

**CITY OF BIRMINGHAM-PURCHASING DIVISION
710 NORTH 20TH STREET
P-100 CITY HALL
BIRMINGHAM, AL 35203-2227
OFFICE: (205) 254-2878/FAX: (205) 254-2484**

MELINDA CUNNINGHAM, SENIOR BUYER
EDWARD WILLIAMS, ASSISTANT PURCHASING AGENT

NOVEMBER 29, 2023
ITB: 24-18

TO:	Prospective Bidders
INVITATION TO BID NUMBER:	24-18 (A complete copy can be downloaded at www.birminghamal.gov)
SEPARATE SEALED BIDS FOR:	Cable TV and High-Speed (Cable Modem/DSL) Internet Services
INVITATION TO BID RESPONSES WILL BE RECEIVED BY:	Melinda Cunningham, Senior Buyer Purchasing Division 710 North 20 th Street, P-100 City Hall Birmingham, AL 35203-2227

*****IMPORTANT SOLICITATION DATES*****

BID DUE DATE:	BID OPENING DATE:
DECEMBER 19, 2023 by 5:00 PM (Central Standard Time)	DECEMBER 20, 2023 at 10:00 AM (Central Standard Time)

Bidders wishing to bid can download the complete solicitation including the specifications and bid forms via the internet at www.birminghamal.gov (go to link titled Work, then click on Bidding Opportunities), or by visiting the Purchasing Office at the address shown above, or by calling (205) 254-2878 and requesting a copy be mailed to you.

BID OPENING WILL BE HELD AT:
Purchasing Division
710 North 20th Street
P-100 City Hall
Birmingham, AL 35203-2227

TELEPHONE INQUIRIES – NOT ACCEPTED

Telephone inquiries with questions regarding clarification of any and all specifications of the ITB will not be accepted. All questions **must** be e-mailed to Melinda Cunningham at melinda.cunningham@birminghamal.gov.

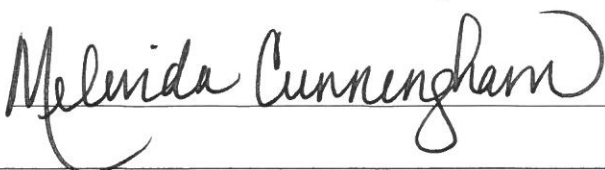
Submissions may be withdrawn, modified, and resubmitted prior to the formal bid opening due date. **Any submission modification(s) submitted after the “Bid Due Date” may not be considered.**

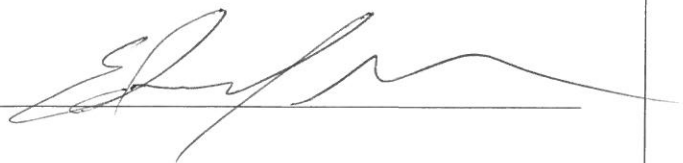
The City of Birmingham reserves the right to accept or reject any or all bids, or any part of any bid, and to waive any informalities or irregularities in the bid. The City of Birmingham may award contract in whole or in part based on the needs of the City of Birmingham.

All costs incurred by the company to respond to this solicitation will be wholly the responsibility of the Bidder. All copies and contents of the bid, attachments, and explanations thereto submitted in response to this ITB, except copyrighted material, shall become the property of the City of Birmingham regardless of the bidder selected. Response to this solicitation does not constitute an agreement between the Bidder and the City of Birmingham.

The City of Birmingham is not responsible for delays occasioned by the U.S. Postal Service, the internal mail delivery system of the City of Birmingham or any other means of delivery employed by the bidder. Similarly, the City of Birmingham is not responsible for, and will not open, any bid responses which are received later than the date and time indicated above. Late bid responses will be retained in the bid file, unopened.

RELEASED BY:





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INVITATION TO BID

Sealed bids marked " **Cable TV and High-Speed (Cable Modem/DSL) Internet Services**" will be received by the City of Birmingham Purchasing Agent, P-100 First Floor of City Hall, 710 North 19th Street, Birmingham, Alabama 35203.

Bids will be accepted until 5:00 P.M. central time (standard or daylight savings time, as applicable) on **DECEMBER 19, 2023**. **Bids submitted after these dates and times will not be considered.** Bids will be publicly opened at **10:00 AM on DECEMBER 20, 2023**.

The City has resumed having public bid openings and if you plan to attend in person, we ask that you wear a mask. You may also participate virtually via WebEx. Login information can be found on the City's website at www.birminghamal.gov (go to link titled **Employment & Bidding**, then click on **Bidding Opportunities**).

The City is not responsible for delays occasioned by the U.S. Postal Service, the internal mail delivery system of the City, or any other means of delivery employed by the Bidder. Similarly, the City is not responsible for, and will not open, any bid/bid responses, which are received later than the date and time, indicated above. Late bids/bids will be retained in the bid/bid file, unopened.

TELEGRAPHIC/ELECTRONIC BID RESPONSES

Proposal responses sent by electronic devices (i.e., facsimile machines and email) are not acceptable and will be rejected upon receipt. Vendors will be expected to allow adequate time for delivery of their bid responses either by airfreight, postal services, or by other means.

Bidders are required to provide an original and two (2) copies of their bid response.

TERM OF CONTRACT

Any contract resulting from this ITB will become effective upon bid award, not to exceed (3) three years. Per Section 3-3-7(7) of the Birmingham City Code and State Bid Law, the proposed contract shall be in effect for a minimum of one (1) year guaranteed contingent upon Council approval. **The life of this contract shall exist with the approval of both parties with the provision that no price increase in the original bid prices shall be allowed.**

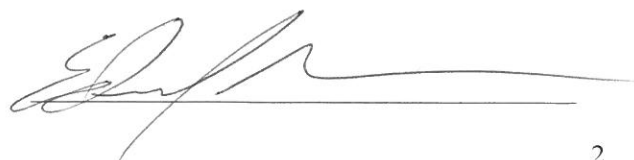
CERTIFIED CHECK/BID BOND/CASHIER'S CHECK

In order for any bid award to be considered your bid must be accompanied by an acceptable bid bond, certified check or cashier's check in the amount of \$1,000.00 payable to the City of Birmingham. Bid bond, certified check or cashier's checks will be returned to all unsuccessful bidders after the formal award is made and to the successful bidder after acceptance of award. Should the successful bidder fail to accept the award, the bid bond check shall be forfeited.

