



**CITY OF FAIRHOPE  
INVITATION TO BID**

**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 10:00 A.M. Thursday, September 8, 2022, 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 042-22 LEASE OF FAIRHOPE SOCCER CONCESSION STAND**

The City of Fairhope is requesting responses from contractors to lease the Fairhope Soccer Concession Stand. The lease would be for an initial one (1) year term, with an option to renew for two (2) additional years.

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

**Questions or comments pertaining to this bid must be presented in writing, sent as e-mail** to the attention of the Purchasing Manager, Erin Wolfe, 555 South Section St., Fairhope, AL 36532, e-mail: [Purchasing@FairhopeAL.gov](mailto:Purchasing@FairhopeAL.gov), by Friday, September 2, 2022, at 11:00 A.M. or will be forever waived.

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

All bids must be on blank bid forms provided in the Bid Documents. All bids, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a "**Sealed Bid**" with **Item Name, Bid Number, City of Fairhope's Name and Address and CONTRACTOR's Name and Address**. Each bid must be in a separate envelope. Bids made out in pencil will not be accepted. Failure to observe the instructions contained herein will constitute grounds for rejection of your bid. The **City** reserves the right to accept or reject all bids or any portion thereof, and to waive informalities and to furnish any item of material or work to change the amount of the CONTRACT, whichever is in the best interest of the City of Fairhope.

No bids will be considered unless the **CONTRACTOR**, whether resident or non-resident of Alabama, is properly qualified to submit a proposal for this type of work in accordance with all applicable laws of the State of Alabama. Where applicable, this shall include evidence of holding a current license from the State Licensing board for General BIDDERS, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, the Awarded Vendor, if non-resident of the State, and if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama. **CONTRACTOR** must have a current business license or purchase a business license with the City of Fairhope prior to work performed. No bids shall be withdrawn for the period of thirty (30) days subsequent to the opening of proposals without the consent of the City of Fairhope, Baldwin County, Alabama. Once completed, a tabulation of the responsive and responsible bids will be available for public viewing by visiting the following web address: [www.FairhopeAL.gov](http://www.FairhopeAL.gov).



**INVITATION TO BID  
NO. 042-22  
LEASE FOR FAIRHOPE SOCCER  
CONCESSION STAND**

**CITY OF FAIRHOPE  
SHERRY SULLIVAN, MAYOR**

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**ITEM I  
INVITATION AND INSTRUCTIONS TO BIDDERS**

**1.00 BID INVITATION**

Notice is hereby given that the **City of Fairhope ("CITY")** will receive bids on the project described herein. Qualified **BIDDERS** are invited to bid on this CONTRACT.

**1.01 BID NO.:** 042-22  
**NAME:** Lease of Fairhope Soccer Concession Stand  
**LOCATIONS:** City of Fairhope  
Fairhope Soccer Complex  
18383 County Road 13  
Fairhope, AL 36532

**1.02 SUMMARY**

The City of Fairhope is requesting responses from contractors to lease the Fairhope Soccer Concession Stand. The lease would be for an initial one (1) year term, with an option to renew for two (2) additional years.

**1.03 BID DEADLINE**

Bids will be received until **10:00 A.M. local time, Thursday, September 8, 2022**, at the City Services and Public Utilities Building, 555 South Section St., Fairhope, Alabama, and publicly opened shortly thereafter.

**1.04 AVAILABILITY OF DOCUMENTS**

Bid Documents may be obtained on the City's website at [www.FairhopeAL.gov/departments/purchasing/bids](http://www.FairhopeAL.gov/departments/purchasing/bids) or at the City Services and Public Utilities Building, 555 South Section Street., Fairhope, Alabama. One set of Bid Documents can be obtained free of charge.

**1.05 INQUIRIES**

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail to the attention of the Purchasing Manager, Erin Wolfe, 555 South Section St., Fairhope, AL 36532, e-mail: [Purchasing@FairhopeAL.gov](mailto:Purchasing@FairhopeAL.gov), by Friday, September 2, 2022, at 11:00 A.M. or will be forever waived.

**1.06 SITE EXAMINATION**

No Pre-Bid Meeting is scheduled.

The City of Fairhope will not furnish any labor, material, or supplies unless specifically stated in the CONTRACT Documents. **BIDDERS** must be properly licensed to perform the work as outlined in the Scope of Work. Awarded Vendor must have a current business license or purchase a business license with the City of Fairhope prior to bid being awarded.

Except for CONTRACTS funded in whole or in part by funds received from a federal agency, preference shall be given to resident **BIDDERS** on the same basis as the nonresident **BIDDERS** state awards CONTRACT to Alabama **BIDDERS** 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-resident **BIDDERS** state of domicile as to preferences granted by that state to entities doing business in that state when letting public contracts.

**1.07 BID SECURITY**

Not Applicable.

**1.08 PERFORMANCE ASSURANCE AND INSURANCE**

Performance Bond is not applicable.

The accepted **BIDDER** shall also provide insurance as required in ITEM V.

#### 1.09 **DURATION OF OFFER**

Bids maybe withdrawn in written or telegraphic request 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 City Council of the City of Fairhope.

#### 1.10 **EQUAL OPPORTUNITY**

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

#### 1.11 **BID SUBMISSION AND PREPARATION**

Sealed Bids, signed, executed, and dated, will be received by the City of Fairhope as noted in section 1.03 above. Submit one copy of the executed offer on the Bid Form provided, signed, and with the required Bid Security. **The bid shall be enclosed in a sealed opaque envelope approximately 9x12 inches or larger, clearly identified on the outside as a SEALED BID with the BID NAME, BID NUMBER, CITY'S NAME AND ADDRESS, CONTRACTOR'S NAME AND ADDRESS.**

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

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

The Bid 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 **BIDDER** without the written authorization of the **CITY**. At the conclusion of the project, the unused portion of the Contingency Allowance shall revert to the **CITY**.

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** satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

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

#### 1.12 **BID INELIGIBILITY**

Bids that contain irregularities of any kind may be declared unacceptable at the discretion of the **CITY**. The **CITY** may waive any irregularities and may reject any or all bids. Bids received after the deadline will be returned to the **BIDDER** unopened.

