

**CONTRACT DOCUMENTS
BID FORM AND SPECIFICATIONS
FOR
BID NO. 026-11
QUAIL CREEK GOLF COURSE FOOD SERVICE**

FAIRHOPE CITY COUNCIL

Timothy M. Kant, Mayor
Lonnie L. Mixon, Council President

Set _____

**CITY OF FAIRHOPE
BID INVITATION**

June 30, 2011

Sealed proposals will be received by the City of Fairhope of Baldwin County, Alabama, in the City of Fairhope offices, 555 South Section St. Fairhope, Alabama, until 2:00P.M. July 21, 2011, and then publicly opened thereafter, for furnishing all labor and materials, and performing all work required by the City of Fairhope and described as follows:

Bid Number 026-11, QUAIL CREEK GOLF COURSE FOOD SERVICE

Questions or comments pertaining to this bid must be presented in writing, sent as e-mail to the attention of the Purchasing Manager, Daniel P. Ames, P.O. Drawer 429, 555 South Section St., Fairhope, Al 36532, e-mail: .ames@cofairhope.com, , Seventy Two (72) hours prior to the bid opening or will be forever waived.

All bids must be on bid forms provided in the Bid Documents. **BID BOND IS WAIVED.**
There will be a non-mandatory pre-bid meeting on July 7, 2011, 10:00 AM at Quail Creek Golf Course, 19841 Quail Creek Dr., Fairhope, Al 36532.

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

All bids, with their guarantee (when required), must be enclosed in a sealed, opaque envelope, clearly identified on the outside as a "**Sealed Bid**" with **Item Name, Bid Number, City of Fairhope's Name and Address and Bidder's Name and Address**. Each bid must be in a separate envelope. Bids made out in pencil will not be accepted.

Failure to observe the instructions contained herein will constitute grounds for rejection of your bid. The City reserves the right to accept or reject all bids or any portion thereof whichever is in the best interest of the City of Fairhope.

The company that is awarded the bid must have Workman's Compensation Insurance on all of its employees if work is done on City premises. General Liability Insurance must be maintained to hold the City harmless in the event of an accident. Proof of Workman's Compensation Insurance if work is done on City premises and General Liability Insurance specifying coverage must be submitted prior to starting work. See Instructions below for details.

No bids will be considered unless the bidder, whether resident or non-resident of Alabama, is properly qualified to submit a proposal for this type of work in accordance with all applicable laws of the State of Alabama. Where applicable, this shall include evidence of holding a current license from the State Licensing board for General Contractors, Montgomery, Alabama, as required by Chapter 8 of Title 34, of the Code of Alabama, 1975. In addition, non-residents of the State if a corporation, shall show evidence of having qualified with the Secretary of State to do business in the State of Alabama. Bidder must have a current business license or purchase a business license with the City of Fairhope prior to issuance of contract or Purchase Order.

Daniel P. Ames,
Purchasing Manager

Posted 06-30-2011

INSTRUCTIONS TO BIDDERS

1. PREPARATIONS FOR BIDS:
 - a. Forms furnished, or copies thereof, shall be used, and strict compliance with the requirements of the invitation, these instructions, and instruction 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 form shall be suitably filled in.

2. LABOR AND MATERIALS NOT TO BE FURNISHED BY CITY OF FAIRHOPE:
 - a. The City of Fairhope, Alabama, will not furnish any labor, material, or supplies unless specifically provided for in the Contract, or Purchase Order documents.

3. SIGNATURE TO BIDS:
 - a. 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 individual signing. When requested by the City of Fairhope, Alabama, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

4. ALTERNATE BIDS:
 - a. Alternate bids will not be considered unless called for. Each bid 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.

5. CORRECTIONS:
 - a. 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.

6. OWNER:
 - a. Where the word "Owner" appears herein, the same refers to City of Fairhope, Alabama, and includes the Fairhope City Council, its governing body.

7. INSURANCE:
 - a. If work is to be performed by awarded bidder, The insurance policies of any insurance company recognized as an admitted carrier by the State of Alabama, will be accepted as insurance as required for any bid or contract. See the instructions hereinafter contained with respect to the type, form, and amounts of required insurance policies.

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

i. Damage to Rented Premises \$1,000,000

j. 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. Note: City of Fairhope as additionally insured.

8. MARKING AND MAILING BIDS:

a. Mark and mail bids per the instructions above in Bid Invitation.

