

**CONTRACT DOCUMENTS
BID FORM AND
SPECIFICATIONS**

BID NO. 001-18

BEVERAGE CONCESSION 2018

CITY OF FAIRHOPE, AL

Karin Wilson, Mayor

Jack Burrell, Council President

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ADVERTISEMENT

Sealed bids 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 Monday, November 20, 2017, at 8:00 a.m.** 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 001-18, BEVERAGE CONCESSION 2018

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

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail to the attention of the Purchasing Manager, 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 bid forms provided in the Bid Documents. Bids shall be accompanied by a Bid Security equal to 5% (percent) of the bid price, but in no event more than \$10,000.00. Bid Security shall be in the form of a Bid Bond or a cashier's check payable to The City of Fairhope. No Bid Security is required on bids less than \$10,000.00. **NOTE: FOR THIS BID, THE BID BOND IS WAIVED**

THERE WILL BE A MANDATORY PREBID MEETING on Wednesday, NOVEMBER 8, 2017 at 8:00 AM, at the City of Fairhope City Services and Utilities Building located at 555 S. Section Street in Fairhope, site visit to follow. At the Mandatory pre-bid meeting, all fields on the mandatory sign-in roster must be completed for every potential bidder. Only those companies in attendance and signed on the roster, will be eligible to submit bids. If a third party is engaged to attend, representing the potential bidder(s), they MUST sign in separately for every potential bidder they represent.

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

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 Bid 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.

The Contractor must furnish to the City of Fairhope, at the time of the signing of the contract, a Certificate of Insurance coverage which will include Comprehensive Insurance, Contractor's Automobile Liability Insurance, and where applicable, Owner's Protective Liability Insurance, Sub-contractor's Public Liability and Property Damage Insurance. The right is reserved to reject any and/or all proposals and any portion thereof, and to waive informalities and to furnish any item of material or work to change the amount of the Contract. Failure to observe the instructions contained herein will constitute grounds for rejection of your proposal.

The company that is awarded the bid must have Workman's Compensation Insurance on all of its employees if work is to be performed on City of Fairhope premises. General Liability Insurance, specifying coverage, must be maintained to hold the City of Fairhope harmless in the event of an accident. See bid packet 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, the awarded vendor, if non-resident of the State, and if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama, <http://www.sos.alabama.gov/BusinessServices/ForeignCorps.aspx> Bidder must have a current business license or purchase a business license with the City of Fairhope prior to work performed. No proposals shall be withdrawn for the period of ninety (90) days subsequent to the opening of proposals without the consent of the City of Fairhope of Fairhope, Alabama, Baldwin County, Alabama.

Daniel P. Ames
Purchasing Manager
Posted November 1, 2017

ITEM II
**INVITATION AND INSTRUCTIONS TO
BIDDERS**

2.0 BID INVITATION

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

2.1 BID NO.: **001-18**
BID NAME: **Beverage Concession 2018**
FOR: Recreation Department

2.2 SUMMARY:
Item VIII Scope of Work and Specifications

2.3 BID DEADLINE

Bids will be received until Monday, November 20, 2017, at 8:00 a.m. local time by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St., Fairhope, Alabama, and publicly opened thereafter.

2.4 AVAILABILITY OF DOCUMENTS

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

2.5 INQUIRIES

Questions or comments pertaining to this bid must be presented in writing, and sent as e-mail to the attention of the Purchasing Manager, Daniel P. Ames, at P.O. Drawer 429, 555 South Section St., Fairhope, Al 36532, e-mail: dan.ames@cofairhope.com, no less than Seventy-Two (72) hours prior to the bid opening, or will be forever

2.6 SITE EXAMINATION / CITY PROVISION / NON-RESIDENT STATE RECIPROCITY

A MANDATORY Pre-bid conference to be held at City of Fairhope offices located at 555 S. Section St, Fairhope, Alabama. at **8:00 a.m. on Wednesday, November 8, 2017**, with Site visit to follow. At the Mandatory pre-bid meeting, all fields on the mandatory sign-in roster must be completed for every potential bidder. Only those companies in attendance and signed on the roster, will be eligible to submit bids. If a third party is engaged to attend, representing the potential bidder(s), they **MUST** sign in separately for every potential bidder they represent. Mandatory Pre-Bid Roster must be signed by all attendees, and these attendees (or their official representatives) will be the sole contractors eligible to bid the project.

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

2.6.2 Except for contracts funded in whole or in part by funds received from a federal agency, preference shall be given to resident CONTRACTORS on the same basis as the non-resident bidder's state awards contracts to Alabama CONTRACTORS bidding under similar circumstances. Therefore, non-resident bidders shall submit with their bid a written opinion of an attorney at law licensed to practice law in the non-residents bidder's state of domicile as to preferences granted by the state to entities doing business in that state when letting public contracts

2.7 BID SECURITY

WAIVED

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

2.8 PERFORMANCE ASSURANCE

Performance Bond and Labor and Materials WAIVED

The bidder to whom award is made shall provide a Performance Bond equal to 100% of the Contract Amount and a Labor and Material Bond equal to 50% of the contract amount. The accepted Bidder shall also provide insurance as required in ITEM VII

2.9 DURATION OF OFFER

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

2.10 EQUAL OPPORTUNITY

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

2.11 BID SUBMISSION AND PREPARATION

Sealed Bids, signed, executed, and dated, will be received by the City of Fairhope as noted in Item I above. Submit one fully executed, signed copy of the offer on the Bid Response Form provided. The bid shall be enclosed in a sealed opaque envelope approximately 9x12 inches or larger, clearly noted on the outside of the envelope as a **SEALED BID with BID NAME, BID NUMBER, CITY OF FAIRHOPE AND ADDRESS, BIDDER'S NAME AND ADDRESS, AND IF REQUIRED, BIDDER'S CONTRACTOR'S LICENSE NUMBER**. When sent by mail, or courier service, the sealed envelope containing the bid, marked as indicated above, shall be enclosed in another envelope for mailing.

2.11.1 Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the Invitation, these instructions, and the instructions printed on the forms is necessary. Special care should be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper space in the bid and guaranty forms shall be suitably filled in. Fill in all blanks on the bid form with non-erasable ink or type. Erasers or other changes must be explained or noted over the signature of the bidder.

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

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

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

2.12 BID INELIGIBILITY

Bids that contain irregularities of any kind may be declared unacceptable at the discretion of the City of Fairhope. The City of Fairhope reserves the right to waive any irregularities and may reject any or all bids. Bids received after the deadline will be returned to the bidder unopened.

2.13 CONTRACT TIME

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

2.14 INQUIRIES/ADDENDA

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

Address: City of Fairhope
Purchasing Dept
555 S. Section St.
Fairhope, Al 36532
251-928-8003

All Addenda are part of the Contract Documents. Include resultant costs in the bid. Addenda will be posted on the City's website: www.cofairhope.com. It is the responsibility of the bidder to verify that all addenda have been received.

2.15 BID ACCEPTANCE

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

2.16 BIDDERS INTERESTED IN MORE THAN ONE BID

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

2.17 ERRORS IN BIDS

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

2.18 CONTRACT AND BOND

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

2.19 COLLUSION

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

2.20 SUBLETTING OR ASSIGNING OF CONTRACT

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

consent shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract

2.21 PROSECUTION OF WORK

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

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

2.21.2 Should the Contractor fail to maintain a satisfactory rate of progress, the City of Fairhope may require that additional forces and/or equipment be placed on the work to bring the project up to schedule and maintain it at that level.

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

2.22 **EXCEPTIONS / CHANGES**

Compliance with or variations from the specifications must be noted as to each item on the Specification Sheet. This requirement must be met even though the Purchasing Manager may alter the specifications in the form of an addendum to accommodate variances. A request for a change in the specifications to accommodate a variation must be called to the attention of the Purchasing Manager at least 72 hours before the bid opening date. All requests for such changes will be considered and the merits weighed. Only those changes in specifications deemed to be in the best interest of the City will be made. In the event of a change in specifications, an addendum will be supplied to bidders. Exceptions may be accepted if they are minor, equal, or superior to that which is specified, and provided that they are listed and fully explained on a separate page entitled, "Exceptions to Specifications". The exceptions shall refer to the specification page and paragraph number. The City shall determine which (if any) exceptions are acceptable and this determination shall be final.

2.23 **INSURANCE**

The company that is awarded the bid must have Workman's Compensation Insurance on all of its employees if work is to be performed on City of Fairhope premises. General Liability Insurance, specifying coverage, must be maintained to hold the City of Fairhope harmless in the event of an accident. See ITEM VII INSURANCE.

**ITEM III
BID FORM**

Date: ____/____/____

Bid Number: 001-18

Bid Name: BEVERAGE CONCESSION 2018

3.0 Award Duration: THREE (3) years from signing date of contract.

3.0.1 The Contractor agrees to complete all the work within timeframe stated in contract. Base bid will include all labor, materials, equipment, shipping, overhead, profit, bonds, insurance and all other costs necessary to provide the complete services outlined within this contract and scope of work. The owner agrees to

provide the following materials: NONE

3.1 BID EVALUATION:

Each response will be reviewed prior to the selection process for completeness and adherence to format. Failure to complete all instructions and supply all required submittals may result in the vendor being declared non-responsive.

