whose name is signed to the foregoing document and who is known to me, acknowledged before me on this day, that, being informed of the contents of the document they executed the same voluntarily on the day the same bears date.

Given under my hand and Notaries Seal on this _____ day of _____, 2011.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

Third Party Finance Company _____

State of Incorporation _____

Company Representative _____
(Signature)

Title _____

Company Representative _____
(print)

Company Address _____

Phone _____

Fax _____

Federal ID Number _____

Foreign Vendor Alabama Registration Number, if applicable _____

Alabama State Contractor's License Number, if applicable _____

NOTARY FOR THIRD PARTY FINANCE COMPANY

STATE OF _____ }

_____ } ss:

COUNTY OF _____ }

I, the undersigned authority in and for said State and County, hereby certify that

_____, as _____
(Print name of bid signer here) (Print bid signers Title here)

respectively, of _____
(Print company name here)

whose name is signed to the foregoing document and who is known to me, acknowledged before me on this day, that, being informed of the contents of the document they executed the same voluntarily on the day the same bears date.

Given under my hand and Notaries Seal on this _____ day of _____, 2011.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____

END OF BID RESPONSE FORM

SAMPLE
LEASE AGREEMENT DOCUMENTS

FOR

BID NO. 023-11
GOLF COURSE MOWER AND EQUIPMENT FOUR
YEAR LEASE PURCHASE

FOR THE
FAIRHOPE RECREATION DEPT.

FOR THE
CITY OF FAIRHOPE

FAIRHOPE CITY COUNCIL
Lonnie Mixon, Council President
Timothy M. Kant, Mayor

Set No. _____

LEASE AGREEMENT

This LEASE AGREEMENT (hereinafter "Agreement") is made this _____ day of _____, _____, by and between the City of Fairhope, hereinafter "Lessee") and _____ (hereinafter "Lessor"), for

GOLF COURSE MOWER AND EQUIPMENT 4 YR LEASE/PURCHASE

The Lessee and Lessor agree as set forth below:

1. **Term of Agreement**

- a. The term of the agreement shall be for a period of FOUR (4) Years from _____ to _____.

2. **Survivability**

- a. Per Alabama State Law, the duration term for this contract cannot exceed 48 months. Placements made using the authority provided by this Contract will not survive the Contract itself, and must be terminated at the 48 month date, as specified herein. Those customers renting or leasing the equipment will continue to receive ongoing service from the Lessor at the agreed upon Contract rate through the term of the Contract.

3. **Compensation**

- a. Invoices -- Upon acceptance of delivery of equipment specified, awarded vendor will submit an invoice and signed delivery ticket to:

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

- b. All invoices must include the leased machine make, model, serial number.
c. 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.
d. The Lessor agrees to charge, and the Lessee agrees to pay a total lump sum lease fee of _____ **DOLLARS** (**\$ _____**), for the required rentals, repairs, and all other services covered by this Agreement, unless terminated by the execution of other clauses of this agreement.

4. Payment Withheld

a. The Lessee may withhold approval for payment on any request and the Lessee may withhold payment to such extent as may be necessary to protect the Lessee from loss on account of:

- i. Negligence on the part of the Lessor, or failure to perform any provision of this Agreement.
- ii. Claims filed or reasonable evidence indicating probable filing of claims.
- iii. Failure of the Lessor to make payments properly to Subcontractors for material or labor.
- iv. A reasonable doubt that the Agreement can be completed for the balance then unpaid.
- v. Damage to property, or another vendor or another vendor's work.

b. When the above grounds are removed, payment shall be made for the amount withheld because of them. The Lessor waives all cancellation rights under the agreement, if payment is withheld for one or more of the above reasons.

5. General Conditions

a. Indemnity: The Lessor hereby agrees to indemnify and save harmless the Lessee, 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 Agreement, to the extent caused by a negligent act or omission of the Lessor, their agents, servants, employees, Subcontractors, or others associated with the Lessor. The Lessor 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 Lessor.

