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CITY OF BIRMINGHAM

FINANCE DEPARTMENT

PURCHASING DIVISION

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April 26, 2016

J. THOMAS BARNETT, JR.
FINANCE DIRECTOR

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PURCHASING AGENT

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REQUEST FOR PROPOSAL FOR CITY OF BIRMINGHAM CROSSPLEX ATHLETIC FACILITY CONCESSION AND CATERING MANAGEMENT SERVICES PROPOSAL #16-27

The City of Birmingham is soliciting proposals from qualified vendors in response to this RFP (Request for Proposal) to provide concession and catering management services at the Birmingham CrossPlex Facility.

The intent of this RFP is to select a vendor/contractor to provide concession and catering management services at the Birmingham CrossPlex Facility as described in this document.

Vendor's wishing to submit a proposal can download the complete solicitation via the internet at www.birminghamal.gov (go to the link titled **Bidding Opportunities**), or by visiting the Purchasing Office at the address shown above, or by calling (205) 254-2265, fax (205) 254-2484 and requesting a copy be mailed to you. Any addenda will be available on the internet. Bidder is responsible for checking the website for addenda until bid opening date. Addenda will be mailed to only those vendors who were provided a copy in person or by mail.

Each vendor must submit with his/her proposal a bid bond in the form of a certified check, cashier's check, bid bond, certificate of deposit or other form of security deemed acceptable by the City at its sole discretion. This bid bond should be payable to the City of Birmingham and should be in the amount of \$500.00. In order for your proposal to be considered, it must be accompanied by an acceptable bid bond. Once an award is made, the bid bond will be returned to all unsuccessful vendors and to the successful vendor after acceptance of award. Should the successful bidder fail to accept the award, the bid bond or check shall be forfeited.

A mandatory pre-proposal conference and site survey to review and discuss the service required will be held at 9:00 a.m. May 12, 2016 Birmingham CrossPlex, 2337 Bessemer Road, Birmingham, AL 35208 in the Meet/Mgt. Room. Anyone who wishes to submit a bid **must attend the pre-proposed conference** scheduled for **May 12, 2016**. **ATTENDANCE WILL BE MANDATORY**. Any bid received from a vendor who did not attend the pre-proposal conference will not be considered for award.

The City has 60 days after receipt to accept a proposal and for any period of time thereafter if the City requests and the proposer agrees to an additional period of time.

The City shall determine as non-responsive any proposals submitted that are deemed not to meet the minimum requirements of the specification. The City reserves the right to waive any informalities, if deemed in the best interest of the City to do so.

The City reserves the right to make an award without conducting negotiations. However, if negotiations are deemed necessary, they will be conducted with all vendors who have at least a minimally acceptable proposal as determined by the proposal evaluation committee. Once all negotiations are complete, if conducted, the City will give each vendor the opportunity to submit a revised proposal in the form of a Best and Final Offer.

The City reserves the right to reject any and all proposals submitted, and accept or reject any portion of any proposal submitted.

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

Proposals will be received by the Purchasing Agent, Room P-100 First City Hall, 710 North 20th Street, Birmingham, AL 35203. Proposals must be received by 4:00 p.m. central time, May 26, 2016. Proposals received after this time will not be considered.

An original, five (5) hard copies and one (1) digital copy of your proposal must be in a binder, submitted in sealed envelope, marked "**RFP CrossPlex Concession and Catering Mgmt. Services (#16-27),**" **4:00 p.m. May 26, 2016.** Proposals may be hand-delivered to P-100 First Floor City Hall, Birmingham, AL 35203 or mailed to P.O. Box 11295, Birmingham, Alabama 35202-1295 (**DO NOT MAIL PROPOSALS TO P-100 CITY HALL**). However, proposals sent by express carrier (i.e. Federal Express, DHL, UPS, etc.) must be mailed to 710 North 20th Street and specify delivery to Room P-100 First Floor City Hall, Birmingham, AL 35203.

It is the proposer's responsibility to make sure that his proposal is in the possession of the Purchasing Agent on or before 4:00 p.m. May 26, 2016.



W.E. Caffee, Assistant Purchasing Agent

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Attachment
B.N. 05/04/16

**REQUEST FOR PROPOSAL
CITY OF BIRMINGHAM CROSSPLEX ATHLETIC FACILITY CONCESSION
AND CATERING MANAGEMENT SERVICES**

1. PURPOSE AND BACKGROUND:

The Birmingham CrossPlex along with the Bill Harris Arena at the CrossPlex (hereafter the CrossPlex), currently serves four competitive sports venues, their athletes, coaches, officials and patrons: Indoor Track and Field, Volleyball, Swimming, Basketball, and related events. In addition, the facility encompasses VIP Boxes, a large meeting hall to service community meetings, sports management meetings, seminars, seated events (team dinners, training, etc.), 6 (six) concession stands, a commercial kitchen and a caterer’s kitchen.

2. GENERAL INFORMATION:

- A. Proposer, Vendor and Contractor are used interchangeably throughout this document.
- B. City will provide water, gas and electricity for the contracted services.
- C. On non-event days, facility is open 7:30 a.m. – 5:00 p.m. On event days facility is open 6:00 a.m. and closes when majority of people have left. The maintenance crew is usually the last to leave on event days.
- D. The facility has 24/7 security service. Successful Proposer would always have access to the facility at whatever time needed due to 24/7 security. Successful Proposer should notify security in advance of your need to access facility during before or after normal hours of operation.
- E. Storage for Successful Proposer’s equipment, carts, trays, plates, wares and paper goods is available in a caged area in the loading bay area and a large storage closet upstairs in the meeting hall. If ever needed for unusually large events, refrigerated trailers can be located in the loading bay area.
- F. The following is a listing of the historical gross sales figures for the facility:

	Catering	Concessions	Alcohol	Total
2013	\$215,650.00	\$267,311.54	\$8,154.00	\$491,116.04
2014	\$176,400.11	\$256,231.85	\$0.00	\$432,631.96
2015	<u>\$142,174.91</u>	<u>\$374,066.30</u>	<u>\$6,259.00</u>	<u>\$522,500.21</u>
Total	\$534,225.52	\$897,609.69	\$14,413.23	\$1,446,248.43

3. SCOPE OF WORK:

The scope of work consists of professional services to provide food and beverage catering services during contracted CrossPlex events, for the athletes, coaches, officials and patrons, using the kitchens, concession stands and portable equipment provided by the Proposer and/or the CrossPlex. The scope of work shall also include the purchase, preparation, sales, marketing and service of food, alcoholic and non-alcoholic beverages and other related food items for Birmingham CrossPlex public and catered events. The scope of work also includes operation of 6 permanent concessions stands and several portable food service outlets. The kitchens may serve as a back-up preparation center for certain food items permitted to be sold to patrons at the concession stands.

4. SPECIFIC SERVICES REQUIRED:

- A. **Catering:** Successful proposer will be required to provide Catering Services at the CrossPlex to those requiring service in the Meeting Hall (5000 sq. ft. room serving 500 max for meetings and 200 max for seated events), Hospitality rooms (2), VIP Suites (9), or other designated areas, as requested by the Event Staff and/or event stakeholders in accordance with the rules set out by the CrossPlex (See Attachment #1). Services required may range from snacks to elaborate multiple course meals. Hosted service, which requires constant attention to ensure re-supply and freshness must also be provided at specific times and/or subject to other constraints imposed by the CrossPlex staff and /or the event stakeholders. Proposers must provide a plan of operation including, but not limited to, menu selections, pricing, staffing, hours of operation and portion sizes. This plan must be approved by the CrossPlex staff.

B. Concessions:

(1.) Permanent Locations:

Successful Proposer will be required to operate all CrossPlex concession outlets (two 500 sq. ft. concession stands) and the Bill Harris Arena at the CrossPlex concession outlets (four, 400 sq. ft. concession stands) in accordance with the rules set out by the CrossPlex (see Attachment #1). Proposers must provide a plan of operation that the CrossPlex staff must approve that includes, but is not limited to, menu selections, pricing, staffing, hours of operation, additional equipment not already present and portion sizes.

(2.) Portable Outlets:

Successful Proposer will be required on occasion to operate between 5-10 portable Food and/or Beverage carts, to be provided by the proposer, as may be required by the CrossPlex. These operations typically are required on larger events that occur at the Facility. However, the CrossPlex may require, in its sole discretion, that these carts be operated at other times. Proposer must provide a plan of operation including, but not limited to, menu selections, pricing, staffing, hours of operation and portion sizes. This plan must be approved by the CrossPlex staff.

(3.) Vending Services:

Successful Proposer may be required to operate a vendor operation that includes individuals (hawkers) roaming the Facilities' stands with beverages, snacks and other food items. Proposers will be responsible for providing the food holders used by the hawkers. Proposer must provide a plan of operation including, but not limited to, menu selections, pricing, staffing, hours of operation and portion sizes. This plan must be approved by the CrossPlex staff.

5. CATERING AND CONCESSION MANAGEMENT MINIMUM REQUIREMENTS:

The proposer must be able to demonstrate in their proposal as a minimum the abilities to:

Serve quality food and drinks to meet the needs of the visiting public. Coca Cola has the pouring rights to the Birmingham CrossPlex therefore; all beverages and branded items must be purchased from Birmingham Coca-Cola Bottling Company United East (see Attachment 4). The successful proposer will be required to provide everything necessary to conduct the operation and management of the concession operation and catering activities, including (but not limited to) beverages, dishes, glassware, serving utensils, eating utensils, paper cups, bottled water and bottled athletic drinks (plastic only), condiments, napkins, food, etc. and other services proposed by Proposer.