3.1.1 BEVERAGES

<u>UNIT</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>
7.5oz	can soft drink	\$ _____
12oz	can soft drink	\$ _____
12oz	plastic bottle soft drink	\$ _____
12oz	plastic bottle name brand water	\$ _____
20oz	plastic bottle soft drink	\$ _____
20oz	plastic bottle name brand water	\$ _____
20oz	plastic bottle sports drink	\$ _____
2.5 gal	Bag-in-a Box syrup	\$ _____
3.0 gal	Bag-in-a Box syrup	\$ _____
5.0 gal	Bag-in-a Box syrup	\$ _____
CO ₂	Deposits	\$ _____
CO ₂	Canisters	\$ _____
<u>TOTAL (per one each unit)</u>		\$ _____

3.1.2 VENDING MACHINE FRANCHISE

Percent of Gross Receipts

20% per City of Fairhope Franchise Agreement (see Exhibit B) Agree _____

Receipt of the following Addenda to these documents is hereby acknowledged by the undersigned (bidder to complete below):

ADDENDUM NO.	DATE ISSUED	ADDENDUM NO.	DATE ISSUED
_____	_____	_____	_____
_____	_____	_____	_____

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.

If Individual

(Name of Individual or Partnership)

(Name of Partner Print)

(Print Name of Representative Authorized to sign

(Name of Partner Print) Bids and Contracts for the firm)

(Signature of Representative Authorized to sign
Bids and Contracts for the firm)

(Address)

(Address)

Phone Number () _____ Fax Number () _____

Primary e-mail address _____

Alabama Contractor's License No. _____ Foreign Corporation Entity ID _____

If Corporation or LLC

Company _____ State of Incorporation _____

Company Representative _____
(Print Name of Representative Authorized to sign Bids and Contracts for the firm)

Company Representative _____
(SIGNATURE of Representative Authorized to sign Bids and Contracts for the firm)

Address _____

Phone Number () _____ Fax Number () _____

Primary e-mail address _____

Alabama Contractor's License No. _____ Foreign Corporation Entity ID _____

THIS MUST BE NOTARIZED!

NOTARY FOR CORPORATION OR INDIVIDUAL

STATE OF _____ }
COUNTY OF _____ }

I, the undersigned authority in and for said State and County, hereby certify that _____
_____ as _____ respectively, of _____,
whose name is signed to the foregoing document and who 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 Notary Seal on this ___ day of _____, 2017.

NOTARY PUBLIC _____

MY COMMISSION EXPIRES: _____

ITEM IV
BID BOND

The PRINCIPAL (Bidder's name and address)

The OWNER (Name and Principal place of Business)

WAIVED

City of Fairhope
P.O. Drawer 429
Fairhope, Al 36533

The PROJECT for which the Principal's Bid is submitted: (Project name as it appears in the Bid Documents)

Project No _____

Project Name: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned Principal and Surety, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the Owner in the PENAL SUM of five percent (5%) of the amount of the Principal's bid, but in no event more than TEN THOUSAND DOLLARS (\$10,000.00).

THE CONDITION OF THIS OBLIGATION is that the Principal has submitted to the Owner the attached bid, which is incorporated herein by reference, for the Project identified above.

NOW, THEREFORE, if, within the terms of the Bid Document, the Owner accepts the Principal's bid and the Principal thereafter either:

- (a) executes and delivers a Construction Contract with the required Performance and Payment Bonds (each in the for contained in the Bid Documents and properly completed in accordance with the bid) and delivers evidence of insurance as prescribed in the Bid Documents, or
- (b) fails to execute and deliver such Construction Contract with such Bonds and evidence of insurance, but pays the Owner the difference, not to exceed the Penal Sum of this Bond, between the amount of the Principal's Bid and the larger amount for which the Owner may award a Construction Contract for the same Work to another bidder, then, this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that the obligation of the Surety under this Bond shall not in any manner be impaired or affected by any extension of the time within which the Owner may accept the Principal's bid, and the Surety does hereby waive notice of any such extension.

SIGNED AND SEALED this ____ day of _____, 2017.

ATTEST

Principal (Company)

By _____

Print Name and Title

SURETY ATTEST

Surety Company

By _____

Print Name and Title

WAIVED

ITEM V PERFORMANCE BOND

KNOW ALL MEN: That we _____

(Insert here the name & address of legal title of the CONTRACTOR)

hereinafter called the Principal, and

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

_and _____

hereinafter called the Surety or Sureties, are held and firmly bound unto The City of Fairhope. hereinafter called the Owner in the sum of _____ Dollars (\$_____) for the payment whereof the Principal and the Surety or Sureties bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written agreement, dated ___/___/___ entered into a contract with the Owner for: **Bid No.001-18, Beverage Concession 2018**, which agreement is by reference made a part hereof,

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

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

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

Witness our hands and seals this _____ day of _____, 2017.

_____, Doing Business As, _____
(Signature of Individual Bidder) (Business Name)

Business Mailing Address: _____

Name of Corporation, Partnership, or Joint Venture

Business Mailing Address: _____

BY: _____
(Signature of Officer Authorized to sign Bids
and Contracts for the Firm)

(Position or Title)

(GENERAL CONTRACTOR'S LICENSE NUMBER)

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

Attest:

(Secretary)

(Name of State under the laws of which incorporated)

(Name of Surety)

BY: _____
(Attorney in Fact)

WAIVED

ITEM VI
LABOR AND MATERIALS BOND

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

WHEREAS, said principal has entered into a certain Contract with said Obligee, dated ____/____/____.
(Hereinafter called the Contract) for **Bid No.001-18, Beverage Concession 2018** which the Contract and the
Specifications for said work shall be deemed a part hereof as fully as if set out herein.

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

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

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

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

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

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

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

Witness our hands and seals this _____ day of _____, 2017.

INDIVIDUAL

_____, Doing Business As, _____
(Signature of Individual Bidder) **(Business Name)**

Business Mailing Address: _____

Name of Corporation, Partnership, or Joint Venture

Business Mailing Address: _____

BY: _____
(Signature of Officer Authorized to sign Bids
and Contracts for the Firm)

(Position or Title)

(GENERAL CONTRACTOR'S LICENSE NUMBER)

STATE OF AL FOREIGN CORP Entity ID
(Required of out-of-state-vendors)

Attest:

(Secretary)

(Name of State under the laws of which incorporated)

(Name of Surety)

BY: _____
(Attorney in Fact)

**ITEM VII
INSURANCE**

7.0 INSURANCE REQUIREMENTS

Awarded Contractor, at its sole expense, shall obtain and maintain in full force the following insurance to protect the Contractor and the City of Fairhope at limits and coverages specified herein. The City of Fairhope will be listed as an additional insured under the Contractor's general liability insurance and automobile liability insurance policies, and all other 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 Awarded Bidder.

7.1 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.

7.2 **NO WORK IS TO BE PERFORMED UNTIL PROOF OF COMPLIANCE WITH THE INSURANCE REQUIREMENTS HAS BEEN RECEIVED BY THE CITY.**

7.3 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

7.4 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

7.5 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 Workers Compensation.

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

7.6 Commercial General Liability

Coverage on an Occurrence form with a combined single limit of (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

Premises and
operations

Personal Injury and Advertising Injury

Products/Completed Operations Independent Contractors

Blanket Contractual
Liability

Explosion, Collapse and Underground hazards

Broad Form Property

Damage

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

7.7 Automobile Liability

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.

7.8 Certificates 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.

7.8.1

The Contractor shall require certificates of insurance from subcontractors. Subcontractors will carry limits of insurance equal to or greater than those carried by the Contractor. These certificates shall evidence waivers of subrogation in favor of the Contractor and the City, and shall be made available to the City upon request.

**ITEM VIII
SCOPE OF WORK AND SPECIFICATIONS**

BID NO. 001-18 BEVERAGE CONCESSION 2018

8.0 SCOPE

- 8.0.1 The City of Fairhope, Alabama is seeking bids from qualified firms to provide beverage concession services in accordance with the terms, conditions, and specifications contained in this bid. It is the intent of the City to award a single contract to the lowest responsive and responsible bidder.
- 8.0.2 The attached specifications are intended and provided solely as a general and non-exhaustive expression of the intent and purpose of the City of Fairhope regarding this bid; said specifications should be so considered by the bidders. The use of specific names is not intended to restrict the bidder or any seller or manufacturer, but is solely for the purpose of indicating the type, size and quality of materials, product services, or equipment best suited for the City of Fairhope. Accordingly, the bidder admits and agrees that said specifications are not complete in every detail and that the work and materials not indicated or expressly mentioned in said specifications, but which are reasonably necessary for the full and faithful performance of the item(s) bid in accordance with the full and faithful intent, will be included in the bid and incorporated in the work by the bidder and at the bidder's sole expense, the same as if indicated and specified.
- 8.0.3 Minimum specifications MUST be met. Additional features and/or capabilities not included in the specifications may be included in the bid. The City of Fairhope reserves the right to reject any or all bids for any reason.
- 8.0.4 **BID EVALUATION:** Each response will be reviewed prior to the selection process for completeness and adherence to format. Failure to complete all instructions and supply all required submittals may result in the vendor being declared non-responsive.
- 8.0.5 The services described herein outline the precise scope of work that is to be performed by the successful bidder at the City of Fairhope for the contractual period of three (3) years. The contract will include, but is not limited to providing non-alcoholic beverage services and may be in both Individual container and fountain dispensed formats, in the following venues:
1. City of Fairhope Recreation Park concessions
 2. Quail Creek Golf Course
 3. Fairhope Soccer Complex
 4. City Functions
 5. Vending machine services on City of Fairhope properties

8.1 FRANCHISE AGREEMENT

As part of the Contract, the Awarded Vendor will enter into a Franchise Agreement with the City of Fairhope for the vending machine franchise (see **ITEM X CONTRACT** and **Exhibit B**).