6. Termination of Agreement

a. **Termination for Default:** Performance of Work under this Agreement may be terminated by the Lessee, in whole or in part, in writing, whenever the Lessee determines that the Lessor has failed to meet the requirements of this Agreement.

b. **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 Lessee may terminate any financial obligation, and Lessor 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 Customers funding from local, State and/or federal sources is not appropriated, withdrawn or limited. Lessee represents to Lessor that Lessee has sufficient appropriations or other funds available to pay all amounts due for the current fiscal year and reasonably believes that funds can be obtained to make all rental payments during the 48 month lease. Lessee hereby covenants that it will do all things reasonably within its power to obtain funds from which the rental payments may be made, including making provision for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding and using its bona fide best efforts to have such portion of the budget approved. It is Lessee's intent to make rental payments for the full term of this lease if funds are available. In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year for rental payments due under this Lease, the Lessee will immediately notify Lessor of such occurrence and this Lease shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to Lessee for any kind whatsoever, except as to the portions of rental payments herein agreed upon for which funds shall have been appropriated and budgeted. Subsequent to a termination of this lease, Lessee shall have no obligation to make rental payments with respect to the remainder of the Lease. In the event of such termination, Lessee agrees to return possession of the leased equipment to Lessor and Lessor shall have all legal and equitable rights to take possession of the Leased equipment. Notwithstanding the foregoing, lessee agrees that it will not (a) cancel this Lease under the terms of this Agreement if any funds are appropriated to it, or by it for the acquisition, retention or operation of the leased equipment.

c. **Termination for Convenience:** Lessee has the absolute right to terminate the Agreement upon "Award of Contract" to another Lessor, to perform major work referenced herein. In such event, payment due on the date of cancellation of the Agreement by Lessee, shall be paid by Lessee. Lessor will refund to Lessee any pre-payments beyond date of termination.

7. **Warranty**

- a. The Lessor warrants that equipment and materials provided, and all Work performed on the leased equipment 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.
- b. All equipment and materials provided by the Lessor shall be merchantable and for the purpose intended, and meet the quality standards of the referenced LEASED EQUIPMENT machine referenced in the specifications.

8. Time of Completion

- a. The Lessee and Lessor understand and agree that time is of the essence in the performance of this Agreement. The Lessor or Lessee, 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 Lessee or Lessor's control, respectively, whether of a similar or dissimilar nature, which prevent or hinder the performance of the Lessee's or Lessor's contractual obligations, respectively. Any such causes of delay, even though existing on the date of the Agreement, or on the day of the start of Work, shall extend the time of the Lessee's or Lessor'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 Lessee may, at their discretion, cancel this Agreement for their own convenience.**

9. Insurance Requirements

- a. Lessee, at its sole expense, shall obtain and maintain in full force or the term of this agreement, insurance for the protection of the leased equipment.
- b. Lessor, at its sole expense, shall obtain and maintain in full force for the term of this agreement, insurance for all work performed on the leased equipment at any site, including Lessee's work or equipment storage locations, to protect the Lessor 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 Lessor.
- c.. 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.

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

e. **Worker's Compensation and Employers Liability**

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. **U.S. Longshoreman & Harbor workers Act (USL&H)**

Required if contract involves work near a navigable Waterway that may be subject to the USL&H law.

g. **Maritime Endorsement (Jones Act)**

Endorsement required if contract involves the use of a Vessel. Or include coverage for "Master or Members or Crew" under "Protection and Indemnity" coverage (P&I), unless crew is covered under WorkersCompensation.

Bodily injury by accident \$1,000,000 Each Accident
Bodily injury by disease \$1,000,000 Aggregate

h. **Commercial General Liability**

Coverage on an Occurrence form with a combined single limit
(Bodily Injury and Property Damage combined as follows:

Each Occurrence \$1,000,000
Personal and Advertising Injury \$1,000,000
Products/Completed Operation Aggregate \$2,000,000
General Aggregate \$2,000,000

- Coverage to include

- 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
- o Railroad Protective Liability Insurance if work involves construction, demolition or maintenance operations on or within 50 feet of a railroad.

Covering all Owned, Non-Owned, and Hired vehicles with a limit of no less than \$1,000,000 combined single limit of Bodily Injury and property damage per occurrence.

- j. **Owner's Protective Liability** Where applicable, the **LESSOR** shall at his expense provide Owners Protective Liability policies issued in the name of the **OWNER** covering its liability for operation of the **LESSOR**. The policy limits shall be no less than \$1,000,000 combined single limit Bodily Injury and Property Damage per occurrence

- k. **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.

10. **Indemnity**

The fullest extent permitted by law, the Lessor 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 this agreement.

11. **Safety Measures**

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

12. **Extra Work and Associated Costs**

- a. Changes in the Work: The Lessee, without invalidating the Agreement, may order changes in the Work within the general scope of this Agreement, consisting of additions, deletions, or other revision, the Agreement 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 Agreement or a separate Change Order and shall be executed under the applicable conditions of the Agreement.