The City follows a policy of nondiscrimination. No contractor with the City should discriminate on the basis of race, sex, religion or national origin. Failure by the Vendor to carry out these requirements is a material breach of its obligations, which may result in its termination or such other remedy as the City deems appropriate.

No bid may be withdrawn for a period of sixty (60) days after the date of the bid opening.
All bids submitted on the bid form provided delivered F. O. B. City of Birmingham, Birmingham, AL 35203.
The City reserves the right to reject any or all bids submitted, in whole or part, and to waive any informalities.

Bids must be submitted in a sealed envelope marked "ITB# 24-18 "Cable TV and High-Speed (Cable Modem/DSL) Internet Services", 5:00 PM, DECEMBER 19, 2023. Bids may be **hand delivered** to Purchasing, Room P-100 First Floor, City Hall, Birmingham, Alabama or **mailed** to City of Birmingham, 710 North 20th Street, Birmingham, AL 35203. Bids mailed in (i.e. USPS, Federal Express, UPS, Airborne, etc.) **must** specify delivery to Room P-100, 1st Floor-City Hall.



Edward Williams, Assistant Purchasing Agent

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INVITATION TO BID – *Continued*

GENERAL

The City of Birmingham is seeking bids for Cable TV and High-Speed (Cable Modem/DSL) Internet Service as described later in this document. Bidder will provide the cost for each requested package as indicated on the bid form. Award will be made based on the lowest priced responsive, responsible bid submitted. Bid price shall be inclusive of any and all items of cost to provide end to end cable tv service and high speed (cable modem/DSL) internet plus modem to the City of Birmingham. Each bidder is to provide a detailed breakdown of all items of cost included in the calculation of the bid price included any possible credits. Bidder must state and explain any item of cost that cannot be provided directly by the bidder such as a line or loop fee that is billable only to the user (City) by a third party (telephone company, etc.)

CONTACT

Questions regarding procurement should be addressed in writing to Melinda Cunningham, Purchasing Division, either by fax, (205) 254-2484, or by email, melinda.cunningham@birminghamal.gov between the hours of 8:00 AM and 4:00 PM, Monday through Friday.

Questions regarding technical aspects should be addressed in writing to Nelvin Short, Information Management Systems by email, nelvin.short@birminghamal.gov between the hours of 8:00 AM and 5:00 PM Monday through Friday.

CORRECTIONS/AUTHORIZED SIGNATURE

Bids having any erasures or corrections must be initialed in ink. Bid must be signed in ink by an official authorized representative.

FORM W-9

Any successful bidder who is not currently set up as a vendor in the City of Birmingham vendor file will be required to submit a completed W-9 tax form prior to any award. The W-9 tax form may be submitted with your bid or no later than seven (7) working days of receipt of notice of intent to award.

FORM OF CONTRACT

Bidder is to submit, as a part of its sealed bid, a copy of their standard form of contract agreement and/or terms and conditions.

BUSINESS LICENSE

The City of Birmingham must have a copy of the successful bidder's current City of Birmingham business license prior to formal award of contract. Each bidder may submit a copy of his/her license along with his/her bid. However, in the event you receive a notification of intent to award letter, bidder must provide a copy of his/her current business license no later than seven (7) working days of receipt. Failure to submit the requested information will result in the notice of intent to award being revoked.

CONFIDENTIALITY

Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of the City information whether deemed confidential or not.

NON-COLLUSION

Contractor covenants and declares that it has not employed any person to solicit or procure this Agreement and that Contractor has not made, and will not make, any payment of any compensation for the procurement of this Agreement. The covenant contained herein shall survive the expiration or earlier termination of this Agreement.

PRE-PAYMENTS

No prepayments of any kind will be made prior to shipment.

PRICES

Include all labor, materials, equipment, overhead and profit to complete projects as specified. Bidder shall be responsible for payment of all sales, use, lease, ad valorem and any other tax that may be levied or assessed by reason of this transaction. All such costs are to be included in the bid price.

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INVITATION TO BID – *Continued*

TAX
The City of Birmingham is exempt from all Federal Tax, and sales and use tax, except Alabama tax on oils, lubricants and fuels specifically bought for over-the-road transportation use.

Municipalities are not liable for sales tax: reference Code of Alabama Section 40-23-4. Costs normally considered pass through costs (property tax, use tax, delivery charge, etc.) to the customer by the provider must be included in any fee proposed (Code of Alabama 40-12-222.) For the purchase of personal property, the City’s policy is to apply a local preference option, as allowed by the State of Alabama Code, Section 41-16-50, in determining the low bidder. The contract shall become effective from the date of the Notification of Award letter which will be mailed to the successful bidder.

INVOICING
All invoices must agree with the purchase order in description and price and include the following information:
1.) Purchase Order Number
2.) Ship to Department Name and Address
3.) In order to ensure prompt payment, ALL **ORIGINAL INVOICES*** MUST BE SENT TO:

**CITY OF BIRMINGHAM
INFORMATION MANAGEMENT SYSTEMS
712 19TH STREET NORTH
BIRMINGHAM, AL 35203**

*If invoice does not agree with purchase order, credits or a corrected invoice will be required in order for the City to process payment.

Invoices that do not reference an authorized Purchase Order will be returned to the vendor.

Each bidder is responsible for all costs involved in the preparation of the bid, providing any sample requested, including transportation to and from the City site and any other costs incurred by the bidder during the bid process.

THIRD-PARTY “REMIT-TO”
If bidder has a third-party “remit-to” company, that information must appear on the Bidder’s response. The City of Birmingham will send payment to the company designated by Bidder on its response, but will not be responsible for resolving payment issues, should the Bidder change payment processing companies after a payment has been mailed or without forty-five (45) days written notification to the Purchasing and General Accounting divisions of the City of Birmingham.

PAYMENT TERMS
The City’s standard payment terms are net 30 days from acceptance. Exceptions may be allowed for discounted early payments, such as 2% 10 net 30 days. The reference date for all such discounted early payment terms will be the date the invoice is received or the date the goods were received, whichever is later. In the event of a dispute, the City’s records shall prevail. The City will not consider any bids requiring C.O.D. payments.

OFFSET FOR OVERDUE FEES, TAXES, ETC.
Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Vendor acknowledges and agrees that the City has the right to deduct from the total amount of consideration to be paid, if any, to Vendor under this Agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from Vendor.