8.1.1 CITY OF FAIRHOPE RECREATION PARK BEVERAGE CONCESSIONS

- 8.1.1.1 The City Fairhope owns various properties/facilities at which competitive sporting events are performed by organizations granted the use of said properties/facilities by the City of Fairhope (See Exhibit B for Properties/Facilities List). The Awarded Vendor will supply to those events, all non-alcoholic beverages, including, but not limited to, all soft drinks, juice, water, and isotonic beverages; whether ordered directly by the City of Fairhope, or any of the organizations granted the use of said Properties/Facilities by the City of Fairhope. At the listed properties/facilities, the awarded vendor will also supply all necessary equipment in which to store and dispense the ordered and delivered beverage products, in a dispense-ready state, including proper temperature.
- 8.1.1.2 The Awarded Vendor shall maintain the equipment in a good state of repair at all times, and shall promptly repair and replace broken or damaged equipment, so as not to interfere with event functions. Costs relating to the repair or replacement of such items, stolen, lost, or damaged, shall be at the expense of the Awarded Vendor.

8.1.2 QUAIL CREEK GOLF COURSE BEVERAGE CONCESSIONS

8.1.2.1 The City of Fairhope owns and operates the Quail Creek Golf Course in Fairhope, Alabama, including currently operating a food and beverage concession. The Awarded Vendor will supply to that concession all non-alcoholic beverages, including, but not limited to, all soft drinks, juice, water, and isotonic beverages, ordered directly by the City of Fairhope. At the facility's concession areas, the awarded vendor will also supply all necessary equipment in which to store/dispense the ordered and delivered beverage products, in a dispense-ready state including proper temperature. Equipment must meet specifications agreed upon by the City.

8.1.2.2 The Awarded Vendor shall maintain the equipment in a good state of repair at all times, and shall promptly repair and replace broken or damaged equipment, so as not to interfere with event functions. Costs relating to the repair or replacement of such items, stolen, lost, or damaged, shall be at the expense of the Awarded Vendor.

8.1.3 FAIRHOPE SOCCER COMPLEX CONCESSIONS

8.1.3.1 The City of Fairhope owns and operates the Fairhope Soccer Complex in Fairhope, Alabama, including currently operating a food and beverage concession. The Awarded Vendor will supply to that concession all non-alcoholic beverages, including, but not limited to, all soft drinks, juice, water, and isotonic beverages, ordered directly by the City of Fairhope. At the facility's concession areas, the awarded vendor will also supply all necessary equipment in which to store/dispense the ordered and delivered beverage products, in a dispense-ready state including proper temperature. The Equipment must meet specifications agreed upon by the City.

8.1.3.2 The Awarded Vendor shall maintain the equipment in a good state of repair at all times, and shall promptly repair and replace broken or damaged equipment, so as not to interfere with event functions. Costs relating to the repair or replacement of such items, stolen, lost, or damaged, shall be at the expense of the Awarded Vendor

8.1.4 CITY FUNCTIONS

For use at various City functions, The City of Fairhope procures non-alcoholic beverages, including, but not limited to, soft drinks, juice, water, and isotonic beverages. The Awarded Vendor will supply such products as ordered directly by the City, at the contract price, for the duration of the contract.

8.1.5 VENDING MACHINE SERVICES ON CITY OF FAIRHOPE PROPERTIES

The City of Fairhope owns a variety of buildings and facilities at which will be placed non-alcoholic beverage vending machines (See Exhibit A for list of locations). The Awarded Vendor will supply non-alcoholic beverage vending machines at those identified locations. Equipment must meet specifications agreed upon by the City. Additional locations may be determined by the CITY during the course of the contract.

8.2 EQUIPMENT

The Awarded Vendor agrees to supply and maintain, at no cost, all the mutually agreed upon equipment necessary to dispense and vend the products stated within the proposal at various locations throughout the City, and will consist of providing, at minimum, the following items:

- 8.2.1. Banners for registration and special events;
- 8.2.2. Soft drink fountains;
- 8.2.3. Menu boards;
- 8.2.4. Coolers – ten (10) minimum;
- 8.2.5. Full service vending machines for all City facilities; and
- 8.2.6. A guarantee of services on all equipment, with a service technician on call on all days on which events are occurring, to respond to problems within 24 hours.

8.3 FUTURE EQUIPMENT

The successful proposer agrees to supply, at no cost, any future equipment needed for any new or expanding facility. This would include soring and dispensing equipment.

8.4 REMOVAL AND INSTALLATION

At the termination of contract, the existing vendor shall have thirty (30) days from the proposal award to remove all existing equipment for all locations throughout City facilities. The newly Awarded Vendor shall within the same 30days from the proposal award, supply and install all new equipment on site as requested. The awarded vendor transition shall be conducted in a manner not to interfere with any CITY function.

8.5 ADVERTISING

During the entire term of this proposal, any renewal, or extension thereof, no beverage other than those supplied by the awarded proposer shall be permanently advertised at all City of Fairhope Facilities. The City must approve all advertising.

8.6 TERMS

The term of this proposal shall be for **three (3) years**.

8.7 AWARDED VENDOR'S ADDITIONAL RESPONSIBILITIES

8.7.1 The Awarded Vendor, its representatives, and employees shall adhere to all State, County, and City laws and regulations relating to the laws currently in force and those adopted and amended hereafter.

8.7.2 Awarded Vendor hereby waives all claims for damages to or loss of any property belonging to Awarded Vendor that may be in or about the premises.

8.7.3 The Awarded Vendor will be responsible for all damage to City property caused by the Awarded Vendor, its employees, or its agents. Any such damage shall be promptly corrected at the expense of the Awarded Vendor.

8.7.4 The Awarded Vendor hereby agrees to indemnify, defend, and hold harmless the City and its respective agents, officials, employees, and representatives from any and all claims of liability for damages by or in connection with any activities conducted pursuant to this Agreement. The City assumes no responsibility whatsoever for any property located on the premises that does not belong to the City and the City is hereby expressly relieved and discharged from any and all liability for any loss, injury, or damage to persons or property that may be sustained by any reason under this Agreement.

8.8 GENERAL TERMS

8.8.1 After reasonable notice to the Contractor, the City of Fairhope may review any of the Contractors' internal records, reports or insurance policies applicable to the contract, during the term of this contract.

8.8.2 The Contractor will provide the required services, and will not subcontract or assign the services without written approval by the City of Fairhope.

8.8.3 Both the Contractor and the City of Fairhope agree that the Contractor is neither an employee nor an agent of the City of Fairhope for any purpose

8.8.4 Contractor not interfere with the free distribution of food or drinks or any items of any nature whatsoever, where the City has authorized such distribution. Free samples, of a size and type to be approved by the City, may be given away by, or on behalf of, or with permission of any person or organization, which has properly engaged the facilities at the discretion of the City.

8.8.5 All equipment provided by the Concessionaire will remain the property of the Concessionaire and any maintenance required thereon shall be at the sole expense of the Concessionaire. The City shall incur no obligation for repairs to equipment provided by the Concessionaire.