9. TIME FOR RECEIVING BIDS:

a. Bids received prior to the time of opening will be securely kept, unopened. The Owner will decide when the specified time has arrived, and no bid will be considered if received thereafter, except that when a bid arrives by mail after time for opening, but before award is made, and it is shown to the satisfaction of the Owner that the non-arrival on time was due solely to delay in the mails for which the bidder was not responsible, such bid will be received and considered. No responsibility will attach to the City of Fairhope, or Fairhope City Council for the premature opening of a bid not properly addressed or identified. Unless specially authorized, telegraphic bids will not be considered.

10. WITHDRAWAL OF BIDS:

a. Bids may be withdrawn on written or telegraph request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

11. BIDDERS PRESENT:

a. At, or shortly thereafter, the time fixed for the opening of bids, their contents will be made public for the information of bidders and others properly interested who may be present either in person or by representation.

12. AWARD OR REJECTION OF BIDS:

a. Since this is a reverse bid, the bid will be awarded to the highest responsible bidder complying with conditions of the invitation for bids, provided his bid is reasonable and it is in the interest of the Owner to accept it. The bidder to whom the award is made will be notified at the earliest possible date. The Owner, 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 best interest of the Owner. It also reserves the right to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts, or Purchase Orders, of a similar nature, or a bid of a bidder who is not, in the judgment of the Owner, in a position to perform the Contract or Purchase Order.

- b. Local vendors, within the city limits of the City of Fairhope, will have a 3% favorable allowance in all bids.

13. ERRORS IN BIDS:

- a. Bidders or their authorized agents are expected to examine the sites, 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, and he cannot secure relief on the plea of error in the bid. In case of error in the extension of prices, the unit price will govern.

14. CONTRACT AND BOND:

- a. The bidder to whom award is made must, when requested, enter into written contract on the standard form as set out herein, within the period specified, or, if no period be specified, within 15 days after the required forms are presented to him for signature.
- b. For bids awarded by Purchase Order, the bidder to whom award is made must fill the Purchase Order within times specified in the bid invitation or Purchase Order.

15. COLLUSION:

- a. If there is any reason for believing that collusion exists among the Bidders any or all Proposals may be rejected, and those participating in such collusion may be barred from submitting bids on the same or other work with the City of Fairhope.
- b. All bidders must sign and notarize the non collusion statement herein.

16. SUBLETTING OR ASSIGNING OF CONTRACT:

- a. Limitations: The Awarded Bidder shall not sublet, assign, transfer, convey, sell, or otherwise dispose of any portion of the contract, or Purchase Orders, his right, title or interest therein, of his power to execute such contract, or Purchase Orders, to any person, firm or corporation without written consent of the City of Fairhope, and such written consent shall not be construed to relieve the Awarded Bidder of any responsibility for fulfillment of the contract. Unless otherwise stipulated in the proposal or special provisions, the Awarded 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.

17. EQUAL OPPORTUNITY

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

18. BID INELIGIBILITY

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

19. CONTRACT TIME

- a. The bidder in submitting an offer accepts the conditions of the Contract Documents and /or Purchase Orders stated for performing the work.

20. ADDENDA

- a. All Addenda are part of the Contract Documents. Include resultant costs in the Bid. Addenda will be issued by FAX or Email to all Bidders on record, and posted to the City of Fairhope website cofairhope.com. It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the bid submission.

21. BIDDERS INTERESTED IN MORE THAN ONE BID

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

22. COMPLIANCE

- a. All bid components will comply with all Federal, State and Local laws, ordinances, codes and regulations.
- b. The awarded vendor will be responsible for insuring that all items meet specifications before delivery.
- c. Awarded vendor will make no substitutions for bid items without prior written approval of the City of Fairhope Purchasing Department.
- d. If you are unable to furnish an item as specified and desire to offer a substitute, give full description of the item.
- e. No errors will be corrected after bids are opened.
- f. No prices shall include State or Federal Excise Taxes.
- g. Municipalities are exempt from Alabama Sales Tax by state law.
- h. Any attachments hereto are made and become a part of this inquiry and must be signed by bidder.
- i. Our bid form must be filled in completely.
- j. All pages of this bid form must be returned.
- k. All documents requested must be attached to the back of page of such request and acknowledgement must be made where blank appears.
- l. A signed contractual agreement, or Purchase Order must be in place prior to beginning work or services.

23. ORDERING

- a. The City of Fairhope will execute a contract with the awarded vendor.

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

ACCEPTANCE OF AGREEMENT

This Agreement contains all terms and conditions agreed upon by the Owner and Winning bidder . No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either party hereto.

The Winning Bidder shall not employ Subcontractors without the express written permission of the Owner.

