

ADDENDUM NO. 01
CITY OF FAIRHOPE
Bid No. 002-15 Beverage Concession 2015

Following the non-mandatory pre-bid meeting, the bid documents for this Bid shall be amended, revised and changed in the following particulars as provided by Tom Kuhl of the Recreation Department:

1. Please discard page 4 of ITEM II, INVITATION TO BIDDERS beginning with "consent shall not..." and replace with **ITEM II, INVITATION TO BIDDERS REV1** (attached)
2. Please discard page 1 of ITEM III, BID FORM, and replace with **ITEM III, BID FORM rev1** (attached)
3. Please replace page 1 of ITEM VIII SCOPE OF WORK AND SPECIFICATIONS and replace with **ITEM VIII SCOPE OF WORK AND SPECIFICATIONS rev1 (pg 1)** (attached)
4. Please replace page 4 of ITEM VIII SCOPE OF WORK AND SPECIFICATIONS and replace with **ITEM VIII SCOPE OF WORK AND SPECIFICATIONS rev1 (pg 4)** (attached)
5. Discard EXHIBIT A and replace with **EXHIBIT A rev1** (attached)
6. Discard EXHIBIT B FRANCHISE AGREEMENT and replace with **EXHIBIT B FRANCHISE AGREEMENT rev1**

QUESTIONS AND ANSWERS FROM POTENTIAL BIDDERS:

Question No. 1:

We would like to request either the total dollar amount or the number of bottle and can cases, by package, purchased by the City of Fairhope for all Recreation Concessions listed in the RFP for Bid No. 002-15 for either the last 12 months or all of 2013, whichever of the two may be available.

Answer to Question No. 1

No summations are available. Product was procured for the concessions primarily by the organizations granted the use of said Properties/Facilities.

Question No. 2:

We request clarification in Section 8.1.1.1 describing the term "all non-alcoholic beverages". We carry other items besides Fountain syrup and bottle and can drinks. Will we be designated the sole supplier in each beverage category that we have product available?

Answer to Question No. 2

The beverages to be supplied are itemized on Item III BID FORM.

Question No. 3:

Section 8.9.1 lists City Facilities that currently have vending machines. Is the total number of machines in each facility available? Number of Vendors by package, if there are both bottle and can vendors in these locations? Are you aware of need for any additional vending machines in the next 12 months? During the next 36 months?

Answer to Question No. 3

Yes, see EXHIBIT A rev1 (attached). Also see ITEM VIII, SCOPE OF WORK AND SPECIFICATIONS: 8.9.3--possible future locations.

Question No. 4:

We request clarification of the Franchise Fee descriptions. In section 3.1.2, VENDING MACHINE FRANCHISE is listed and refers to a payment of 20% of Gross Receipts. Section 4.1 refers to 20% of Gross Revenue but does not state "from vending machine revenue only". We want to have a clear understanding that only the revenue generated by each beverage vending machine during the length of this agreement is subject to the 20% Fee. That would mean that we are assuming that any revenue from product sold to any other entity designated by the City of Fairhope for any purpose will not be included in the Fee agreement

Answer to Question No. 4

Franchise Fee is 20% of Gross Receipts from Vending Machine Revenue only.

Question No. 5

Are we allowed to ask additional questions and for clarification of items during the PREBID MEETING if we have not submitted them in writing prior to 10:00am next Wednesday?

Answer to Question No. 5

Yes

Question No. 6

Can we still sell other items, not included in the Contract to Quail Creek, and to the Concessionaires?

Answer No. 6

Yes, but outside of the contract. The City and Quail Creek, can buy items not listed on the contract, but it will be accomplished by separate P.O.

Question No. 7

Are Fairhope High School Athletics included in this contract?

Answer No. 7

Yes, the Booster Club and any support organization that utilizes the City facilities as concessionaires are included.

Question No. 8

On average in the concession stands, is there one or two fountains?

Answer No. 8

Most concession locations do not have fountains. Quail Creek is the only one that does. However if the concessionaires want to have fountains, they can request them.

Question No. 9

There are items listed here in the bid document, but we have new items added to our inventory all the time. How can we introduce them?

Answer No. 9

The list was developed by discussion with the concessionaires about their needs. This does not keep you from dealing with the concessionaires as they will be directly invoiced. The contract can be amended if the need arises.

Bidders are to sign and include signed Addendum No.1 with submitted bid documents.

