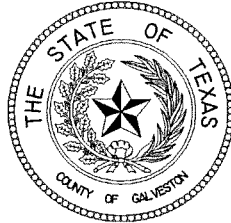


**GALVESTON COUNTY  
PURCHASING DEPARTMENT**



**REQUEST FOR PROPOSAL**

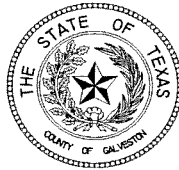
**RFP #B162004**

**VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**

**PROPOSAL DUE DATE: 02/11/2016**

**2:00 P.M.**

***Rufus Crowder, CPPO, CPPB  
Purchasing Agent  
Galveston County  
722 Moody (21<sup>st</sup> Street)  
Fifth (5<sup>th</sup>) Floor  
Galveston, Texas 77550  
(409) 770-5372***



**RFP #B162004**  
**OPEN: 02/11/2016**  
**TIME: 2:00 P.M.**

## **REQUEST FOR PROPOSAL**

### **VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**

Sealed proposals in sets of five (5), one (1) original and four (4) copies, will be received in the office of the Galveston County Purchasing Agent until 2:00 P.M. CST, on 02/11/2016, and opened immediately in that office in the presence of Galveston County Auditor and the Purchasing Agent. Sealed proposals are to be delivered to Rufus G. Crowder, CPPO CPPB, Galveston County Purchasing Agent at the Galveston County Courthouse, 722 Moody, (21<sup>st</sup> Street), Floor 5, Purchasing, Galveston, Texas 77550, (409) 770-5372. The time stamp clock located in the Purchasing Agent's office shall serve as the official time keeping piece for this solicitation process. Any proposals received after 2:00 P.M. on the specified date will be returned unopened.

#### **Purpose:**

The County of Galveston is seeking a vendor for the maintenance and operation of the Galveston County Veteran's Sports Complex in Jack Brooks Park, Hitchcock, Texas.

All proposals must be marked on the outside of the envelope:

**RFP #B162004**

#### **VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**

Proposers name, return address, and the enclosed label should be prominently displayed on the proposal package for identification purposes.

Specifications can be obtained on application at the office of the Galveston County Purchasing Agent, located in the Galveston County Courthouse, 722 Moody, (21<sup>st</sup> Street), Floor 5, Purchasing, Galveston, Texas, 77550, or by visiting the Galveston County website @ <http://www.galvestoncountytexas.gov/pu/Pages/BidListings.aspx>.

Proposal prices shall be either lump sum or unit prices as shown on proposal bid sheets, if applicable. The net price shall be delivered to Galveston County, including all freight, shipping, and license fees. Galveston County is tax exempt and no taxes should be include in proposal pricing.

Upon satisfaction of contractual terms (e.g., goods delivered in promised condition, services rendered as agreed, etc.), contractor shall be paid via Galveston County's normal accounts payable process.

***A pre-proposal conference will be held on Monday, January 25, 2016 at 11:00 a.m. in the Galveston County Purchasing Department located at the Galveston County Courthouse, 722 Moody Avenue (21<sup>st</sup> St), Fifth (5<sup>th</sup>) Floor, Galveston, Texas 77550***

#### **Bonding Requirements:**

No bonding is required with this Request for Proposal.

The Galveston County Commissioners' Court reserves the right to waive any informality and to reject any and all proposals, and to accept the proposal which, in its opinion, is most advantageous to Galveston County with total respect the governing laws.

Rufus G. Crowder, CPPO CPPB  
Purchasing Agent  
Galveston County

**GENERAL PROVISIONS  
VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK  
GALVESTON COUNTY, TEXAS**

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**1. PROPOSAL PACKAGE**

*The request for proposal, general and special provisions, drawings, specifications/line item details, contract documents and the proposal sheet are all part of the proposal package. Proposals must be submitted in sets of five (5), one (1) original and four (4) copies on the forms provided by the County, including the proposal sheets completed in their entirety and signed by an authorized representative by original signature. Failure to complete and sign the proposal sheets/contract page(s) may disqualify the proposal from being considered by the Commissioners' Court. Any individual signing on behalf of the proposer expressly affirms that he or she is duly authorized to tender this proposal and to sign the proposal sheet/contract under the terms and conditions in this proposal. Proposer further understands that the signing of the contract shall be of no effect unless subsequently awarded and the contract properly executed by the Commissioners' Court. All figures must be written in ink or typed. Figures written in pencil or with erasures are not acceptable. However, mistakes may be crossed out, corrections inserted, and initialed in ink by the individual signing the proposal. If there are discrepancies between unit prices quoted and extensions, the unit price will prevail. Each proposer is required to thoroughly review this entire proposal packet to familiarize themselves with the proposal procedures, the plans and specifications for the requested work as well as the terms, and conditions of the contract the successful proposer will execute with the County.*

**2. PROPOSER'S RESPONSIBILITY**

The Proposer must affirmatively demonstrate its responsibility. The Proposer must also meet the following minimum requirements:

1. have adequate financial resources or the ability to obtain such resources as required;
2. be able to comply with all federal, state, and local laws, rules, regulations, ordinances and orders regarding this Request for Proposal;
3. have a satisfactory record of performance;
4. have a satisfactory record of integrity and ethics; and
5. be otherwise qualified and eligible to receive an award.

**3. TIME FOR RECEIVING PROPOSALS**

Proposals received prior to the submission deadline will be maintained unopened until the specified time for opening. If the proposer fails to identify the Proposal Number on the outside of the envelope as required, the Purchasing Agent will open the envelope for the sole purpose of identifying the proposal number for which the submission was made. The envelope will then be resealed. No liability will attach to a County office or employee for the premature opening of a proposal. If you do not submit a proposal, return this Request for Proposal and state reason, otherwise your name may be removed from the Purchasing Agent's mailing list.

**4. PROPOSAL OPENING**

Only the names of proposers will be read at the opening. The Purchasing Agent will examine proposals promptly and thoroughly. No proposal may be withdrawn for a period of sixty (60) calendar days of the proposal opening date.

**5. COMMISSIONERS' COURT**

No contract is binding on the County until it is properly placed on the Commissioners' Court agenda, approved in open Court, authorized to be executed by the County Judge, and fully executed by both parties.

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Department heads and elected officials are not authorized to enter into any type of agreement or contract on behalf of the County. Only the Commissioners' Court acting as a body may enter into a contract on behalf of and contractually bind the County. Additionally, department heads and elected officials are not authorized to agree to any type of supplemental agreements or contracts for goods or services. Supplemental agreements are subject to review by the County Legal Department prior to being accepted and signed by the County's authorized representative.

**6. REJECTION OF PROPOSALS/DISQUALIFICATION**

Galveston County, acting through its Commissioners' Court, reserves the right to: reject any and all proposals in whole or in part received by reason of this request for proposal, to waive any informality in the proposals received, to disregard the proposal of any proposer determined to be not responsible, and/or to discontinue its efforts for any reason under this proposal package at any time prior to actual execution of contract by the County. Proposers may be disqualified and rejection of proposals may be recommended to the Commissioners' Court for any of (but not limited to) the following causes:

- A. Failure to use the proposal form(s) furnished by the County;
- B. Lack of signature by an authorized representative on the proposal form(s);
- C. Failure to properly complete the proposal;
- D. Proposals that do not meet the mandatory requirements; and/or
- E. Evidence of collusion among proposers.

**7. RESTRICTIVE OR AMBIGUOUS SPECIFICATIONS**

It is the responsibility of the prospective proposer to review the entire invitation to proposal packet and to notify the Purchasing Department if the specifications are formulated in a manner that would restrict competition or appear ambiguous. Any protest or question(s) regarding the specifications or proposal procedures must be received in the Purchasing Department not less than seventy-two (72) hours prior to the time set for proposal opening. Vendors are to submit proposal as specified herein or propose an approved equal.