### 1.13 **CONTRACT TIME**

The **BIDDER** agrees to an initial contract term of one (1) year, with an option for an additional two (2) one year term renewals.

### 1.14 **INQUIRIES/ADDENDA**

**All Addenda are part of the CONTRACT Documents.** Include resultant costs in the Bid. Addenda will be issued by E-MAIL and posted on the City's website: [www.FairhopeAL.gov](http://www.FairhopeAL.gov). It is the responsibility of the **BIDDER** to verify that all Addenda have been received.

Questions or comments pertaining to this bid must be presented in writing, sent via email [Purchasing@FairhopeAL.gov](mailto:Purchasing@FairhopeAL.gov) by Friday, September 2, 2022, at 11:00 A.M. or will be forever waived.

### 1.16 **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** shall be the accepted bid. Alternates shall be awarded in the order in which they are listed on the Bid Form.

### 1.17 **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** reserves the right to determine in its discretion whether the provisions of this clause have been violated by any **BIDDER**.

### 1.18 **ERRORS IN BIDS**

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

### 1.19 **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 15 days after the required forms are presented to him for signature.

### 1.21 **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**.

### 1.22 **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**, and such written consent shall not be construed to relieve the **BIDDER** of any responsibility for the fulfillment of the CONTRACT. Unless otherwise stipulated in the proposal or special provisions, the **BIDDER** shall perform with his own organization, and with the assistance of workmen under his immediate superintendence and reported on his payroll, all CONTRACT work of a value not less than 50 percent of the total CONTRACT amount, except that any items designated in the CONTRACT as "Specialty Items" so performed by SUB-CONTRACT may be deducted from the total CONTRACT amount before computing the amount of work required to be performed by the **BIDDER** with his own organization.

**SUB-CONTRACTOR'S Status:**

A **SUB-CONTRACTOR** shall be recognized only in the capacity of an employee or agent of the **CONTRACTOR** and the **CONTRACTOR** will be responsible to the **CITY** for all of the **SUB-CONTRACTOR's** work, including failures or omissions; and his removal may be required by the Project Manager, as in the case of an employee.

1.23 **PROSECUTION OF WORK**

The **BIDDER** shall prosecute the work continuously and diligently in the order and manner set out in his schedule as approved by the **CITY**. He shall provide sufficient satisfactory materials, labor, and equipment to ensure that the work will be completed in a satisfactory manner within the time specified in the **CONTRACT**.

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

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

**ITEM II**  
**SCOPE OF WORK**

**Bid No. 042-22**  
**Lease of Fairhope Soccer Concession Stand**

The City of Fairhope ("Owner") is requesting responses from Bidders ("Contractor" or "Bidder") to lease the Fairhope Soccer Concession Stand. The lease would be for an initial one (1) year term, with an option to renew for two (2) additional years.

The Fairhope Soccer Complex is located at 18383 County Road 13, Fairhope, AL 36532. The Complex includes ten (10) soccer fields, a walking track and a play area.

**Schedule**

The Fairhope Soccer Club has two (2) competition seasons per year: Spring (March through May) and Fall (September through November). The game times start at 8:30 a.m. on Saturdays and 5:30 p.m. on Tuesdays and Thursdays (see Attachment A Fall 2022 Soccer Schedule). Contractor shall be required to open the concession stand at the same time as the earliest game time and stay open until fifteen minutes after the last game of the day ends.

The Fairhope Soccer Complex may also host other events throughout the year, that may not be scheduled at the time of this bid. The concession stand is required to be open for any additional events, unless otherwise notified.

**Equipment**

The following equipment is currently within the food concession facility:

- One (1) Hot Dog Grill
- One (1) Hot Dog Bun/Roll Warmer
- One (1) Heated Holding Proofing Cabinet, Mobile
- One (1) Range, 60", 6 Burners, 24" Griddle/Broiler
- Three (3) Fryer, 35-40 lb oil capacity
- Two (2) Standing Heat Lamps
- Two (2) Steam Table Pans
- Two (2) Wire Pan Racks/Grate
- One (1) Work Table, 36" x 30"
- One (1) Reach-In Freezer, 42.1 Cu. Ft.
- One (1) Reach-In Refrigerator, 42.3 Cu. Ft.
- One (1) Nacho Cheese/Chips Warmer
- One (1) Coffee Brewer
- One (1) Popcorn Popper
- Two (2) Work Tables, 60" x 30"
- One (1) Work Table, 48" x 24"
- Two (2) A-Frame Sign Boards
- One (1) Ice Maker, 30" Width
- One (1) Chest Freezer, 9 Cu. Ft.
- One (1) Undercounter Refrigerator, 1.1 Cu. Ft.
- One (1) Microwave Oven, 0.8 Cu. Ft.

The City shall confirm the supplied equipment list prior to contract execution. Upon expiration of the contract, the Contractor shall return to the City all equipment listed as confirmed prior to contract execution, and as it may subsequently be amended. The Contractor shall maintain all equipment in good condition.

The City does not guarantee the condition of the listed equipment. The Contractor shall be the insurer of the City against the risk of loss or theft or damage as the result of the Contractor's sole or contributory negligence to any fixtures, equipment or personal property owned by the City which is located at the concession site. Contractor shall promptly repair or replace the same within five (5) calendar days of such loss, damage or theft.

**Cleaning**

Contractor shall be responsible for cleaning and maintenance during the duration of lease. Concessions stand shall be cleaned and vacated at the end of each soccer season.

The Contractor shall keep all fixtures, equipment and personal property whether owned by the Proposer, the City, or a third party in a clean, sanitary and orderly condition at all times and conduct the concession strictly in accordance with all applicable code requirements, including but not limited to, the Baldwin County Health Department. Contractor shall also be responsible for maintaining the floors in the preparation area, the storeroom area and the service area. The Contractor shall also keep trash areas clean. The City will dispose of trash collected by the Proposer from concession area. Said trash shall be deposited by the Contractor in provided containers in locations designated by the City. The City shall furnish exterminating services on a regular basis.