- 8.8.6 Concessionaire shall require all employees to be attired in a standard uniform of the Concessionaire's choice. Said uniform shall be neat and appropriate for the type of operation and shall be approved by the City.
- 8.8.7 Discounts, if any, will be figured from the date of acceptance by the City regardless of the date of delivery or invoice.
- 8.8.8 All bids which do not contain a firm, stated price for the materials required will be considered informal. Any bid containing an "escalator clause" will not be considered.
- 8.8.9 Awarded Vendor agrees to supply the following:
 - 8.8.9.1 Vending machines and miscellaneous support equipment for all designated facilities
 - 8.8.9.2 Beverage merchandising coolers for bottled and canned beverages
 - 8.8.9.3 Special assistance during major events, e.g. tournaments and festivals
 - 8.8.9.4 Emergency repair service for all equipment within 24 hours after call

8.9 SPECIFICATIONS:

8.9.1 Product

- 7.5 oz can soft drink
- 12 oz can soft drink
- 12 oz plastic bottle soft drink
- 12 oz plastic bottle name brand water
- 20 oz plastic bottle soft drink
- 20 oz plastic bottle name brand water
- 20 oz plastic bottle sports drink

- 2.5 gal Bag-in-a Box syrup
- 3.0 gal Bag-in-a Box syrup
- 5.0 gal Bag-in-a Box syrup
- CO₂ Deposits
- CO₂ Canisters

8.9.2 Vending Machine Locations

1. Recreation Center
2. City Pool
3. City Hall
4. City Services and Public Utilities
5. James P. Nix Center
6. Boys & Girls Club
7. Stimpson Park
8. Welcome Center
9. Police Station
10. Quail Creek Golf Course
11. Wastewater Treatment
12. Fairhope Soccer Complex

8.9.3 Concession Locations

1. Fairhope Municipal Park including: Stadium, High School Baseball, Youth Baseball, and Pool
2. Founders Park including: Youth Softball, Youth Soccer, and High School Softball.
3. Barnwell Park including Youth Football and Adult Softball.
5. Quail Creek Golf Course
6. Fairhope Soccer Complex

Future park locations as approved by CITY.

**ITEM IX
CITY OF FAIRHOPE, ALABAMA
STANDARD TERMS AND CONDITIONS**

1. ACCEPTANCE OF AGREEMENT

This Agreement contains all terms and conditions agreed upon by the Owner and Winning bidder. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto. The Winning Bidder shall not employ Subcontractors without the express written permission of the Owner. No waiver, alteration, consent or modification of any of the provisions of the Agreement shall be binding unless in writing and signed by the Owner and Contractor. This Agreement shall not be construed against the party or parties preparing it. It shall be construed as if all the parties and each of them jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against one or more parties.

2. ACCEPTANCE OF WORK

The City of Fairhope will be deemed to have accepted the Work after the City of Fairhope agrees the Work is completed by signature on delivery or service tickets. In the event Work furnished under the Contract / Agreement / Purchase Order is found to be defective or does not conform to the intent of the Contract / Agreement / Purchase Order, the awarded vendor shall, after receipt of notice from the City of Fairhope, correct the deficiencies. Failure on the part of the awarded vendor to properly correct the deficiencies within the time period allowed will constitute the City of Fairhope's right to cancel the Contract / Agreement / Purchase Order immediately, upon written notice to the awarded vendor.

3. ADDENDA

All Addenda are part of the Contract Documents. Include resultant costs in the Bid. Addenda will be issued by email to all Bidders on record, and posted to the City of Fairhope website www.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

4. ADDITIONAL ORDERS

Unless it is specifically stated to the contrary in the bid response, the City of Fairhope reserves the option to place additional orders against a contract awarded as a result of this solicitation at the same terms and conditions; to extend the renewal date until a new bid is in place, if it is mutually agreeable.

5. APPLICABLE LAW

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

6. ASSIGNMENT

The awarded vendor shall not assign the Contract /

Agreement/Purchase Order or sublet it as a whole without the express written permission of the City of Fairhope. The awarded vendor shall not assign any payment due them hereunder, without the express written permission of City of Fairhope. The City of Fairhope may assign the Contract / Agreement / Purchase Order, or sublet it as a whole, without the consent of the awarded vendor.

7. ASSURANCE OF NON-CONVICTION OF BRIBERY

The bidder hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or Federal government.

8. AWARD CONSIDERATION

The following factors will be considered in determining the lowest **responsible** bidder: Overall quality, Conformity with specifications both general and specific, Purposes for which materials or services are required, Delivery dates and time required for delivery, Unit acquisition cost, financial ability to meet the contract, previous performance, facilities and equipment, availability of repair parts, experience, delivery promise, terms of payments, compatibility as required, other costs, and other objective and accountable factors which are reasonable.

9. AWARD OR REJECTION OF BIDS

The Bid will be awarded to the lowest responsible bidder complying with conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the City of Fairhope to accept it. The bidder to whom the award is made will be notified at the earliest possible date. The City of Fairhope, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest to the City of Fairhope.

10. BACK ORDERS

If it is necessary to back order any items, the vendor must notify the Purchasing Department and advise as to the expected shipping or delivery date. If this date is not acceptable, the City of Fairhope may seek remedies for default.

11. BID AND PERFORMANCE SECURITY

If bid security is required, a bid bond or cashier's check in the amount indicated on the bid cover must accompany the bid and be made payable to The City of Fairhope of Baldwin County, Al. Corporate or certified checks are not acceptable. Bonds must be in a form satisfactory to the City and underwritten by a company licensed to issue bonds in the State of Alabama. If bid security fails to accompany the bid, it shall be deemed unresponsive, unless the Purchasing Manager deems the failure to be non-substantial. All checks will be returned to the bidders after the contract has been approved. If a performance bond is required, the successful bidder will be notified after the awarding of the contract.

12. BRAND NAMES

Reference to brand names and numbers is descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the standards of quality thereby indicated will be considered, providing the bid clearly describes the article offered and indicates how it differs from the referenced brands.

Descriptive literature or manufacturers specifications plus any supplemental information necessary for comparison purposes should be submitted with the bid or the bid on that item may be rejected. Reference to literature submitted with a previous bid or on file with the Division of Purchasing will not satisfy this requirement. The burden is on the bidder to demonstrate that the item bid is equivalent to the item specified in the ITB. Bids without sufficient documentation to fully support equality, may be considered non-responsive. Reference by the City of Fairhope in the ITB to available existing specifications shall be sufficient to make the terms of such specifications binding on the bidder. Unless the bidder specifies otherwise in its bid, it is understood the bidder is offering a referenced brand item as specified in the ITB or is bidding as specified when no brand is referenced. Failure to examine drawings, specifications and instructions will be at the bidder's risk.

13. BUSINESS LICENSE

The vendor selected to enter into a Contract / Agreement with the City of Fairhope must be licensed to do business in the City of Fairhope prior to commencement of any work under the contract. Delivery of goods or services to the City of Fairhope by Purchase Order have detailed and varied Business License requirements. In all instances that require a business license. Awarded vendor will provide proof of possessing a current City of Fairhope Business License. Prospective bidders will not be required to possess a City of Fairhope Business License prior to award.

14. CANCELLATION OF / CONTRACT / AGREEMENT / PURCHASE ORDER / LEASE

A purchase order can be canceled in whole or in part when awarded vendor fails to deliver or perform as specified. Cancellation of a purchase order can only be made by a written purchase order change (POC) from the City of Fairhope. A term contract, lease or agreement can be canceled by the City of Fairhope, for justifiable cause, or convenience, by written notice.

15. CERTIFICATION PURSUANT TO ACT NO. 2006-557

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

Office of the Secretary of State

P.O. Box 5616

Montgomery, AL 36103

(334) 242-5324

Fax: (334) 240-3138

<http://www.sos.state.al.us/index.aspx>

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

16. COST OF REMEDYING DEFECTS

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

17. DELIVERY OF BID

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

18. DELIVERY

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

19. ENVIRONMENTAL REQUIREMENTS

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

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

20. EQUIPMENT DEMONSTRATION

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

21. EQUIPMENT ELECTRICAL CERTIFICATION

All electrical equipment purchased shall conform to, and be identified in, the applicable standard(s), or otherwise be certified as applicable, as of the bid opening date and time, by Underwriters Laboratories, Inc. or other recognized laboratory facility. Bidder must provide satisfactory documentation with

returned bid that all such equipment meets the applicable product standard or has otherwise been certified as outlined above. Unless indicated in the bid document, the above certification shall apply to the equipment itself, not the individual components of that equipment.

22. ERRORS IN BID

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

23. FORCE MAJEURE

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

24. HAZARDOUS AND TOXIC SUBSTANCES

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

25. INDEMNITY

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

26. INSPECTION

All materials, workmanship, equipment, and supplies are subject to inspection and test at any source or time. Final inspection, acceptance or rejection will be made at delivery destination. Goods that do not meet specifications will be rejected unless substitutions have been approved by the City of Fairhope. Failure to inspect or to reject upon receipt, however, does not relieve the awarded vendor of liability. When subsequent tests, after receipt, are conducted and when such tests reveal a failure to meet specifications, the City of Fairhope will reject the goods and the awarded vendor shall immediately supply goods meeting specifications or the City of Fairhope may seek damages including but not limited to the testing expense, regardless of whether a part of or all of the goods have been consumed through the testing process. Rejected goods shall be removed by the awarded vendor promptly after rejection, at his expense. If not removed in fourteen (14) calendar days, they may be disposed of at the discretion of the City of Fairhope. Disposal costs will be the awarded vendor's responsibility.