Proposer must also successfully engage and manage any food, beverage and merchandise vendors as subcontractors. The Proposer shall demonstrate an understanding of the City of Birmingham's CrossPlex facility's goals and objectives. All Proposers are required to describe in detail how they will accomplish the requirements listed below:

- A.** Furnish all necessary labor, materials, equipment, supervision and all effort necessary to provide high quality professional catering and concessions services and management services during all CrossPlex events as directed or scheduled in a first class manner and provide prompt, courteous, safe and efficient service at all times.
- B.** Meet all local codes including obtaining any necessary permits and food service licenses as mandated by federal, state, local public health and other authorities. Provide a copy of all required licenses with your proposal. Provide a copy of your last six (6) county health department ratings.
- C.** Apply for and obtain an alcoholic beverage license for the facility.
- D.** Ensure sufficient personnel to provide sanitary conditions and superior services that will assure prompt efficient hospitality at all times.
- E.** Where necessary and appropriate provide signage for CrossPlex patrons at proposer's expense. The CrossPlex Director or designee must approve signage design and material before they are displayed. Also work with CrossPlex staff on LED message boards where appropriate. Provide sample of signage you would like to display.
- F.** Ensure that the Concessionaire and Kitchen staff complies with the terms of the final contract agreement.
- G.** Require all employees to be dressed in an approved uniform and conduct themselves in a professional manner at all times. Provide pictures of uniforms proposed.

- H. Ensure that all employees shall be required to comply with the CrossPlex's security requirements. The Proposer's Manager shall ensure a security background check is conducted at their expense, on all their employees before the employees begin working in the CrossPlex facilities. Also, employer must provide badges for their employees.
- I. Ensure that all Concessionaire and Kitchen staff be trained and certified by Jefferson County Health Department in Food Handler Training. Provide copies of training certificates for employees.
- J. Ensure that all Concessionaire and kitchen staff cleans the areas they use, such as servicing areas, kitchen premises and all other equipment. The concessionaire and kitchen staff will perform all necessary mopping and cleaning of the floors and all food storage areas in the concession and kitchen areas and any other areas used.
Note: The City of Birmingham's Risk Management Coordinator regularly visits and inspects these areas to ensure they are clean, sanitary, safe and pose no potential health problems or hazardous working conditions to its employees or patrons. Any negative, unacceptable items reported by the Risk management Coordinator must be corrected immediately. Failure to correct immediately or consistent negative reports will not be tolerated and will be considered grounds for termination of the contract.
- K. Provide a plan to demonstrate how you intend to market and advertise the various food options available for purchase to CrossPlex patrons.
- L. The Proposer's management must obtain approval from the CrossPlex management prior to making any changes to any approved menus.
- M. Ensure that all Proposers' employees exercise reasonable care and precaution in the use of all City of Birmingham CrossPlex owned equipment and facility.
- N. Provide security plan as deemed necessary for the security of receipts and monies and for safe guarding of the transfer of funds to secure locations.
- O. Provide a plan for how small wares will be provided for use at CrossPlex events. This plan should include, but not be limited to, plates, dishes, kitchen equipment (pots, pans, etc.), buffet ware, cash registers, etc.
- P. Ensure maintenance agreements are in place for the periodic maintenance of all concession and kitchen equipment on an annual basis at the cost of the proposer. Copy of agreements shall be made available to the CrossPlex Director or designee when requested.

6. PROVISION OF PERSONNEL:

The Successful Proposer may be called upon to provide hosts, hostesses, bartenders, waiters, waitresses, porters and food runners for specialized functions. The provision of this staff will be in addition to the normal concessionaire services and staffing for which the Successful Proposer is responsible and must not result in a reduction of the staff available for any other services required to be provided by the Successful Proposer. The CrossPlex requires the following staff be available for Successful Proposer's overall operations staffing standards and shall be provided for and included as part of all menu prices proposed. Proposer must provide a plan of operation including, but not limited to, where additional personnel will be obtained, evidence of their knowledge appropriate to their job duties, how many additional personnel proposer has access to, pay scale for each category of worker, etc. This plan must be approved by the CrossPlex staff.

- A. 1 server per 15 seated guests
- B. 1 server per 30 guests (buffet style)
- C. 1 bartender per 100 hosted attendees
- D. 1 bartender per 75 cash bar attendees
- E. 1 porter per 5 bars
- F. 1 food runner per 4 stations
- G. 1 porter per 250 seated attendees

7. LINEN SERVICE:

The Successful Proposer shall provide linen services for all catered functions and any tables used for the purpose of facilitating food service in the CrossPlex, at no addition costs. Linen must be clean, free of stains, tears, holes, rips etc. Cost of linen service shall be included as a part of all proposed menu prices. Proposer must provide a plan of operation including, but not limited to, sizes, styles, designs, colors of linens, etc. This plan must be approved by the CrossPlex staff.

8. FUTURE SERVICES:

While the above is a comprehensive list of services currently required at the CrossPlex, it is expected that the Successful Proposer will provide input and suggestions on new trends and offerings being provided at comparable public venues and implement those future services at the CrossPlex during this contract. Proposer must provide in detail in their proposal any suggestions currently being provided at comparable venues that vendor would consider implementing at the CrossPlex.

9. PERIOD OF PERFORMANCE:

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about _____ and to end three (3) years thereafter on or about _____.

10. GENERAL METHODOLOGY FOR THE SUBMISSION OF PROPOSALS:

A. GENERAL INFORMATION FOR PROPOSERS:

Prospective Proposers are to direct any questions concerning this RFP to the Purchasing Division - phone (205)254-2265 or fax (205)254-2484 between the hours of 9:00 AM and 4:00 PM, Monday through Friday. The last day to submit questions is May 12, 2016.

Enclosed is a tentatively proposed sample concession and catering management service agreement form for review by potential bidders. Certain terms and conditions are subject to change upon mutual agreement of both parties.

B. LIST OF MAJOR PROCUREMENT MILESTONES:

Issue Request for Proposal (RFP)
Submit written questions
MANDATORY Pre-Proposal Conference and Site Visit
Issue addendum(s) to RFP (if applicable)
Proposals Due
Evaluate Proposals
Short list proposals in the competitive range
Conduct taste test with short listed vendors
Conduct negotiations with short listed vendors, if required
Notify successful vendor and send notification via fax or e-mail to unsuccessful Proposers
Begin Contract Work

11. RFP PROCEDURES AND INSTRUCTIONS FOR SUBMISSION OF PROPOSALS:

- A. A mandatory pre-proposed conference and site visit will be held at the CrossPlex on May 12, 2016. The purpose of this conference is to discuss the details of this RFP and provide an opportunity for proposers to ask questions, inspect the site for storage, existing equipment and any conditions that might affect your proposal. In order to have a proposal considered, a representative of the Proposer must attend this mandatory conference.

B. Amendment and Clarification Procedures:

Inquiries about this RFP must be received in writing by the Purchasing Division. Any questions or clarifications deemed to be of a significant nature will be answered by amendment to the RFP and will be available on the internet, and mailed to only those providers who were provided a copy in person or by mail. The City may delay the proposal receipt date if it deems necessary. Any verbal clarifications provided by any City representative shall not be binding on the City and shall in no way excuse the respondent from obligations as set forth in this RFP, or in any way amend the provisions of this RFP.

C. Proposal Submission Requirements:

Proposers must submit an original plus five (5) copies of their proposal as well as one (1) digital copy. Proposals shall be complete and address all the information listed later in this document. Proposals and all conditions therein shall remain in effect for at least 60 days after the submittal deadline. The City reserves the right to request further proposal extensions after the initial 60 days. The City reserves the right to reject any proposal as non-responsive if it does not provide all information requested later in this document.

D. Preparation of Proposals:

Responses to this RFP must be completed as mentioned above. Elaborate qualifications and brochures are not desired. Clear, concise, and orderly information is important. All pages shall be numbered consecutively. Proposals shall be included in binders with tabs to separate the information requested. The provider is expected to respond to all information requested in as much detail as necessary for the City to make a fair evaluation of the provider's proposal. It shall be the responsibility of the Proposer to furnish sufficient data to determine if the goods or services offered conform to the proposal specifications. Responses which are incomplete, not properly signed, or otherwise contrary to the guidelines of this RFP, may be deemed as non-responsive and rejected and will receive no further consideration.

E. Submittal Deadline for Responses:

Proposals must be received on or before, 4:00 p.m., CST May 26, 2016 in the following manner:

If hand delivered, to Room P-100 First Floor City Hall, Birmingham, Alabama, or mailed to City of Birmingham, P. O. Box 11295, Birmingham, Alabama 35202-1295. **(DO NOT MAIL BIDS TO ROOM P-100 FIRST FLOOR CITY HALL).** However, bids sent by any express carrier (Federal Express, UPS, Airborne, etc.) must be mailed to 710 North 20th Street, and specify delivery to Room P-100 First Floor City Hall.

All proposals shall be submitted in sealed envelopes and clearly marked "CrossPlex Concession and Catering Management Services". No proposals will be opened until after the submittal deadline. The City will return, unopened, any proposals received after the time and date specified. Facsimile or emailed proposals will not be accepted.

F. Disposition of Proposals:

All proposals become the property of the city and will be returned only at the provider's expense. In any event, one copy of each proposal will be retained for the city's official files.