The City shall provide utilities to the Contractor at no additional charge, which includes electricity, solid waste disposal, water and sewer service. The City may require the Contractor to participate in a Recycling Program. The City shall not provide telephone or internet services or be responsible for charges incurred for these services.

### **Quality of Service**

Concession Operations shall be conducted to offer paramount service at all times. Food, drink and other items shall have a consistent quality.

Contractor shall operate concession facilities in a business-like manner.

Concession operations shall be conducted in an orderly manner without unnecessary disruption.

Contractor shall control and correct objectionable conduct, demeanor, and appearance of its employees, or as requested by the City.

### **Staffing**

Contractor shall bear all responsibility for the continuous staffing of the concession facility providing for prompt, efficient customer service. All State, County and City regulations pertaining to food service personnel must be adhered to at all times. The Contractor must ensure appropriate dress of all staff.

Labor relations, including hiring and termination, shall be the exclusive duty and right of the Contractor. The City shall reserve the right to review employees and require the replacement of those who are abusive, under the influence of or habitual users of alcohol or drugs, or whose conduct or appearance otherwise detracts from the facility's reputation or profitability. The Contractor shall not discriminate against any applicant or employee or customer because of race, color, religion, national origin or ancestry, age, sex, or physical disability.

### **Delivery of Goods**

The Contractor shall bear all responsibility for receiving, stocking and maintaining inventory of all goods received.

### **City's Right of Approval**

The City reserves the right of review and final approval for the following:

- Hours of Operation
- Menu and Pricing
- Review of Operations
- Advertising

In reserving these rights, the City does not intend to interfere with normal operations of the concession. Rather, these rights shall serve as safeguards against improper conduct or operations.

### **Licenses**

The Contractor, both corporate and individual, must be able to be fully licensed and certified by all regulatory, and subject to their guidelines, for the type of services to be performed. The Contractor must possess a City of Fairhope business license prior to start of operations for Food Service Concessions.

### **General Requirements**

1. Bidders shall be able to guarantee availability to work as soon as possible after the contract is awarded, and the Contract/Lease is fully executed, in order for concessions to be available as early as possible for the 2022 Fall Soccer Schedule.

**ITEM III  
BID RESPONSE FORM**

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Bid No: 042-22 Lease of Fairhope Soccer Concession Stand

Bids Due: Thursday, September 8, 2022, 10:00 A.M.

Minimum Lease Proposal Shall Be No Less Than \$833.00 Per Month or \$10,000.00 Per Year	
DESCRIPTION	LEASE BID (Price per Month)
Lease of Fairhope Soccer Concession Stand	

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

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

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

Each bid must give the full business address of the CONTRACTOR 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 CONTRACT or collusion among BIDDERS or prospective BIDDERS in restraint of freedom of competition, by CONTRACT to bid at a fixed price or to refrain from bidding or otherwise.

Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**If Individual or Partnership**

\_\_\_\_\_  
(Name of Individual or Partnership)

\_\_\_\_\_  
(Name of Partner Print)

\_\_\_\_\_  
(Name of Representative Authorized to sign Bids and CONTRACTs for the firm Print)

\_\_\_\_\_  
(Name of Partner Print)

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number ( ) \_\_\_\_\_ Fax Number ( ) \_\_\_\_\_

E-mail address \_\_\_\_\_ Alabama Contractor's License No. \_\_\_\_\_

Foreign Entity ID (if outside of Alabama) \_\_\_\_\_

**If Corporation or LLC**

Company \_\_\_\_\_

State of Incorporation \_\_\_\_\_

Company Representative \_\_\_\_\_  
(Representative Authorized to sign Bids and CONTRACTs for the firm Print)

Company Representative \_\_\_\_\_  
(Representative Authorized to sign Bids and CONTRACTs for the firm Signature)

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number ( ) \_\_\_\_\_ Fax Number(\_\_\_\_) \_\_\_\_\_

E-mail address \_\_\_\_\_ AL Contractor's License No. \_\_\_\_\_

Foreign Vendor Id \_\_\_\_\_

**BID PROPOSAL NOTARIZATION:**

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 \_\_\_\_\_, 2022.

NOTARY PUBLIC \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_/\_\_\_\_/\_\_\_\_

**ITEM IV  
CONTRACTOR INFORMATION**

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

**Bid No. 042-22  
Lease of Fairhope Soccer Concession Stand**

**Business Organization**

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

\_\_\_\_\_  
Doing-Business-As Name of CONTRACTOR:

\_\_\_\_\_  
Principal Office Address:

\_\_\_\_\_  
**LOCAL** Telephone Number: \_\_\_\_\_ Toll- Free \_\_\_\_\_  
**LOCAL** 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 CONTRACT recorded? Yes \_\_\_ No \_\_\_

Contact: \_\_\_\_\_ Email \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

**END OF CONTRACTOR INFORMATION SECTION**



3.07 **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.

3.08 **Certificate of Insurance**

**A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the City PRIOR to commencement of any work on the CONTRACT. Each policy shall be endorsed to provide ten (10) days written notice of cancellation to the CITY**

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

The insurer agrees with the insured as follows:

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

**END OF INSURANCE REQUIREMENTS**

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this "Lease") is made and entered into on the \_\_\_ day of \_\_\_\_\_, 2022 (the "Effective Date"), by and between the City of Fairhope, Alabama, an Alabama municipal corporation ("Lessor"), and \_\_\_\_\_ ("Lessee", and together with Lessor, the "Parties", or individually, a "Party").

### Recitals

- A. Lessor is the record title owner of that certain parcel of real property located in Baldwin County, Alabama, more particularly described on Exhibit A attached hereto (the "Master Parcel"), which is currently improved and operated as the Fairhope Sports Complex.
- B. A portion of the Master Parcel is currently improved with a concession facility and conference center (the "Property"), generally depicted on the site plan attached hereto as Exhibit B.
- C. The Property is declared to be surplus property of the Lessor and is not needed for public or municipal purposes during the term of this Lease. Lessor has agreed to lease the Property on the terms and conditions set forth herein.