**8. SUBSTITUTES/DESCRIPTION OF MATERIALS AND EQUIPMENT**

Any brand name or manufacturer reference used herein is intended to be descriptive and not restrictive, unless otherwise noted, and is used to indicate the type and quality of material. The term "or equal" if used, identifies commercially produced items that have the essential performance and salient characteristics of the brand name stated in the item description. All supplies, material, or equipment shall be new and of the most suitable grade for the purpose intended. It is not the County's intent to discriminate against any materials or equipment of equal merit to those specified. However, if Proposer desires to use any substitutions, prior written approval must be obtained from the County Purchasing Agent and sufficiently in advance such that an addendum may be issued. All material supplied must be one hundred percent (100%) asbestos free. Bidder/Proposer, by submission of its bid/proposal, certifies that if awarded any portion of this procurement, the bidder/proposer will supply only material and equipment that is 100% asbestos free.

**9. EXCEPTIONS TO PROPOSAL**

The proposer will list on a separate sheet of paper any exceptions to the conditions of the proposal. This sheet will be labeled, "Exceptions to Proposal Conditions", and will be attached to the proposal. If no exceptions are stated, it will be understood that all general and specific conditions will be complied with, without exception.

The Proposer must specify in its proposal any alternatives it wishes to propose for consideration by the County. Each

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**VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**  
**GALVESTON COUNTY, TEXAS**

alternative should be sufficiently described and labeled within the proposal and should indicate its possible or actual advantage to the program being offered.

The County reserves the right to offer these alternatives to other proposers.

**10. PRICING**

Proposals will be either lump sum or unit prices as shown on the proposal sheet. The net price will be delivered to Galveston County, including all freight or shipping charges.

Cash discount must be shown on proposal, otherwise prices will be considered net. Unless prices and all information requested are complete, proposal may be disregarded and given no consideration.

In case of default by the contractor, the County of Galveston may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the contractor, the difference between the price named in the contract of purchase order and the actual cost thereof to the County of Galveston. Prices paid by the County of Galveston shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent and the Commissioners' Court.

**11. PROCUREMENT CARD PROGRAM**

The County of Galveston participates in a Procurement Card (P-Card) program that allows payments made to a vendor by credit card. This method normally results in substantially faster bill payments, sometimes within three (3) to five (5) days of the actual transaction date. If your company will accept payment via credit card (Visa, MasterCard), please notate this in your proposal submittal.

**12. PASS THROUGH COST ADJUSTMENTS**

Except in instances of extreme extenuating circumstances Vendor prices shall remain firm throughout the Contract period and any renewals. Examples of extreme extenuating circumstances include such situations as a nationwide rail strike, oil shortage or oil embargo.

In extreme extenuating circumstances Vendors may be allowed to temporarily "pass through" additional costs they are forced to incur through no fault of their own. A request for a pass through cost increase will not be considered unless a Vendor's cost for his product exceeds 10% over the original cost for the product. Also, the increase in cost must be nationwide and consistent for a minimum period of sixty (60) days. Costs that historically are anticipated to rise over a period of time (for example only, such as wages or insurance costs) do not qualify for pass through. If a Vendor thinks he will be asking for a pass through cost adjustment during the term of the contract, then the original cost of the product to Vendor must be stated in Vendor's original proposal.

A request for a pass through cost does not guarantee that one will be granted. Vendors must submit such information on each request as is required by the County Purchasing Agent. The County Purchasing Agent will review each request on a case by case basis and determine the appropriateness of each request as well as amount and duration of increase. Vendors will not be permitted any additional compensation for mark-ups or profits based on the increase in price. Rather, such additional compensation will be limited to the actual increase in original cost to the Vendor as such increase is reflected by the original cost stated in the proposal. But in no event will the amount of additional compensation exceed 25% increase in Vendor's original cost for his product as such cost is reflected in Vendor's original proposal or the duration exceed a period of sixty (60) days. In addition, should, during the period of the pass



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through, cost return to normal or decrease to below pre pass through prices, appropriate downward adjustments will be made. No more than one pass through adjustment will be permitted per year.

**13. MODIFICATION OF PROPOSALS**

A proposer may modify a proposal by letter at any time prior to the submission deadline for receipt of proposals. Modification requests must be received prior to the submission deadline. Modifications made before opening time must be initialed by proposer guaranteeing authenticity. Proposals may not be amended or altered after the official opening with the single exception that any product literature and/or supporting data required by the actual specifications, if any, will be accepted at any time prior to the Commissioners' Court considering of same.

**14. SIGNATURE OF PROPOSALS**

Each proposal shall give the complete mailing address of the Proposer and be signed by an authorized representative by original signature with the authorized representative's name and legal title typed below the signature line. Each proposal shall include the Proposer's Federal Employer Identification Number (FEIN). Failure to sign the Contract page(s) and proposal response sheets may disqualify the proposal from being considered by the County. The person signing on behalf of the Proposer expressly affirms that the person is duly authorized to tender the proposal and to sign the proposal sheets and contract under the terms and conditions of this RFP and to bind the Proposer thereto and further understands that the signing of the contract shall be of no effect until it is properly placed on the Commissioners' Court agenda, approved in open Court, authorized to be executed by the County Judge, and fully executed by both parties.

**15. AWARD OF PROPOSALS – EVALUATION CRITERIA AND FACTORS**

The award will be made to the responsible proposer whose proposal is determined to be the best evaluated offer demonstrating the best ability to fulfill the requirements set forth in this Request for Proposal. **The proposed cost to the County will be considered firm and cannot be altered after the submission deadline, unless the County invokes its right to request a best and final offer.**

Each proposer, by submitting a proposal, agrees that if their proposal is accepted by the Commissioners' Court, such proposer will furnish all items and services upon which prices have been tendered and upon the terms and conditions in this proposal and contract.

The contractor shall commence work only after the transmittal of a fully executed contract and after receiving written notification to proceed from the County Purchasing Agent. The contractor will perform all services indicated in the proposal in compliance with this contract.

Neither department heads nor elected officials are authorized to sign any binding contracts or agreements prior to being properly placed on the Commissioners' Court agenda and approved in open court. Department heads and other elected officials are not authorized to enter into any type of agreement or contract on behalf of Galveston County. Only the Commissioners' Court, acting as a body, may enter into a contract on behalf of the County. Additionally, department heads and other elected officials are not authorized to agree to any type of supplemental agreements or contracts for goods or services. Supplemental agreements are subject to review by the County Legal Department prior to being signed by the County's authorized representatives.

The County of Galveston reserves the right to accept proposals on individual items listed, or group items, or on the proposal as a whole; to reject any and all proposals; to waive any informality in the proposals; and to accept the proposal that appears to be in the best interest of the County. The selection process may, however, include a request for additional information or an oral presentation to support the written proposal.

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In determining and evaluating the best proposal, the pricing may not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the service offered, and the reputation of the service in general use will also be considered with any other relevant items. The Commissioners' Court shall be the sole judge in the determination of these matters.

The County reserves the right to reject any or all proposals in whole or in part received by reason of this RFP and may discontinue its efforts under this RFP for any reason or no reason or solely for the County's convenience at any time prior to actual execution of the contract by the County.

**A Proposer whose proposal does not meet the mandatory requirements set forth in this RFP will be considered noncompliant.**

The invitation to submit a proposal which appears in the newspaper, or other authorized advertising mediums, these general provisions, the specifications which follow, the proposal sheets, and any addenda issued are all considered part of the proposal.

Each Proposer, by submitting a proposal, agrees that if its proposal is accepted by the Commissioners' Court, such Proposer will furnish all items and services upon the terms and conditions in this RFP and the resultant contract.

Notice of contract award will be made within ninety (90) days of opening of proposals to the lowest responsive and responsible contractor, whose proposal complies with all the requirements in the Request for Proposals.

Contractor shall submit to the County, for approval, within ten (10) days from notice of contract award, all Certificates of Insurance evidencing the required coverage as described under Insurance in the schedule of the Requests for Proposals.