G. Proprietary Data:

If a proposal includes any proprietary data or information that the provider does not want disclosed to the public, such data or information must be specifically identified as "Proprietary" on each individual page which contains such information. Pages of the proposal that do not contain proprietary information should not be marked as such. Information marked as such will only be used by the City for the purpose of evaluating proposals and conducting contract negotiations.

All proposals, exclusive of pages designated "Proprietary" will become a matter of public record. Each provider agrees, by submitting their proposal, that the City has the right to use any or all ideas or concepts presented, in any proposal, without restrictions and without compensation to proposer thereof.

H. Modification or Withdrawal of Proposals:

Any proposal may be withdrawn or modified by written request of the provider provided such request is received by the City prior to the submittal deadline. Modifications received after the deadline will not be considered.

I. Cost of Proposal Preparation:

The cost of preparing a proposal in response to this RFP will not be reimbursed to the proposers.

J. General Contract Requirements:

(1.) Licenses:

All providers shall be licensed to do business in the State of Alabama, Jefferson County and possess a current City of Birmingham business license. Should a foreign corporation be selected to provide professional services in accordance with this RFP, it must be qualified to transact business in the State of Alabama in accordance with Section 10-2B-15.01. *et seq.*, Code of Alabama (1975), and possess a Certificate of Authority issued by the Secretary of State at the time a professional services contract is executed.

(2.) Taxes:

Municipalities are not liable for sales tax: reference Code of Alabama Section 40-23-4. Costs normally considered pass through costs (property tax, use tax, etc.) to the customer by the provider must be taken into consideration in any fees proposed (Code of Alabama Section 40-12-222).

(3.) Choice of Law:

Any contract resulting from this RFP shall be governed in all respects by the laws of the State of Alabama, Jefferson County, and the City of Birmingham.

(4.) Negotiations:

The City reserves the right to negotiate with any proposers deemed to be on the short list in the competitive range any terms and conditions which may be necessary or appropriate to accomplish the purpose and scope of the RFP; however the City reserves the right to make an award without conducting negotiations.

(5.) Termination Provision:

The City reserves the right to cancel any contract awarded for cause or convenience by giving thirty (30) days written notice, and seek new proposals. Termination for Cause may be defined as, but not limited to, failure to satisfactorily continue to meet the minimum specification requirements/capabilities outlined in this document. Termination for Cause will result in the vendor being deemed non-responsible and may result in the rejection of any future bids/proposals by the vendor for a period of time in the future to be determined by the City of Birmingham Purchasing Agent.

At its convenience and without the occurrence of a Default by vendor , the City may terminate this Contract by providing vendor written notice of intent to terminate at least sixty (60) days before the end of the first twelve month period of this Contract, or the second twelve month period that follows the Effective Date.

The vendor may terminate this contract before the expiration of its term if after the first twelve (12) months of the contract has expired, the company, upon six (6) months written notice to the City, may terminate the contract at any specified date.

(6.) Assignment:

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

(7.) Non-Exclusive:

Bids/proposals may be solicited for any item/service included in any contract awarded as a result of this RFP where an immediate/emergency need exists. The decision of the Purchasing Agent as to what constitutes a biddable situation shall be final and shall not be construed as a breach of contract. In addition, any additional food options the City desires to have added to the menu will be offered to the Caterer/Concessionaire with right of first refusal. If the Caterer/Concessionaire does not wish to accommodate the City's request, the City has the right to bring in another vendor to provide those particular food options.

(8.) Contract Time Frame:

Any contract awarded shall be for a period of three (3) years.

(9.) Insurance:

For the duration of this contract and for limits not less than stated below, the successful vendor shall carry (i) general liability insurance (either primary or a combination of primary and umbrella coverage) with limits of not less than \$2,000,000.00 total with a maximum of \$300,000.00 for each occurrence that shall include, but not be limited to, personal injury, property damage, vandalism, property loss and theft; (ii) comprehensive automobile liability insurance concerning owned and rented vehicles operated by the vendor with limits of not less than \$1,000,000.00 bodily injury per occurrence, \$1,000,000.00 property damage or combined single limit of \$1,000,000.00; and (iii) Workman's compensation coverage in an amount adequate to comply with the statutory requirements. The city's proposal number (16-27) must appear on any/all copies of the certificate of insurance.

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

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

City Additional Named Insured. Except for Workers Compensation coverage, all coverage's shall contain endorsements naming the City, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of vendor or the performance of its Work. The additional named insured endorsement shall not limit the scope of coverage to the City to vicarious liability, but shall allow coverage for the City to the fullest extent provided by the policies. Such additional insured coverage shall be at least as broad as Additional Insured endorsement from ISO, CG 2010.11 85.

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

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

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

(10.) Indemnity:

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

(11.) Safety:

The successful vendor (“Vendor”) warrants that it will inspect the work sites before performing the services and work contemplated here under (“services”). Vendor is exclusively responsible for performing the services in a safe manner that does not put at risk the safety of persons (including its own employees or representatives) or endanger property. Vendor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) all its employees and all other persons who may be affected by the services; (ii) all the services and all materials and equipment to be incorporated therein, whether in storage on or off the worksite, or under the care, custody or control of the Vendor or any of its subcontractors; and (iii) other property at the work sites or adjacent thereto. Vendor further agrees to comply with all provisions and requirements set forth in applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction over safety of persons or property or to protect them from damage, injury or loss.

(12.) Subcontracting:

It is expected that the vendor selected and awarded any contract, will be the vendor that will actually perform all services. The City does not contemplate the selected vendor subcontracting any or all the services to another vendor(s). However, should the vendor desire to use one or more subcontractors to perform any portion of the required work, the City must be notified in writing in advance and the City shall retain sole discretion as whether to allow the requested subcontractor(s).

(13.) Financial Reports:

On a monthly basis vendor shall provide gross revenue reports to CrossPlex Administration staff by the 15th of the following month for the previous month’s CrossPlex based operations. In addition, vendor must provide annually their Public Accountant reviewed fiscal year financial statement.

(14.) Audit:

Upon reasonable advance notice from the City’s Director of Finance, Vendor, at its expense, agrees to allow inspection of facilities and produce financial records maintained by it with respect to transactions contemplated under this Contract and otherwise participate in a periodic audit by the City to evaluate whether Vendor is properly documenting financial transactions that are authorized and contemplated hereunder.

K. Selection Procedures:

The City of Birmingham will evaluate proposals received based upon **all** information provided in each proposal.

All proposals will be evaluated by an evaluation team consisting of several members of the City of Birmingham. The Purchasing Agent and a representative of the Law Department will be members of the evaluation team as advisors only. The vendor(s) deemed to have proposals within the competitive range and thus on the short list will be contacted to participate in a taste test to be conducted by the evaluation team. All short listed vendors remaining after the taste test will be contacted for negotiations, if negotiations are deemed necessary. Once negotiations are completed, if required, the evaluation team will select a vendor and make a recommendation to the Mayor. After the Mayor’s approval, the Purchasing Agent and Law Department will prepare the necessary contract and resolution for City Council’s approval of the award and authorization for the Mayor to sign the contract.

L. Evaluation and Award Criteria:

(1.) Development of Short List:

Selected vendors will be determined in the competitive range and will be placed on a short list by the evaluation team according to the quality and responsiveness of their proposals. Proposals, which are not placed on the short list, will receive no further consideration. The City reserves the right to short-list any number of vendors based on the merits of their proposals. Vendor(s) proposals may be selected for the short list after being reviewed for completeness and adherence to the format. A new short list will be determined after results of the taste test have been evaluated. A proposal will be considered complete if **all** requested information as outlined later in this document is addressed and provided in the proper order.

(2.) Formal Evaluations of Short Listed Vendors:

(a.) The evaluation team will grade each short listed vendor’s proposal based on its’ merits. Responses will be evaluated in light of the material actually provided and not on the basis of what is inferred. The evaluation process may include verification of references, verification of project team resumes, confirmation of technical, management and financial information, and may also include site visits or any other information deemed appropriate by the City. The revised short list will take into account the results of the taste test of the original short listed vendors.

(b.) Notification:

The City will make a public notice as per the law and notify all the short listed firms of any eventual notice of award.

(3.) Evaluation Criteria and Maximum Points:

The Birmingham CrossPlex will consider qualifications and experience, technical capabilities, management capabilities and financial proposal in the evaluation of all proposals. The maximum points that shall be awarded for each of these major categories are detailed below:

<u>CATEGORY</u>	<u>MAXIMUM POINTS POSSIBLE: 600</u>
Qualifications and Experience	100
Technical Capabilities	200
Management Capabilities	100
Financial Proposal	200

(4.) Award Criteria:

The proposal evaluation process is designed to award a contract to the vendor that is most advantageous to the City after thoroughly analyzing all of the information pertaining to the evaluation criteria mentioned above. Award will not necessarily be made to the vendor who simply offers the highest overall revenue to the City.

12. VENDOR PROPOSAL GUIDELINES (PROVIDE INFORMATION EXACTLY IN THE ORDER LISTED BELOW):

A proposal to furnish services as prescribed by the request for proposals shall not be complete unless all the information required in the Request for Proposals is provided by the Proposer in the order shown below. Statements must be complete and accurate. Omission, generalities, inaccuracy or misstatement may be cause for rejection of a proposal. By submission of a proposal, a Proposer acknowledges and agrees that the CrossPlex has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the proposal, and authorizes the release to the CrossPlex of any and all information sought in such inquiry or investigation.

The proposal shall consist of the items listed below in the order listed:

A. Cover Letter

B. Table of Contents

C. Executive Summary

D. Provider's Qualifications:

(1.) Profile Data:

(a.) Provider's Name and Address

(b.) Name, Title, Phone and Fax Number of Two Contact People for the vendor.