REDUCTION IN COST
Bidder agrees that the City of Birmingham will be charged no more for item(s) bid than the State of Alabama, and that in the event of a price reduction; the City will receive the benefit of such reduction on any undelivered portion of contract.

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INVITATION TO BID – Continued

SPECIFICATIONS

The City currently has Cable TV and High-Speed (Cable Modem/DSL) Internet Services along with Cable Modem/DSL High Speed Internet Service at several city locations with various speeds and various High Speed packages. Please find the included spreadsheet of locations.

<u>Name</u>	<u>Service Location Address</u>	<u>Current Service</u>
Fire Station # 1	1808 7th Ave North Bham, AL 35203	TV, HBO, ShowTime, Internet
Fire Station # 2	600 11th Street South Bham, AL 35233	Spectrum with 3 Receivers, Ultra Internet
Fire Station # 3	2210 Highland Ave South Bham, AL 35205	Enterprise TV, Internet
Fire Station # 6	317 15th Street North Bham, AL 35203	Movie Pass with Cable TV, Internet
Fire Station # 7	437 16th Ave South Bham, AL 35203	Cable TV, Internet
Fire Station # 12	6449 1st Avenue North Acct 2 Bham, AL 35212	Spectrum Business
Fire Station # 13	2229 30th Ave North Bham, AL 35203	TV, HBO, DVR, Wi-Fi Internet
Fire Station # 15	1725 Jefferson Ave Southwest	HBO, TV Service, DVR - Internet
Fire Station # 18	200 Dugan Ave Bham, AL 35214	HBO, Sports Pass, Wi-Fi
Fire Station # 20	4825 Avenue W Bham, AL 35208	Sports Pass, TV, HBO
Fire Station # 25	3015 Wilson Rd SW Bham, AL 35221	HBO, Sports Pass, Showtime Internet
Fire Station # 26	1700 Montclair Road Irondale, AL 35210	Tv, 3 Boxes, HBO, DVR Internet
Fire Station # 28	2501 Carson Road Bham, AL 35215	TV, HBO, Internet
Fire Station # 29	1512 Springville Rd RRBC Bham, AL 35215	High Speed
Bham Fire and Rescue	2001 Ave I Ste RRBC Bham, AL 35218	Wi-Fi
City of Birmingham City Hall	1200 Tuscaloosa AVE SW Bham, AL 35211	Internet Service Only
City Hall	710 19th Street North APT 319 Bham, AL 35203	Spectrum, Sport Pass, Private TV
City of Birmingham City Hall	4712 Avenue W Bham, AL 35208	Tv 4 receivers
City of Birmingham City Hall	1710 1st Avenue Bham, AL 35203	Spectrum TV, 2 Receiver
City of Birmingham City Hall	710 20th Street North Bham, AL 35203	TV, Receivers
City of Birmingham City Hall	710 20th Street North Bham, AL 35203	TV
City of Birmingham	710 20th Street North Flr 3 Bham, AL 35203	Tv Only
IMS Communication	2600 31st Ave North Bham, AL 35207	Cable Modem
IMS Communication	600 Red Lane Road Apt East Bham, AL 35215	Cable Modem
IMS Communication	1320 19th Street South Bham, AL 35205	Cable Modem
IMS Communication	2236 47th Street Ensley apt West Bham, AL 35208	Cable Modem
Legion Field	400 Graymont Ave West Bham, AL 35204	TV Service
Mayor's Office	710 20th Street North Bham, AL 35203	Basic Cable

CONTRACT AWARD

The contract shall become effective from the date noted in the Notification of Award letter(s) to be mailed to the successful vendor final execution of a written agreement between the successful bidder and the City, attested by the City Clerk. Contract award to purchase the service covered in this bid document shall be constructed under and governed by the law of the State of Alabama and each party thereto irrevocably agrees to be subject to the jurisdictions of the courts of the State of Alabama.

Successful bidder shall not assign this contract to any other party without prior written approval of the City of Birmingham. Contract shall not be assigned to an unsuccessful bidder who was rejected because he was not a responsive or responsible bidder.

Any bid that stipulates a reversal of freight charges if a minimum quantity or purchase order amount is not ordered, will be determined a non-responsive bid, and will not be considered for award.

Use of specific names and numbers is not intended to restrict the bidding of any seller and/or manufacturer but is solely for the purpose of indicating the type, size and quality of materials, products, service, or equipment considered best adapted to the City of Birmingham's

intended use. Proprietary specifications may be waived for functional equivalents offered and approved by The City of Birmingham Information Management Systems designee.

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INVITATION TO BID – *Continued*

SINGLE BID

If a single bid response is received for this ITB, the City reserves the option to award or negotiate for a lower price with the rejected Bidder and other Bidders by means of sealed quotes, upon department approval. The rejected Bidder's initial offer will not be disclosed to other Bidders, prior to the awarding of a contract. The award will be made to the company offering the lowest negotiated quotation, provided that all conditions and specifications required by the City are met.

AWARD

Contract will be awarded to the lowest, most responsive and responsible bidder who meets all bid requirements and has a history of successfully providing like products.

NEGOTIATIONS

The City of Birmingham reserves the right to enter into contract negotiations with the selected Bidder. If the City and the selected Bidder cannot negotiate a successful contract, the City may terminate negotiations and begin negotiation with the next selected Bidder. This process will continue until a contract has been executed or all proposals have been rejected. No Bidder shall have any rights against the City arising from such negotiations.

PURCHASE ORDERS

The City will issue purchase order(s) to the successful bidder for the goods and/or services (bid items) that are the subject of the bid. Unless otherwise agreed in a writing that is signed by both parties, the entire agreement between the City and the successful bidder concerning the bid items is comprised of the terms, conditions, specifications and requirements stated in (a) the contemplated purchase order(s), (b) this Invitation to Bid and Specifications and (c) your bid (collectively, the "Contract Requirements"). These writings supersede all former proposals, offers, negotiations, representations or agreements, either written or oral, concerning the provision of vendor's goods and/or services. By acceptance of the City's purchase order(s), the successful vendor agrees to abide by and perform its responsibilities related to the bid items in compliance with the Contract Requirements.

ADDITIONAL PURCHASES

The City has attempted to list all items required for "CABLE TV SERVICE AND HIGH SPEED INTERNET SERVICE" required during the term of the contract, if mutually agreed upon, additional contracts may be executed, based upon this bid for the same item(s) or related types and/or sizes.