27. INSPECTION OF PREMISES

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

28. INSURANCE

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

29. INVITATION TO BID

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

30. INVOICING, DELIVERY, PACKAGING

Invoices shall be prepared only after ordered materials have been delivered. All invoices must show the purchase order number. Unless otherwise specified in writing, vendors shall not ship any material without an authorized Purchase Order from the City of Fairhope Purchasing Department. All packages delivered must show the purchase order number. The awarded vendor will be required to furnish all materials, equipment and/or service called for at the bid price quoted. In the event the awarded vendor fails to deliver within a reasonable period of time, as determined by the City of Fairhope, the right is reserved

to cancel the award and subsequent purchase order and purchase from the next lowest responsible bidder the items needed. The original awarded vendor will be back charged the difference between the original contract price and the price the City of Fairhope has to pay as a result of the failure to perform by the original awarded vendor. All bids will remain firm for acceptance for 60 days from the date of bid opening. Prices shall be net F.O.B., Prepaid and Allow, City of Fairhope chosen site, Baldwin County, Al. The title and risk of loss of the goods will not pass to the City of Fairhope until receipt and acceptance takes place at the F.O.B. point.

31. LABELING

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

32. LOSS OR DAMAGE IN TRANSIT

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

33. MANDATORY SITE VISIT

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

34. MONITORING OF SERVICES

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

35. NON-CONFORMING MERCHANDISE

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

36. NON-DISCRIMINATION

The City of Fairhope is an Equal Opportunity Employer and

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

37. NON-EXCLUSIVE

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

38. NOTIFICATION AND ACCIDENT REPORTS

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

39. PACKAGING

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

40. PATENTS

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

41. 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.

42. PAYMENT WITHHELD

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

43. PRODUCT TESTING

Vendor shall incur all cost involved in obtaining an Independent Laboratory Test if the City deems necessary during the term of the Contract / Agreement / Purchase Order. The City of Fairhope reserves the right to request a demonstration of any and all items bid before making the award

44. PERMITS LICENSES AND CERTIFICATES

The awarded vendor is to procure all permits, licenses, and certificates, or any approvals of plans or specifications as may be required by Federal, State, Local Laws, ordinances, rules, and regulations, for the proper execution and completion of Work covered under the Contract / Agreement / Purchase Order.

45. PREPARATION OF BID

All bids / proposals shall be typewritten or in ink on the form(s) prepared by the City of Fairhope. Bids / proposals prepared in pencil will not be accepted. All bids / proposals must be signed by officials of the corporation or company duly authorized to sign bids / proposals. Any bid / proposal submitted without being signed will automatically be rejected. All corrections or erasures shall be initialed and dated by the person authorized to sign quotations / bids / proposals. If there are discrepancies between unit prices quoted and extensions, the unit price will prevail.

46. QUESTIONS / CONTACT

. Commencing with the issuance of the RFQ / ITB / RFP, or other form of solicitation, no vendor or anyone acting on a vendor's behalf, shall make direct or indirect contact with City personnel or undertake any activities or take any action to otherwise promote its quotation / bid / proposal to the City or its personnel. All communications shall be made to the contact identified in the quotation / bid / proposal documents. Violation of this requirement may, at the City's sole and absolute discretion, be grounds for disqualifying a vendor from further consideration.

47. RECEIPT BY CITY OF FAIRHOPE

If not otherwise stated in the order, the City of Fairhope will be said to have received goods when they have been delivered, unloaded and placed on the agency's dock or if there is no dock, inside an accessible building, and signed for by an authorized City employee. Shipments will be checked against the receiving copy of the Purchase Order. If the purchase order requires grading certificates, USDA Stamps, or any proof of quality, such proof must accompany the shipment.

48. REJECTION OF BIDS

The City of Fairhope reserves the right to accept or reject any or all bids in whole or in part for any reason, to waive technicalities or informalities, or to advertise for new proposals, if, in the judgment of the awarding authority, the best interest of the City of Fairhope will be promoted thereby. Bidders may be disqualified and rejection of proposals may be recommended for any of (but not limited to) the following causes: Failure to use the bid forms furnished by the City of Fairhope, Lack of signature by an authorized representative on the bid form, Failure to properly complete the bid form and vendor compliance, Evidence of collusion among bidders, Unauthorized alteration of the bid form.

50. RIGHT TO AUDIT

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

51. SAMPLES

Bidders will not be required to furnish samples at the time of bid opening, unless specifically called for. The City of Fairhope reserves the right to request samples after bid opening to assist in the evaluation of proposals submitted.

52. SAFETY MEASURES

The awarded vendor shall take all necessary precautions for the safety of the City of Fairhope's and awarded vendor's employees at the Work site, and shall erect and properly maintain at all times, all necessary safeguards for the protection of the workmen and the public. The awarded vendor shall post signs warning against hazards in and around the Work site.

53. SET-UP AND INSTALLATION

Unless otherwise specified, bid / quotation to include cost of all uncrating, disposal of shipping materials, set-up, testing and initial instruction to agency personnel.

54. SPILL CLEAN UP

The awarded vendor shall be responsible for spillage caused by their negligence, which occurs during transit or unloading operations. The awarded vendor shall immediately report and clean up any spillage. Upon failure to do so, the awarded vendor shall remain responsible for all actual related costs

55. SUBSTITUTIONS

Substitutions on a purchase order shall require the approval of the Originating Buyer. The City of Fairhope reserves the right to reject at destination and hold at the vendor's risk and expense any goods supplied by the vendor which do not conform to the specification or description embodied in the order or are inferior in any respect to the good specified. Any good bought by sample which is inferior in quality to the sample submitted by vendor will be rejected. Any goods delivered that do not meet specifications may be returned to the vendor at its expense. When a good is returned, the vendor must make immediate replacement with acceptable merchandise or the City of Fairhope may seek remedies for default.

56. TABULATION

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

57. TAXES

Prices quoted shall be delivered prices, exclusive of all federal or state excise, sales, and manufacturer's taxes. The City will assume no transportation or handling charges other than specified in the RFQ, ITB, RFP or other form of solicitation. The City is tax exempt by law – Code of Alabama 1975.

58. TERMINATION FOR CONVENIENCE

Any Contract / Agreement / Purchase Order may be terminated for convenience by the City of Fairhope, in whole or in part, by written notification to the awarded vendor.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. IMMIGRATION LAW

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

ITEM X
CONTRACT (sample)

THIS CONTRACT, entered into this ____ day of _____, 2017 by the City of Fairhope of Baldwin County, Alabama, hereinafter called the "**OWNER**", and _____, a corporation organized and existing under the laws of the State of Alabama, hereinafter called the "**CONTRACTOR**", on

Bid Number 001-18, BID FOR BEVERAGE CONCESSIONS 2018

The **OWNER** and the **CONTRACTOR** agree as set forth below:

1. The Contract consists of all of the items contained within this contract the associated bid package, Standard Terms and Conditions, addenda, amendment, drawings, charts and appendices, if any.
2. The **CONTRACTOR** shall perform all the **WORK** described herein.
3. **As part of the Contract, the Awarded Vendor will enter into a Franchise Agreement with the City of Fairhope for the vending machine franchise (see ITEM X CONTRACT and Exhibit B, City of Fairhope Franchise Agreement).**

WITNESSETH: That the parties hereto do mutually agree as follows:

1. **DURATION:**

The term of the Agreement shall be for a period of **THREE (3)** years from the signing date of Contract. Therefore, the Contract will begin on **12/30/2017**, and terminate on **12/29/2020 at midnight**.

2. **ORDERING**

:

- 2.1. The City of Fairhope will order the initiation of WORK by issuing a Notice to Proceed to the Awarded Bidder.
- 2.2. The **mobilization period** for Quail Creek Golf Club Concession will be from the date of Contract execution to 1/5/2018. For all other locations, from the date of Contract execution to 1/12/18
- 2.3. Other work outside the scope and specifications will be ordered by Purchase Orders specific to the events.

3. **PAYMENT:**

3.1. **Compensation:**

Payment shall be based upon the rates set forth in the Awarded Bidder's "Bid Response" form.

3.2 **Invoices:**

3.2.1 Invoices for Routine Services--For routine services, the CONTRACTOR will submit to the Owner, monthly invoices. **Bid No. 001-18, BID FOR BEVERAGE CONCESSIONS 2018** must be referenced on all communications including signed delivery / service tickets and invoices.

3.2.2 Invoices for Non-Routine work--For other work outside the scope of routine, Contractor is to invoice Owner upon completion of work specified. Submittal will include signed delivery / service tickets and invoices.

Send Invoices to: **City of Fairhope**
 Attn: Accounts Payable
 P.O. Drawer 429
 Fairhope, AL 36533
 ap@fairhopeal.gov

3.3 Payment of Invoice--All invoices received by the OWNER are payable within Thirty (30) days from date of receipt by the Owner, provided they are approved by the Owner.

4.0 PAYMENT WITHHELD:

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

- 4.1 Negligence on the part of the CONTRACTOR to execute the work properly or fail to perform any provision of this Agreement.
- 4.2 The Owner, after three (3) days written notice to the CONTRACTOR, may without prejudice to any other remedy, make good such deficiencies and may deduct the cost thereof from the overall Agreement sum.
- 4.3 Claims filed or reasonable evidence indicating probable filling of claims.
- 4.4. Failure of the CONTRACTOR to make payments properly to Subcontractors for material or labor.
- 4.5. A reasonable doubt that the Agreement can be completed for the balance then unpaid.
- 4.6 Damage to City of Fairhope facilities, or another CONTRACTOR or another CONTRACTOR's work.
- 4.7 When the above grounds are removed, payment shall be made for the amount withheld because of them. The CONTRACTOR waives all cancellation rights under the agreement, if payment is withheld for one or more of the above reasons.