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

This Agreement shall not be construed against the party or parties preparing it. It shall be construed as if all the parties and each of them jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against one or more parties.

ACCEPTANCE OF WORK

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

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.

ADDENDA

All Addenda are part of the Contract Documents. Include resultant costs in the Bid. Addenda will be issued by FAX or

Email to all Bidders on record, and posted to the City of Fairhope website www.cofairhope.com. It is the responsibility of the bidder to verify that all addenda have been received, and to include all signed addenda in the bid submission

ADDITIONAL ORDERS

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

ASSIGNMENT

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

ASSURANCE OF NON-CONVICTION OF BRIBERY

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

AWARD CONSIDERATION

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

AWARD OR REJECTION OF BIDS

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

BACK ORDERS

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

BID AND PERFORMANCE SECURITY

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

BRAND NAMES

Reference to brand names and numbers is descriptive, but not restrictive, unless otherwise specified. Bids on equivalent items meeting the standards of quality thereby indicated will be considered, providing the bid clearly describes the article offered and indicates how it differs from the referenced brands. Descriptive literature or manufacturers specifications plus any supplemental information necessary for comparison purposes should be submitted with the bid or the bid on that item may be rejected. Reference to literature submitted with a previous bid or on file with the Division of Purchasing will not satisfy this requirement. The burden is on the bidder to demonstrate that the item bid is equivalent to the item specified in the ITB. Bids without

sufficient documentation to fully support equality, may be considered non-responsive.

Reference by the City of Fairhope in the ITB to available existing specifications shall be sufficient to make the terms of such specifications binding on the bidder. Unless the bidder specifies otherwise in its bid, it is understood the bidder is offering a referenced brand item as specified in the ITB or is bidding as specified when no brand is referenced. Failure to examine drawings, specifications and instructions will be at the bidder's risk.

CANCELLATION OF / CONTRACT / AGREEMENT / PURCHASE ORDER / LEASE

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

CERTIFICATION PURSUANT TO ACT NO. 2006-557

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

Office of the Secretary of State
P.O. Box 5616
Montgomery, AL 36103
(334) 242-5324
Fax: (334) 240-3138
<http://www.sos.state.al.us/index.aspx>

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

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.

ENVIRONMENTAL REQUIREMENTS

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

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

EQUIPMENT DEMONSTRATION

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

PAYMENT

Invoices -- Upon completion of service and delivery of materials specified in the applicable purchase order, awarded vendor will submit an invoice and signed delivery ticket to:

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

All invoices must reference appropriate Purchase Order Numbers

Payment Of Invoice: All invoices received by the City of Fairhope are payable within thirty (30) days from the date of receipt by the City of Fairhope, provided they are approved by the City of Fairhope.

PAYMENT WITHHELD

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

INDEMNITY

Indemnity: The awarded vendor hereby agrees to indemnify and save harmless the City of Fairhope, its officers, agent, and employees, from and against any and all liabilities, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including reasonable attorneys fees for trial and on appeal, of any kind and nature, arising or growing out of, or in any way connected with the performance of this Contract / Agreement / Purchase Order, to the extent caused by a negligent act or omission of the awarded vendor, their agents, servants, employees,

Subcontractors, or others associated with the awarded vendor. The awarded vendor shall be responsible for damage to any equipment excluded from this agreement, or damage or injury caused by any equipment excluded from this agreement, only to the extent that the damage or injury is caused by a negligent act or omission of the awarded vendor, or caused by failure of the awarded vendor's supplied product to perform as specified.

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.

INSPECTION OF PREMISES

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

INSURANCE

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

INVITATION TO BID

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

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.

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.

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.

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.

PATENTS

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

PREPARATION OF BID

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

QUESTIONS / CONTACT

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

REJECTION OF BIDS

The City of Fairhope reserves the right to accept or reject any or all bids in whole or in part for any reason, to waive technicalities or informalities, or to advertise for new

proposals, if, in the judgment of the awarding authority, the best interest of the City of Fairhope will be promoted thereby. Bidders may be disqualified and rejection of proposals may be recommended for any of (but not limited to) the following causes: Failure to use the bid forms furnished by the City of Fairhope, Lack of signature by an authorized representative on the bid form, Failure to properly complete the bid form and vendor compliance, Evidence of collusion among bidders, Unauthorized alteration of the bid form.

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.

SUBSTITUTIONS

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

TABULATION

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

TAXES

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

TERMINATION FOR CONVENIENCE

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

TERMINATION FOR DEFAULT

Performance of Work under the Contract / Agreement / Purchase Order Agreement may be terminated by the City of Fairhope, in whole or in part, in writing, whenever the City of Fairhope determines that the awarded vendor has failed to meet the requirements of the Contract / Agreement / Purchase Order.