Bids may be solicited for the product included in this contract where an immediate/emergency need exists including large quantities. The decision of the Purchasing Agent as to what constitutes a biddable situation shall be final and shall not be construed as a breach of contract.

TERMINATION OF CONTRACT

Failure to adhere to any or all terms, conditions and specifications as set forth in the contract may result in the immediate termination of the contract. Should termination occur, the holder of the contract may be declared a "non-responsible vendor" This declaration may result in the rejection of any future bids submitted by the vendor for a period of time to be determined by the City

CANCELLATION

The City reserves the right to cancel the contract, in whole or part, and seek new bids at any time the City determines that the services, item(s) and/or product lines(s) being supplied is/are failing to perform satisfactorily. Any bid that imposes a service fee or any other type of fee on any order not exceeding a minimum order quantity or minimum purchase order dollar amount, will be determined a non-responsive bid and will not be considered for award.

PROHIBITION AGAINST BOYCOTTING

By signing this contract, the Contractor certifies that it is not currently engaged in, and for the duration of this agreement will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state enjoys open trade.

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INVITATION TO BID – *Continued*

INSURANCE REQUIREMENTS

Liability Insurance: For the duration of this contract and for limits not less stated below, the Contractor shall carry (i) general liability insurance (either primary or a combination of primary and umbrella coverage) with limits of not less than \$1,000,000.00 total with a maximum of \$1,000,000.00 for each occurrence and shall include, but not be limited to, personal injury, property damage, vandalism, property loss and theft; (ii) comprehensive automobile liability insurance concerning owned and rented vehicles operated by the Contractor with limits of not less than \$1,000,000.00 bodily injury per occurrence, \$1,000,000.00 property damage or combined single limit of \$500,000.00; and (iii) Workman’s Compensation coverage in an amount adequate to comply with the statutory requirements. The City’s bid number **(24-18)** must appear on any/all copies of the certificate of insurance.

All such insurance shall be provided by a policy or policies issued by a company or companies qualified by law to engage in the insurance business in the State of Alabama with a rating of A-VII or better according to the most current edition of Best’s Insurance reports. Bidder is to provide written documentation of the company’s rating with their bid.

The Contractor may use umbrella or excess liability insurance to achieve the required coverages, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

City Additional Named Insured: Except for Worker’s Compensation coverage, all coverages shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of the Contractor or the performance of its work.

The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability but shall allow coverage for the City to the fullest extent provided by the policies. Such additional insured coverage shall be at least as broad as Additional Insured endorsement from ISO, CG 2010.1185.

Policies Primary: All insurance policies required herein are to be primary and non-contributory with any insurance or self-insurance program administered by the City.

Waiver of Subrogation: Contractor shall require the carriers of the above-required insurance coverage to waive all rights of subrogation against the City, and its officers, employees, agents, contractors and subcontractors. Further, Contractor hereby waives any rights of subrogation against the City. All general or automotive liability coverage provided herein shall not prohibit the Contractor or its employees, agents or representatives from waiving the right of subrogation prior to loss or claim.

Proof of Coverage: Before the commencement of services or work hereunder, the Contractor shall provide the City a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. Evidence of insurance will not be accepted on a per event basis. These certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the City. In the event that the City is not notified that any of the coverage required herein is to be cancelled or changed in such a manner as not to comply with the requirements of this Contract, the Contractor shall, within fifteen (15) days prior to the effective date of such cancellation or change, obtain and provide the City with binder(s) of insurance evidencing the re-establishment of the insurance coverage required herein.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Vendor acknowledges and agrees that, consistent with federal law and City’s public policy, it will encourage disadvantaged business enterprise (DBE) participation to the extent permitted by law. A “disadvantaged business enterprise” is a for-profit small business concern (i) at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (ii) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. In accordance with federal law, a “socially and economically disadvantaged individual” includes African-Americans, Hispanic Americans, Native

Americans, Asian-Americans, women, and any additional groups designated as socially and economically disadvantaged by the federal Small Business Administration.

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INVITATION TO BID – *Continued*

HISTORICALLY UNDERUTILIZED BUSINESS ENTERPRISES

Vendor acknowledges that the City, as a matter of public policy and to the extent allowed under applicable law, encourages participation of minority-owned, women-owned and disadvantaged business enterprises to the maximum extent possible seeks to provide opportunities for and to actively include Disadvantaged Business Enterprises (DBEs) and Historically Underutilized Business Enterprises (HUBE's) which includes architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City's business, economic and community revitalization programs. Vendor agrees to comply with this policy, and to include and retain those firms, contractors and consultants as sub-contractors or participants in other capacities to assist Vendor to complete the Work.

NON-DISCRIMINATION POLICY

Vendor (and its employees, agents and any subcontractors) shall not discriminate on the basis of race, color, sex, gender identity, sexual orientation, disability, familial status, or national origin in the performance of the services contemplated hereunder. Failure by the bidder to carry out these requirements is a material breach of its obligations which may result in its termination or such other remedy as the City deems appropriate.

During the performance of this contract the contractor (Consultant/Vendor) agrees as follows:

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

(b) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the Vendor may be declared ineligible for further municipal contracts.

IMMIGRATION LAW COMPLIANCE.

(a) Vendor represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended (the "Act"). (b) Vendor represents and warrants that it will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that Vendor is enrolled in the E-Verify program. During the performance of this Agreement, Vendor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations. (c) Vendor agrees to comply with all applicable provisions of the Act with respect to its subcontractors by entering into an agreement with such subcontractors providing work for Vendor on the Project in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-Verify program. Vendor represents and warrants that Vendor shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which Vendor knows is not in compliance with the Act. (d) By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

LAWS, PERMITS

The bidder's attention is directed to the fact that all applicable state laws, municipal ordinances and rules and regulations of the authorities having jurisdiction over the work to be performed shall apply to the Contract throughout, and they will be deemed to be included in the Contract as though written out in full in the Contract.

CITY OF BIRMINGHAM-PURCHASING DIVISION
710 NORTH 20TH STREET
P-100 CITY HALL
BIRMINGHAM, AL 35203-2227
OFFICE: (205) 254-2878/FAX: (205) 254-2484

MELINDA CUNNINGHAM, SENIOR BUYER
EDWARD WILLIAMS, ASSISTANT PURCHASING AGENT

NOVEMBER 29, 2023
ITB: 24-18

INVITATION TO BID – *Continued*

GOVERNING LAW/DISPUTE RESOLUTION

Contract award to purchase the materials covered in this bid document shall be construed under and governed by the laws of the State of Alabama and each party hereto irrevocably agrees to be subject to the jurisdictions of the courts of the State of Alabama.