5. GENERAL CONDITIONS:

5.1 Indemnity: The CONTRACTOR hereby agrees to indemnify and save harmless the Owner, its officers, agent, and employees, from and against any and all liabilities, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including reasonable attorney's 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 CONTRACTOR, their agents, servants, employees, Subcontractors, or others associated with the CONTRACTOR. The CONTRACTOR shall be responsible for damage to any equipment excluded from this agreement, or damage or injury caused by any equipment excluded from this Contract, to the extent that the damage or injury is caused by a negligent act or omission of the CONTRACTOR.

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

6. WARRANTY:

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

provided by other CONTRACTORS. All equipment and materials provided by the CONTRACTOR shall be merchantable and for the purpose intended.

7. **TIME OF COMPLETION:**

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

8. **INSURANCE REQUIREMENTS**

See Item VII Insurance Requirements.

9. **RIGHT TO AUDIT**

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

10. **INTERMITTENT PROBLEMS**

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

11. **TIME IS OF THE ESSENCE**

The Owner and CONTRACTOR agree that time is of the essence in the performance of Work called for under this Contract. The CONTRACTOR agrees that all work will be accomplished regularly, diligently and uninterrupted at such a rate of progress as will ensure full completion thereof within reasonable time periods.

12. **SAFETY MEASURES:**

The CONTRACTOR shall take all necessary precautions for the safety of the Owner's and CONTRACTOR'S employees, and the general public at the Work sites, and shall erect and properly maintain at all times, all necessary safeguards for the protection of the workmen and the public. Where necessary, the CONTRACTOR shall post signs warning against hazards in and around the Work site.

13. **EXTRA WORK AND ASSOCIATED COSTS:**

Changes in the Work: The Owner, 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. All such changes in the Work shall be authorized by a written Amendment to the Agreement or a separate Change Order, or Purchase Order, and shall be executed under the applicable conditions of the Agreement.

14. **FAMILIARITY WITH THE WORK:**

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

15. **MISCELLANEOUS PROVISIONS:**

- 15.1 The CONTRACTOR shall not employ subcontractors without the express written permission of the Owner or its agents, servants, employees and subcontractors.
- 15.2 The CONTRACTOR shall not assign the Agreement or sublet it as a whole without the express written permission of the Owner. The CONTRACTOR shall not assign any payment due them hereunder, without the express written permission of Owner. The Owner may assign the contract, or sublet it as a whole, without the consent of the CONTRACTOR.
- 15.3 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.
- 15.4 The CONTRACTOR is to procure all permits, licenses, and certificates, or any approvals, of plans or specifications as may be required by Federal, State, Local Laws, ordinances, rules, and regulations, for the proper execution and completion of Work covered under this Agreement.
- 15.5 The CONTRACTOR shall at all times, keep the Work area free from accumulation of waste materials or rubbish caused by his operations, and promptly remove any such materials to an area designated by the Owner, or remove to a waste site as directed by the Owner. If the CONTRACTOR fails to clean up the Work site, the Owner will complete the task and charge the CONTRACTOR for such services. News releases, publicity releases, or advertisements relating to this Contract or the tasks or projects associated with the project shall not be made without prior City approval.
- 15.6 This Agreement is considered a non-exclusive Agreement between the parties.
- 15.7 This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of Alabama.
- 15.8 Any litigation arising out of the Agreement shall be heard in the Courts of Baldwin County, Alabama.
- 15.9 This Agreement, contains all terms and conditions agreed upon by the Owner and CONTRACTOR. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.
- 15.10 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.

Section 41-16-5, Code of Alabama 1975, requires that public contracts over \$15,000 include the following language:

***By signing this Contract, _____ represents and agrees
COMPANY NAME
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***

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

The City of Fairhope

BY: _____
Karin Wilson, Mayor

ATTEST: _____
Lisa A. Hanks, MMC, City Clerk

NOTARY FOR THE CITY:

**STATE OF ALABAMA]
COUNTY OF BALDWIN]**

I, _____, a Notary Public in and for said State and County, hereby certify that **Karin Wilson**, whose name as Mayor of the City of Fairhope, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, she as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and Notary seal on this the ____ day of _____, 2017

Notary _____

My commission expires __/__/____

Individual or Partnership

(Individual or Partnership)

(Print Name of Partner)

(Print Name of Representative Authorized to sign Bids and Contracts for the firm)

(Print Name of Partner)

(Signature of Representative Authorized to sign Bids and Contracts for the firm)

(Address)

(Address)

Phone Number () _____ Fax Number () _____

Primary e-mail address _____

Alabama CONTRACTOR's License No. (If required) _____ Foreign Corporation Entity ID _____

If Corporation or LLC

Company _____ State of Incorporation _____

Company Representative _____
(Print Name of Representative Authorized to sign Bids and Contracts for the firm)

Company Representative _____
(Signature of Representative Authorized to sign Bids and Contracts for the firm)

Address _____

Phone Number () _____ Fax Number() _____

Primary e-mail address _____

Alabama CONTRACTOR's License No. (If Required) _____ Foreign Corporation Entity ID _____

Notary for Individual or Corporation

STATE OF _____ }
COUNTY OF _____ }

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

As _____ respectively, of _____
title company name

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 Notary Seal on this ____ day of _____, 2017

Notary Public _____

My commission expires ___/___/_____

ITEM XI
Alabama Immigration Act Contract Requirements

11.1 Background

The **Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No 2011-535, as amended by Act No 2012-491, Code of Alabama (1975) Section 31-13-1 through Section 31-13-30** (also known as and hereinafter referred to as “the Alabama Immigration Act”) is applicable to contracts with the City of Fairhope, Alabama. All business entities entering into Contracts with the City of Fairhope, Alabama will comply with the Alabama Immigration Act.

11.2 Definitions

- 11.2.1 ALIEN. Any person who is not a citizen or national of the United States, as described in 8 U.S.C. § 1101, et seq., and any amendments thereto.
- 11.2.2 BUSINESS ENTITY: Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit. Business entity shall include but not be limited to the following:
- 11.2.2.1 Self-employed individuals, business entities filling articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, foreign liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.
- 11.2.2.2 Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.
- 11.2.3 CONTRACTOR: A person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include, but not be limited to, a general CONTRACTOR, sub- CONTRACTOR, independent CONTRACTOR, contract employee, project manager, or a recruiting or staffing entity.
- 11.2.4 EMPLOYEE: Any person directed, allowed, or permitted to perform labor or service of any kind by an employer. The employees of an independent CONTRACTOR working for a business entity shall not be regarded as the employees of the business entity, for the purposes of this chapter. This term does not include any inmate in the legal custody of the state, a county, or a municipality.
- 11.2.5 EMPLOYER: Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.
- 11.2.6 E-VERIFY: The electronic verification of federal employment authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division c, Section 403 (a); 8 U.S.C. §1324(a), and operated by the United States Department of Homeland Security, or its successor program.
- 11.2.7 STATE-FUNDED ENTITY: Any governmental entity of the state or a political subdivision thereof or any other entity that receives any monies from the state or a political subdivision thereof; provided, however, an entity that merely provides a service or a product to any governmental entity of the state or a political subdivision thereof, and receives compensation for the same, shall not be considered a state-funded entity.
- 11.2.8 SUBCONTRACTOR: A person, business entity, or employer who is awarded a portion of an existing contract by a CONTRACTOR, regardless of its tier.

11.2.9 UNAUTHORIZED ALIEN: An alien who is not authorized to work in the United States as defined in 8 U.S.C. § 1324a (h) (3).

11.3 **Mandatory Clause**

11.3.1 All contracts or agreements to which the state, a political subdivision, or state-funded entity are a party shall include the following clause:

"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."

11.3.2 For purposes of this section, "contract" shall mean a contract awarded by the state, any political subdivision thereof, or any state-funded entity that was competitively bid or would, if entered into by the state or an agency thereof, be required to be submitted to the Contract Review Permanent Legislative Oversight Committee.

11.4 **Contracts Involving Business Entity, or Employer**

11.4.1 As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, the business entity or employer shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

11.4.2 As a condition for the award of any contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees within the state of Alabama, **the business entity or employer shall provide documentation establishing that the business entity or employer is enrolled in the E-Verify program.** During the performance of the contract, the business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations.

11.5 **Contracts Involving Subcontracting**

Any sub-contractor on a project paid for by contract, grant, or incentive by the state, any political subdivision thereof, or any state-funded entity shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama and shall also enroll in the E-Verify program prior to performing any work on the project. Furthermore, during the performance of the contract, the sub- contractor shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. This subsection shall only apply to sub- contractors performing work on a project subject to the provisions of this section and not to collateral persons or business entities hired by the sub-contractor.