### Agreement

**NOW THEREFORE**, for and in consideration of the premises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Lessor and Lessee hereby covenant and agree as follows:

**Section 1. PROPERTY.** Subject to and upon the terms and conditions set forth herein, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor for the term and rent herein set forth, all of Lessor's right, title and interest in and to the Property, together with a non-exclusive right to use all parking sites and pedestrian walkways within the Master Parcel.

**Section 2. TERM OF LEASE.** The Property shall be leased by Lessor to Lessee for a term of [\_\_\_\_\_] ( ) year(s)], commencing on the Effective Date and expiring at 12:00 midnight on the first anniversary of the Effective Date, unless otherwise extended by written agreement of the Parties or sooner expired or terminated in accordance with this Lease or by operation of law (the "Term").

**Section 3. RENT.**

(a) **Base Rent.** During the Term, commencing on the Effective Date, Base Rent for the Property shall be [\_\_\_\_\_] , payable in equal monthly installments of [\_\_\_\_\_]. The Base Rent shall be due and payable on or before the first (1<sup>st</sup>) day of each consecutive calendar month during the Term, and Lessee hereby agrees to pay the Base Rent to Lessor monthly in advance without the necessity of demand by Lessor and without any reduction, abatement, counterclaim or setoff, at \_\_\_\_\_, or at such other address, or by deposit to such bank account as may be designated by Lessor.

(b) **Gross Lease.** Lessor and Lessee intend for this Lease to be a "gross lease" in which Lessee is only responsible for the payment of (i) Base Rent, (ii) the costs incurred by Lessee for insurance pursuant to Section 6, and (iii) the costs incurred by Lessee for maintenance of the Property and Equipment

pursuant to Section 8, and (iv) the cost of the utilities Lessee utilizes within the Property pursuant to Section 9.

(c) **Default in Payment.** All amounts which Lessee assumes or agrees to pay pursuant to this Lease, which are not paid when due, may be paid by Lessor. Any amount so paid by Lessor, together with interest at the rate of twelve percent (12%) per annum (the "Default Rate") from the date of Lessor's payment, shall be due and payable by Lessee on demand by Lessor.

#### **Section 4. CONDITION OF PROPERTY**

(a) **Delivery of Property.** On the Effective Date, the Property will be delivered and Lessee shall accept the Property "WHERE IS, AS IS" in its present condition and as suited for the Permitted Use. Lessor has made no representation or warranty as to the condition of the Property or its suitability for any particular purpose. Lessor shall not be responsible for any latent defect or change of condition in the Property, and the Base Rent shall in no event be withheld or diminished on account of any defect therein, nor any change of condition thereof, nor for any damage occurring thereto, except as otherwise specified herein. Lessee acknowledges that Lessee is familiar with the Property and is aware of all conditions and defects, latent or otherwise, existing on the Property.

(b) **Equipment.** Lessee shall cause the Property to be equipped with fixtures and equipment (the "Equipment") generally described on Exhibit C attached hereto.

(c) **Ordinances and Restrictions.** The Property is leased to Lessee subject to existing easements, covenants and restrictions of record in the Probate Court of Baldwin County, Alabama (if any), and all laws, orders, ordinances, rules and regulations of governmental authorities.

#### **Section 5. USE OF PROPERTY.**

(a) **Permitted Use.** Lessee shall have the right to occupy the Property solely for the preparation and sale of concessions, general meeting and conference space and related uses thereto (the "Permitted Use"). At its own expense, Lessee will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Lessee's use of the Property.

(b) **Title to Equipment.** Title to the Equipment including any modifications or additions thereto during the Term shall be vested in Lessee until the expiration or termination of the Lease, at which time all title to and ownership of the Equipment shall automatically and immediately vest (without the necessity of any further action being taken by Lessee or Lessor or any instrument being executed and delivered by Lessee to Lessor) in Lessor. In addition, the Lessee and Lessor each agree and acknowledge that Lessee alone shall be entitled to all of the tax attributes of ownership, including, without limitation, the right to claim depreciation or cost recovery deductions. Notwithstanding the foregoing, Lessee shall execute and deliver any documents reasonably requested by Lessor evidencing conveyance and transfer of title.

(c) **Environmental Covenant.** Except cleaning or sanitation products that may be utilized or caused to be disposed of in the ordinary course of business, Lessee will not cause or permit any Hazardous Substance (as defined herein) to be brought upon, kept or used in or about the Property by Lessee or its agents, employees, contractors, licensees or invitees. If the Property become contaminated in any manner for which Lessee is legally liable or otherwise becomes affected by any release or discharge of a Hazardous Substance as a result of Lessee's actions, Lessee shall immediately notify Lessor of the release or discharge of the Hazardous Substances, and Lessee shall indemnify, defend (by counsel reasonably acceptable

to Lessor) and hold harmless Lessor from and against any and all claims, damages, fines, judgment, penalties, costs, liabilities or losses (reasonable damages caused by loss or restriction of rentable or usable space, or any reasonable damages caused by adverse impact or marketing of the space, and any and all sums paid for settlement of claims, attorney's fees, consultant fees and expert fees) arising during or after the Term and arising as a result of such contamination, release or discharge. This indemnification includes, without limitations, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision. For the purposes of this Lease, the following terms have the following meanings: (i) "Hazardous Substance" means any substance, material or waste that is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or that is or becomes similarly designated, classified or regulated under any Environmental Law, including without limitation asbestos, petroleum and petroleum products, and (ii) "Environmental Law" means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including without limitation CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980), RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).