HOLD HARMLESS AND INDEMNIFICATION

Vendor(s) shall defend, indemnify, and hold harmless the City of Birmingham, and its agents, employees and officials (hereinafter the "Indemnitees") from and against all demands, actions, damages, judgments, expenses (including but not limited to attorneys' fees, expert fees, court costs and other litigation costs), losses, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property) (collectively hereinafter "Claims") by any third parties (including any employee, subcontractor or representative of the Vendor, hereafter a "Vendor Representative") that arises out of, relates to, results from, or is attributable to any of the following: (a) Vendor's performance or failure to perform its obligations hereunder; (b) any conditions in or about the work sites that the Vendor or any Vendor Representative may encounter; or (c) the use or occupancy of the work sites by Vendor or any Vendor Representatives. This indemnification obligation includes Claims that are caused in part by the negligence of an Indemnitee(s); provided nothing herein shall obligate Vendor to indemnify any of the Indemnitee(s) for Claims resulting from the sole negligence or from the willful misconduct of the Indemnitee(s).

CONFLICT OF INTEREST

Contractor covenants and declares that it has not, and will not, acquire any interest, directly or indirectly, in any property acquired by the City during the term of this Agreement. Contractor warrants and covenants that it presently has no interest in, nor shall any interest be hereinafter acquired in, any matter that will render the services required under this Agreement a violation of any applicable Federal, State or local law. In the event that any conflict of interest should hereinafter arise, Contractor shall promptly notify the City in writing of the existence of such conflict of interest.

PUBLIC DISCLOSURE

Subject to applicable law or regulations, the content of each Bidder's Proposal shall become public information upon the effective date of any resulting contract.

GENERAL

The City of Birmingham expressly reserves the right to reject any or all bids, or parts of bids, or to re-bid and to make the award or awards as the best interest of The City of Birmingham appears.

GUARANTEE

Bidder certifies by bidding, that he is fully aware of the conditions of service and purpose for which item(s) included in this bid are to be purchased, and that his offering will meet these requirements of service and purpose to the satisfaction of Community Development Department and The City of Birmingham Finance Purchasing Division and its agent.

Melinda A. Cunningham

Melinda A. Cunningham, Senior Buyer

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**NOVEMBER 29, 2023
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BID FORM

In order for any bid award to be considered your bid must be accompanied by an acceptable bid bond, certified check or cashier's check in the amount of \$1,000.00.

Submitted below is my firm bid for **Cable TV and High-Speed (Cable Modem/DSL) Internet Services** for the City of Birmingham for a period of one (1) year, in accordance with your invitation to bid and specifications dated **NOVEMBER 29, 2023**. Prices are F.O.B. Birmingham, AL picked-up and I am bidding in accordance with specifications except as listed below.

All bids are to be submitted on the bid form provided and all bids are to be f.o.b. Birmingham, Alabama delivered. The City reserves the right to reject any or all bids submitted, in whole or part, and to waive any informalities.

Cable TV and High-Speed (Cable Modem/DSL) Internet Services for the City of Birmingham per specifications

LINE NO	DESCRIPTION	MONTHLY COST	ANNUAL COST
1	Basic Cable TV Service and High Speed Internet Service	\$	\$
2	Premium HBO	\$	\$
3	Premium Sports	\$	\$
4	Fiber Based TV Service	\$	\$
5	High Speed 200Mbps	\$	\$

FORM OF CONTRACT

Bidder is to submit, as a part of its sealed bid, a copy of their standard form of contract agreement and/or terms and conditions.

BIDDERS ARE REQUIRED TO PROVIDE AN ORIGINAL AND TWO (2) COPIES OF THEIR BID SUBMITTAL.

MAXIMUM DISCOUNT

Guaranteed discount if bid is renewed for 2nd year: _____%

Guaranteed discount if bid is renewed for 3rd year: _____%

NAME OF YOUR COMPANY: _____

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**NOVEMBER 29, 2023
ITB: 24-18**

SIGNATURE PAGE

I hereby certify that we do not discriminate in employment of our personnel against any persons on account of race, creed, color, sex, or national origins, and acknowledge and agree that the City encourages minority – and women – owned business participation to the maximum extent possible. This policy includes Historically Underutilized Business Enterprises such as architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City’s business, economic and community revitalization programs.

EXCEPTIONS TO SPECIFICATIONS: (use extra pages if necessary)

Bidder acknowledges receipt of _____ addenda
(Addenda numbers)

This page must be returned with bid.

DUNS # _____

Date of Bid

Name (Print legibly or Type)

Company

Title

Street Address

Signature

City State Zip

Tax ID Number

Post Office Box

E-Mail Address

City State Zip

Telephone Number

Terms of Payment

Fax Number

Delivery Date

Cell Phone

IF AVAILABLE, PLEASE SUBMIT COPY OF CURRENT CITY OF BIRMINGHAM BUSINESS LICENSE WITH THIS BID.

INDICATE THE FOLLOWING ADDRESSES IF DIFFERENT FROM ABOVE:

1. **BID AWARD NOTICE ADDRESS** _____
2. **PURCHASE ORDER ADDRESS** _____
3. **REMITTANCE ADDRESS (and name if different than above)** _____

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CERTIFICATION REGARDING DEBARMENT, SUSPENSIONS, AND OTHER RESPONSIBILITY MATTERS

(Executive Order 12549, Debarment and Suspension, 34 CFR Part 85)

Bidder/Offeror certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have have not within a three-year period preceding award of this contract been convicted of or had civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property;
- (c) Are are not presently indicted for or otherwise criminally charged by a governmental entity (Federal, State or Local) with commission on any of the offenses enumerated in Paragraph (b) above; and
- (d) Have have not within a three-year period preceding award of this contract had one or more public transactions (Federal, State or Local) terminated for cause of default.