The contractor shall not commence work under these terms and conditions of the contract until all applicable Certificates of Insurance, Performance and Payment Bonds, and Irrevocable Letter of Credit (if required) have been approved by the County of Galveston and the Contractor has received notice to proceed in writing and an executed copy of the contract from the County Purchasing Agent.

**16. DISPUTE AFTER AWARD/PROTEST**

Any actual or prospective Proposer who is allegedly aggrieved in connection with the solicitation of this RFP or award of a contract resulting therefrom may protest. The protest will be submitted in writing to the Purchasing Agent within seven (7) calendar days after such aggrieved person knows of or should have known of the facts giving rise thereto. If the protest is not resolved by mutual agreement, the Purchasing Agent will promptly issue a decision in writing to the protestant. If the protestant wishes to appeal the decision rendered by the Purchasing Agent, such appeal must be made to the Commissioners' Court through the Purchasing Agent. The decision of the Commissioners' Court will be final. The Commissioners' Court need not consider protests unless this procedure is followed.

**17. PUBLIC INFORMATION ACT**

The parties agree that the County is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act. Proposer agrees that it has **clearly and conspicuously** marked any information that it considers to be confidential, proprietary, and/or trade secret in its proposal. County agrees to provide notice to Proposer in accordance with the Public Information Act in the event the County receives a request for information under the Public Information

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Act for information that the Proposer has marked as confidential, proprietary, and/or trade secret.

**18. PROPOSER'S EMAIL ADDRESSES**

Notwithstanding the foregoing Section 17, Proposer acknowledges and agrees that the confidentiality of any and all email addresses it uses or discloses in communicating with the County are open to the public in accordance with Section 552.137 of the Government Code and consents to the release of its email addresses.

**19. RESULTANT CONTRACT**

Proposer shall correctly and fully execute the resultant contract first – after this, the contract shall be set for consideration by the Commissioners' Court. If the Commissioners' Court authorizes the execution of the contract, then the resultant contract shall become effective upon the Commissioners' Court execution of same. Contract documents shall consist of the contract, the general and special provisions, the drawings, proposal package (including best and final offer(s) if such is utilized), any addenda issued, and any change orders issued during the work. If applicable to the attached bid/proposal, bidder/proposer must sign three (3) original contracts and return with their bid/proposal submittal.

Proposer should submit a proposed contract with its proposal or its sample material terms and conditions.

The criteria utilized for determining responsibility of proposer(s) includes, but is not limited to, the proposer's experience, skill, ability, business judgment, financial capacity, integrity, honesty, possession of the necessary facilities or equipment, previous performance, reputation, promptness, and any other factor deemed relevant by the County. The proposers shall furnish any information requested by the County in order for the County to determine whether a proposer is responsible.

**20. CONTRACT TERM**

The term of the resultant contract will begin on the date of execution by the Commissioners' Court and will terminate on the date specified in the resultant contract unless terminated earlier as herein set forth.

**21. TERMINATION FOR DEFAULT**

Failure of either party in the performance of any of the provisions of this contract shall constitute a breach of contract, in which case either party may require corrective action within ten (10) days from date of receipt of written notice citing the exact nature of such breach. Failure of the party being notified to take corrective action within the prescribed ten (10) days, or failure to provide written reply of why no breach has occurred, shall constitute a Default of Contract.

All notices relating to default by Proposer of the provisions of the contract shall be issued by County by its Legal Department, and all replies shall be made in writing to the County Legal Department. Notices issued by or issued to anyone other than the County Legal Department shall be null and void and shall be considered as not having been issued or received.

Galveston County reserves the right to enforce the performance of this contract in any manner prescribed by law in the event of breach or default of this contract, and may contract with another party, with or without solicitation of bids or proposals or further negotiations. At a minimum, Proposer shall be required to pay any difference in service or materials, should it become necessary to contract with another source, plus reasonable administrative costs and attorney fees.

In the event of Termination for Default, Galveston County, its agents or representatives shall not be liable for loss of

**GENERAL PROVISIONS  
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any profits anticipated to be made by Proposer.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity.

No waiver by either party of any event of default under this agreement shall operate as a waiver of any subsequent default under the terms of this agreement.

County reserves the right to terminate this contract immediately in the event Proposer:

- Fails to meet delivery or completion schedules; and/or
- Fails to otherwise perform in accordance with the accepted proposal and the contract.

**22. TERMINATION FOR CONVENIENCE**

County may terminate this contract upon at least thirty (30) calendar days prior written notice for its convenience or for any reason deemed by the County to serve the public interest. County may terminate this contract upon thirty (30) calendar days prior written notice for any reason resulting from any governmental law, order, ordinance, regulations, or court order. In no event shall County be liable for loss of any profits anticipated to be made hereunder by Proposer should this contract be terminated early.

**23. FORCE MAJEURE**

If by reason of Force Majeure either Party shall be rendered unable, wholly or in part, to carry out its responsibilities under this contract by any occurrence by reason of Force Majeure, then the Party unable to carry out its responsibility shall give the other Party notice and full particulars of such Force Majeure in writing within a reasonable time after the occurrence of the event, and such notice shall suspend the Party's responsibility for the continuance of the Force Majeure claimed, but for no longer period.

Force Majeure means acts of God, floods, hurricanes, tropical storms, tornadoes, earthquakes, or other natural disasters, acts of a public enemy, acts of terrorism, sovereign conduct, riots, civil commotion, strikes or lockouts, and other causes that are not occasioned by either Party's conduct which by the exercise of due diligence the Party is unable to overcome and which substantially interferes with operations.

**24. ESTIMATED QUANTITIES**

Any reference to quantities shown in the Request for Proposals is an estimate only. Since the exact quantities cannot be predetermined, the County reserves the right to adjust quantities as deemed necessary to meet its requirements.

**25. CONTRACTOR INVESTIGATION**

Before submitting a proposal, each proposer shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representations made by the County upon which the contractor will rely. If the contractor receives an award as a result of its proposal submission, failure to have made such investigations and examinations will in no way relieve the contractor from its obligation to comply in every detail with all provisions and requirements of the contract, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the contractor for additional compensation.

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GALVESTON COUNTY, TEXAS**

**26. NO COMMITMENT BY COUNTY OF GALVESTON**

This Request for Proposal does not commit the County of Galveston to award any costs or pay any costs, or to award any contract, or to pay any costs associated with or incurred in the preparation of a proposal in response to this Request for Proposal, and does not commit the County of Galveston to procure or contract for services or supplies.

**27. PROPOSAL COSTS BORNE BY BIDDER/PROPOSER**

Galveston County shall not be liable for any costs incurred by Bidder/Proposer in preparation, production, or submission of a bid/proposal and shall not be liable for any work performed by Bidder/Proposer prior to issuance of fully executed contract and properly issued notice to proceed. Galveston County shall not be liable for any costs incurred by Bidder/Proposer by reason of attending a pre-proposal conference. Galveston County shall not be liable for any costs incurred by Bidder/Proposer by reason of the County invoking use of best and final offers.

**28. BEST AND FINAL OFFERS (BAFO)**

In acceptance of proposals, the County of Galveston reserves the right to negotiate further with one or more of the proposers as to any features of their proposals and to accept modifications of the work and price when such action will be in the best interest of the County. This includes solicitation of a Best and Final Offer from one or more of the proposers. If invoked, this allows acceptable proposers the opportunity to amend, change or supplement their original proposal. Proposers may be contacted in writing requesting that they submit their Best and Final Offer. Any such Best and Final Offer must include discussed and negotiated changes.

**29. SINGLE PROPOSAL RESPONSE**

If only one proposal is received in response to the Request for Proposal, a detailed cost proposal may be requested of the single contractor. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

**30. CHANGES IN SPECIFICATIONS**

If it becomes necessary to revise any part of this proposal, a written notice of such revision will be provided to all proposers in the form of addenda. The County is not bound by any oral representations, clarifications, or changes made in the written specifications by the County's employees, unless such clarification or change is provided to proposers in a written addendum from the Purchasing Agent.