(d) **Improvements to Property by Lessee.** Any alterations, changes, replacements, improvements and additions in and to the Property ("Lessee-Made Alterations"), shall require Lessor's prior written consent, which shall be withheld in Lessor's sole discretion. Lessee shall keep the Property free and clear of any mechanic's and materialman's liens arising in connection with any Lessee-Made Alterations. Should any mechanic's, materialmen's, or other lien be filed against the Property, or any part thereof for any reason whatsoever by reason of Lessee's acts or omissions or because of a claim against Lessee, Lessee shall, at its own cost and expense, cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Lessor, and Lessee shall indemnify and hold harmless Lessor from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorney's fees resulting therefrom. If Lessee fails to comply with this Section 5(d), Lessor shall have the option, but no obligation and without the necessity of investigating the validity thereof, of discharging or bonding any lien, charge order or encumbrance, and Lessee agrees to reimburse Lessor for all costs, expenses and other sums of money in connection therewith, with interest at the Default Rate specified herein.

(e) **Rules and Regulations.** This Lease is made subject to, and during the Term, Lessee agrees and will cause its agents, employees, contractors, customers, invitees and licensees to agree to comply with the rules and regulations set forth in the Exhibit D and any future rules and regulations at any time or times and from time to time promulgated by Lessor, which Lessor in its sole discretion shall deem necessary for the proper operation of the Master Parcel.

## **Section 6. INSURANCE.**

(a) **Lessee to Maintain Insurance.** At all times during the Term, Lessee shall pay, or cause to be paid, all premiums for and maintain in full force and effect the following policy of insurance with an insurance company admitted to do business in the State of Alabama and carrying a current A.M. Best Company rating of at least "A": general liability insurance in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) per person and Two Million and No/100 Dollars (\$2,000,000.00) per occurrence with regard to the Property; such policy of insurance shall name Lessor as an additional insured and shall be endorsed to provide a waiver of subrogation in favor of Lessor, its officers, agents and employees.

(b) **No Increased Risks.** Lessee shall not allow, permit or condone anything to be or remain upon or about the Property, nor carry on nor permit in the Property any trade or occupation, or suffer to be done anything which may render an increased or extra premium payable for any insurance (whether procured by Lessee or Lessor) on the Property against fire, or other perils included under standard extended coverage insurance.

**Section 7. WAIVER OF SUBROGATION.** Lessee hereby releases Lessor from any and all liability or responsibility to Lessee, or any other claim through or under Lessor by way of subrogation or otherwise, for any insured loss or damage covered by any insurance policies maintained on the Property, whether pursuant to this Lease or otherwise.

**Section 8. MAINTENANCE AND REPAIR.**

(a) **Maintenance Obligations.** Lessor shall, subject to events beyond its reasonable control, provide all normal and customary maintenance and repair to the common areas serving the public located within the Master Parcel and the exterior and structural components of the Property, including the heating, ventilation and air conditioning unit serving the Property; provided, however, that Lessor will not be responsible for or required to make, and Lessee will make, any repairs to the Property and/or the Master Parcel which may have been occasioned or necessitated by the negligence of Lessee, its agents, employees or invitees. Lessor shall not be liable for any damages resulting from its failure to make repairs, unless such failure continues beyond a reasonable time after receipt of notice of the necessity for such repairs. Lessee shall, at Lessee's sole cost and expense, maintain the Property, in good, clean and first-class condition and repair. Without limiting the generality of the foregoing, Lessee shall be solely responsible for maintaining the interior of the Property and repairing all fixtures, access points and interior walls within the Property.

(b) **Lessor's Entry.** Lessor shall have the right to enter upon the Property at all reasonable times during the Term for the purposes of inspection, maintenance, repair and alteration.

(c) **Responsibility of Lessee.** Except for maintenance or repair required as a result of reasonable wear and tear or as a result of damage solely caused by the gross negligence or willful misconduct of Lessor, Lessee shall, during the Term, maintain, service, repair and replace, if necessary, and keep in good condition and repair, at Lessee's sole cost and expense, the Equipment.

(d) **Condition at End of Term.** Lessee will surrender the Property and Equipment at the expiration of the Term or earlier termination of this Lease in as good condition as was tendered on the Effective Date, excepting only deterioration caused by ordinary wear and tear.

**Section 9. UTILITIES AND TRASH REMOVAL.**

**Section 10. TAXES.** Lessee shall be solely responsible for payment of all property taxes, assessments or payments in lieu of taxes levied against Lessee's personal property, if any, and shall pay any such assessed amount on or before the due date thereof.

**Section 11. DESTRUCTION.** If the Property shall be damaged by a casualty event, Lessor and Lessee shall have the right to terminate this Lease by providing advance written notice to the other party of the intent to terminate. In the event of termination pursuant to this Section 11, this Lease shall terminate immediately and neither Party shall have any further obligations with respect to this Lease, except for the provisions herein that expressly survive termination.

**Section 12. LIABILITY.**

(a) **Indemnification by Lessee.** Lessee hereby agrees, to the full extent permitted by law, to indemnify and hold harmless Lessor, and its respective officials, employees, members, managers, officers, agents, contractors, affiliates, servants, licensees, and invitees, from and against, any and all suits, actions, causes of action, damages, liability, costs, expenses and attorney's fees, of any kind or nature whatsoever incurred, paid by or demanded to be paid by Lessor, or its respective officials, employees,

members, managers, officers, agents, contractors, affiliates, servants, licensees, or invitees, arising from, relating to or in connection with any loss of life, bodily or personal injury or property damage arising from or out of the use or occupancy of the Property or any part thereof, including the parking areas and any common areas and facilities within the Property, by any person or entities, including licensees and invitees of Lessee, and whether occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, invitees, licensees or concessionaries or any other person, or otherwise. Lessor shall not be liable to Lessee or Lessee's employees, agents, contractors, licensees or invitees for any damage to person or property resulting from any act or omission of any visitor to the Property, except in the event such damage to person or property results from Lessor's willful misconduct.

(b) **Lessee Responsible for Property.** Lessee shall occupy the Property at its own risk, and hereby releases Lessor, and its officials, employees, members, managers, officers, affiliates, servants, licensees, and invitees to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury or property damage. Lessor, and its officials, employees, members, managers, officers, affiliates, servants, licensees, and invitees shall not be responsible or liable at any time for any loss or damage to Lessee's equipment, fixtures or other personal property of any nature whatsoever of Lessee.