13. **Familiarity with the Work**

a. The Lessor, by executing this Agreement, acknowledges full understanding of the extent and character of the Work required and the conditions surrounding the performance thereof. The Lessee 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 Agreement by the Lessor serves as his stated commitment to fulfill all requirements and conditions referred to in this Agreement.

14. **New Attachments**

a. The Lessor is not required to install new attachments on the equipment which is recommended by the Lessee, insurance companies, governmental authorities, etc., unless requested by and paid for by the Lessee.

15. **Scope of Work and Specifications** –

a. As referenced in Bid documents.

16. **Miscellaneous Provisions**

a. The Lessor shall not employ Subcontractors without the express written permission of the Lessee.

b. The Lessor shall not assign the Agreement or sublet it as a whole without the express written permission of the Lessee. The Lessor shall not assign any payment due them hereunder, without the express written permission of Lessee. The Lessee may assign the agreement, or sublet it as a whole, without the consent of the Lessor.

c. No waiver, alteration, consent or modification of any of the provisions of the Agreement shall be binding unless in writing and signed by the Lessee and Lessor.

d. The Lessor 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 Agreement.

e. The Lessor shall at all times keep the Work area free from accumulation of waste materials or rubbish caused by his operations, and promptly remove and lawfully dispose of any such materials, or remove to a lawful waste

disposal site. If the Lessor fails to clean up the Work site, the Lessee will complete the task and charge the Lessor for such services.

f. This Agreement is considered a non-exclusive Agreement between the parties.

g. This Agreement 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 Agreement shall be heard in the Courts of Baldwin County, Alabama.

i. This Agreement, the Bid Invitation packet, and associated addenda contain all terms and conditions agreed upon by the Lessee and Lessor. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

j. The Lessee will not furnish any labor, material, or supplies unless specifically stated in the Agreement Documents. Lessor must be properly certified to industry standards and licensed to perform the work as outlined in the Agreement Documents.

k. 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.

l. During the term of the Agreement, Lessee will operate and maintain the normal use maintenance of the LEASED EQUIPMENT, in accordance with manufacturer's standard maintenance schedule.

m. During the term of the Agreement, Lessee will operate leased equipment only in applications for which it is designed.

17. End of Lease

a. If the end date is other than date stated herein as end date of this agreement, Lessee will give Lessor Thirty (30) days notice prior to the date of Lessee's intention to terminate agreement and return leased equipment.

b. At termination of lease, Lessor will recover leased equipment at Lessee's location, at Lessor's expense.

c. Provide a secured place to store off-lease equipment for up to fourteen (14) days upon request of Lessor. "Secured place" will be defined as gated and fenced area with nighttime illumination.

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

**FOR: THE CITY OF FAIRHOPE
OF BALDWIN COUNTY, ALABAMA**

ATTEST:

BY: _____

(Mayor)

(City Clerk)

{STATE OF ALABAMA}

{COUNTY OF BALDWIN}

I, _____, a Notary Public in and for said State and County, hereby certify that TIMOTHY M. KANT and LISA A. HANKS, whose names as Mayor and City Clerk, respectively of the CITY OF FAIHOPE of BALDWIN COUNTY, a body corporate and politic, are signed to the foregoing instrument and who are known to me, acknowledge before me on this day, that being informed of the contents of the instrument, they as such officers and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and notarial seal on this the _____ day of _____
_____ 20 ____

NOTARY PUBLIC, BALDWIN COUNTY, ALABAMA

My Commission Expires: _____

FOR THE LESSOR:

Two Witnesses to Lessor: _____

_____ (Lessor)

_____ (Lessor Business Address)

I _____, certify that I am

the _____ of the Corporation named as Lessor herein,
that _____ who signed this Contract on behalf of the
Lessor, was then _____ of said
Corporation; that said contract was duly signed for and in behalf of said corporation by
authority of its governing body, and is within the scope of its corporation by authority of
its corporate powers.

(signature)

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I, the undersigned authority, a Notary Public in and for said State and County, hereby
certify that

_____ whose name as _____
_____ of _____

_____, a corporation, is signed to the foregoing
instrument, and who is known to me, acknowledged before me on this day, that being
informed of the contents of the within instrument, he, as such officer and with full
authority executed the same voluntarily and as the act of said corporation.

Given under my hand and Official Seal this the _____ day of _____
_____20_____.

NOTARY PUBLIC

My Commission Expires: _____