TERMINATION FOR NON-APPROPRIATION

Termination for Non-appropriation – The continuation of any financial obligation beyond the current fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the local source, State Legislature and/or federal sources. The City of Fairhope may terminate any financial obligation, and awarded vendor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the City of Fairhope’s funding from local, State and/or federal sources is not appropriated, withdrawn or limited.

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.

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.

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.

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.

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.

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.

PACKAGING

Unless otherwise specified, goods are to be packaged in cartons meeting federal specifications and shipped on non-returnable pallets.

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.

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.

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.

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.

RIGHT TO AUDIT

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

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.

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.

NON EXCLUSIVE

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

SCOPE OF WORK AND SPECIFICATIONS
BID NO. : 026-11
BID NAME: QUAIL CREEK GOLF COURSE FOOD SERVICE

SCOPE OF WORK

1. PURPOSE

- a. The City of Fairhope is seeking a Food and Beverage Concessionaire (hereafter "TENANT") for the operation of a Food and Beverage service at the City's Quail Creek Golf Course.

2. FOOD AND BEVERAGE OPERATION REQUIREMENTS

The City of Fairhope has the following requirements of the TENANT at the Quail Creek Golf Course:

- a. The TENANT will be fully operational and provide required services at all times the golf course is operational.
- b. Pricing for Local Patrons and daily fee golfers shall be reasonable and acceptable standard industry pricing as relative to local area city and county municipal/daily fee golf operations.
- d. Outside Group Outings/ Special Events/ Tournaments shall enjoy pricing acceptable with standard industry pricing as relative to local area city and county municipal/daily fee operations.
- e. Outside Group Outings/Special Events/ Tournaments and Charity Golf events approved as annual events by the City of Fairhope and receive considerations for the benefit of their intended benefit programs to the local schools are: Fairhope Educational Enrichment Foundation (FEEF); the Fairhope High School Booster Club; the Fairhope Intermediate School.
- f. The type and extent of TENANT involvement in providing food services for Special Events/Tournaments will be determined by the Director of Golf, or his representative, and may vary with the unique requirements of each Special Event / Tournament.
- g. Meet the food and beverage needs of the golfing public who play the golf course, including league play and tournament play. Provide adequate food and beverage service for tournaments, group outings and other special events planned at Quail Creek Golf Course.
- h. Provide a consistent service of an on-course beverage cart operation that meets the needs of the Quail Creek golfers. This service must be available, at a minimum, on Wednesdays, Fridays, Saturdays and Sundays and must operate continuously throughout the day. This service schedule will include Special Events / Tournaments and Holidays. At the determination of the City, Awarded Vendor will be required to provide beverage cart services at any time.
- i. Quick food service for those golfers wishing to purchase food prior to the start of their golfing round and for those golfers who desire to purchase food at the midpoint of their round. (Finishing Hole #9 and before starting Hole #10).

- j. Sufficient mix of food offerings to cover the meal spectrum of breakfast, lunch, dinner and snack foods.
- k. Provide a high level of customer service for golfers that is quick and friendly.
- l. Enhance the image of the Quail Creek Golf Course within the golfing public as a public golf course that has a great club house facility and excellent customer service.

SPECIFICATIONS

1. GOLF OPERATIONS

a. Quail Creek Golf Course, located in Baldwin County, Alabama is surrounded by established commercial and mid to high value residential areas. The golf course consists of 18 Holes.

- b. The golf operations are directed by a Director of Golf and Head Golf Professional under the general direction of the City of Fairhope.
- c. The course allows golfers to walk or ride, and adequate parking exists for daily use and/or large functions involving the food and beverage operations. The golf course is a fee basis facility that has individual & family memberships, daily walk-in players and numerous golf tournaments throughout the year.
 - The annual number of rounds played is 48,000.
- d. Major course renovations have been completed, including the greens, irrigation system and clubhouse.