Acknowledged:

_____ Company

_____ By

Daniel P. Ames
Purchasing Manager City of Fairhope
Posted: 10-23-2014

ITEM II INVITATION TO BIDDERS REV1

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

2.21 PROSECUTION OF WORK

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

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

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

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

2.22 EXCEPTIONS / CHANGES

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

2.23 INSURANCE

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

**ITEM III
BID FORMrev1**

Date: ____/____/____

Bid Number: 002-15

Bid Name: BEVERAGE CONCESSION 2015

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

3.0.1 The Contractor agrees to complete all the work within timeframe stated in contract. Base bid will include all labor, materials, equipment, shipping, overhead, profit, bonds, insurance and all other costs necessary to provide the complete services outlined within this contract and scope of work. The owner agrees to provide the following materials: NONE

3.1 BID EVALUATION:

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

3.1.1 BEVERAGES

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

3.1.2 VENDING MACHINE FRANCHISE

**Percent of Gross Receipts from
Franchised Machines**

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

Agree _____

ITEM VIII
SCOPE OF WORK AND SPECIFICATIONS rev1 (pg1)

BID NO. 002-15 BEVERAGE CONCESSION 2015

8.0 SCOPE

- 8.0.1 The City of Fairhope, Alabama is seeking bids from qualified firms to provide beverage concession services in accordance with the terms, conditions, and specifications contained in this bid. It is the intent of the City to award a single contract to the lowest responsive and responsible bidder.
- 8.0.2 The attached specifications are intended and provided solely as a general and non-exhaustive expression of the intent and purpose of the City of Fairhope regarding this bid; said specifications should be so considered by the bidders. The use of specific names is not intended to restrict the bidder or any seller or manufacturer, but is solely for the purpose of indicating the type, size and quality of materials, product services, or equipment best suited for the City of Fairhope. Accordingly, the bidder admits and agrees that said specifications are not complete in every detail and that the work and materials not indicated or expressly mentioned in said specifications, but which are reasonably necessary for the full and faithful performance of the item(s) bid in accordance with the full and faithful intent, will be included in the bid and incorporated in the work by the bidder and at the bidder's sole expense, the same as if indicated and specified.
- 8.0.3 Minimum specifications MUST be met. Additional features and/or capabilities not included in the specifications may be included in the bid. The City of Fairhope reserves the right to reject any or all bids for any reason.
- 8.0.4 **BID EVALUATION:** Each response will be reviewed prior to the selection process for completeness and adherence to format. Failure to complete all instructions and supply all required submittals may result in the vendor being declared non-responsive.
- 8.0.5 The services described herein outline the precise scope of work that is to be performed by the successful bidder at the City of Fairhope for the contractual period of three (3) years. The contract will include, but is not limited to providing non-alcoholic beverage services and may be in both Individual container and fountain dispensed formats, in the following venues:
1. City of Fairhope recreation park concessions
 2. Quail Creek Golf Course
 3. City Functions
 4. Vending machine services on City of Fairhope properties
- 8.1 **FRANCHISE AGREEMENT**
As part of the contract, the Awarded Vendor will enter into a Franchise Agreement with the City of Fairhope for the vending machine franchise (see **ITEM X CONTRACT** and **Exhibit B**).
- 8.1.1 **CITY OF FAIRHOPE RECREATION PARK BEVERAGE CONCESSIONS**
- 8.1.1.1 The City Fairhope owns various properties/facilities at which competitive sporting events are performed by organizations granted the use of said properties/facilities by the City of Fairhope (See Exhibit B for Properties/Facilities List). The Awarded Vendor will supply to those events, listed on Item II Bid Form non-alcoholic beverages including, but not limited to soft drinks, juice, water, and isotonic beverages; whether ordered directly by the City of Fairhope, or any of the organizations granted the use of said Properties/Facilities by the City of Fairhope. At the listed properties/facilities, the awarded vendor will also supply all necessary equipment in which to store and dispense the ordered and delivered beverage products, in a dispense-ready state, including proper temperature.
- 8.1.1.2 The Awarded Vendor shall maintain the equipment in a good state of repair at all times, and shall promptly repair and replace broken or damaged equipment, so as not to interfere with event functions. Costs relating to the repair or replacement of such items, stolen, lost, or damaged, shall be at the expense of the Awarded Vendor.

ITEM VIII SCOPE OF WORK AND SPECIFICATIONS rev1 (pg 4)

8.9 SPECIFICATIONS:

8.9.1 Product

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

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

8.9.2 Vending Machine Locations

- Recreation Center
- City Pool
- City Hall
- City Services and Public Utilities
- James P. Nix Center
- Boys & Girls Club
- Stimpson Park
- Welcome Center
- Police Station
- Quail Creek Golf Course

8.9.3 Concession Locations

Fairhope Municipal Park including: Stadium, High School Baseball, and Youth Baseball.

Founders Park including: Youth Softball, Youth Soccer, and High School Softball.

Barnwell Park including Youth Football and Adult Softball.