The County of Galveston reserves the right to revise or amend the specifications up to the time set for opening of proposals. Such revisions and amendments, if any, shall be announced by amendments to the solicitation. Copies of such amendments shall be furnished to all prospective contractors. Prospective contractors are defined as those contractors listed on the County's Request for Proposal list for this material/service or those who have obtained documents subsequent to the advertisement. If revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening of proposals may be postponed by such number of days as in the opinion of the County shall enable contractors to revise their proposals. In any case, the proposal opening shall be at least five working days after the last amendment, and the amendment shall include an announcement of the new date if applicable, for the opening of proposals.

**31. PROPOSAL IDEAS AND CONCEPTS**

The County reserves to itself the right to adopt or use for its benefit, any concept, plan, or idea contained in any proposal.

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**32. PROPOSAL DISCLOSURES**

The names of those who submitted proposals will not be made public information unless in conformity with the County Purchasing Act. No pricing or staffing information will be released. Proposers are requested to withhold all inquiries regarding their proposal or other submissions until after an award is made. No communication is to be had with any County employee or official, other than the County Purchasing Agent, regarding whether a proposal was received. Violations of this provision may result in the rejection of a proposal.

**33. WITHDRAWAL OF PROPOSAL**

Proposers may request withdrawal of a sealed proposal prior to the scheduled proposal opening time provided the request for withdrawal is submitted to the Purchasing Agent in writing. No proposals may be withdrawn for a period of sixty (60) calendar days after opening of the proposals.

**34. INDEMNIFICATION**

The contractor shall agree to assume all risks and responsibility for, and agrees to indemnify, defend, and save harmless, the County of Galveston, its elected and appointed officials and department heads, and its agents and employees from and against all claims, demands, suits, actions, recoveries, judgments, and costs and expenses including reasonable attorney's fees for the defense thereof in connection therewith on account of the loss of life, property or injury or damage to the person which shall arise from contractor's operations under this contract, its use of County facilities and/or equipment or from any other breach on the part of the contractor, its employees, agents or any person(s), in or about the County's facilities with the expressed or implied consent of the County. Contractor shall pay any judgment with cost which may be obtained against Galveston County resulting from contractor's operations under this contract.

Contractor agrees to indemnify and hold the County harmless from all claims of subcontractors, laborers incurred in the performance of this contract. Contractor shall furnish satisfactory evidence that all obligations of this nature herein above designated have been paid, discharged or waived. If Contractor fails to do so, then the County reserves the right to pay unpaid bills of which County has written notice direct and withhold from Contractor's unpaid compensation a sum of money reasonably sufficient to liquidate any and all such lawful claims.

**35. REQUIREMENT OF AND PROOF OF INSURANCE**

The successful proposer shall furnish evidence of insurance to the County Purchasing Agent and shall maintain such insurance as required hereunder or as may be required in the resultant contract, if different. Contractor shall obtain and thereafter continuously maintain in full force and effect, commercial general liability insurance, including but not limited to bodily injury, property damage, and contractual liability, with combined single limits of \$1,000,000 or as may be required by State or Federal law, whichever is greater. Such insurance must be issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners of the State of Texas, with coverage provisions insuring the public from loss or damage that may arise to any person or property by reason of services rendered by Contractor. Insurance shall be placed with insurers having an A.M. Best's rating of no less than A. The County of Galveston shall be named as an additional insured on the commercial general liability insurance policy. Certificates of Insurance, fully executed by a licensed representative of the insurance company written or countersigned by an authorized Texas state agency, shall be filed with the County Purchasing Agent within ten (10) business days of issuance of notification from the County Purchasing Agent to Proposer that the contract is being activated as written proof of such insurance and further provided that proposer shall not commence work under this contract until it has obtained all insurance required herein, provided written proof as

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required herein, and received written notice to proceed issued from the County Purchasing Agent. Proof of renewal/replacement coverage shall be provided upon expiration, termination, or cancellation of any policy. Said insurance shall not be cancelled, permitted to expire, or changed without thirty (30) days prior written notice to the County. Insurance required herein shall be maintained in full force and effect during the life of this contract and shall be issued on an occurrence basis. Contractor shall require that any and all subcontractors that are not protected under the Contractor's own insurance policies take and maintain insurance of the same nature and in the same amounts as required of Contractor and provide written proof of such insurance to Contractor. Proof of renewed/replacement coverage shall be provided upon expiration, termination, or cancellation of any policy. Contractor shall not allow any subcontractor to commence work on the subcontract until such insurance required for the subcontractor has been obtained and approved.

Successful proposer shall carry in full force Workers' Compensation Insurance Policy(ies), if there is more than one employee, for all employees, including but not limited to full time, part time, and emergency employees employed by the successful proposer. Current insurance certificates certifying that such policies as specified above are in full force and effect shall be furnished by successful proposer to the County.

Insurance is to be placed with insurers having a Best rating of no less than A. The Proposer shall furnish the County with certificates of insurance and original endorsements affecting coverage required by these insurance clauses within ten (10) business days of receiving notification from the County Purchasing Agent that the contract is being activated. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The Proposer shall be required to submit annual renewals for the term of this contract prior to expiration of any policy.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity.

The County agrees to provide Proposer with reasonable and timely notice of any claim, demand, or cause of action made or brought against the County arising out of or related to utilization of the property. Proposer shall have the right to defend any such claim, demand, or cause of action at its sole cost and expense and within its sole and exclusive discretion. The County agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the property without the prior written consent of the Proposer.

In no event shall the County be liable for any damage to or destruction of any property belonging to the Proposer.

**Galveston County shall be listed as the additional insured on policy certificates and shall be provided with no less than thirty (30) calendar days prior notice of any changes to the policy during the contractual period.**

**36. BID/PROPOSAL GUARANTEE**

Evidencing its firm commitment to engage in contract if Proposer is selected for award of contract, each Proposer is required to furnish with their proposal a Cashier's Check, Certified Check from any bank within the State of Texas, or an acceptable Proposer's Bond (in the event of requests for bids, this is called a Bidder's Bond), in the amount of five percent (5%) of the total contract price. The Proposer's Bond must be executed with a surety company authorized to do business in the State of Texas. Failure to furnish the bid/proposal guarantee in the proper form and amount, by the time set for opening of bids/proposals may be cause for rejection of the bid/proposal.

The Cashier's Check, Certified Check, or Proposer Bond (as applicable) will be returned to each respective unsuccessful proposer(s) subsequent to the Commissioners' Court award of contract, and shall be returned to the

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successful proposer upon the completion and submission of all contract documents. Provided however, that the Cashier's Check, Certified Check, or Proposer Bond will be forfeited to the County as liquidated damages should successful proposer fail to execute the contract within thirty (30) days after receiving notice of the acceptance of its proposal.

**37. PERFORMANCE AND PAYMENT BONDS**

Successful proposer, before beginning work, shall execute a performance bond and a payment bond, each of which must be in the amount of the contract. The required payment and performance bonds must each be executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56<sup>th</sup> Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code).

The performance and payment bonds must clearly and prominently display on the bond or on an attachment to the bond:

- a.) The name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
- b.) The toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll free-telephone number.

The performance bond shall be solely for the protection of Galveston County, in the amount of the contract, and conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents. The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material, and in the amount of the contract.

The payment and performance bonds required to be furnished herein must be furnished before the contractor begins work and are a requirement for issuance of a Notice to Proceed. Such bonds must be furnished to the Galveston County Purchasing Agent within ten (10) business days of receiving notice from the Purchasing Agent that the contract has been fully executed. Failure to provide the required payment and performance bonds within such 10 business days shall constitute an event of default under this contract. Contractor shall not commence work until all applicable certificates of insurance, performance bonds, and payment bonds have been received and approved by the County Purchasing Agent and the Contractor receives notice to proceed in writing that has been issued by the County Purchasing Agent.

Additionally, if this request for proposal is for the award of a public works contract, then compliance with Chapter 2253 of the Texas Government Code, which is known as the McGregor Act, is mandatory. Performance and payment bonds are required to be furnished in accordance with Chapter 2253 of the Texas Government Code. Proposer should familiarize itself with the entire provisions of Chapter 2253 of the Texas Government Code.