11.6 **Proof of E-Verify** documentation will be in the form of a copy of the signed Memorandum Of Understanding (MOU) generated upon completion of the E-Verify program.

COMPANY INFORMATION

This Section must be printed, completed and turned in with your bid response

Bid 001-18 Beverage Concession 2018

Business Organization

Name of Bidder (exactly as it appears on W-9):

Doing-Business-As Name of Bidder: _____

Principal Office Address: _____

Telephone Number: _____ Fax _____

Number: _____

Email address: _____

Website: _____

Form of Business Entity [check one ("X")]

Corporation _____ Partnership _____

_ Individual _____ Joint _____

Venture _____

Other (describe): _____

Corporation Statement

If a corporation, answer the following:

Date of incorporation: _____

Location of incorporation: _____

The corporation is held: Publicly _____
Privately _____

Partnership Statement

If a partnership, answer the following:

Date of organization: _____

Location of organization: _____

The partnership is: General _____
Limited _____

Joint Venture Statement

If a Joint Venture, answer the following:

Date of organization: _____

Location of organization: _____

JV Agreement recorded? Yes _____
No _____

Contact _____ Email _____

Phone _____

State License _____

END OF BIDDER INFORMATION SECTION

EXHIBIT A

Vending Machine Locations

Vending Machine Locations	Current # of machines	Plastic or Cans	
Recreation Center	two (2)	<u> 2 </u>	<u> </u>
City Pool	one (1)	<u> </u>	<u> 1 </u>
City Hall	one (1)	<u> </u>	<u> 1 </u>
City Services and Public Utilities	two (2)	<u> </u>	<u> 2 </u>
James P. Nix Center	one (1)	<u> </u>	<u> 1 </u>
Boys & Girls Club	one (1)	<u> </u>	<u> 1 </u>
Stimpson Park	one (1)	<u> 1 </u>	<u> </u>
Welcome Center	one (1)	<u> </u>	<u> 1 </u>
Police Station	one (1)	<u> 1 </u>	<u> </u>
Quail Creek Golf Course	two (2)	<u> </u>	<u> 2 </u>
Wastewater Treatment Plant	one (1)	<u> </u>	<u> 1 </u>
Fairhope Soccer Complex	one (1)	<u> 1 </u>	<u> </u>

Concession Locations

Fairhope Municipal Park

Stadium
High School Field
Youth Baseball
Pool

Founders Park

Soccer
Youth Softball
High School Field

Barnwell Park

Youth Football

Quail Creek Golf Course

Concession Stand

Fairhope Soccer Complex

Concession Stand

EXHIBIT B

FRANCHISE AGREEMENT

(Amended 10-23-17)

FRANCHISE AGREEMENT

This Agreement is made and entered into by and between the City of Fairhope, Alabama ("City") a municipal corporation and _____, ("Grantee").

RECITALS

Grantee is a sole proprietor with a principal place of business at _____, Fairhope, AL 36532. Grantee is engaged in the business of _____ to the public. Grantee proposes to install and operate _____ at the _____. Grantee requests that the City grant to Grantee a franchise to install, maintain and operate this business on public property at the _____.

In consideration of the mutual covenants, promises and conditions set forth herein the parties agree as follows:

SECTION 1

Section 1.1 DEFINITIONS

Unless otherwise specially provided, or unless clearly required by the context, the words and phrases defined in this section shall have the following meanings when used in this Ordinance and Franchise Agreement:

- (1) **MAYOR:** Shall mean the Mayor of the City of Fairhope
- (2) **COUNCIL:** Shall mean the City Council of Fairhope, the governing body of City of Fairhope, Alabama.
- (3) **CITY:** Shall mean City of Fairhope, Alabama, which is governed by the Fairhope City Council.
- (4) **FRANCHISE:** Shall mean the franchise granted under the provisions of the *Ala. Code §11-40-1*, et seq., which authorizes municipalities to contract and to be contracted with. A "franchise" as used in this agreement is a special privilege not belonging to the citizens by common right but conferred by a municipality upon an individual or corporation.
- (5) **GRANTEE:** Shall mean _____ to whom a franchise has been granted by the City or anyone who succeeds _____, in accordance with the provisions of the franchise.
- (6) **GROSS REVENUES:** Shall mean all revenues received by the Grantee from or in connection with the operation of the franchise to provide services in the City of Fairhope pursuant to this franchise agreement.

(7) **PERSON:** Shall mean an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(8) **SERVICE AREA:** Shall mean the geographical area within City of Fairhope and specifically defined as follows: _____.

Section 1.2 REQUIREMENTS FOR FRANCHISE

(a) No person shall engage in the construction, operation, or maintenance of a private business on public property in the City unless such person or the person for whom such action is being taken shall hold a valid franchise granted by the City.

(b) Any franchise granted by the City pursuant to these rules and regulations shall not be deemed to be an exclusive right of permission. The City expressly reserves the right to grant similar nonexclusive franchises to other persons.

(c) In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the City's Public Rights-of-way or public property for the purpose of operating a private business on public property in any part of the City, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

(d) No franchise shall be granted by the City in the Central Business District located in downtown Fairhope.

(e) No franchise shall be granted by the City to any food vendor who does not show proof of ServSafe certification.

(f) No franchise shall be granted by the City to any vendor requiring a running water supply for personal sanitary purposes and/or for cleaning equipment used in the preparation of his/her product unless water supply is provided and metered by the City.

(g) Food franchises shall meet all Alabama Health Department regulations and show proof thereof.

(h) No franchise shall be granted by the City to any vendor who has electrical requirements without securing metered power from the City or, if applicable, having a generator to supply the power required; generator shall meet City of Fairhope noise ordinances.

Section 1.3 TERM OF FRANCHISE, RENEWAL

(a) The duration of this franchise agreement granted pursuant to this Ordinance shall be for one year and shall be renewed automatically each year for three years unless notice of termination is given in writing to the other party at least 60 days prior to the expiration of the then current term. This Agreement shall commence 10 days after approved by the City Council.

Section 1.4 ENFORCEMENT OF FRANCHISE

(a) A Grantee shall not be excused from complying with any of the terms or conditions of the franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

(b) Whenever the City shall set forth any time for any action to be performed by or on behalf of Grantee, said time shall be deemed of the essence and any failure of Grantee to perform within the time allotted shall be sufficient grounds for the City to revoke the franchise.

(c) A Grantee agrees by filing an application for a franchise that they will not assert, at any time, in any claim or proceeding that any condition or term of the franchise is unreasonable, arbitrary or void or that the City had no power or authority to make such term or conditions, but shall be required to accept the validity of the terms and conditions of the franchise in their entirety.

Section 1.5 CONFLICT WITH LAWS

(a) Whenever any law of the State of Alabama or of the United States, or of any agency of either, shall be in direct conflict with and supersede any provision of these rules and regulations, then for so long as such state or federal law or regulation shall be in force and effect, any affected provisions of this franchise granted hereunder shall be suspended and be of no force and effect and the Grantee shall not be required to comply with such provision; however, the validity of the remaining portions or provisions shall not be affected thereby. In the event this franchise imposes burdens different than those imposed by any other law, but within the power of the City to impose said burdens, the more restrictive provision shall apply.

(b) If any section, sentence, clause or phrase of these rules and regulations or of any franchise granted hereunder is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining portion of these rules and regulations or a of any franchise granted hereunder.

SECTION 2

Section 2.1 PROCEDURE FOR GRANTING FRANCHISE

(a) Any person desiring a franchise shall apply to the City for such a grant. The **application for a franchise** shall be in writing, in the form approved by and containing such information as required by the City and must be accompanied by a nonrefundable application fee of \$150.00 by cashier's check, certified check or money order payable to City of Fairhope. This is a separate fee from the Franchise fee.

(b) Upon receipt of said franchise application, the City shall provide notice of said application and conduct a public hearing to determine if the grant of the franchise would be in the best interest of the citizens of City of Fairhope.

(c) The application shall contain a statement under oath that the applicant will comply with all legal, financial and technical provisions of these rules and regulations and any other municipal, state or federal regulatory agencies.

(d) The application shall define the proposed service area of the applicant with specific time standards for the establishment of service to suit the service area.

SECTION 3

Section 3.1 CONSTRUCTION AND INSTALLATION

(a) After receipt of an initial franchise, a Grantee shall proceed with due diligence to install and begin operation of the franchise.

(b) Failure on the part of the Grantee to commence and diligently pursue _____ or failure to commence operation after 90 days from the commencement of this agreement shall be grounds for termination of the franchise. The City may extend the time for the commencement and completion of _____ for additional periods in the event the Grantee, acting in good faith, experiences delays by reasons of circumstances beyond her control.

(d) The _____ shall be constructed and operated in accordance with all adopted City, state and national construction and electrical codes.

Section 3.2 CONDITIONS FOR USE OF PUBLIC PROPERTY

(a) Grantee shall not install or begin operation of the franchise business until the installation has been approved by the Mayor or his designee.

Section 3.3 OPERATION AND MAINTENANCE

(a) The Grantee shall install and maintain _____ in a prudent and reasonable manner.