(c) **Lessor Not Liable to Others Claiming Through Lessee.** Lessor and its officials, employees, members, managers, officers, affiliates, servants, licensees, and invitees, shall not be responsible or liable to Lessee or to those claiming by, through or under Lessee, or Lessee's employees, agents, customers, invitees, licensees or visitors for any loss or damage to either the person or property of Lessee or any other person or entity whatsoever, that may be occasioned by or through the acts or omissions of any persons or entities, whether occupying adjacent, connected or adjoining premises, or otherwise, and Lessee agrees to indemnify and hold harmless Lessor and its members, managers, officers, affiliates, servants, licensees, invitees and employees from and against all such loss or damage.

(d) **Defects: Lessor Not Liable.** Lessor shall not be responsible or liable to Lessee for any defect, latent or otherwise, on the Property, nor shall Lessor be responsible or liable for any injury, loss or damage to any person or to any property of Lessee or other person caused by theft or otherwise.

(e) **Acknowledgement.** The indemnity obligations set forth within Section 5 and Section 12 of this Lease shall survive the expiration of the Term or early termination of this Lease.

**Section 13. QUIET ENJOYMENT.** Lessee, upon paying the rents and performing all of the terms of this Lease, shall peaceably and quietly enjoy the Property, subject, nevertheless, to the terms of this Lease, any Field Use Agreement of the Lessor, or agreements to which this Lease is or shall become subordinated.

**Section 14. FIXTURES AND EQUIPMENT.**

(a) **Furniture and Inventory of Lessee.** Upon expiration or termination of this Lease, all improvements and additions to the Property shall adhere thereto and become the property of Lessor, with the exception of: food, supplies, and inventory (collectively, "Lessee Property"). Any such Lessee Property shall remain the property of Lessee, and Lessee may remove Lessee Property provided all terms and conditions of this Lease have been complied with by Lessee.

(b) **Damage Occasioned by Removal.** In case of damage to the Property by reason of the removal of Lessee Property, Lessee shall, at its expense, make all repairs to the Property reasonably required by Lessor.

(c) **Procedure at End of Term.** Notwithstanding anything contained in Section 14(a) hereof to the contrary, in the event Lessee does not remove any or all of Lessee Property from the Property before the expiration of this Lease (“Abandoned Property”), Lessee shall be deemed to have abandoned any such Abandoned Property. Lessor may dispose of or otherwise deal with any Abandoned Property in whatever manner Lessor shall deem appropriate.

**Section 15. ASSIGNMENT AND SUBLEASING.** Lessee shall have the right to assign or sublet (a “Transfer”) its interest in this Lease without prior consent from Lessor, provided that Lessee complies with the following for each Transfer: (i) each Transfer is for a term of no more than four (4) calendar days, (ii) each transferee shall operate in accordance with the terms of this Lease and the Permitted Use, and (iii) each Transfer is evidenced by a written instrument. Unless released by Lessor in writing, Lessee shall remain fully liable to perform its duties under this Lease during and following the term of each Transfer. Except as set forth above, Lessee shall not assign, sublease, mortgage, or encumber this Lease or any interest therein, in whole or in part, or any part of the Property, nor permit other persons to occupy the Property or any part thereof, nor grant any license or concession for all or any of the Property, without the prior written consent of Lessor, which may be withheld in Lessor’s sole discretion.

**Section 16. DEFAULT.**

(a) **Events of Default.** The following shall constitute events of default hereunder: (i) failure by Lessee to pay any Rent or other charges when due; (ii) failure by Lessee to comply with any provision of this Lease other than payments of Rent, when such failure is not cured within fifteen (15) days after written notice to Lessee; (iii) Lessee deserts, abandons, vacates or fails to cause the Property to be continuously operated; (v) Lessee becomes the subject of an action or proceeding relating to bankruptcy, criminal charges, or insolvency; (vi) Lessee shall make any material misrepresentation herein, or other materials provided by Lessee in connection with negotiating or entering into this Lease; (vii) any fraudulent conveyance or making of assignment by Lessee for the benefit of any or all of its creditors; or (viii) Lessee does or permits to be done anything which creates a lien upon the Property. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by law.

(b) **Lessor’s Remedies.** Upon the occurrence of any of such events of default, Lessor shall have the option to terminate this Lease on ten (10) days written notice to Lessee, and thereupon re-enter and take possession of the Property and dispossess Lessee. Nothing herein, however, shall be construed to require Lessor to re-enter and re-let in such event. Any such re-entry upon default shall be allowed by Lessee without hindrance and Lessor shall not be liable in damages for any such reentry or guilty of trespass or forcible entry. Any and all rights and remedies given under this Lease to Lessor in the event of any such default shall be cumulative, in addition to, and without waiver of or in derogation of, any right or remedy given to Lessor under any law now or hereafter in effect; (x) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof; (y) to sue for and collect any unpaid rent; and (z) Lessor may without terminating or canceling this Lease declare all amounts and Rent due under this Lease for the remainder of the Term to be immediately due and payable, and thereupon all Rent and other charges due hereunder to the end of the Term shall be accelerated.

(c) **Lessee’s Remedies.** If Lessor fails to perform any of its obligations hereunder within thirty (30) days after written notice from Lessee specifying in detail such failure (or if the failure cannot be corrected, through the exercise of reasonable diligence, within such 30 day period, if Lessor does not commence to correct same within such 30 day period and thereafter diligently prosecute same to completion), Lessee’s sole and exclusive remedy shall be an action for declaratory relief or actual monetary damages, excluding lost profits and lost economic damages, and Lessee hereby waives all other remedies, including without limitation the right to terminate this Lease. Unless and until Lessor fails to diligently pursue to cure

any default after such notice, Lessee shall not have any remedy or cause of action by reason thereof. All obligations of Lessor hereunder will be construed as covenants, not conditions, and all obligations of Lessor will be binding upon Lessor only during the period of its ownership of an interest in the Property and not thereafter. Anything to the contrary contained herein notwithstanding, the Lessor's liability hereunder, and the sources of payment of any obligations arising hereunder shall be limited to Lessor's equitable interest in the Property, including revenue incurred therefrom. In no event are the Lessor's obligations hereunder secured by a pledge of its tax revenue. nor shall the Lessor be required to expend tax proceeds in satisfaction of its obligations hereunder.