**38. PATENT AND COPYRIGHT PROTECTION**

The Proposer agrees at its sole expense to protect the County from claims involving infringement of patents or copyrights. **Proposer shall indemnify and save harmless the County of Galveston, its officers, employees, and agents, from liability of any nature and kind whatsoever, including without limitation cost and expenses, for or**



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on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the County. Proposer also agrees that if Proposer is awarded this contract, that no work performed hereunder shall be subject to patent, copyright, or other intellectual property by Proposer.

**39. CONFLICT OF INTEREST DISCLOSURE REPORTING**

Proposer may be required under Chapter 176 of the Texas Local Government Code to complete and file a conflict of interest questionnaire (CIQ Form). If so, the completed CIQ Form must be filed with the County Clerk of Galveston County, Texas.

If Proposer has an employment or other business relationship with an officer of Galveston County or with a family member of an officer of Galveston County that results in the officer or family member of the officer receiving taxable income that exceeds \$2,500.00 during the preceding 12-month period, then Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

If Proposer has given an officer of Galveston County or a family member of an officer of Galveston County one or more gifts with an aggregate value of more than \$250.00 during the preceding 12-months, then Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

The Galveston County Clerk has offices at the following locations:

Galveston County Clerk  
Galveston County Justice Center, Suite 2001  
600 59<sup>th</sup> Street  
Galveston, Texas 77551

Galveston County Clerk  
North County Annex, 1<sup>st</sup> Floor  
174 Calder Road  
League City, Texas 77573

Again, if Proposer is required to file a CIQ Form, the original completed form is filed with the Galveston County Clerk (not the Purchasing Agent).

For Proposer's convenience, a blank CIQ Form is enclosed with this proposal. Blank CIQ Forms may also be obtained by visiting the Galveston County Clerk's website and/or the Purchasing Agent's website – both of these websites are linked from the Galveston County homepage, at <http://www.co.galveston.tx.us>.

As well, blank CIQ Forms may be obtained by visiting the Texas Ethics Commission website, specifically at [http://www.ethics.state.tx.us/whatsnew/conflict\\_forms.htm](http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm).

Chapter 176 specifies deadlines for the filing of CIQ Forms (both initial filings and updated filings).

It is Proposer's sole responsibility to file a true and complete CIQ Form with the Galveston County Clerk if Proposer is required to file by the requirements of Chapter 176 of the Local Government Code. Proposer is advised that it is an offense to fail to comply with the disclosure reporting requirements dictated under Chapter 176 of the Texas Local Government Code.

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If you have questions about compliance with Chapter 176, please consult your own legal counsel. Compliance is the individual responsibility of each person, business, and agent who is subject to Chapter 176 of the Texas Local Government Code.

**40. COMPETITIVENESS AND INTEGRITY**

To prevent biased evaluations and to preserve the competitiveness and integrity of such acquisition efforts, **proposers are to direct all communications regarding this proposal to the Galveston County Purchasing Agent**, unless otherwise specifically noted.

**Do not contact the requesting department.** Attempts by offering firms to circumvent this requirement will be viewed negatively and may result in rejection of the offer of the firm found to be in non-compliance.

**All questions regarding this Request for Proposal must be submitted in writing to:**

**Rufus Crowder, CPPO CPPB, Purchasing Agent**

722 Moody

Fifth (5<sup>th</sup>) Floor

Galveston, Texas 77550

Fax: (409) 621-7997

E-mail: [rufus.crowder@co.galveston.tx.us](mailto:rufus.crowder@co.galveston.tx.us)

An authorized person from the submitting firm must sign all proposals. This signature acknowledges that the proposer has read the proposal documents thoroughly before submitting a proposal and will fulfill the obligations in accordance to the terms, conditions, and specifications.

Please carefully review this Request for Proposal. It provides specific information necessary to aid participating firms in formulating a thorough response.

**41. ENTIRETY OF AGREEMENT AND MODIFICATION**

This contract contains the entire agreement between the parties. Any prior agreement, promise, negotiation or representation not expressly set forth in this contract has no force or effect. Any subsequent modification to this contract must be in writing, signed by both parties.

An official representative, employee, or agent of the County does not have the authority to modify or amend this contract except pursuant to specific authority to do so granted by the Galveston County Commissioners' Court.

**42. NON-COLLUSION AFFIDAVIT**

Proposer certifies, by signing and submitting a proposal, that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the proposal is genuine and not collusive or sham; that the contractor has not directly or indirectly induced or solicited another contractor to put in a false or sham proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham proposal or that anyone shall refrain from bidding; that the contractor has not in any manner, directly or indirectly, sought by agreement, communications, or conference with anyone to fix the proposal price of the contractor of any other bidder, or to fix any overhead, profit or cost element of the proposal price, or that of any other contractor, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in the proposal are true; and further, that the contractor has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or

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divulged information or data relative thereto, or paid, and will not pay, any fee to any cooperation, partnership, company association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal.

**A blank Non-Collusion Affidavit is included with this proposal packet. Proposer must enclose a truthful and fully executed original Non-Collusion Affidavit with the submission of its proposal. This is a mandatory requirement of this RFP. Failure to include the truthfully and fully executed Non-Collusion Affidavit in the submission of its proposal shall be considered non-compliance with the requirements of this RFP by the Proposer and grounds for the rejection of Proposer's submission.**

No negotiations, decisions, or actions shall be initiated by any company as a result of any verbal discussion with any County employee prior to the opening of responses to this Request for Proposal.

No officer or employee of the County of Galveston, and no other public or elected official, or employee, who may exercise any function or responsibilities in the review or approval of this undertaking shall have any personal or financial interest, direct or indirect, in any contract or negotiation process thereof. The above compliance request will be part of all County of Galveston contracts for this service.

**43. SOVEREIGN IMMUNITY**

The County specifically reserves any claim it may have to sovereign, qualified, or official immunity as a defense to any action arising in conjunction with this contract.

**44. CONTROLLING LAW AND VENUE**

Proposer acknowledges and agrees that the contract is and shall be governed and construed by the laws of the State of Texas and that venue shall lie exclusively in Galveston County, Texas.

**45. MERGERS, ACQUISITIONS**

The Proposer shall be required to notify the County of any potential for merger or acquisition of which there is knowledge at the time that a proposal is submitted.

If subsequent to the award of any contract resulting from this RFP the Proposer shall merge or be acquired by another firm, the following documents must be submitted to the County:

- a.) Corporate resolutions prepared by the awarded Proposer and the new entity ratifying acceptance of the original contract, terms, conditions and prices;
- b.) New Proposer's Federal Identification Number (FEIN); and
- c.) New Proposer's proposed operating plans.

Moreover, Proposer is required to provide the County with notice of any anticipated merger or acquisition as soon as Proposer has actual knowledge of the anticipated merger or acquisition. The New Proposer's proposed plan of operation must be submitted prior to merger to allow time for submission of such plan to the Commissioners' Court for its approval.

**46. DELAYS**

The County reserves the right to delay the scheduled commencement date of the contract if it is to the advantage of the County. There shall be no additional costs attributed to these delays should any occur. Proposer agrees it will make no

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claims for damages, for damages for lost revenues, for damages caused by breach of contract with third parties, or any other claim by Proposer attributed to these delays, should any occur. In addition, Proposer agrees that any contract it enters into with any third party in anticipation of the commencement of the contract will contain a statement that the third party will similarly make no claim for damages based on delay of the scheduled commencement date of the contract.

**47. ACCURACY OF DATA**

Information and data provided through this Request for Proposal are believed to be reasonably accurate.

**48. SUBCONTRACTING/ASSIGNMENT**

Proposer shall not assign, sell, or otherwise transfer its contract in whole or in part without prior written permission of Commissioners' Court. Such consent, if granted, shall not relieve the Proposer of any of its responsibilities under this contract.