(e) **DATA UNIVERSAL NUMBERING SYSTEM (DUNS)**

Duns number must be provided on the signature page of this document before an award can be made to facilitate System Award Management (SAM) certification <https://www.sam.gov/SAM/>. Companies that do not have a free DUNS number may visit <https://www.dnb.com/duns-number/get-a-duns.html> for more information. *The City of Birmingham does not provide DUNS numbers.*

AUTHORIZED SIGNATURE

TITLE

PRINTED NAME

DATE

_____ I am unable to certify to the above statements. My explanation is attached.

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NOVEMBER 29, 2023
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NOTARIZED AFFIDAVIT AND WARRANTY:

The bidder warrants that the bid submitted is not made in collusion with any other bidders, or in the interest of or on behalf of an undisclosed party; that the bidder has not, directly or indirectly, induced any other bidder to put in a sham bid or to refrain from making a bid; and that bidder has not paid or agreed to pay to any party, either directly or indirectly, any money or other thing of value for assistance or aid rendered to or to be rendered in attempting to procure the bid for the privileges provided in this invitation. All the information contained in the bid may be relied upon by the City of Birmingham in awarding demolition services, and everything contained herein is warranted by the bidder to be true.

DATE

NAME OF COMPANY

AUTHORIZED SIGNATURE

PRINT NAME

TITLE

NOTARY PUBLIC

MY COMMISSION EXPIRES

**CITY OF BIRMINGHAM-PURCHASING DIVISION
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**NOVEMBER 29, 2023
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SIGNATURE PAGE

I hereby certify that we do not discriminate in employment of our personnel against any persons on account of race, creed, color, sex, or national origins, and acknowledge and agree that the City encourages minority - and women - owned business participation to the maximum extent possible. This policy includes Historically Underutilized Business Enterprises such as architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City's business, economic and community revitalization programs.

EXCEPTION TO SPECIFICATIONS: (use extra pages if necessary)

Bidder acknowledges receipt of _____ addenda(s).
(addenda numbers)

This page must be returned with bid.

DUNS # _____

Date of Bid

Name (Print legibly or Type)

Company

Title

Street Address

Signature

City State Zip

Tax ID Number

Post Office Box

E-Mail Address

City State Zip

Telephone Number

Terms of Payment

Fax Number

Delivery Date

Cell Phone

IF AVAILABLE, PLEASE SUBMIT COPY OF CURRENT CITY OF BIRMINGHAM BUSINESS LICENSE WITH THIS BID.

INDICATE THE FOLLOWING ADDRESSES IF DIFFERENT FROM ABOVE:

1. **BID AWARD NOTICE ADDRESS** _____
 2. **PURCHASE ORDER ADDRESS** _____
 3. **REMITTANCE ADDRESS (and name if different than above)** _____
- _____

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NOVEMBER 29, 2023
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City of Birmingham Transparency in City Government Disclosure and Certification Form

TRANSPARENCY IN CITY GOVERNMENT DISCLOSURE AND CERTIFICATION FORM

INSTRUCTIONS:

This form must be fully completed by any individual or entity (hereinafter referred to as “Vendor”) seeking to enter into a contract or appointment, provide services, obtain funding or otherwise do business with the City of Birmingham with the express exclusion of persons or entities exclusively providing grant funding to the City, General Services Administration (GSA) vendors, national cooperatives approved by the Alabama Department of Examiners of Public Accounts and governmental entities to include City boards and agencies.

Submit completed forms to the appropriate City Department. All questions must be answered. Respond “Not applicable” or “NA” if a question does not apply. Attach additional pages if needed. Completed forms will be submitted to the Birmingham City Council or the appropriate Council Committee along with the Applicant’s proposed contract, appointment and/or funding request.

For purposes of this Form, the following definitions apply:

Family Member of a Public Employee. The spouse, domestic partner or a dependent of the public employee.

Family Member of a Public Official. A spouse, domestic partner, dependent, adult child and his or her spouse, parent, spouse's parents, sibling and his or her spouse, of the public official.

Public Employee. Any person employed by the City of Birmingham or its instrumentalities, including governmental corporations and authorities.

Public Official. Any person elected to public office of the City of Birmingham, whether or not that person has taken office, by the vote of the people, and any person appointed to a position at the City of Birmingham or its instrumentalities, including governmental corporations and authorities.

This Form is a:

New Submission

Update to a Previous Submission

Section 1: VENDOR NAME AND CONTACT:

Vendor’s Legal Name:

Physical Street Address:

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City of Birmingham Transparency in City Government Disclosure and Certification Form

Mailing Address:

Phone Number:

Contact Person:

Section 2: DISCLOSURES

(a) Identify all officers, directors, owners, members, partners and executive management of the Vendor.

(b) (PUBLIC OFFICIAL)

Are any of the persons identified in paragraph (a) above a Family Member of a Public Official of the City of Birmingham or do they have an employment or other business relationship with a Public Official of the City of Birmingham or a Family Member of a Public Official? If "yes", describe any family, employment or business relationship with the Public Official.

Yes Not Applicable

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City of Birmingham Transparency in City Government Disclosure and Certification Form

(c) (PUBLIC EMPLOYEE)

Are any of the persons identified in paragraph (a) above a Family Member of a Public Employee of the City of Birmingham or do they have an employment or other business relationship with a Public Employee of the City of Birmingham or a Family Member of a Public Employee? If "yes", describe any family, employment or business relationship with the Public Employee.

Yes Not Applicable

SECTION 3. LOBBYISTS, CONSULTANTS & ATTORNEYS:

During the past three (3) years, has Vendor retained, hired or paid any person or entity including, but not limited to, a lobbyist, consultant or attorney, to assist Vendor in obtaining a City contract, appointment or funding? If "yes", identify by individual name, firm name, address and telephone number any such person or entity.

Yes Not Applicable

SECTION 4: DISCLOSURE OF CONTRIBUTIONS:

During the past three (3) years, has the Vendor provided a campaign contribution, a contribution to a political action committee that provides funding to a Public Official's campaign or other funding to or performed services for a Public Official, or provided funding to or performed services for an individual or entity, including a charitable entity, at the request of a Public Official or Public Employee? If yes, identify the amount, date and recipient of any campaign contribution or other funding and/or the date, contract amount and nature of services performed.

Yes Not Applicable

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City of Birmingham Transparency in City Government Disclosure and Certification Form

SECTION 5: CONTRACTS WITH THE CITY OF BIRMINGHAM:

Does the Vendor have any existing contracts with the City of Birmingham or contracts which have expired or been terminated within the past three (3) years?

Yes No

SECTION 6: CLAIMS AGAINST THE CITY OF BIRMINGHAM:

Does the Vendor have any pending claims against the City of Birmingham.