(c.) Type of Entity:

Discuss the type of entity your company represents (i.e., sole proprietor, corporation, partnership, etc.), and whether your company is a parent company, a division, subsidiary, or branch office of another entity. Also indicate if company is a MBE/WBE/DBE/HUB.

(d.) Provider's Philosophy:

Discuss what you believe distinguishes your company's services in the industry from your competitors.

(e.) Federal Employee Identification Number

(f.) Statement of Provider's Compliance with this RFP:

Provide a signed statement from an authorized officer of the company stating that any related contracts with the City will comply with criteria defined in this RFP, and that all material, dates and conditions contained in the company's proposal to this RFP shall remain in effect for at least 120 days.

(g.) Provide information regarding any intentions company has of either subcontracting or assigning any portion of this service to other companies.

(h.) Provide a description of the company's structure, history and place of incorporation.

E. Provider's Experience:

(1.) Provide names, address, phone number and email information for at least five (5) customers for which company has performed concession and catering services of similar scope, complexity and size.

(2.) Indicate how many years your company has been performing the concession and catering services being requested in this RFP.

(3.) Include resumes of all key employees who will actually be working and providing the services requested in this RFP.

(4.) Complete and include the Questionnaire for catering/concessionaire attached (Attachment 2).

F. Technical Capabilities:

(1.) Provide a detailed plan for catering services as required in Section 3A of this RFP.

- (2.) Provide a detailed plan for the concession stands as required in Section 3B (1) of this RFP.
- (3.) Provide a detailed plan for the portable outlets (carts) as required in Section 3B (2) of this RFP.
- (4.) Provide a detailed plan for the vending service (hawkers) as required in Section 3B (3) of this RFP.
- (5.) Provide a detailed plan for the linen service to be provided as required by Section 6 of this RFP.
- (6.) Provide a detailed plan for how you intend to provide a cash/credit/debit receipt system with ability to run reports for all sales and non-sales for internal and external audit purposes. This may be a point of sale system.

G. Management Capability:

- (1.) Provide a detailed description of how your company will accomplish the requirements in Section 4A-O of this RFP. Be sure to attach all required documentation required in Section 4A-O.
- (2.) Provide a detailed plan for obtaining additional personnel for special functions as required in Section 5 of this RFP.
- (3.) Provide information and/or suggestions addressing new trends and offerings you are aware of that are currently being offered at venues comparable to the CrossPlex as required in Section 7 of this RFP.

H. Financial Proposal:

- (1.) Provide a copy of your company's latest audited financial statement setting out information which shows your company's current financial conditions and accurately reflects the net worth of your company. This statement must indicate it has been reviewed by a Public Accountant.
- (2.) **Facility License Fee:** Propose an annual license fee you are willing to pay the City for the opportunity to provide concession and catering services for the CrossPlex.
- (3.) **Per Event Commission:** Propose a monthly percentage commission from gross revenue you are willing to pay the City for each catered special event at the CrossPlex for the opportunity to use the CrossPlex facility and kitchen to conduct these events.
- (4.) **Concession Commission:** Propose a monthly percentage commission you are willing to pay the City from gross revenue for all concession sales at the CrossPlex.
- (5.) **Food Comp Program:** Propose an annual dollar amount of food that you are willing to comp to the City from time to time, at the City's request, to offset food cost overruns that may occur on particular events. The successful proposer may request evidence from the City to substantiate each particular food cost overrun. Any remaining comp credit after the end of each contract year would be added to the comp credit being offered for the next contract year. Any unused comp credit at the end of the contract will be retained by the vendor.

I. Alternate Financial Proposal:

(Proposers are not required to submit an alternate proposal. Failure to do so will not impact the City's award decision):

In addition to the commissions and license fees mentioned above in paragraph H (2)-(4), propose a monthly rental fee you are willing to pay the City for exclusive use of the CrossPlex kitchen and caterer's kitchen in order to use it to operate your entire catering business.

J. Standard Form Contract:

The successful bidder will be required to execute an agreement with the City in accordance with the proposed terms upon which proposals are submitted. A copy of the proposed agreement is included in the request for proposal document.

K. Proposal must be signed by an official with authority to bind the provider contractually. The original proposal must have original signature. The name and title of the individual signing the proposal shall be typed immediately below the signature.

13. Vendor (and its employees, agents and any subcontractors) shall not discriminate on the basis of race, color, national origin, or sex in the performance of the services contemplated hereunder. Failure by the Vendor to carry out these requirements is a material breach of its obligations, which may result in its termination or such other remedy as the City deems appropriate.
14. Vendor acknowledges and agrees that, consistent with federal law and City's public policy, it will encourage Disadvantage business enterprise (DBE) participation to the extent permitted by law. A "disadvantaged business Enterprise" is a for-profit small business concern (i) at least 51% owned by one or more individuals who are both Socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (ii) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. In accordance with federal law, a "socially and economically disadvantaged individual" includes African-Americans, Hispanic Americans, Native Americans, Asian-Americans, women, and any additional groups designated as socially and economically disadvantaged by the Federal Small Business Administration.
15. **Successful vendor acknowledges and agrees that the City has the right to deduct from total amount of consideration to be paid, if any, to the successful vendor under this agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from the successful vendor.**
16. The City of Birmingham must have a copy of the successful provider's current City of Birmingham business license prior to formal award of contract. Each proposer may submit a copy of their license along with their proposal. However, SELECTED provider must provide a copy of their current business license no later than seven (7) working days of receipt of notice of intent to award. Failure to submit the requested information may result in the notice of intent to award being revoked.
17. **Any successful vendor who is not currently set up as a vendor in the City of Birmingham vendor file will be required to submit a completed W-9 tax form prior to any award. The W-9 tax form may be submitted with your bid or no later than seven (7) working days of receipt of notice of intent to award.**

ATTACHMENTS:

1. CrossPlex Rules for concession stands
2. Questionnaire for Catering/Concessionaire
3. Certification of Non-discrimination

ATTACHMENT 1

Rules for Catering/Concession Upkeep Birmingham CrossPlex

1. Maintain clean catering/concessions areas suitable for preparation of food and safety for all staff.
2. Maintain proper temperatures for all food storage.
3. Make certain all chemicals and cleaning materials used in the upkeep of catering/concessions areas meet industry standards and are stored properly.
4. All staff should wear proper preparation gloves, hairnets, and clothing when prepping or working an event.
5. Maintain adequate staffing to handle all events. This is to include, wait staff, bartenders or hawkers.
6. Maintain adequate amount of condiments and ensure they are stored and served properly.
7. Provide periodic updates regarding any changes in staff.
8. Provide periodic updates regarding malfunction of any catering/concession equipment or additional equipment needed to perform the task.
9. CrossPlex requires that employees maintain a professional deportment regarding appearance during event and non-event days. The staff will also act in a professional behavior as it is a direct reflection on the CrossPlex.
10. The sole control of keys to the kitchen and concession stands will be the responsibility of the food and beverage director.
11. The food and beverage director should design an agreement that all employees sign that explains the scope of activities.
12. The catering/concessions company is responsible for random drug testing of employees.
13. If an employee becomes ill they should be sent home immediately.
14. The CrossPlex will require that the employer maintain a minimum health rating of 95.

ATTACHMENT 2

Birmingham CrossPlex
Questionnaire for Catering/Concessionaire

This information will be necessary for the evaluation process. Please complete it and include as required in the Section of your proposal as described in the Proposal Guidelines Section of the RFP.

General Information:

How long have you been in business? What is your annual catering revenue?

Do you have a current business license? Health department license?

Do you hold a current liquor license? If so, what type?

What limit of liability insurance do you carry?

Does it include liquor liability? Worker's comp?

Do you own a private (stand-alone) event facility from which you provide exclusive catering?

Do you have an exclusive contract with or provide exclusive catering services for any private event facility located within Jefferson County or any contiguous counties to Jefferson County?

Do you require a minimum \$ amount for any catering service? If so, what is the amount?

Do you provide catering seven days a week?

Do you accommodate certain dietary requirements (vegetarian, kosher, etc.)?

What size events are you familiar and comfortable with? Describe:

Do you provide all types of catering? (Formal sit-down, buffet, hors d'oeuvres, drop-off, boxed lunches, snacks, etc.)

Is there any meal you do not provide? (Breakfast, brunch, lunch, or dinner)

Is your company minority owned? Is your company minority operated?

Service and Operations:

What type of service do you provide? (Full wait staff, delivery only, set-up/clean-up only, etc.)

How far in advance does your wait staff arrive at the venue prior to functions?

Do you require your wait staff to be uniformed? If so, please describe?

Does your service include set-up, breakdown and clean-up?

What is the server-to-guest ratio for receptions? Seated dinners?

ATTACHMENT 2

**Birmingham CrossPlex
Questionnaire for Catering/Concessionaire – Cont'd**

Do you own, provide for or arrange for the rental of dinnerware, glassware, tableware, flatware, china, linens, etc., for your Client? _____ Do you own, provide for or arrange for the rental/purchase of tabletop décor,

chair covers, additional tables and chairs, etc., for your Client? _____

Do you provide concessions services? _____

Bartending / Alcohol Service:

Do you provide bartending services? _____

What type of beverages do you provide? (Beer, wine, liquor, etc.)