Fairhope Pool

Quail Creek Golf Course

Possible future locations as approved by CITY:

- One park and one building

EXHIBIT A rev1

Vending Machine Locations

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

Concession Locations

Fairhope Municipal Park

Stadium
High School Field
Youth Baseball
Pool

Founders Park

Soccer
Youth Softball
High School Field

Barnwell Park

Youth Football

Quail Creek Golf Course

Concession Stand

Exhibit B
FRANCHISE AGREEMENT
(Vending Machines)

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

RECITALS

Grantee is a (sole proprietor, corporation, LLC) with a principal place of business at _____, Fairhope, AL 36532. Grantee is engaged in the business of _____ to the public. Grantee proposes to install and operate vending machines in various locations on city property and in city building as more specifically designated on Exhibit "A" attached hereto and incorporated herein. Grantee requests that the City grant to Grantee a franchise to install, maintain and operate this business on public property at the above designated locations.

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

SECTION 1

Section 1.1 DEFINITIONS

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

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

Section 1.2 REQUIREMENTS FOR FRANCHISE

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

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

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

(d) No franchise shall be granted by the City in the Central Business District located in downtown Fairhope, except a franchise may be granted in city buildings and on city property in the Central Business District.

Section 1.3 TERM OF FRANCHISE, RENEWAL

(a) The duration of this franchise agreement granted pursuant to this Resolution shall be for three years beginning on the date this Franchise Agreement is signed by both parties.

Section 1.4 ENFORCEMENT OF FRANCHISE

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

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

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

Section 1.5 CONFLICT WITH LAWS

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

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

SECTION 2

Section 2.1 PROCEDURE FOR GRANTING FRANCHISE

(a) Any person or entity desiring a franchise shall pay a nonrefundable application fee of \$150.00 by cashier's check, certified check or money order payable to City of Fairhope. This is a separate fee from the Franchise fee.

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

SECTION 3

Section 3.1 CONSTRUCTION AND INSTALLATION

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

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

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

Section 3.2 CONDITIONS FOR USE OF PUBLIC PROPERTY

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

Section 3.3 OPERATION AND MAINTENANCE

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

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

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

SECTION 4

Section 4.1 FRANCHISE FEE

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

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

Section 4.2 INDEMNIFICATIONS

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

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

A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the City, its officers, boards, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Grantee under franchise herein granted or alleged to have been so caused with a minimum of liability of (see ITEM VII INSURANCE) for personal injury or death of any two or more persons in any one occurrence. Renewal certificates of such insurance shall be promptly forwarded to the City as such renewals are made, and such insurance shall be kept in force and effect during the term of this grant or franchise. The Grantee and/or the insurance company shall file with the City a written notice of any material alteration or cancellation of any insurance coverage at least thirty (30) days prior to the effective date of such alteration or cancellation. Property damage insurance indemnifying, defending and saving harmless the City, its officers, boards, agents, and employees from and against all claims by any person whatsoever for property damage occasioned by the operation of a Grantee under franchise granted by City caused with a minimum liability of (see ITEM VII INSURANCE) for property damage to two or more persons in any one occurrence. Said policies of insurance shall name the City as an additional insured.

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

Section 4.3 BOOKS/RECORDS OF GRANTEE

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

Section 4.4 GRANTEE ACKNOWLEDGEMENT

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

SECTION 5

Section 5.1 SALE OR LEASE OF FRANCHISE

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

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

Section 5.2 REVOCATON OF FRANCHISE

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

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

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

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

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

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

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

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

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

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

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

Section 5.3 RIGHTS UPON REVOCATION OR NON-RENEWAL

In the event the City determines that a franchise should not be renewed at its expiration or that a franchise should be revoked for cause as permitted hereunder, the Grantee shall be allowed three months from the date of such determination, or such longer period as the City may permit, to negotiate the sale of its _____ within the City to another provider at a price acceptable to the Grantee, provided that such sale shall be approved by the City pursuant to Section 5 herein. In the event a sale to a provider acceptable to the City is not then negotiated within the time allowed, then an independent expert shall be appointed to determine the fair market value of the Grantee's _____. The appointment of said expert shall be by mutual agreement between the City and the Grantee; provided, however, that if the City and the Grantee are unable to reach an agreement within 30 days of the written decision of termination, then the matter of appointing an expert shall be submitted, within ten (10) days immediately following expiration of the former 30 days, to the American Arbitration Association [unless the City and the Grantee mutually agree upon some other arbitrator(s)], and the expert designated by the American Arbitration Association or such other arbitrators shall be appointed. The cost of employing the arbitrator or arbitrators and the cost of arbitration, if required, shall be borne equally by the Grantee and the City. Upon determination of the fair market value of the Grantee's system by the appointed independent expert, the Grantee shall be required to sell its system to any entity which offers said fair market value and which has obtained the approval of the City to purchase said system.

Section 5.4 REMOVAL AND ABANDONMENT OF PROPERTY

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

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

Section 5.5 MISCELLEOUS PROVISIONS

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

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

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

THE CITY OF FAIRHOPE, ALABAMA

By: _____
Timothy M. Kant, Mayor

Attest: _____
Lisa A. Hanks, MMC
City Clerk

By: _____
, Grantee