**49. INDEPENDENT CONTRACTOR**

Proposer expressly acknowledges that it is an independent contractor. Nothing in this agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing County to exercise control or direction over the manner or method by which Proposer or its subcontractors perform in providing the requirements stated in the Request for Proposal.

**50. MONITORING PERFORMANCE**

The County shall have the unfettered right to monitor and audit the Proposer's work in every respect. In this regard, the Proposer shall provide its full cooperation and insure the cooperation of its employees, agents, assigns, and subcontractors. Further, the Proposer shall make available for inspection and/or copying when requested, original data, records, and accounts relating to the Proposer's work and performance under this contract. In the event any such material is not held by the Proposer in its original form, a true copy shall be provided.

**51. PROCUREMENT ETHICS**

Galveston County is committed to the highest ethical standards. Therefore, it is a serious breach of the public trust to subvert the public purchasing process by directing purchases to certain favored vendors, or to tamper with the competitive bidding process, whether it's done for kickbacks, friendship or any other reason. Since misuse of the purchasing power of a local government carries criminal penalties, and many such misuses are from a lack of clear guidelines about what constitutes an abuse of office, the Code of Ethics outlined below must be strictly followed.

Galveston County also requires ethical conduct from those who do business with the County.

**CODE OF ETHICS – Statement of Purchasing Policy**

"Public employment is a public trust. It is the policy of Galveston County to promote and balance the objective of protecting the County's integrity and the objective of facilitating the recruitment and retention of personnel needed by Galveston County. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public office.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Galveston County procurement organization.

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To achieve the purpose of this Article, it is essential that those doing business with Galveston County also observe the ethical standards prescribed here.”

### **General Ethical Standards**

It shall be a breach of ethics to attempt to realize personal gain through public employment with Galveston County by any conduct inconsistent with the proper discharge of the employee's duties.

It shall be a breach of ethics to attempt to influence any public employee of Galveston County to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Galveston County to participate directly or indirectly in a procurement when the employee knows that:

- The employee or any member of the employee's immediate family, has a financial interest pertaining to the procurement;
- A business or organization in which the employee or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business, or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

### **Gratuities**

It shall be a breach of ethics for any person to offer, give, or agree to give any employee or former employee of Galveston County, or for any employee or former employee of Galveston County to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

### **Kickbacks**

It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or to any person associated therewith as an inducement for the award of a subcontract or order.

### **Contract Clause**

The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation by Galveston County.

### **Confidential Information**

It shall be a breach of ethics for any employee or former employee of Galveston County to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

### **Prohibition against Contingent Fees**

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Galveston County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except

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for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Failure to abide by this section constitutes a breach of ethical standards.

**Representation**

Proposer represents and warrants, by signing and submitting its proposal, that it has not retained anyone in violation of this section prohibiting contingent fees.

**Contract Clause**

The representation prescribed above shall be conspicuously set forth in every contract and solicitation therefor.

**52. SUBJECT TO APPROPRIATION OF FUNDS**

State law prohibits the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved by the Commissioners' Court. Galveston County anticipates this to be an integral part of future budgets to be approved during the periods of this contract, except for unanticipated needs or events which may prevent such payments against this contract. However, Galveston County cannot guarantee the availability of funds, and enters into this contract only to the extent such funds are made available through appropriation (allocation) by the Commissioners' Court. This contract shall not be construed as creating any debt on behalf of the County of Galveston in violation of TEX. CONST. art. XI, § 7, and it is understood that all obligations of Galveston County are subject to the availability of funds.

**53. NOTICE**

All notices or other communications required or permitted under this contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, transmitted by facsimile, or mailed certified mail, return receipt requested with proper postage affixed and addressed to the appropriate party at the following address or at such other address as may have been previously given in writing to the parties (Proposer shall provide its notice information with its proposal submission). If mailed, the notice shall be deemed delivered when actually received, or if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, duly certified, return receipt requested, with proper postage affixed. If delivered in person, notice shall be deemed delivered when receipted for by, or actually received by, the receiving Party. If transmitted by facsimile, notice shall be deemed delivered when receipt of such transmission is acknowledged.

To the County at:

Hon. Mark Henry,  
County Judge of Galveston County  
722 Moody, Second (2<sup>nd</sup>) Floor  
Galveston, Texas 77550  
Fax: (409) 765-2653

With copies to:

Rufus Crowder, CPPO CPPB,  
Galveston County Purchasing Agent  
722 Moody, Fifth (5<sup>th</sup>) Floor  
Galveston, Texas 77550  
Fax: (409) 621-7997

Robert Boemer, Director,  
Galveston County Legal Department  
722 Moody, Fifth (5<sup>th</sup>) Floor  
Galveston, Texas 77550  
Fax: (409) 770-5560

To the Contractor at:

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(Proposer to provide its contact name, address, and facsimile number for notice hereunder.)

**54. NONDISCRIMINATION**

- a. Equal Employment Opportunity. Proposer will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, genetic information or veteran status. Proposer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, disability, genetic information or veteran status. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices of employment.

Proposer will, in all solicitation or advertisements for employees placed by or on behalf of Proposer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, disability, genetic information, or veteran status.

Proposer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

Proposer will include the provisions herein in every subcontract or purchase order unless exempted.

- b. Drug Free Work Place Act. Proposer shall comply with all applicable requirements of the Drug-Free Workplace Act of 1988 and implementing regulations.
- c. Americans with Disabilities Act. Proposer shall comply with all applicable provisions of the Americans with Disabilities Act and implementing regulations.
- d. OSHA Regulations. Proposer agrees to maintain and to display any applicable materials for its employees in accordance with OSHA regulations.
- e. Compliance with Immigration Laws and use of E-Verify. Proposer agrees to comply with all requirements of the U.S. Immigration Reform and Control Act of 1986, as amended, and any implementing regulations thereto. Proposer further agrees to utilize the E-Verify system through the Department of Homeland Security on its employees. Proposer shall not employ unauthorized aliens, and shall not assign services to be performed to any supplier or subcontractor who are unauthorized aliens. If any personnel performing any services hereunder are discovered to be an unauthorized alien, then Proposer will immediately remove such personnel from performing services hereunder and shall replace such personnel with personnel who are not unauthorized alien(s).
- f. Proposer agrees to comply with all other State and Federal laws and regulations applicable to the provision of services under this contract.

**55. RECORD RETENTION AND RIGHT TO AUDIT**

Proposer shall keep and maintain all records associated with this contract for a minimum of five (5) years from the close of the contract or as required by Federal or State law or regulation, whichever period is longer. If awarded this contract, Proposer shall allow the County reasonable access to the records in Proposer's possession, custody, or control that the County deems necessary to assist it in auditing the services, costs, and payments provided hereunder. If this contract involves the use of Federal or State funds, then Proposer shall also allow reasonable access to representatives of the

**GENERAL PROVISIONS**  
**VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**  
**GALVESTON COUNTY, TEXAS**

Office of Inspector General, the General Accounting Office, and the other Federal and/or State agencies overseeing the funds that such entities deem necessary to facilitate review by such agencies and Proposer shall maintain fiscal records and supporting documentation for all expenditures in a manner that conforms with OMB Circular A-87 (relocated to 2 C.F.R. Part 225) and this contract.