ATTACHMENT 3

**Certification of Non-discrimination
Birmingham CrossPlex Concession/Catering Service**

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

Vendor: _____

Contact Person: _____ Title: _____

E-Mail: _____

Phone: _____ Fax: _____

Business Address: _____

City: _____ State: _____ Zip: _____

Signature: _____

Name: _____
(Please Type)

Date: _____

Complete and return this page with your proposal.



ATTACHMENT 4

4600 East Lake Boulevard (35217)
 P.O. Box 7006
 Birmingham, Alabama 35201
 Telephone 205-841-2653
 Fax 205-849-4728

ON PREMISE "Gold"

To our valued Customers,

Coca-Cola Bottling Company UNITED Inc.-East, LLC - North Alabama Division will make available the following Everyday Value offers to ALL On Premise Customers serviced by our Oxford & Tuscaloosa Sales Centers:

January 1, 2016 thru December 31, 2016						
	Wholesale Cost	Discount Allowance	Gold CMA	Gold Net Price	Case Pack	Net Unit Cost
GLUCOSE FRUIT DRINKS						
8 oz Glass Bottles	\$30.00	\$11.91	\$1.63	\$18.46	24	\$0.87
0.5 Aluminum Bottles	\$36.00	\$15.50	\$1.85	\$18.66	24	\$0.78
10 oz Glass Bottles (Seagram's)	\$30.00	\$11.91	\$1.63	\$14.46	24	\$0.69
16 oz NR	\$36.00	\$14.71	\$1.74	\$17.55	24	\$0.73
6 Pk 6 Liter	\$26.40	\$10.40	\$1.44	\$14.56	24	\$0.61
8 Pk 12 oz PET	\$36.00	\$23.18	\$1.15	\$11.67	24	\$0.49
20 oz Singles	\$36.00	\$10.46	\$2.28	\$23.06	24	\$0.96
20 oz Minute Maid 3%	\$36.00	\$10.46	\$2.28	\$23.06	24	\$0.96
12oz Mexican Coke Singles	\$36.00	\$14.39	\$1.94	\$19.67	24	\$0.82
1 liter	\$21.00	\$6.52	\$1.39	\$14.09	12	\$1.17
1.25 liter	\$21.00	\$10.30	\$0.96	\$9.74	12	\$0.81
2 liters	\$20.00	\$6.03	\$1.26	\$12.71	8	\$1.59
8 Pk 7.5 oz Cans	\$19.20	\$6.20	\$1.26	\$12.74	24	\$0.53
6 Pk 12 oz Cans	\$18.00	\$4.00	\$1.26	\$12.74	24	\$0.53
12 Pk Fridge Pack Cans	\$18.00	\$4.00	\$1.26	\$12.74	24	\$0.53
24 Pk 12 oz Cans	\$18.00	\$4.00	\$1.26	\$12.74	24	\$0.53
FLAVORABLE SODA DRINK						
20 oz Regular Single	\$42.00	\$16.50	\$2.30	\$23.21	24	\$0.97
8 Pk 20 oz Regular and Zero	\$42.00	\$16.50	\$2.30	\$23.21	24	\$0.97
32 oz Regular and Zero (16 Pk)	\$30.00	\$4.20	\$2.32	\$23.48	16	\$1.57
12 Pk 12oz PET	\$25.00	\$0.00	\$2.25	\$22.75	24	\$0.95
5 Gallon Powder (12 pk)	\$79.68	\$6.54	\$6.68	\$66.56	12	\$5.55
2.5 Gallon Powder (8 pk)	\$39.00	\$13.00	\$2.34	\$23.66	24	\$0.99
PowerAde Drops 3oz	\$24.00	\$5.35	\$1.68	\$16.97	4	\$2.93
DIETARIAN WATER						
20 oz Singles	\$36.00	\$16.15	\$1.79	\$18.06	24	\$0.75
12 oz NR	\$21.60	\$7.66	\$1.26	\$12.69	24	\$0.53
1 liter	\$21.00	\$7.15	\$1.25	\$12.60	12	\$1.05
6 Pk .5 liter	\$26.40	\$10.40	\$1.44	\$14.56	24	\$0.61
6 Pk .5 liter Flavors	\$26.40	\$10.40	\$1.44	\$14.56	24	\$0.61
12 Pk .5 liter	\$26.40	\$10.40	\$1.44	\$14.56	24	\$0.61
24 Pk .5 liter	\$26.40	\$10.40	\$1.44	\$14.56	24	\$0.61
6 Pk 24 oz	\$36.00	\$20.00	\$1.44	\$14.56	24	\$0.61
1.09 oz Drops	\$24.00	\$5.35	\$1.68	\$16.97	4	\$2.83
SPORTS WATER						
20oz Singles	\$42.00	\$19.11	\$2.06	\$20.83	24	\$0.87
760ML Sports Cap	\$36.00	\$6.76	\$2.63	\$26.61	24	\$1.11
1 liter	\$30.00	\$13.72	\$1.47	\$14.81	12	\$1.23
6 Pk 1 liter	\$30.00	\$13.72	\$1.47	\$14.81	12	\$1.23
VITAMIN WATER						
GLACEAU 20oz Single	\$42.00	\$15.75	\$2.36	\$23.89	24	\$1.00
GLACEAU 6 Pk .5 liter	\$33.60	\$6.78	\$2.41	\$24.41	24	\$1.02
GLACEAU Fruitwater 16.9oz Single	\$18.00	\$3.00	\$1.17	\$11.83	12	\$0.99
ZICO COCONUT WATER						
14oz PET	\$34.00	\$13.96	\$1.80	\$18.24	12	\$1.52
1 liter PET	\$54.00	\$13.92	\$3.61	\$36.47	12	\$3.04
OTHER BEVERAGES AND FRUIT FLAVOR DRINKS						
100% Minute Maid Juice 15.2 oz or 480ml	\$40.00	\$14.87	\$2.26	\$22.87	24	\$0.95
Minute Maid Juice 10oz	\$21.60	\$8.10	\$1.67	\$16.84	24	\$0.70
FUZE Beverages .5 liter Single	\$20.40	\$2.58	\$1.60	\$16.22	12	\$1.35
Gold Peak Tea 18.5oz	\$20.40	\$6.98	\$1.21	\$12.21	12	\$1.02
Gold Peak Tea 64oz	\$25.00	\$10.38	\$1.32	\$13.30	8	\$1.66
Honest Tea .5 liter Single	\$30.00	\$16.53	\$1.30	\$13.17	12	\$1.10
Peach Tea 23oz	\$15.00	\$4.00	\$0.99	\$10.01	12	\$0.83
Sum-E Yummiest 10oz Single	\$12.00	\$3.65	\$0.75	\$7.40	12	\$0.63
Monster Energy 16oz 4 Pk	\$50.40	\$8.05	\$3.81	\$38.54	24	\$1.61
Monster Energy 16oz Single	\$50.40	\$8.05	\$3.81	\$38.54	24	\$1.61
Monster 24oz Single	\$32.00	\$4.95	\$2.43	\$24.42	12	\$2.05
NOS Energy (All Flavors) 16 oz Single	\$50.40	\$8.05	\$3.81	\$38.54	24	\$1.61
NOS Energy (All Flavors) 14 oz Single	\$26.20	\$4.02	\$1.91	\$19.27	12	\$1.61
NOS Energy (All Flavors) 22 oz Single	\$32.00	\$4.00	\$2.34	\$23.66	12	\$1.97
Full Throttle Energy (All Flavors) 16oz Single	\$50.40	\$8.05	\$3.81	\$38.54	24	\$1.61
Full Throttle Energy 12CH (All Flavors) 14oz Single	\$25.20	\$4.02	\$1.91	\$19.27	12	\$1.61
Monster JAVA 16oz Single	\$30.00	\$5.00	\$2.25	\$22.75	12	\$1.90
Muscle Monster 16oz Single	\$36.00	\$11.00	\$2.25	\$22.75	12	\$1.90
Core Power 11.5oz Single	\$48.00	\$17.20	\$2.77	\$28.03	12	\$2.34
Ily Coffee 6.8oz Single Can	\$25.20	\$4.80	\$1.84	\$18.56	12	\$1.55
Ily Coffee 8.4oz Single Can	\$25.20	\$4.80	\$1.84	\$18.56	12	\$1.55
Ily Coffee 9.5oz Glass	\$25.20	\$4.80	\$1.84	\$18.56	12	\$1.55

** Intro's noted with Asterisk

1. Promotional allowances and wholesale prices are subject to change with two (2) weeks notice.
2. Discounted product must be placed on extra display in selling area of store.
3. All discounted product purchased must be re-sold at or below normal margin.
4. Birmingham Coca-Cola reserves the right to limit quantities that can be retained for regular inventory.
5. All product purchased must be re-sold to retail shoppers at our point of delivery.

Brian Davis
 On Premise Sales Manager
 North Alabama Division

CONCESSION AND CATERING MANAGEMENT SERVICES AGREEMENT

The CONCESSION AND CATERING MANAGEMENT SERVICES AGREEMENT is made between the City of Birmingham, Alabama, a municipal corporation (hereinafter referred to as CITY) and _____ (hereinafter referred to as "CONTRACTOR").