**Section 17. ATTORNEY'S FEES.** In the event that Lessor brings legal action against Lessee arising out of this Lease, Lessor shall be entitled to recover from Lessee all costs of suit and reasonable attorney's fees.

**Section 18. HOLD OVER.** Lessee shall pay Lessor 150% of the amount of Base Rent then applicable, together with all Additional Rent, for each month Lessee shall retain possession of the Property or any part thereof after expiration or earlier termination of this Lease, together with all damages sustained by Lessor on account thereof. The foregoing provision shall not serve to extend the Term.

**Section 19. FORCE MAJEURE.** Lessee (except with respect to the payment of Rent, which shall not be excused in any event) and Lessor shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond the control of such Party which shall include without limitation, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire and other casualty, epidemic or pandemic, inability to obtain any material services or financing or through acts of God.

**Section 20. WAIVER OF LIABILITY.** Anything contained in this Lease to the contrary notwithstanding, Lessee agrees that Lessee shall look solely to the interest of Lessor in the Property for the collection of any judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default or breach by Lessor with respect to any of the terms and provisions of this Lease to be observed and/or performed by Lessor; subject, however, to any prior rights of the holder of any mortgage covering the Property. This provision shall not be deemed, construed or interpreted to be or constitute an agreement, expressed or implied, between Lessor and Lessee that Lessor's interest in the Property shall be subject to impressment of an equitable lien or otherwise.

**Section 21. NOTICES.** Each notice, request, and communication required under this Lease shall be in writing. It will be deemed to have been received: (i) on personal delivery; (ii) on the first business day after its deposit for overnight delivery with a recognized overnight delivery service; (iii) if by facsimile, on receipt of electronic confirmation of its receipt (but only if the facsimile is followed by delivery by United States mail); or (iv) if mailed, on actual receipt (but only if sent by registered or certified mail, with return receipt requested, addressed to the other party's address below):

To Lessor:

City of Fairhope, Alabama  
Attn: \_\_\_\_\_  
161 North Section St.  
Fairhope, AL 36532

With a copy to:

Hand Arendall Harrison Sale LLC  
Attn: Christopher Williams  
71 N Section St.  
Fairhope, AL 36532

To Lessee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**Section 22. INVALIDITY.** If any term or provision of this Lease, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Section 23. BINDING EFFECT.** The covenants and agreements herein contained shall be binding upon and inure to the benefit of the respective parties hereto, their legal representatives, successors and assigns (subject to the restrictions against assignment as set forth above).

**Section 24. TIME IS OF THE ESSENCE.** Time is of the essence in the performance by Lessee of any covenant or obligations hereunder.

**Section 25. WAIVER OF LIEN.** Lessee shall have no right, and Lessee hereby waives and relinquishes all rights which Lessee might otherwise have, to claim any nature of lien against the Property or to withhold, deduct from or offset against any rent or other sums to be paid to Lessor by Lessee, except as expressly provided under this Lease.

**Section 26. CAPTIONS OR TITLES.** The captions or titles used throughout this Lease are for reference and convenience only and shall in no way define, limit or describe the scope or intent of this Lease.

**Section 27. GOVERNING LAW.** This Lease shall be governed by, and construed in accordance with, the internal laws of the State of Alabama without regard to its principles concerning conflicts of law.

**Section 28. ENTIRE AGREEMENT.** The recitals and terms and provisions of all Exhibits described herein and attached hereto are hereby made a part hereof for all purposes. This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof, and all prior correspondence, memoranda, agreements or understandings (written or oral) with respect hereto are merged into and superseded by this Lease.

**Section 29. AUTHORITY.** Lessee warrants, represents and covenants that (a) it is a duly organized and existing legal entity under the laws of the state in which it is organized, and in good standing in the State of Alabama, (b) it has full right and authority to execute, deliver and perform this Lease, and (c) the person executing this Lease on behalf of Lessee was authorized to do so.

**Section 30. COUNTERPARTS.** This Lease may be executed in counterparts with the same effect as if the parties had executed one instrument, and each such counterpart shall constitute an original of this Lease.

*{Remainder of Page Intentionally Left Blank}*

SAMPLE LEASE

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease on the date first above written.

**LESSOR:**

City of Fairhope, Alabama  
an Alabama municipal corporation

By: \_\_\_\_\_  
Sherry Sullivan, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Lisa Hanks, City Clerk

**Lessee:**

Company Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

SAMPLE LEASE

**EXHIBIT A**  
**Master Parcel**

SAMPLE LEASE

**EXHIBIT B**  
**Site Plan**

SAMPLE LEASE

**EXHIBIT C**  
**Description of Equipment**

SAMPLE LEASE

**EXHIBIT D**  
**Rules and Regulations**

1. Alcoholic beverages, glass bottles, fireworks, fires, and/or grills are not permitted on the Master Parcel.
2. Sidewalks, doorways, vestibules, halls, stairways and other similar areas shall not be obstructed or used for any purpose other than ingress and egress.
3. Plumbing fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. The cost to repair and damage resulting to any such fixtures or appliances from misuse by a lessee and/or transferee shall be paid by such lessee.
4. Use of space heaters or floor heating devices is strictly prohibited.
5. Lessees shall exercise reasonable precautions in protection of their personal property from loss or damage by keeping doors to unattended areas locked.
6. Lessor reserves the right to deny entrance to the Master Parcel or remove any person or persons from the Master Parcel in any case where the conduct of such person or persons involves a hazard or nuisance to the public or in the event of other emergency, riot, civil commotion or similar disturbance involving risk to the Master Parcel or the general public.