**56. TITLE VI ASSURANCES/TxDOT**

The County is subject to Title VI of the Civil Rights Act of 1964 and the Federal and State laws and regulations of the United States Department of Transportation and Texas Department of Transportation (TxDOT). Pursuant to these requirements, the County must have its contractors provide required assurances on compliance with non-discrimination by itself and its subcontractors. The Title VI Assurances within this Subsection are not exhaustive – whenever any Federal, State, or Local requirement requires additional clauses, this list shall not be construed as limiting. Contractor agrees as follows:

- (1) **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this contract.
- (2) **Nondiscrimination.** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the basis of race, color, national origin, religion, sex, age, disability or Veteran status in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurement of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, religion, sex, age, disability or Veteran status.
- (4) **Information and Reports.** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Galveston County or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to Galveston County or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance.** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, Galveston County shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - (b) cancellation, termination, or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions.** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or



**GENERAL PROVISIONS**  
**VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**  
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procurement as Galveston County or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request Galveston County to enter into such litigation to protect the interests of Galveston County, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**57. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

Proposer certifies that neither it, nor any of its Principals, are presently debarred, suspended, proposed for debarment, disqualified, excluded, or in any way declared ineligible for the award of contracts by any Federal agency. Contractor agrees that it shall refund Galveston County for any payments made to Contractor while ineligible. Contractor acknowledges that Contractor's uncured failure to perform under this Agreement, if such should occur, may result in Contractor being debarred from performing additional work for the County, the GLO, the State, HUD, and other Federal and State entities. Further, Proposer has executed the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters and returned the fully completed and executed original certification with the submission of its proposal. **The truthful and fully completed and executed original of the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters must be included with the submission of Proposer's proposal and is a mandatory requirement of this RFP. Proposer's failure to include the fully completed and executed original of this Certification shall be considered non-compliance with the requirements of this RFP and grounds for the rejection of Proposer's proposal.**

**58. SECTION 231.006, FAMILY CODE/DELINQUENT CHILD SUPPORT**

Pursuant to Title 5, Section 231.006 of the Texas Family Code, as applicable, Proposer certifies that it, including all of its principals, is/are current in child support payments and therefore, that it is eligible to receive payments from State funds under a contract for property, materials, or services. Proposer acknowledges and agrees that if it is awarded this contract, then the ensuing agreement may be terminated and payment withheld if this certification is inaccurate. Finally, by the submission of its proposal, the Proposer certifies that it has included the names and social security numbers of each person with at least 25% ownership interest in Proposer within its response to the RFP and that all such persons are current in child support payments.

**59. LABOR STANDARDS**

Proposer acknowledges that the contract to be awarded pursuant to this RFP is on a grant program funded with Federal funds. Proposer shall comply with the requirements of 29 CFR Part 5 and CFR Part 30 and shall be in conformity with Executive Order 11246, entitled "Equal Employment Opportunity", Copeland, "Anti-Kickback" Act (29 C.F.R. Part 3), the Davis-Bacon and Related Acts (29 C.F.R. Parts 1,3, and 5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), and all other applicable Federal, State, and local laws and regulations pertaining to labor standards, insofar as those acts apply to the performance of this Agreement. Proposer is also responsible for ensuring that all subcontractors comply with the requirements of 29 CFR Part 5 and CFR Part 30 and shall be in conformity with Executive Order 11246, entitled "Equal Employment Opportunity", Copeland "Anti-Kickback" Act, the Davis-Bacon and Related Acts (29 CFR Parts 1, 3 and 5), the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), and all other applicable Federal, State, and local laws and regulations pertaining to labor standards, insofar as those acts apply to the performance of this Agreement.

**GENERAL PROVISIONS**  
**VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**  
**GALVESTON COUNTY, TEXAS**

**Special Provisions begin on the next page**

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**SPECIAL PROVISIONS  
VETERANS' SPORTS COMPLEX IN JACK BROOKS PARK  
GALVESTON COUNTY, TEXAS**

The Special Provision section of this Request for Proposal solicitation and the exhibits attached herein are made a part of the entire agreement between the parties with respect to the subject matter of the Request for Proposal and Resultant Contract Agreement, and supersede the General Provisions, any prior negotiations, agreements, and understandings with respect thereto.

**PURPOSE:**

Galveston County will accept sealed proposals for the granting of a Concession Agreement for the maintenance and operation of the Galveston County Veterans Sports Complex located in Jack Brooks Park, Hitchcock, Texas.

**PROPOSAL GUARANTEE:**

A bid bond is not a requirement of this solicitation request.

**PERFORMANCE AND PAYMENT BONDS:**

Performance and Payment bonds are not a requirement of this solicitation.

**CONTRACT TERM:**

The primary term of the Concession Agreement will be for a period of three (3) years. There will be two (2) additional one (1) year options to renew on such terms and conditions as may be agreed to by the parties at the time of each renewal.

**REQUIREMENTS:**

The following are minimum requirements and required information for the submission of a proposal on the above-referenced project:

Successful proposer must indicate that he/she is submitting a proposal for the maintenance and operation of The Galveston County Veterans Sports Complex located in Jack Brooks Park, Hitchcock, Texas.

1. All proposals are subject to the terms and conditions of this Request for Proposal that will be incorporated into the final Concession Agreement.
2. Any individual(s) desiring to submit a bid on this proposal must state in their proposal they are willing to agree to abide by all terms and conditions of the Request for Proposal and attached Concession Agreement. In addition, such individual(s) must state the annual fee they are willing to pay the County and answer all other questions on the proposal forms. Failure to abide by these requirements may disqualify a proposer.
3. Proposers wishing to offer any alternatives or take any exceptions to the RFP must attach a separate sheet noting any such exceptions.
4. This RFP is seeking an individual or other legal entity to operate a County-owned facility. V.T.C.A., Local Government Code, Chapter 171 prohibits, where applicable, the participation on the part of local public officials in matters in which they may have an interest. Proposers should familiarize

themselves with the entire provisions of this law and the penalties provided for its violations before submitting their proposals.

5. Proposal submittals should be typewritten or computer generated and signed in ink. Legibility, clarity, and completeness are essential elements of the proposal. **One (1) original and four (4) copies** must be provided in a sealed envelope clearly marked as **RFP #B162004**, Veterans' Sports Complex Concession and be delivered to:

Rufus G. Crowder, CPPO CPPB  
Purchasing Agent  
Galveston County Purchasing Department  
722 Moody, 5<sup>th</sup> Floor  
Galveston, Texas 77550  
(409) 770-5373

6. The deadline to submit proposals is **2:00 p.m. on 02/11/2016**. Proposals shall be opened and the names of proposers read aloud at 722 Moody, 5<sup>th</sup> Floor, Galveston, Texas in the office of the Purchasing Agent. No decision regarding any proposal will be made on that date.
7. Any inquiries regarding the proposals should be made to Rufus G. Crowder, CPPB, Purchasing Agent at (409) 770-5373 or via e-mail at [rufus.crowder@co.galveston.tx.us](mailto:rufus.crowder@co.galveston.tx.us).
8. The responses and any subsequent negotiated items of the successful proposal shall be incorporated into the final executed contract.
9. Information disclosed in the proposals is the property of Galveston County. No information will be disclosed until the award has been placed on the Commissioners' Court agenda. Once recommendations are made to the Galveston County Commissioners' Court, proposal information is subject to public access and disclosure through requests made under the Texas Open Records Act.
10. The County reserves the right to reject any and all proposals received as a result of this request. The County may waive any informality, technical defect, or clerical error in any proposal, as the interest of the County may require. The County may cancel the RFP process at any time for any reason or no reason prior to entering into a formal agreement. All proposals shall remain firm for 60 days.
11. The proposer must demonstrate his/her experience with past or existing similar operations such as the one described in this RFP.
12. Expenses for developing proposals are entirely the responsibility of the proposers and shall not be chargeable in any manner to the County.
13. Proposals will be evaluated by a panel made up of a representative from the Galveston County Legal Department, the Galveston County Purchasing Agent, and the Director of the County Parks Department, or their designees, in accordance with the factors set forth below. A short list of finalists will be determined. If necessary, short list finalists may be invited to present their proposals and their best and final offers in an oral presentation at a time and place to be determined by the County. The evaluation criteria will consist of:

| <u>Possible Points</u> | <u>Criterion</u>   |
|------------------------|--|
| 30                     | Competence: The proposal will be evaluated for qualifications, financial stability, and previous directly related experience of the proposer.  |
| 25                     | Quality: The proposal will be assessed as to the overall approach to the management, scheduling and operation of three baseball fields, a concession stand, restrooms, press box and meeting room and parking lot. |
| 25                     | Revenue: The proposal will be evaluated with regard to financial benefits to Galveston County.   |
| 20                     | Completeness: The proposal will be evaluated with regard to inclusion of all items specified in this RFP.  |

**A proposal that does not meet each of the criteria set forth in this RFP and is not submitted by deadline will not be considered.**

**COST ADJUSTMENTS:**

Prices quoted shall be firm for the initial contract term and all approved extension periods. No cost increases shall be accepted in this initial contract term. Please consider this when providing pricing for the materials requested in this solicitation.