2. FOOD AND BEVERAGE OPERATION

- a. The clubhouse facility is approximately 12,500 square feet of which approximately 528 square feet is designated for the Food and Beverage concession. The TENANT will provide a short-order menu with a bar and grill style service. Both sit-downs dining and seating at the bar will be available.
- b. The TENANT will also provide food and beverage service for weekly organizational meetings or group social gatherings. In addition, the TENANT Food and Beverage Operation will be allowed to schedule and coordinate facility rentals and catered events as long as those rentals/events do not interfere with the primary operation of the golf course. All potential rentals and catered events must be **pre-approved** by the Director of Golf or his designee. Approved Rental and Catered Events will be charged: Clubhouse Rental Fee: Deposit: \$100.00; Room Fee \$50.00; Hourly Rate \$25.00 per hour, payable to the City of Fairhope
- c. The City of Fairhope will provide approximately 15 dining tables, 60 chairs, existing storage cabinets and shelving, 1 microwave oven, 1 convection oven, 2 standup, reach in freezers, 1 reach in refrigerator/freezer combo, 1 sandwich/food prep refrigerator, 1 electric 4 basket deep fryer, hot dog roller / cooker, 1 gas grill, 1 table top burner, 1 electric flattop burner for the TENANT. The TENANT will be responsible for providing all other food preparation equipment.

- d. The City will allow the TENANT the use of approximately 528 square feet for food and beverage services and an additional 220 square feet for storage.
- e. The TENANT will pay the city a monthly lease fee (____%) for the exclusive use 748 square feet which includes the Kitchen / bar area and Storage Room (see Exhibit A drawing. During daily operational hours of the golf course - unless the area has been previously scheduled for a specific golf course or City of Fairhope event. (i.e., Golf Course Tournament), the Clubhouse area will be available to the TENANT for any rental or catered event coordinated by the TENANT.
- f. The TENANT will be available, open for business and provide all necessary food and beverage services at all times the same as the Pro Shop is open, the Golf Course is open for daily play and for those Special Events / Tournaments /and Holidays scheduled by the Director of Golf, or his designee. Any exceptions to this scheduling must be pre-approved by the Director of Golf. All tournament negotiations will be conducted by the Director of Golf, or his designee.
- g. The TENANT will be required to provide and sell beer, and wine. The TENANT must acquire and maintain all proper licenses/permits to do so. TENANT'S beer, and wine sales duties will include cart service, and soft drink machine stocking on the golf course, as required and scheduled by the Director of Golf, or his designee. All associated pricing charges of labor and supplies must be approved by the Director of Golf.
- h. For TENANT operations scheduling, the Director of Golf, or designee, will provide the TENANT with a monthly schedule of all known activities to include dates, starting times and the number of players. This list will also include all known tournaments and events for which fee waivers are in place. The City of Fairhope reserves the right to add additional waivers that are in the best interest of the City of Fairhope.
- i. TENANT and TENANT's employees, may receive tips for their services. All required accounting and reporting for taxation and all other reason, of said tips will be the responsibility of TENANT.
- j. The Director of Golf will set the food and drink pricing for Special Events and Tournaments where client is providing none, or some food and beverages; and where client provides all food and beverages, but asks for additional food and beverages from TENANT.
- k. A basic menu will be established by the Director of Golf. TENANT'S additional menu items and pricing must be pre-approved by the Director of Golf.
- l. Cleaning and janitorial responsibilities will be per attached "EXHIBIT A", CLEANING AND JANITORIAL AREAS OF RESPONSIBILITY", to include, but not limited to Tenant cleaning all food preparation and serving surfaces, tables, chairs, buffet / salad bar equipment, and laundering any linens utilized in the Tenant's operations. Tenant will maintain the presentation of the dining area in an appropriate manner, suitable to the golfing environment.

SPECIAL CONDITIONS

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.

These specifications are based upon design and performance criteria which have been developed by the City of Fairhope as a result of careful analysis of the data. Subsequently, these specifications reflect the only type of equipment, material(s), supplies, OR SERVICES that is/are acceptable at this time. Therefore, 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 Purchaser shall determine which (if any) exceptions are acceptable and this determination shall be final.

**City of Fairhope
Request of Qualifications
Food and Beverage Service at Quail Creek Golf Course**

Qualifications Form

All answers must be typed. All requested information and financial data must be provided.

1. What is or was the name of your business?
2. Where is or was this business located?
3. How long has or was this business in operation?
4. If this business is no longer in operation, explain why.
5. Have you ever operated a food and beverage service at a Golf Course?
6. Describe your current or former food and beverage service operation. Include days/times of operation, types of food and beverages served, customer capacity, number of staff employed and the tasks they performed, your direct involvement with the operation and how many hours during a 7 day period you were there at the place of business.
7. Please provide a profit or loss statement along with your Tax Return for the last two years including 2010 or for the last two years that your food and beverage service operated.
8. Describe your philosophy of Customer Service as it relates to a food and beverage operation.
9. If you were operating the food and beverage service at Quail Creek Golf Course, what types of food and beverages would you provide to the golfing public? Be specific as to food and beverage items. (i.e., Sandwiches, soft drinks, etc) Please provide a price range for each item as well. (i.e., Sandwiches, \$3 -\$7)
10. If you were selected to operate the Food and Beverage Operation at Quail Creek Golf Course, how many days would you need before you could begin service to the golfing public?
11. Have you ever filed for Chapter 11 or Bankruptcy?