WHEREAS, the CITY requires concession and catering management services (including, but not limited to, the sale of food, snacks, and alcoholic and non-alcoholic beverages) in connection with its operations of the CrossPlex/Bill Harris Arena in the western section of Birmingham (the "Services");

WHEREAS, the CrossPlex and Bill Harris Arena facilities collectively may be referenced herein as the "Facilities";

WHEREAS, in its Request for Proposal #16-27 dated April 26, 2016, as amended by any addenda (collectively hereinafter, "Proposal #16-27"), the CITY requested proposals to perform the Services pursuant conditions set forth in Proposal #16-27, including, without limitation, the requirements and specifications for Services therein (the "Specifications");

WHEREAS, on or about May 26, 2016, representatives of the CONTRACTOR submitted the _____ response to Proposal #16-27, which response is incorporated herein by reference (the "Response");

WHEREAS, Proposal #16-27, the Response, and this CONCESSION AND CATERING MANAGEMENT SERVICES AGREEMENT may collectively referenced hereinafter as the "AGREEMENT"; and

WHEREAS, CONTRACTOR desires to provide, and the CITY desires that CONTRACTOR furnish, the Services required at the Facilities pursuant to the terms, conditions and provisions in the AGREEMENT.

WITNESSETH

In consideration of the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

ARTICLE 1 – EFFECTIVE DATE/TERM

This AGREEMENT shall become effective on the date last signed below by a party (the "Effective Date"). This AGREEMENT shall remain in effect for three (3) years from its Effective Date (the "Term").

ARTICLE 2 – EARLY TERMINATION

Notwithstanding any provision in Article 1 or elsewhere herein, the AGREEMENT may be terminated prior to its expiration for any of the following reasons:

(i) Termination for Cause: If CONTRACTOR fails to perform a material obligation under the AGREEMENT and does not remedy that deficiency within thirty (30) days following written notice thereof from the CITY (a “DEFAULT”), the CITY may terminate this AGREEMENT effective on the date stated in its notice to terminate. CITY’s right to terminate for CONTRACTOR’s breach is non-exclusive, and does not bar the CITY from pursuing its other available remedies that arise from such breach;

(ii) Termination for Convenience by CITY: Without the occurrence of a Default by CONTRACTOR, CITY may terminate this AGREEMENT for its convenience effective on either the first or second anniversary of the Effective Date. CITY may exercise this option by providing CONTRACTOR written notice of early termination at least sixty (60) days before the first or second anniversary of the Effective Date; and

(iii) Termination for Convenience by CONTRACTOR. After the AGREEMENT has been in effect for twelve (12) months, CONTRACTOR may terminate it for its convenience at any time thereafter during the remaining Term after providing the CITY six (6) months advance written notice of early termination.

If this AGREEMENT is terminated prior to its expiration, the parties shall remain obligated to perform their respective responsibilities hereunder up to the effective time of termination.

ARTICLE 3 – NATURE OF SERVICES

During the Term of this Agreement, the CITY grants CONTRACTOR the exclusive right and privilege to provide Services at the Facilities. CONTRACTOR shall provide those Services pursuant to the terms, conditions and provisions in the AGREEMENT. Further, CONTRACTOR warrants that it will perform the Services in a good and workmanlike manner consistent with industry standards for such operations.

Except for the cashiers contemplated in Article 5 below, CONTRACTOR, at its sole expense, will provide all labor and supervision of personnel required to perform the Services. Further, none of the Non-Profits organizations (as defined below), the representative of those Non-Profits or any other persons, firms or representative of CONTRACTOR that it engages to perform the Services are employees, agents, servants or representatives of the CITY. CONTRACTOR is exclusively responsible for furnishing all training, supervision and oversight for the work performed by all such organizations and personnel, including without limitation, training of them concerning health and other Laws and Regulations (as defined below) applicable to the Services and the compliance by them with those Laws.

The CITY has installed certain appliances and equipment that can be used in food preparation and service operations (including, but not limited to, freezers, refrigerators, stove and convection oven). These appliances and pieces of equipment are collectively referenced as the "Existing Equipment," and are listed included on the attached Exhibit A. CITY grants to its compliance with the following conditions:

- (i) CONTRACTOR shall keep all such Equipment in clean and orderly condition; and
- (ii) CONTRACTOR, at its expense, shall maintain and keep the Existing Equipment in good and sound operating order; provided that the maximum amount payable by CONTRACTOR with respect to any single repair required to restore an item of Equipment to operating condition shall not exceed Five Hundred Dollars (\$500.00). During the Term, CONTRACTOR agrees to obtain and maintain a mutually acceptable maintenance agreement with an equipment service provider for maintenance services on the Equipment. That agreement will cover the expense of ordinary maintenance and repairs of the Equipment (including the expense of replacing working parts or components; provided that, thereunder need not exceed the sum of Five Hundred Dollars (\$500.00) and this agreement need not cover the expense of totally replacing any Existing Equipment that fails due to obsolescence.

CONTRACTOR acknowledges that the CITY will have an active schedule of events at the Facilities over the Term of the AGREEMENT, and understands that time is of the essence in performing the Services. CONTRACTOR warrants that it will use commercially reasonable efforts to provide them in a timely manner that is consistent with the CITY's schedule of events at the Facilities.

CONTRACTOR acknowledges that CITY previously has entered a separate pouring rights agreement with a third party supplier of non-alcoholic beverages that contemplates that Coca-Cola products exclusively will be consumed and promoted at the Facilities. CONTRACTOR agrees that, in its provision of Services, it will coordinate with that third party (or any subsequent vendor that may succeed it and hold exclusive pouring rights) to assure that such non-alcoholic beverages are sold by CONTRACTOR and promoted at the Facilities.

ARTICLE 4 – COMMISSION FOR CITY

In connection with Proposal #16-27, CITY has furnished CONTRACTOR certain historical information about past levels of concession, beverage and food sales during prior operations at the Facilities. However, the CITY does not warrant, represent or guarantee to CONTRACTOR that any minimum amount of food or beverage sales will occur during the Term, that CONTRACTOR will earn any minimum level of compensation in performing its Services, or that any given level of revenues will result from the contemplated operations at the Facilities.

In consideration of the CITY's appointment of CONTRACTOR as the concessionaire for the Facilities, CONTRACTOR agrees to pay the CITY the following amounts:

- (a) Concession Sales:
- (b) Catering Sales:
- (c) Alcoholic Beverage Sales:
- (d) Food Comp Annual Amount: \$ _____

The above-noted payments collectively may be described hereinafter as the "Commission."

*NOTE: For purposes of the AGREEMENT, an "annual" period is the term that begins with the Effective Date (or the anniversary of that Date) and ends twelve (12) months later.

ARTICLE 5 – SPECIFIC PROCEDURES FOR SERVICES AND DISTRIBUTION OF REVENUES

CONTRACTOR will provide two types of Services at the Facilities: (A) the provision of food and beverages to the general public in designated concession areas (hereinafter "Concessions"); and (B) the provision and sale of food and beverages at catered functions in rooms or space designated for use by interested groups parties (hereinafter "Catering"). With respect to these activities, CONTRACTOR agrees to furnish personnel (except for cashiers), food and beverage at times, places and events designated by the CITY's Contract Representative (as designated below). Additionally, the parties agree that the following procedures and understandings apply to for these activities.

A. Concessions

CITY will provide CONTRACTOR reasonable advance notice of all events at which CONTRACTOR is required to offer food and beverages for sale to the general public.

As noted in CONTRACTOR's Response, it will engage athletic booster clubs, band booster clubs and other non-profit associations (hereinafter collectively, a "Non-Profit(s)") to staff concession stands, provide labor or otherwise conduct Concession operations. The CITY's Contract Administrator (as designated below) must consent in advance in writing with respect to the engagement of all Non-Profit organizations that CONTRACTOR intends to utilize. CITY and CONTRACTOR will develop a mutually-acceptable procedure for the CITY to timely provide that consent.

For all events at which Concessions are sold, CITY shall furnish personnel who will operate all cash register/point of sale machines ("POS Machines") and receive all cash or alternative types of payment (e.g., debit or credit cards) for those sales. None of any Non-Profit, any Non-Profit representatives or any employee or representative of CONTRACTOR is authorized to receive cash or alternative payments for sales of Concession items.

CITY will provide up to four (4) cashiers and four (4) POS Machines for these events requiring Concessions sales. The POS Machines furnished by CITY will record the sales of particular items (and accompanying revenue) and generally be configured to the mutual satisfaction of the parties. If the number of POS Machines and cashiers provided by CITY are inadequate at certain events to meet the demand for sales of Concessions to the public, CITY agrees to consult with CONTRACTOR to devise alternative methods to meet that demand, including, but not limited to, the provision of supplemental CITY personnel or POS Machines.

After each event (or sooner if mutually agreed) at which Concession items are sold, a CITY representative will prepare and furnish CONTRACTOR a report documenting the gross amount of Concession sales for that event. Further, no later than ten (10) days following each event, CITY will issue CONTRACTOR a check for the amount of the gross Concession sales associated with that event minus the Commission payable to CITY for that event. CONTRACTOR is not required to submit an invoice in order to be paid its share of Concession revenues. As soon as possible following an event at which Concessions are sold, the parties will use their good faith efforts to expeditiously resolve any dispute that arises concerning the reported gross sales, the sum payable to CONTRACTOR and the associated Commission retained or payable to the CITY.

CONTRACTOR is exclusively responsible for remitting to the proper authorities any sales or use taxes that arise from the sale of Concessions at the Facilities.

B. Catering

Each respective Contract Representative shall notify the other and otherwise coordinate with his/her counterpart if either party receives an inquiry about or request for Catering services at the Facilities. After consultation between the Contract Representatives concerning any such request, the CITY will furnish the prospective Catering customer an itemized, joint proposal that includes all charges associated with the Catering function, including, but not limited to, the CITY's charges for use of space at the Facilities, CONTRACTOR's charges for food, beverage and gratuity, CONTRACTOR's charges for alcoholic beverages supplied to the customer in connection with an open bar or meal, requested deposits and any other special charges or conditions. If the customer accepts that proposal, CITY will document and furnish CONTRACTOR written evidence of that acceptance. Thereafter, CONTRACTOR shall make arrange to furnish personnel (except for cashiers), food, beverage, and associated deliverables for the subject Catering event.