Yes No

SECTION 7: GOOD STANDING:

By signing this *Transparency in City Government Disclosure and Certification Form* Vendor affirms that it is current in regard to all required federal, state, and local business, tax and other filing requirements and licensure.

CERTIFICATION:

I, the undersigned, certify that I am authorized to execute this *Transparency in City Government Disclosure and Certification Form* on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the City of Birmingham is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the City to notify the City in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the City, permitting the City to declare any contract(s) resulting from this certification void and unenforceable.

VENDOR SIGNATURE:

NAME:

DATE:

_ _ / _ _ / _ _ _ _

STATE OF ALABAMA)

JEFFERSON COUNTY)

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (“Agreement”) entered into on this ____ day of _____, 2023, by and between the City of Birmingham (hereinafter referred to as the “City”) and _____, a _____ corporation (hereinafter referred to as “Provider”), with its principal place of business at _____.

RECITALS

WHEREAS, the City is authorized by §11-40-1, Code of Alabama 1975, to contract for authorized goods and services; and

WHEREAS, the City requires Cable TV and High-Speed (Cable Modem/DSL) Internet Services; and

WHEREAS, the City and Provider desire to enter into this Agreement under which the Provide shall provide Cable TV and High-Speed (Cable Modem/DSL) Internet Services to the City pursuant to the attached scope of services identified as Attachment A.

NOW THEREFORE, in consideration of the covenants, conditions and agreements expressed herein, the parties hereby agree as follows:

GENERAL

1. SERVICES. Provider is retained to provide Cable TV and High-Speed (Cable Modem/DSL) Internet Services for the benefit of the City as set forth in Attachment A (the “Services”).

2. TERM. The term of this Agreement shall for thirty-six (36) months commencing on the date written above (Effective Date) unless terminated sooner as provided herein. This Agreement is subject to the fiscal provisions of the City and will terminate without any penalty at the end of any fiscal year in the event funds are not appropriated for the following fiscal year.

3. PERFORMANCE. Provider will use commercially reasonable efforts to provide the Services to City twenty-four (24) hours per day, seven (7) days per week. It is possible, however, that there will be interruptions of Service. The Service may be unavailable from time-to-time either for scheduled or unscheduled maintenance, technical difficulties, or for other reasons beyond Provider’s reasonable control. Temporary service interruptions or outages for such reasons, as well as service interruptions or outages caused by City, its agents and employees, or by a Force Majeure Event, shall not constitute a failure by Provider to perform its obligations under this Service Agreement.

4. DEFAULT, SUSPENSION OF SERVICE, AND TERMINATION.

(a) Default. A Party shall be in default under this Service Agreement if it has failed to comply with the terms of this Service Agreement, including without limitation the obligation to pay any amounts due, and such Party fails to correct each such noncompliance within thirty (30) days of receipt of notice from the non-defaulting Party describing in reasonable detail the default or noncompliance (“Default”).

(b) Mutual Termination Rights. Either Party may terminate this Service Agreement if: (i) the other Party is in Default; or (ii) the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of

creditors, invokes any provision of law for general relief from its debts, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange.

(c) Termination for Convenience by City. Notwithstanding any other term or provision in this Service Agreement, City may terminate this Service Agreement, at any time upon thirty (30) days prior notice to Provider, subject to payment of all outstanding amounts due, payment of any applicable Termination Charges (as defined below), and the return of any Provider Equipment.

(d) Termination Charges. Upon Termination, City must pay all Services Charges then due for Services provided through the effective date of Termination.

5. LIMITATION OF LIABILITY.

LIMITATION OF LIABILITY. WITHOUT LIMITING ANY EXPRESS PROVISIONS OF THIS SERVICE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER, ANY END USER, OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, RELIANCE, OR PUNITIVE DAMAGES (INCLUDING LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS SERVICE AGREEMENT OR THE PROVISION OF SERVICES, INCLUDING ANY SERVICE IMPLEMENTATION DELAYS OR FAILURES, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY, MISREPRESENTATION, OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

6. INDEMNIFICATION.

Provider agrees to indemnify and hold harmless City, its directors, officers, employees, agents and/or representatives ("City Indemnified Parties") from and against any and all third-party claims, liabilities, lawsuits, damages, losses, judgments, costs, fees and expenses incurred by and/or or brought against City's Indemnified Parties, including reasonable attorney and other professional fees and court costs incurred by City's Indemnified Parties ("Claims") to the extent that such Claims arise directly from: (i) physical damage to personal or real property or bodily injury, including death, directly caused by the negligent or willful misconduct of Provider, its employees or contractors and/or (ii) Provider's failure to comply with laws expressly applicable to Provider's provision of Services ordered by and provided to City. Provider shall have full authority to settle any such Claims; provided, however, that it may not enter into any settlement without City's advance written consent in which (a) a full and final release of such Claim in favor of City's Indemnified Parties is not obtained as a result of the settlement, or (b) any admission or affirmative obligation is required or placed upon City's Indemnified Parties.

7. COMPLIANCE WITH LAWS. As between the Parties, Provider shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Provider's operation and provision of the Services as contemplated in the Service Agreement, and City shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to City's use of the Services as contemplated in the Service Agreement.

Unless specified otherwise in the Service Agreement, each Party shall give all notices, pay all fees and comply with all applicable laws, ordinances, rules and regulations relating to its performance obligations specified in the Service Agreement. The Service Agreement is subject to all applicable federal, state, or local laws and regulations in effect in the relevant jurisdiction(s) in which Provider provides the Services. If any provision of the Service Agreement contravenes or is in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of the Service Agreement. If the relevant law or regulation applies to some but not all of the Services being provided under the Service Agreement, then such law or regulation shall take priority over the relevant provision of the Service Agreement only for purposes of those Services to which the law or regulation applies. Except as explicitly stated in the Service Agreement, nothing contained in the Service Agreement shall constitute a waiver by Provider of any rights under applicable laws or regulations pertaining to the installation, construction, operation, maintenance, or removal of the Services, facilities or equipment.

8. NOTICES.

(a) Notices to be given under this Service Agreement shall be validly given or served only if in writing and sent by nationally recognized overnight delivery service or certified mail, return receipt requested, to the following addresses

If to Provider:

If to City:

City of Birmingham
City Clerk
710 – 20th Street North, .3rd Floor
Birmingham, Alabama 35203

With a copy to:

City of Birmingham
Office of the City Attorney
710 – 20th Street North, 600
Birmingham, Alabama 35203

Each Party may change its respective address(es) for legal notice by providing notice to the other Party. Upon Provider’s request, City will also provide Provider with a current email address that City regularly checks so that Provider may provide copies of notices and other communications to City by email.