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 Notaries Seal on this _____ day of _____, 2011

NOTARY PUBLIC

_____/_____/_____
MY COMMISSION EXPIRES:

**(SAMPLE)
CONTRACT DOCUMENTS
AND SPECIFICATIONS
FOR
BID NO. 026-11
QUAIL CREEK GOLF COURSE FOOD SERVICE**

FAIRHOPE CITY COUNCIL

Timothy M. Kant, Mayor
Lonnie L. Mixon, Council President

Set _____

QUAIL CREEK GOLF COURSE FOOD AND BEVERAGE CONCESSION AGREEMENT

This Commercial Lease Agreement ("Lease") is made and effective this _____ day of _____, 2011, by and between CITY OF FAIRHOPE, a municipal corporation ("Landlord") and _____ ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as Quail Creek Golf Club, Fairhope, Alabama.

Landlord makes available for lease a portion of the Building designated as Quail Creek Golf Club Snack Bar (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, it is agreed:

1. Term

a. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby lease the same from Landlord, for an "Initial Term" of forty eight (48) months beginning ___/___/___ and ending ___/___/___ . If both Landlord and Tenant agree in writing, this Lease may be extended for two, three (3) year increments. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay.

2. Rental.

a. Tenant shall pay to Landlord during the Initial Term rental payable in installments of ___% of gross sales before taxes per month. Each installment payment shall be due on the twentieth day of each calendar month during the lease term to the City of Fairhope, 161 North Section Street, Post Office Drawer 429, Fairhope, Alabama 36533 or at such other place designated by written notice from Landlord. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

3. Quiet Possession.

a. Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

4. Repairs and Maintenance.

a. During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of appliances, floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

b. Landlord reserves the right after reasonable notice and at any time to enter upon said premises itself, its workmen, contractor, architect, artisans and laborers, to make such repairs and to do such work on or about said premises as Landlord may deem necessary or proper, or that Landlord may be lawfully required to make, and such repairs shall be made at the Tenant's own risk as to his goods, ware, fixtures, equipment, stock and

furnishings, as to protection thereof from theft or damages or other hazard directly or indirectly connected with such repair work.

c. Should the Tenant fail to make any repairs, replacements or fail to undertake any maintenance agreed to by him under this Lease, the Landlord may enter the premise and undertake such maintenance under the same conditions herein above set out, and the cost thereof shall be payable by the Tenant on demand, together with interest at the highest legal rate not to exceed 15% per annum and which said sum shall be secured as additional rent under the terms of this Lease.

5. Inspection

a. Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises. Landlord shall have the right to show said Premises to prospective tenants and to display "For Sale" and/or "For Rent" signs on said Premises.

6. Alterations and improvements.

a. Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense. The Landlord shall not be obligated to purchase any equipment or make any renovations to the lease premises.

7. Tenant's Duties

a. Tenant will replace all plate and other glass if broken and will replace all lost or broken keys and will keep the interior of said Premises, together with all heating, ventilation, air conditioning, electrical, plumbing and other mechanical installation and/or systems therein, in good order and condition, and will promptly repair all damage suffered as a result of or from Tenant's usage including any damage to doors, loading docks, entrances or columns. Should Tenant fail to do or to undertake the maintenance and repair of the items and things herein required of Tenant, the Landlord may do and undertake the same, after ten (10) days' written notice, and the Tenant will pay the Landlord the costs and expenses thereof, together with interest thereon at the rate of interest being charged at the time of such notice by Regions Bank as published by Regions Bank in and through its mortgage offices (the "Regions Bank Rate").

b. The Tenant will maintain the restaurant hours of operation that are the same as the pro shop hours and/or sufficient hours of operation for the golfing public; to supply enough employee help to provide quality service for tournaments and group outings that include lunch; to maintain the entire restaurant area, including kitchen area; to meet all Health Department requirements including maintaining proper "Serve Safe Certificate"; to clean the restaurant area, including vacuuming the carpet daily; to provide a menu that has an assortment of items, including items that have short preparation times for golfers that want such items while turning from the front nine to the back nine; to work closely with the head golf professional in scheduling meals for golf tournaments and group outings; and to acquire and keep up to date all licenses and fees required by law for the restaurant. Tenant agrees that the area shall be cleaned as needed and should be definitely cleaned at the end of each business day to be ready for customers the following morning.

c. The TENANT will be responsible for the proper disposal or recycling of recyclables (including grease, cooking oil) for any TENANT generated waste, including garbage fees from private services.