If a cash bar for the sale of alcoholic beverages is furnished at a Catering function, CITY will supply POS Machines and personnel to operate those Machines and receive all cash or alternative types of payment (e.g., debit or credit cards) for those sales. No employee or representative of CONTRACTOR is authorized to receive cash (or alternative forms of payment) for sales of alcoholic beverages at the Facilities.

CITY exclusively shall receive and collect all revenues (including required deposits and the proceeds of sales at cash bars) payable with respect to Catering functions. No later than ten (10) days following any such function, CITY will issue CONTRACTOR a check in the amount of the total paid by the Catering customer to the CITY, less the CITY's Commission (or any amount payable to CITY) associated with that event. CONTRACTOR is not required to submit an invoice to be paid its share of Catering revenues (including those from the sale of alcoholic beverages). As soon as possible following a catering function, the parties will use their good faith efforts to expeditiously resolve any dispute that may arise concerning that function, the amount paid to CONTRACTOR, or the commission or other amounts retained or payable to the CITY.

CONTRACTOR is exclusively responsible for remitting to the proper authorities any sales or use taxes that arise from sales associated with Catering functions at the Facilities.

ARTICLE 6 – INSPECTION OF RECORDS

During the Term and for a period of not less than six (6) months following the expiration or early termination of this AGREEMENT, either party, at the request of its respective senior financial officer and at a mutually acceptable time and place, may request an inspection of books and records, accounts, statements and other documents maintained by the other party in connection with the administration of this AGREEMENT. Records related to the following subjects may be requested for review: Commission levels; quantities of food or beverage furnished by CONTRACTOR for Services at the Facilities; the payment of sales and use taxes by CONTRACTOR for Concessions and Catering activities; and all other records reasonably related to the other party's compliance with its respective obligations under this AGREEMENT. Each party will bear its own expense associated with any such review.

ARTICLE 7 – LIQUOR LICENSE

As of the Effective Date, the CITY is licensed by the State of Alabama Alcoholic Control Board ("ABC Board") to sell beer and liquor products at the Facilities (the "CITY Liquor License"). Immediately following the Effective Date, the parties will undertake the following actions:

- (a) At its expense CONTRACTOR will undertake to secure a proper license(s) from the ABC Board in its own name to sell beer and liquor at the Facilities;
- (b) Pending the consideration by the ABC Board of CONTRACTOR's application for its own beer and liquor license, CITY agrees to reasonably cooperate with CONTRACTOR and execute any customary documents permitting a transfer of the CITY Liquor License to the CONTRACTOR. In the event the ABC Board does not approve the transfer of the CITY Liquor License to CONTRACTOR, it agrees to reasonably cooperate with CITY and/or execute any customary documents required for reinstatement of the CITY Liquor License; and

(c) In the event the ABC Board grants CONTRACTOR (or any of its successors) its own license(s) to sell beer and liquor at the Facilities, CONTRACTOR agrees to take all actions reasonably requested by the CITY (including, but not limited to, the execution of transfer instruments) so that, effective upon the termination or early expiration of this AGREEMENT, the beer and liquor license then held by CONTRACTOR shall be transferred to the CITY.

ARTICLE 8 – MENUS

Before CONTRACTOR commences performing Services, the parties will develop a mutually-agreed menu of food and beverage items and associated prices for those items that CONTRACTOR regularly will supply at the Facilities (the “Menu”). The following understandings apply concerning that Menu:

- (i) without the CITY’s consent, during any twelve (12) month period of this AGREEMENT, CONTRACTOR may increase the price of any concession item on the approved Menu up to 10% greater than the price previously applicable for that item; and
- (ii) without the consent of CITY, CONTRACTOR will not cease/discontinue supplying a concession item on the approved Menu, offer new concession items or during any twelve (12) month period of this AGREEMENT increase the price of any concession item more than 10% over the price previously established for that item.

ARTICLE 9 – CITY’S RESPONSIBILITIES

CITY shall provide CONTRACTOR and its employees, agents and representatives access to the Facilities as is reasonably required and reasonably cooperate with CONTRACTOR in a manner that facilitates its performance of Services.

ARTICLE 10 – INSURANCE

(a) For the duration of this AGREEMENT and for limits not less than stated below, CONTRACTOR shall maintain the following insurance:

i. Comprehensive General Liability: This insurance shall cover all operations performed by or on behalf of the CONTRACTOR, with policy limits of not less than \$2,000,000 combined single limit and aggregate for bodily injury and property damage, per occurrence. This insurance shall cover liability for damages to third party for personal injury, death and property damage, shall extend to damage, destruction and injury to CITY owned or leased property and CITY personnel caused by or resulting from the acts, operations or omissions of CONTRACTOR, its officers, agents, employees or contractors in performing its responsibilities under this AGREEMENT, and shall include coverage for Completed Operations and Contractual Liability;

ii. Comprehensive Automobile Liability: Insurance covering owned and rented vehicles operated by CONTRACTOR, with policy limits of not less than \$1,000,000 per occurrence for bodily injury and property damage; and

iii. Workers' Compensation as required by statute and Employers Liability.

All such insurance shall be provided by a policy or policies issued by a company or companies qualified by law to engage in the insurance business in the State of Alabama with a rating of B+ or better according to the most current edition of Best's Insurance Reports.

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

(b) Additional Named Insured: Except for the Workers' Compensation coverage, all coverage shall contain endorsements naming the CITY, and its officers, employees and agents as additional named insured with respect to liabilities that arise out of and result from the operations of CONTRACTOR or the performance of its Services. The additional named insured endorsement shall not limit the scope of coverage to the CITY to vicarious liability, but shall allow coverage for the CITY to the fullest extent provided by the policies. Such additional insured coverage shall be at least as broad as Additional Insured endorsement from ISO, CG 2010.11 85.

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

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

(e) Proof of Coverage: Before the Effective Date of this Agreement, CONTRACTOR shall provide the CITY a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section. This certificate(s) shall state that it is provided with respect to City of Birmingham Proposal #16-27, and also provide that such insurance shall not be terminated or expire without thirty (30) days advance notice to the CITY. In the event CITY is not notified that any of the coverage required herein is to be cancelled or changed in such a manner as not to comply with the requirements of this contract, CONTRACTOR shall, within fifteen (15) days prior to the effective date of such cancellation or change, obtain and provide the CITY with binder(s) of insurance evidencing the re-establishment of the insurance coverage required herein.

ARTICLE 11 – SAFETY

CONTRACTOR acknowledges that it has inspected or will inspect the Facilities before performing the Services and work contemplated hereunder, and that it has not identified any condition or hazard that will prevent it from performing the Services in a manner that does not endanger persons or property. CONTRACTOR further acknowledges that it, not the CITY, is exclusively responsible to provide a safe working environment for all of CONTRACTOR's employees, subcontractors or representatives who perform operations related to its Services. CONTRACTOR is exclusively responsible for performing Services in a safe manner that does not put at risk the safety of persons (including its own employees, subcontractors or representatives) or endanger property or at adjacent to the work sites.

CONTRACTOR further agrees to comply with all provisions and requirements set forth in applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction over safety of persons or property or to protect them from damage, injury or loss.

ARTICLE 12 – INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and hold harmless the CITY, and its agents, employees and officials (hereinafter the "Indemnitees") from and against from and against all demands, actions, damages, judgments, expenses (including, but not limited to, attorneys' fees, expert fees, court costs and other litigation costs), losses, and claims (including those for bodily injury, sickness, disease or death, or to injury to, destruction or loss of use of tangible property) (collectively herein "Claims") by any third parties (including any employee, subcontractor or representative of CONTRACTOR, hereafter a "CONTRACTOR Representative") that arises out of, relates to, results from, or is attributable to any of the following: (a) CONTRACTOR's failure to perform the Services or its breach of other obligations or warranties herein; (b) the negligent acts or omissions of CONTRACTOR or any CONTRACTOR Representative occurring in performing any Services or in the sue of the work sites at the Facilities. This indemnification obligation includes Claims that are allegedly caused in part by the negligence of an Indemnitee(s); provided that (a) nothing herein shall obligate CONTRACTOR to indemnify any of the Indemnitees for Claims resulting from the sole negligence or from the willful misconduct of the Indemnitees, and (b) CONTRACTOR's indemnification obligation under this provision shall not exceed the amount of the limits of its general liability coverage required herein.

ARTICLE 13 –
LIMITATION OF LIABILITY/EXCLUSION OF CONSEQUENTIAL DAMAGES

CONTRACTOR AGREES AND ACKNOWLEDGES THAT, IN THE EVENT IT ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THIS AGREEMENT OR ITS FAILURE TO PERFORM ANY OF ITS OBLIGATIONS HEREUNDER, THE MAXIMUM AMOUNT THAT CONTRACTOR MAY RECOVER FROM CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO CONTRACTOR'S ACTUAL DAMAGES THAT DIRECTLY ARISE FROM THAT BREACH AND ARE PROVEN IN A COURT OF LAW. CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE COMMERCIAL TERMS HEREIN WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT ITS INCLUSION. IN NO EVENT WILL CITY BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR OTHER SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS, THAT ARE CAUSED OR ALLEGEDLY ARISE FROM CITY'S BREACH OF THIS AGREEMENT.