9. MISCELLANEOUS.

(a) Entire Agreement. This Service Agreement, including without limitation all Attachments, and incorporated documents constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof. This Service Agreement supersedes all prior understandings, promises, and undertakings, if any, made orally or in writing by or on behalf of the Parties with respect to the subject matter of this Service Agreement, including without limitation any prior confidentiality or non-disclosure agreement between the Parties regarding the purchase and sale of Provider Services.

(b) Signatures; Electronic Transactions. This Service Agreement may be executed in one or more counterparts, each of which is an original, but together constituting one and the same instrument. Execution of a facsimile or other electronic copy will have the same force and effect as execution of an original, and a facsimile or electronic signature will be deemed an original and valid signature. The Parties agree to conduct business using electronic means including using electronic records and electronic signatures, except as provided with respect to notices in Section 8.

(c) Severability. To the extent any term, covenant, condition or portion of this Service Agreement is held to be invalid or unenforceable, the remainder of this Service Agreement shall not be affected, and each remaining term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law as nearly as possible to reflect the original intentions of the Parties.

(d) Force Majeure. Notwithstanding anything to the contrary in the Service Agreement, neither Party shall be liable to the other for any delay, inconvenience, loss, liability or damage resulting from any failure or interruption of Services, directly or indirectly caused by circumstances beyond such Party's control, including but not limited to denial of use of poles or other facilities of a utility company, labor disputes, acts of war or terrorism, criminal, illegal or unlawful acts, weather, fire, flood, natural causes, mechanical or power failures, fiber cuts, governmental acts or any order, law or ordinance in any way restricting the operation of the Services (each a "Force Majeure Event"). Changes in economic, business, or competitive conditions shall not be considered a Force Majeure Event.

(e) Governing Law; Claims Limitation. The law of the state of Alabama shall govern the construction, interpretation, and performance of this Service Agreement, except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded. Any legal action brought under or in connection with the subject matter of the Service Agreement shall be brought only in the United States District Court for the Northern District of Alabama or, if such court would not have jurisdiction over the matter, then only in a state court sitting in Jefferson County, Alabama.

Each party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of the Service Agreement in any other court or forum. Each Party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of the Service Agreement in the Federal courts in Alabama or the state courts sitting in Jefferson County, Alabama, and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum.

(f) No Third-Party Beneficiaries. The terms of this Service Agreement and the Parties' respective performance of obligations as described are not intended to benefit any person or entity not a Party to this Service Agreement, and the consideration provided by each Party hereunder only runs to the respective Parties, and that no person or entity not a Party to this Service Agreement shall have any rights hereunder nor the right to require performance of obligations by either of the Parties.

(g) Waiver. Except as otherwise provided herein, the failure of either Party to enforce any provision of this Service Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision. To be legally binding on either Party, any waiver must be in writing.

(h) Remedies Cumulative and Nonexclusive. Unless stated otherwise herein, all rights and remedies of the Parties under this Service Agreement shall be cumulative, nonexclusive and in addition to, but not in lieu of, any other rights or remedies available to the Parties whether provided by law, in equity, by statute or otherwise. The exercise of any right or remedy does not preclude the exercise of any other rights or remedies.

(i) Insurance. Provider, at its sole expense, shall obtain and maintain in force the following insurance limits for all acts performed by Provider pursuant to this Agreement. The limits and coverage specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully protect the Provider. 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 or better. No Services are to be performed until proof of compliance with the insurance requirements has been received by the City: (a) Worker's Compensation: Statutory amounts as required by the State of Alabama; (b) Commercial General Liability: insurance written on an occurrence basis with limits no less than One Million and No/100 Dollars (\$1,000,000); and (c) Automobile Liability insurance covering owned and non-owned vehicles operated by Provider with limits no less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit and aggregate per accident for bodily injury and property damage. Each policy of insurance except for Workers' Compensation shall name the City as an additional insured pursuant to a blanket endorsement. A certificate of insurance evidencing the above minimum requirements must be provided to the City prior to commencement of any Services. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation to the City.

(j) Independent Contractor. Provider is an independent contractor of City. This Service Agreement does not create any partnership, joint venture or principal-agent relationship between the City and Provider. Further, City retains no control or authority with respect to its means and methods in which Provider (or any of its employees or representatives) performs any work under this Service Agreement.

(k) Immigration Act Compliance. Provider shall comply with the applicable and mandatory terms of the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, et seq., Code of Alabama 1975, as amended, as it relates to the Services under this Service Agreement.

(l) Boycotting Activities. Provider represents that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

(m) Offset for Overdue Fees, Taxes, Etc. Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Provider acknowledges and agrees that the City has the right to deduct from the total amount of consideration to be paid, if any, to Provider under this Service Agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from Provider.

(n) Non-Discrimination. During the performance of this agreement Provider agrees as follows: (i) Provider will not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Provider will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, gender identity, sexual orientation, disability, familial status, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship; and (ii) In the event of Provider's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and Provider may be declared ineligible for further municipal contracts.

(o) Historically Underutilized Business Enterprises. Provider acknowledges that the City, as a matter of public policy and to the extent allowed under applicable law, encourages participation of minority-owned, women owned and disadvantaged business enterprises to the maximum extent possible and seeks to provide opportunities for and to actively include Disadvantaged Business Enterprises (DBEs) and Historically Underutilized Business Enterprises (HUBE's) which includes architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City's business, economic and community revitalization programs. Provider is also committed to the goals of supplier diversity and uses good faith efforts and takes reasonable steps to provide diverse businesses an opportunity to compete for contracts and subcontracts for goods and services. Provider does not discriminate in the award and performance of contracts and subcontracts based on the disadvantaged and/or diversity status.

[Signatures on the Following Page]

IN WITNESS WHEREOF the parties hereto have herein below set their hands and seals.

CITY OF BIRMINGHAM

ATTEST: _____
City Clerk

BY: _____
Mayor

DATE: _____

WITNESS: _____

PROVIDER

BY: _____

(Its) _____

DATE: _____

Approved as to Form, Assistant City Attorney:

BY: _____

DATE: _____