8. Utilities.

a. Unless otherwise expressly agreed in writing by Landlord, Landlord shall pay charges for Fairhope Utilities supplied utilities (water, sewer, gas, electricity) and telephone (local service only) services used by Tenant on the Leased Premises during the term of this Lease.

9. Compliance with Law.

a. Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

10. Overloading.

a. Tenant will not overload the building, its floors, roof, or walls and shall be liable for all damage to the Premises or other consequences of overloading.

11. Default.

a. If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity.

12. Acceleration.

a. Upon default, the rent payable under this Lease shall become immediately due and payable and without regard whether possession of the Premises shall have been surrendered to or taken by the Landlord.

13. Damage and Destruction.

a. If the Leased Premises are damaged to the extent that the same are rendered wholly untenable, and such damage is not directly attributable to Tenant's negligence, then at Landlord's option, this lease shall automatically thereupon terminate, and rent shall be payable only to the time of said destruction. Landlord shall notify Tenant within sixty (60) days from the time of such damage as to whether Landlord shall terminate this Lease or whenever it shall repair and restore the Leased Premises. If Landlord elects to repair and restore the Leased Premises, Landlord shall make such repairs as soon following the time such damage occurs as is practicable. If the Landlord elects not to repair said building, then this Lease shall be terminated as of the date of the occurrence.

14. Notices.

a. Any notice required or allowed under this Lease shall be in writing and shall be delivered in person or sent by prepaid certified mail to the Tenant at the Leased Premises and to the Landlord at the address set forth hereinabove, or to such other address as the parties hereto may designate in writing.

15. **Signs.**

a. Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

16. **Surrender.**

a. Upon the expiration or termination of the Lease, Tenant shall surrender possession of the Lease Premises in the same condition as the same were in on the Commencement Date, natural wear and tear excepted.

b. In surrendering the Lease Premises, the Tenant will remove his goods, materials and equipment only under the supervision of the Director of Golf or his designee.

c. The Tenant will provide to Landlord a final sales tally, and pay the final payment due the Landlord within 30 days of the date of the Notice of Termination.

17. **Attorney's Fees.**

a. In the event that Landlord employs an attorney to render advice or services incident to Tenant's breach or threatened breach of this Lease, the Tenant agrees to pay all reasonable attorney's fees incurred by Landlord.

18. **Indemnification and Insurance.**

a. Tenant shall, at its own expense, maintain a policy or policies of comprehensive general liability insurance with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than \$1,000,000 for injuries to or death of more than one persons with a \$2,000,000 aggregate. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration.

b. Tenant shall indemnify Landlord and hold Landlord harmless from and against any and all claims, actions, damages, liability and expenses, including costs of defense and attorney's fees, in connection with loss of life, personal injury or property damage arising from the Tenant's occupancy or use of the Leased Premises, including without limitation claims for professional malpractice, or caused wholly or in part by any act or omission of Tenant, its agents, contractors, employees or invitees.

19. **Sublease and Assignment.**

a. Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed. Any violation hereof is agreed and understood to constitute a substantial and material breach of condition of this Lease, with all of the rights thereunto pertaining as in the case of default for any other cause hereunder.

20. **Waiver of Subrogation.**

a. Landlord and Tenant each hereby waives such causes of action that either may have or acquire against the other that are occasioned by the negligence of either party or their respective employees or agents and that result in damage to the other party's property that is located in or about the Leased Premises and that are caused by fire and/or hazards normally insured by an extended coverage endorsement to a standard fire insurance policy. Each party further agrees to use its respective best efforts to cause any insurance policy covering damage to such property from fire and/or the hazards covered under said endorsement to contain a waiver of subrogation or endorsement under which the insurance company waives its right of subrogation against any party to this Lease in case of destruction of or damage to said property.

21. Landlord's Rights Cumulative.

a. Landlord's failure to insist upon Tenant's strict performance of any of its obligations under this lease shall not be construed as a waiver of Tenant's future strict performance. Landlord's receipt of any payment with knowledge of Tenant's breach of any covenant hereunder shall not be deemed a waiver of such breach.

22. Holding Over.

a. If the Tenant continues to occupy the Premises following the *expiration of the Term, or option period, of this Lease or following an event of default*, then such holding over shall create a month-to-month extension of the Term of this Lease. PROVIDED, HOWEVER, that the Landlord may terminate this Lease during any holdover period upon ten (10) days' prior written notice to Tenant.