## **ITEM VII**

### ***CITY OF FAIRHOPE***

### ***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.FairhopeAL.gov](http://www.FairhopeAL.gov). It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the bid submission

#### **4. ADDITIONAL ORDERS**

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

#### **5. APPLICABLE LAW**

This Agreement is deemed to be under and shall be governed by and construed according to the laws of the 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 attorney fees for trial and on appeal, of any kind and nature, arising or growing out of, or in any way connected with the performance of this Contract / Agreement / Purchase Order, to the extent caused by a negligent act or omission of the awarded vendor, their agents, servants, employees, Subcontractors, or others associated with the awarded vendor. The awarded vendor shall be responsible for damage to any equipment excluded from this agreement, or damage or injury caused by any equipment excluded from this agreement, only to the extent that the damage or injury is caused by a negligent act or omission of the awarded vendor or caused by failure of the awarded vendor's supplied product to perform as specified.

**26. INSPECTION**

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

**27. INSPECTION OF PREMISES**

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

**28. INSURANCE**

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

**29. INVITATION TO BID**

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

**30. INVOICING, DELIVERY, PACKAGING**

Invoices shall be prepared only after ordered materials have been delivered. All invoices must show the purchase order number. Unless otherwise specified in writing, vendors shall not ship any material without an authorized Purchase Order from the City of Fairhope Purchasing Department. All packages delivered must show the purchase order number. The awarded vendor will be required to furnish all materials, equipment and/or service called for at the bid price quoted. In the event the awarded vendor fails to deliver within a reasonable period of time, as determined by the City of Fairhope, the right is reserved to cancel the award and subsequent purchase order and purchase from the next lowest responsible bidder the items needed. The original awarded vendor will be back charged the difference between the original contract price and the price the City of Fairhope has to pay as a result of the failure to perform by the original awarded vendor. All bids will remain firm for acceptance for 60 days from the date of bid opening. Prices shall be net F.O.B., Prepaid and Allow, City of Fairhope chosen site, Baldwin County, AL. The title and risk of loss of the goods will not pass to the City of Fairhope until receipt and acceptance takes place at the F.O.B. point.

**31. LABELING**

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

**32. LOSS OR DAMAGE IN TRANSIT**

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

**33. MANDATORY SITE VISIT**

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

**34. MONITORING OF SERVICES**

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

**35. NONCONFORMING MERCHANDISE**

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

**36. NON-DISCRIMINATION**

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

**37. NON-EXCLUSIVE**

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

**38. NOTIFICATION AND ACCIDENT REPORTS**

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

**39. PACKAGING**

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

**40. PATENTS**

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

**41. PAYMENT**

Invoices -- Upon completion of service and delivery of materials specified in the applicable Contract / Agreement / Purchase Order, awarded vendor will submit an invoice and signed delivery ticket to:

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

All invoices must reference appropriate Purchase Order Numbers Payment of Invoice: All invoices received by the City of Fairhope are payable within thirty (30) days from the date of receipt by the City of Fairhope, provided they are approved by the City of Fairhope.

**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.

**49. RIGHT TO AUDIT**

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

**50. 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.

**51. 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.

**52. 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.

**53. 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.

**54. 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.

**55. TABULATION**

Bid results are posted on The City of Fairhope's web site: [www.FairhopeAL.gov](http://www.FairhopeAL.gov). The awarded vendor will be sent a written notification.

**56. 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.

**57. 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.

**58. 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.

**59. 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.

**60. 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.

**61. 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.

**62. 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.

**63. 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.

**64. 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 VIII

### ALABAMA IMMIGRATION ACT CONTRACT REQUIREMENTS

#### 1.0 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.

#### 2.0 Definitions

**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.

**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:

- a. 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.
- b. 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, an any business entity that is operating unlawfully without a business license.

**CONTRACTOR.** A person, employer, or business entity that enters into a CONTRACT 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.

**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.

**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.

**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.

**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.

**SUB-CONTRACTOR.** A person, business entity, or employer who is awarded a portion of an existing CONTRACT by a CONTRACTOR, regardless of its tier.

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

### 3.0 **Mandatory Clause**

All CONTRACTS or CONTRACTS 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 CONTRACT, 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 CONTRACT and shall be responsible for all damages resulting therefrom."***

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.

### 4.0 **CONTRACTS Involving Business Entity, or Employer**

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.

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.

### 5.0 **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-BIDDERS 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.

### 6.0 **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.**

**END OF ALABAMA IMMIGRATION ACT CONTRACT REQUIREMENTS**

**ITEM IX**

**INVITATION SUMMARY**

**Bid No. 042-22  
LEASE OF FAIRHOPE SOCCER CONCESSION STAND**

Bid Name:	<b>BID 042-22 Lease of Fairhope Soccer Concession Stand</b>
Issue Date:	August 21, 2022
Certificate of Insurance Requirements:	See Item V
Deadline for Questions Date:	Friday, September 2, 2022, 11:00 A.M.
<b>Bid Due Date:</b>	Thursday, September 8, 2022, 10:00 A.M.
City Internet Site:	<a href="http://www.FairhopeAL.gov">www.FairhopeAL.gov</a>
<b>SEALED Bid Response</b> Copies to submit:	One (1) Original and One (1) Identical Paper Copy
Purchasing Department Contact for questions:	<a href="mailto:Purchasing@FairhopeAL.gov">Purchasing@FairhopeAL.gov</a> (251) 928-8003

**END OF INVITATION SUMMARY**

## **FALL SOCCER SCHEDULE**

- Opening Day-Saturday, September 17<sup>th</sup>
- Saturday, September 24<sup>th</sup>
- Saturday, October 1<sup>st</sup>
- Tuesday, October 4<sup>th</sup> or Thursday, October 6<sup>th</sup>
- Saturday, October 15<sup>th</sup>
- Saturday, October 22<sup>nd</sup>
- Tuesday, October 25<sup>th</sup> or Thursday, October 27<sup>th</sup>
- Saturday, November 5<sup>th</sup>
- End of Season--Saturday, November 12<sup>th</sup>

**Game Times:** Saturdays-8:30am, 9:30am or 10:30am Tuesday/Thursdays-5:30pm or 6:30pm

**HALLOWEEN BLAST** October 29-30<sup>th</sup> Saturday-8am-9pm Sunday 8am-4pm