ARTICLE 14 – SURVIVAL

CONTRACTOR'S obligations and duties in Articles 4, 6 and 12 shall survive the termination or expiration of this AGREEMENT.

ARTICLE 15 – UNCONTROLLABLE FORCES (FORCE MAJURE)

Neither the CITY nor CONTRACTOR shall be considered to be in default of their obligations under this AGREEMENT if delays in or failure of performance shall occur due to Uncontrollable Forces (as defined below), the effect of which, by the exercise of reasonable diligence, the non-performing party could not reasonably avoid or anticipate. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this AGREEMENT, and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and economic dislocations. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Uncontrollable Force, give written notice to the other party describing the circumstances and Uncontrollable Force preventing continued performance of the obligations of this AGREEMENT.

ARTICLE 16 – SUCCESSORS/ASSIGNMENT/DBE PARTICIPATION

CITY and CONTRACTOR bind themselves and their successors and assigns to this AGREEMENT.

CONTRACTOR shall not subcontract with a third party or assign this AGREEMENT, or any of its rights, duties or obligations hereunder, without the express written approval of the CITY, which consent will not be unreasonably withheld.

CONTRACTOR acknowledges that the CITY, as a matter of public policy, seeks to actively include Disadvantaged Business Enterprises (as defined by the Small Business Administration) such as professional firms, consultants, and contractors in its business, economic programs and ventures. CONTRACTOR agrees that, to the maximum extent allowed by law, it will comply with this policy with respect to its selection and retention of any sub-contractors or third parties it retains to assist it to perform the Services.

ARTICLE 17 – NOTICES

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As to CITY
Faye K. Oates (Faye.Oates@birminghamal.gov)
Director of CrossPlex
City of Birmingham
2337 Bessemer Road
Birmingham, AL 35208
Attention: Faye Oates

As to attorney
Thomas Bentley (Thomas.Bentley@birminghamal.gov)
Deputy City Attorney
City Hall, Room 600
710 North 20th Street
Birmingham, AL 35203

As to City Clerk
Lee Frazier (Lee.Frazier@birminghamal.gov)
Birmingham City Clerk
City Hall, 3rd Floor
710 North 20th Street
Birmingham, AL 35203

As to CONTRACTOR

Either party may designate an alternative or additional representative(s) by providing notice to the other.

ARTICLE 18 – CONTRACT REPRESENTATIVES

Each party hereby appoints a representative(s) who shall coordinate with the other party on matters related to the performance of the Services, the administration of this Agreement, and who may act on behalf of its respective organization to transmit instructions and receive information (the “Contract Representative”).

The CITY’s Contract Representative shall be:

Faye Oates, Director of CrossPlex
City of Birmingham
2337 Bessemer Road
Birmingham, AL 35208
205-279-8954
Email: faye.oates@birminghamal.gov

The CONTRACTOR’s Contract Representative is:

Email: _____

Either party may designate a Contract Representative other than the person named above upon provision of written notice to the other.

ARTICLE 19 – LICENSING/COMPLIANCE WITH LAWS

(a) Before commencing its Services, CONTRACTOR, at its own expense, will obtain all licenses, permits or other governmental authorizations needed to perform the Services, including, without limitation, an appropriate business license issued by the City and any permits or licenses required by the Jefferson County Health Department (collectively, “Licensing”). Additionally, as provided in Article 6 above, CONTRACTOR will undertake to obtain license(s) required by the ABC Board. CONTRACTOR further agrees to maintain all required Licensing, and comply with the terms of all such licenses or permits, throughout the Term of this AGREEMENT.

(b) CONTRACTOR agrees to comply with all laws, guidelines and regulations applicable to the performance of the Services, including, but not limited to, any federal, state or local regulations applicable to the handling, preparation or service of food or beverages to the public (collectively herein, “Laws and Regulations”).

ARTICLE 20 – DISPUTE RESOLUTION

If a dispute or disagreement arises between the parties with respect to this AGREEMENT (a “Dispute”), the respective Contract Representatives will engage in good faith negotiations and attempt to resolve that Dispute within forty-five (45) days after it arises. In the event those negotiations are unsuccessful, the Dispute thereafter will be escalated to senior level representatives of the parties, and those senior representatives will in good faith seek to resolve it within thirty (30) days after such matter is escalated. However, if the parties are unable to amicably resolve any Dispute, the dispute resolution mechanism shall be litigation in a court of competent jurisdiction that is located in Jefferson County, Alabama. If (i) either party should employ attorneys or incur other expenses in any legal action regarding a Dispute, and (ii) one party secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative bod related thereto against the other party, the losing party will pay the prevailing party its reasonable attorneys’ fees and other reasonable expenses that are incurred in that action.

ARTICLE 21 – MISCELLANEOUS

(a) The AGREEMENT is comprised of this CONCESSION AND CATERING MANAGEMENT SERVICES AGREEMENT, Proposal #16-27 (including the Specifications) and the Response. In the event of a conflict between any of the terms, conditions and provisions of these components, any such conflict shall be resolved by reference to these components in the following order of priority: (1) the CONCESSION AND CATERING MANAGEMENT SERVICES AGREEMENT; (2) Proposal #16-27; and (3) the Response.

(b) This AGREEMENT expresses the entire understanding between the parties concerning the subject matters herein, and there are no promises or understandings concerning those matters other than those stated herein. This AGREEMENT supersedes all prior representatives, negotiations, communications, or understandings, whether oral or written, between the CITY and CONTRACTOR pertaining to the Services or the subject matters on this AGREEMENT.

(c) The AGREEMENT may be modified only by a written amendment that is executed by both parties.

(d) CONTRACTOR is an independent contractor of the CITY. This AGREEMENT does not create any partnership, joint venture or principal-agent relationship between the CITY and CONTRACTOR. Further, the CITY retains no control or authority with respect to its means and methods in which the CONTRACTOR (or any of its employees, subcontractors, or representatives) performs the Services.

(e) The contract is made only for the benefit of the CITY and CONTRACTOR. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(f) CONTRACTOR makes the following representations and warranties as additional inducements to the CITY for it to enter the AGREEMENT:

(i) CONTRACTOR is a duly organized and existing entity that is authorized to perform business under the laws of the State of Alabama, and has the power to enter into and to perform and observe its agreements and covenants in the contract.

(ii) All actions required to be taken by or on behalf of CONTRACTOR to execute the contract, and to perform its covenants, obligations and agreements hereunder, have been duly taken. Those actions may include a resolution duly adopted by its governing body; and

(iii) The execution and performance of the AGREEMENT do not constitute and will not cause the breach or violation of any contract, lease, franchise, permit or agreement of any nature to which CONTRACTOR is a party.

(g) In its performance of Services, CONTRACTOR agrees to treat all of its employees, contractors and representatives, all CITY representatives, and the public equally without regard to race, color, religion, gender, age or national origin.

(h) If CONTRACTOR has information that any process, good or item furnished or used in its operations infringes on a patent or a copyright, it shall promptly provide such information to the CITY. CONTRACTOR shall pay all royalties and license fees related to its use of any of those articles. CONTRACTOR shall hold and save the CITY (and its agents and employees) harmless from liability of any nature or kind, including costs and expenses, for or on account of any claim of infringement of any copyright or patent or unpatented invention, process, article, appliance or item manufactured or used by CONTRACTOR in its performance of this AGREEMENT.

(i) The invalidity, illegality, or unenforceability of any provision of the AGREEMENT, or the occurrence of any event rendering any portion or provision of this AGREEMENT void, shall in no way affect the validity or enforceability of any other portion or provision herein. Any void provision shall be deemed severed from the AGREEMENT, and the balance of the AGREEMENT shall be construed and enforced as if the AGREEMENT did not contain the particular portion or provision held to be void.

(j) CONTRACTOR certifies that it has not employed or retained any firm, entity or person to solicit or secure its selection to enter into this AGREEMENT, and that it has not paid or agreed to pay any fee, commission, percentage, gift or other consideration to any such firm, entity or person that is contingent upon or resulting from the award or making of this AGREEMENT. The CITY, at its sole discretion, may terminate the AGREEMENT without liability if CONTRACTOR violates this warranty.

(k) This AGREEMENT may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as an original document.

(l) Any forbearance or delay on the part of the CITY in enforcing any of its rights under this AGREEMENT shall not be construed as a waiver of such rights. No terms of this AGREEMENT shall be waived by the CITY unless expressly stated in writing.

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

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

(o) “Buy Local”. Contractor agrees that in connection with any portion of the Work, it will make commercially reasonable efforts to buy and/or lease supplies, materials and equipment from vendors located within the corporate limits of the City of Birmingham and it will encourage any subcontractor of the Contractor, if any, to buy and/or lease supplies, materials and equipment from vendors located within the corporate limits of the City of Birmingham.

(p) Local Hiring. Contractor agrees to make, and to cause its subcontractors, if any, to make commercially reasonable efforts to hire qualified residents of the City of Birmingham to fill available positions with respect to the Work.

(Signature Page Follows)

In witness whereof, the CITY, and YGMR, LLC enter into this AGREEMENT.

CITY

By: William A. Bell, Sr.

Its: Mayor

Signature: _____

Date: _____

Attest: _____

City Clerk: _____
Lee Frazier, City Clerk

CONTRACTOR

By: _____

Its: _____

Signature: _____

Date: _____

Witness: _____

Name: _____

APPROVED AS TO FORM BY LAW DEPARTMENT:

Assistant City Attorney / Date

SAMPLE