23. Eminent Domain.

a. In the event that a governmental authority causes the Leased Premises (or so much thereof so as to render the same untenable) to be taken under power of eminent domain or to otherwise be transferred in lieu thereof, then this Lease shall automatically terminate as of the date that possession is taken by the governmental authority, Any compensation awarded or paid for any taking or acquiring under the power or threat of eminent domain, whether for the whole or a part of the Leased Premises, shall be paid to the Landlord.

24. Safety.

a. Tenant shall make any and all additions, improvements, alterations and repairs to or on the Leased Premises that are required or recommended by any lawful authorities, insurance underwriters or insurance inspectors and that are necessitated by Tenant's use or occupancy of the Leased **Premises**. In the event that Tenant fails or refuses to make any such improvements, alterations or repairs, the Landlord may perform the same and Tenant agrees to pay Landlord upon demand for the costs incurred by Landlord in doing so.

b. Tenant will maintain existing fire suppression system in Tenant's area, including all necessary inspections, updates or repairs.

c. Friends, relatives, or other non-business related associates of the Tenant may cause unsafe distractions, and will not be allowed on the golf course premises unless engaged in golf related activities, and pre-approved by the Director of Golf or his designee.

25. Accord and Satisfaction.

a. Tenant's payment or Landlord's receipt of acceptance of a lesser amount than is actually due hereunder shall not be deemed an accord and satisfaction. Landlord may accept any such payment without prejudice to Landlord's right to recover the balance of such payment or to pursue any other remedy provided in this Lease.

26. Entire Agreement.

a. This Lease, the bid packet identified as Bid No. 026-1, any addenda to Bid No. 026-11, and any exhibits attached hereto set forth all the agreements between Landlord and Tenant concerning the Leased Premises. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless the same is reduced to writing and signed by them.

b. For all terms, covenants or conditions, where in conflict or contradiction, the terms covenants or conditions contained in the Lease will take precedence over those contained in the referenced bid packet and addenda.

27. Partial Invalidity.

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

28. Recording.

a. Tenant shall not record this Lease without first obtaining the prior written consent of Landlord and the recordation of this Lease by Tenant without first obtaining such consent shall be deemed a material breach of this Lease.

29. Counterparts.

a. This Lease is executed in counterparts, each of which shall be deemed a duplicate original hereof.

30. Termination of Agreement

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

b. Termination for Convenience: The Owner may terminate this contract at any time for any reason by giving notice in writing to the Tenant. If the contract is terminated by the Owner as provided herein, the Tenant will cease all operations, and surrender premises per paragraph 16 of this document.

c. 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 Landlord may terminate any financial obligation, and Tenant 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 Landlord's funding from local, State and/or federal sources is not appropriated, withdrawn or limited.

31. Litigation

a. 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.

32. Use of Premises

a. Tenant shall use the Leased Premises For snack bar and concession sales and for no other purpose.

33. Successors in Interest

a. This Lease shall be binding upon the Landlord and personal representative and assigns and it shall bind the Tenant, its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this lease in triplicate on the day and year first above written.

CITY SIGNATURE

CITY OF FAIRHOPE

BY: _____
TIMOTHY M. KANT
MAYOR

ATTEST: _____
LISA A. HANKS
CITY CLERK

CONSULTANT SIGNATURE

IF NOT A CORPORATION

BY: _____
(CONSULTANT SIGNATURE)

ATTEST: _____

IF A CORPORATION

(CORPORATION NAME)

BY: _____

As Its _____

ATTEST: _____

As Its _____

NOTARY FOR THE CITY:

STATE OF ALABAMA]

COUNTY OF BALDWIN]

I, _____, a Notary Public in and for said State and County, hereby certify that Timothy M. Kant and Lisa A. Hanks, whose names as Mayor and City Clerk, respectively, of the City of Fairhope, are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, they as such officers and with full authority, executed the same voluntarily on the day the same bears date.

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

NOTARY PUBLIC _____

My Commission Expires ____ / ____ / ____

NOTARY FOR CORPORATE CONSULTANT:

STATE OF _____]

COUNTY OF _____]

I, _____, a Notary Public in and for said State

and County, hereby certify that _____ and

_____, whose names as

(Title) and _____
(Title)

respectively, of _____
(corporation)

are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, they as such officers and with full authority, executed the same voluntarily on the day the same bears date.

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

NOTARY PUBLIC _____

My Commission Expires ____/____/____

EXHIBIT A

CLEANING AND JANITORIAL AREAS OF RESPONSIBILITY