(b) Failures or malfunctions of the _____ shall be corrected by the Grantee promptly after notice of such failure or malfunction except or unless such failure or malfunction shall have been caused by storm, fire, lightening, explosion, civil unrest or other similar catastrophe.

(c) The City shall, if it deems it necessary, have the right and privilege to inspect the installation, operation and maintenance of the _____ by the Grantee in order to satisfy itself as to the proper performance of the terms of this franchise agreement.

SECTION 4

Section 4.1 FRANCHISE FEE

(a) There shall be a franchise fee of twenty (20) percent of Gross Revenues; and the fee for the business license which is an annual license issued by the municipality for the privilege of doing any kind of business, trade, profession or other activity in the municipality, by whatever name called.

(b) Grantee shall pay quarterly to the City during the life of the franchise a sum equal to twenty (20) percent of its gross revenues. Grantee shall file with the City on such form as prescribed by the City within sixty (60) days after the end of each quarterly a report, under oath at the risk of perjury, of the gross revenues for the preceding quarterly period, and shall, at the same time, pay to the City a sum equal to twenty (20) percent of the gross revenues for the said quarterly period.

Section 4.2 INDEMNIFICATIONS

(a) Grantee shall at his/her sole cost and expense fully indemnify, defend and save harmless the City, its officers, boards, and employees against any and all claims, demands, suits, actions, liability and judgments for damage arising out of the construction, operation and maintenance of the _____ franchise, and against all liabilities for damages by reason of, or arising out of, any failure by Grantee to safely operate and maintain the _____, including reasonable attorney's fees, arising out of the exercise or enjoyment of this franchise, irrespective of the amount of comprehensive liability policy required hereunder. This indemnity shall not apply to damages occasioned solely and exclusively by acts of the City, its agents or employees.

(b) Within thirty (30) days after the granting of the franchise and at all times during the term of the franchise, Grantee shall obtain, pay all premiums for, and file with the City executed duplicate copies and receipts evidencing the payment of premiums for the following:

A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the City, its officers, boards, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under franchise herein granted or alleged to have been so caused with a minimum of liability of _____ for personal injury or death of any two or more persons in any one occurrence. Renewal certificates of such insurance shall be promptly forwarded to the City as such renewals are made, and such insurance shall be kept in force and effect during the term of this grant or franchise. The Grantee and/or

the insurance company shall file with the City a written notice of any material alteration or cancellation of any insurance coverage at least thirty (30) days prior to the effective date of such alteration or cancellation. Property damage insurance indemnifying, defending and saving harmless the City, its officers, boards, agents, and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of a Grantee under franchise granted by City caused with a minimum liability of _____ for property damage to two or more persons in any one occurrence. Said policies of insurance shall name the City as an additional insured.

(c) All of the foregoing insurance certificates shall be in form satisfactory to the City and shall be issued and maintained by companies authorized to do business in the State of Alabama and acceptable to the City and they shall require thirty (30) days written notice of any cancellation or reduction in coverage to both the City and Grantee herein, and a copy of said certificates shall be filed with the City.

Section 4.3 BOOKS/RECORDS OF GRANTEE

(a) All books and records of a Grantee concerning its operations within the City necessary for the enforcement of the provisions of this franchise, shall be made available for inspection and audit upon demand by the City within thirty (30) days after any request for such inspection or audit has been made.

Section 4.4 GRANTEE ACKNOWLEDGEMENT

(a) Grantee is an independent contractor. No agency or employment relationship is created by this Franchise Agreement.

SECTION 5

Section 5.1 SALE OR LEASE OF FRANCHISE

(a) No transfer or control of the _____, whether by force or voluntary sale, lease, assignment, foreclosure, attachment, merger, or any other form of disposition, shall occur or be considered valid without first giving prior notice and receiving the approval of the City. The notice shall include full identifying particulars of the proposed transaction. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into the qualification of the prospective controlling party and the Grantee shall assist the City in any such inquiry. The City shall have one 60 days from the date the notice is received by the City within which to approve or disapprove, by resolution, the proposed transfer of control. The City will not unreasonably withhold its approval.

(b) Approval of such transfer shall be expressly conditioned upon full compliance with the material terms of the franchise agreement and this Ordinance. The transferee shall agree in writing to comply with all provisions of this Ordinance and the franchise agreement.

Section 5.2 REVOCATON OF FRANCHISE

(1) Subject to the provisions of this section, the City reserves the right to revoke, at any time, any franchise granted hereunder and rescind all rights and privileges associated therewith in the event that:

(a) Grantee has not substantially complied with a material provision of this Ordinance, the franchise agreement, or of any supplemental written agreement entered into by and between the City and the Grantee; or

(b) Grantee has made a material false statement in the application for the franchise, knowing it to be false, or Grantee commits a fraud in its conduct or relations under the franchise with the City; or

(c) Grantee becomes insolvent, enters into receivership or liquidation, files for bankruptcy or assignment for benefits of creditors, or is unable to pay its debts as they mature, unless the Grantee is in due process of contesting such debts; or

(d) Grantee fails to substantially comply with a material provision of any federal or state statute, or of any material rules or regulations that govern telecommunications; or

(e) Grantee exhibits a pattern of failing to comply with service standards as adopted herein or in the franchise agreement; or

(f) Grantee fails to comply with any federal or state judgment arising directly from the exercise of Grantee's rights under its franchise; or

(g) Grantee fails to provide or maintain in full force and effect the bond and insurance policies required by this Ordinance and franchise agreement; or

(h) Grantee assigns, sells or transfers its title or interest in its franchise without the consent of the City.

(2) In the event that the City shall make a preliminary decision to revoke a franchise granted hereunder, it shall give the Grantee a minimum of thirty days written notice of its intention to terminate and stipulate cause. A public hearing shall be scheduled for the end of said 30-day period. If during said period, the cause shall be cured to the satisfaction of the City, the City shall declare the notice to be null and void. If the cause is not cured to the satisfaction of the City, before a franchise may be terminated, the Grantee must be provided with an opportunity to be heard before the City in a public hearing in accordance with due process procedures. After the public hearing, if the City, by majority vote, determines that the franchise should be terminated, it shall issue a written decision containing its findings of fact and stating the specific grounds for termination. The decision to terminate a franchise shall be subject to judicial review as provided by law.

(3) A Grantee shall not be declared in default or be subject to any sanction under any provision of this Ordinance and franchise agreement in any case where the City determines that the action justifying such sanction is without the Grantee's knowledge or authorization or outside its control.

Section 5.3 RIGHTS UPON REVOCATION OR NON-RENEWAL

In the event the City determines that a franchise should not be renewed at its expiration or that a franchise should be revoked for cause as permitted hereunder, the Grantee shall be allowed three months from the date of such determination, or such longer period as the City may permit, to negotiate the sale of its _____ within the City to another provider at a price acceptable to the Grantee, provided that such sale shall be approved by the City pursuant to Section 5 herein. In the event a sale to a provider acceptable to the City is not then negotiated within the time allowed, then an independent expert shall be appointed to

determine the fair market value of the Grantee's _____. The appointment of said expert shall be by mutual agreement between the City and the Grantee; provided, however, that if the City and the Grantee are unable to reach an agreement within 30 days of the written decision of termination, then the matter of appointing an expert shall be submitted, within ten (10) days immediately following expiration of the former 30 days, to the American Arbitration Association [unless the City and the Grantee mutually agree upon some other arbitrator(s)], and the expert designated by the American Arbitration Association or such other arbitrators shall be appointed. The cost of employing the arbitrator or arbitrators and the cost of arbitration, if required, shall be borne equally by the Grantee and the City. Upon determination of the fair market value of the Grantee's _____ by the appointed independent expert, the Grantee shall be required to sell its _____ to any entity which offers said fair market value and which has obtained the approval of the City to purchase said _____.

Section 5.4 REMOVAL AND ABANDONMENT OF PROPERTY

(a) If the use of any part of Grantee's _____ is discontinued for any reason for a continuous period of twelve (12) months, or if such _____ does not comply with the requirements of these rules and regulations, or if Grantee's franchise is terminated or revoked the City may in its discretion require that said _____ be sold to a franchise designated by the City at a purchase price equal to the _____ fair market value as determined in subsection (b) hereof.

(b) Any dispute between the City and the Grantee over determination of the system's fair market value shall be determined in accordance with Section 5.3 above.

Section 5.5 MISCELLANEOUS PROVISIONS

(a) This agreement constitutes the entire agreement of the parties and supersedes any and all agreements, understandings, statements or representations either oral or in writing. This agreement can be amended only by a written document signed by the parties.

(b) This agreement shall be enforced and interpreted pursuant to the laws of the State of Alabama.

IN WITNESS WHEREOF, the Parties have hereunto set their respective signatures and seals on the ____ day of _____, 20____.

THE CITY OF FAIRHOPE, ALABAMA

By: _____
Karin Wilson, Mayor

Attest: _____
Lisa A. Hanks, MMC
City Clerk

By: _____
, Grantee