Thereafter, any extensions that may be approved by the Galveston County Commissioners' Court shall be subject to the provisions of the accompanying contract document.

If during the life of the contract, the successful bidder's net prices to other customers for the supplies and materials awarded therein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to Galveston County.

The bidder's past experience of honoring contracts at the bid price will be an important consideration in the evaluation of the lowest and best bid.

Any requests for price increases must be made in writing on company letterhead and addressed to the Galveston County Purchasing Agent. The requests shall be accompanied by written documentation from company suppliers and manufacturers of the requested materials that evidence the extenuating circumstances. Likewise, if any decreases occur in the industry during the contractual period, the Contractor shall extend these decreases to the County without prior request from the County. Increases in freight rates, oil embargos, or other extenuating circumstances are governed by the General Provisions, page 3, Item 12, Pass Through Cost Adjustments. These particular requests may be allowed only if prior approved by the Galveston County Commissioners' Court. It is understood that rail freight rates are subject to increase or decrease by the regulatory authority.

The County may, after examination, refuse to accept the adjusted costs if they are not properly documented, or considered to be excessive, or if decreases are considered to be insufficient. In the event the County does not wish to accept the adjusted costs and the matter cannot be resolved to

the satisfaction of the County, the Contract will be considered cancelled on the scheduled expiration date.

**EXCEPTIONS:**

Any exceptions to bid conditions should be listed on a separate sheet of paper, attached to bid submittal and submitted with bid at the specified date and time of bid opening.

ANY REFERENCES TO NAME BRANDS ARE FOR BIDDING PURPOSES ONLY

**Galveston County is tax exempt and therefore taxes and license fees should not be added to the bid price.**

*The remainder of this page intentionally left blank*

**VETERANS' SPORTS COMPLEX IN JACK BROOKS PARK  
GALVESTON COUNTY, TEXAS  
CONCESSION PROPOSAL FORM  
EXHIBIT B**

1. This is a proposal to maintain and operate the Galveston County Veterans Sports Complex located in Jack Brooks Park, Hitchcock, Texas (yes or no) \_\_\_\_\_

2. Name under which concession will operate if proposal is selected and contract entered into:

\_\_\_\_\_  
\_\_\_\_\_

3. Name of Owner/Operator:

\_\_\_\_\_

4. Type of Business (Corporation, Partnership, Sole Proprietorship):

\_\_\_\_\_

5. I, the undersigned, agree, if awarded the Concession Agreement by the County, to furnish the services and items listed on the attached proposal forms, at the prices quoted, and according to the terms and provisions of the Concession Agreement attached to this RFP. My proposal and the prices quoted herein shall remain firm for a period of sixty (60) days from the date of the proposal opening. I am authorized to agree to abide by the terms and conditions of this RFP and the Concession Agreement.

Signature: \_\_\_\_\_

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

6. Address of Concession Owner/Operator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Telephone Number: \_\_\_\_\_

8. Fax Number: \_\_\_\_\_

9. Email Address: \_\_\_\_\_

10. Annual Flat Rate Bid in Consideration for this RFP:  
\_\_\_\_\_  
(To be paid quarterly as stated in RFP)

11. Proposed Hours of Operation (7 days per week required):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. List all fees you are proposing to charge for practices for baseball organizations or teams.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. List all fees you are proposing to charge for league play.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. List all fees you are proposing to charge for tournaments.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. List all fees you are proposing to charge for rental of the meeting room.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. List all fees you are proposing to charge for advertising  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



17. List all items you are proposing to sell/rent at the concession stand with proposed prices:  
(Attach additional page if necessary)

| Item  | Proposed Price | Item  | Proposed Price |
|-------|----------------|-------|----------------|
| _____ | _____          | _____ | _____          |
| _____ | _____          | _____ | _____          |
| _____ | _____          | _____ | _____          |
| _____ | _____          | _____ | _____          |
| _____ | _____          | _____ | _____          |

18. List all officers and members of your organization or enterprise:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. Describe your experience in operating, managing, and scheduling ball fields and food and beverage concessions. This should include the length of time in business, your staff size, your understanding of the importance of senior management's continuity and involvement throughout the contract, and previous and current operations that are similar in nature to this project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. Provide a summary of how you intend to provide the services requested by this RFP. Please describe a staffing plan and chain of responsibility for resolving any problems that may arise at the concession.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

21. Provide a list of at least three references that can attest to your ability to fulfill the requirements of this RFP and Concession Agreement. (List name, address, telephone number)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22. Provide any additional information, if any, that should be considered in evaluating your proposal. If there is none, state, "There is no additional information we wish to present."

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23. List all trade fixtures and personal property items you propose to supply by the proposer.

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24. Attach a Separate Sheet if you are proposing alternatives to the requirements set forth in this RFP. Although the County is seeking proposals as specified in this RFP, reasonable alternatives will be considered. For example, the County will entertain allowing the successful applicant to provide storage sheds for ball teams upon the Concession Premises.

*End of Special Provisions*

*Remainder of page intentionally left blank.*

**Veterans' Sports Complex  
Concession Agreement  
Jack Brooks Park**

**This Agreement** is made and entered into effective as of the Commencement Date, by and between the **County of Galveston**, a political subdivision of the State of Texas and \_\_\_\_\_ . It is for the management and operation of the **Galveston County Veterans Sports Complex** located in Jack Brooks Park in Hitchcock, Texas.

Definitions

1. **County** - means the County of Galveston, Texas.
2. **Concessionaires** - means \_\_\_\_\_
3. **Complex** - means the Galveston County Veterans Sports Complex located in Jack Brooks Park in Hitchcock, Texas. The Complex consists of three fenced and lighted 300-foot baseball fields; a 2,485 square foot concession building that contains a concession stand, restrooms, press box and meeting room; a paved plaza area surrounding the building; and a 157-car parking lot. The location of the complex is more fully shown in Exhibit "A" attached hereto.
4. **Commencement Date** - means the latter of the date of execution of this agreement by the County or the date of its approval by the United States Department of the Interior.
5. **Authorized Representative** - means the Director of the County Parks Department or his written designee. Unless otherwise stated, County's Authorized Representative is authorized to act on the County's behalf on all aspects of this Agreement.

**Recitals**

**Whereas**, the County is the Owner of the Complex; and

**Whereas**, the County desires to grant to Concessionaires the exclusive right, for the term hereafter stated, to manage and operate the Complex.

**Now, Therefore, Know All Men By These Presents:**

That for and in consideration of the public improvements and other payments to be made by Concessionaires and for the further consideration of the mutual covenants, terms, provisions, and conditions contained herein, the parties hereby agree as follows:

**Article I  
Scope and Use**

1.1 That the County, subject, however, to any conditions, restrictions, covenants, rights-of-way, or easements affecting the Complex, as well as the mutual covenants, terms, provisions and conditions contained herein, grants to Concessionaires, for the term hereinafter set forth the exclusive right to:

- a) schedule baseball and/or softball practices, league games, tournaments, and other related events at the Complex;
- b) establish reasonable fees for admission during said events;
- c) operate and manage the concession stand at the Complex;
- d) offer for sale sports merchandise, souvenirs, food, and non-alcoholic beverages, and such other items of merchandise as are customarily offered for sale under similar circumstances at refreshment stand concessions within Galveston County; and
- e) schedule the upstairs meeting room at the Complex for coaches meetings or other related uses;

all of said rights being granted, at and in the Complex.

1.2 No other use of the Complex shall be permitted unless consent to such use is first obtained in writing from the County's Authorized Representative.

1.3 No portion of the Complex is being leased to Concessionaires. Concessionaires are licensees and not lessees of the Complex. The right of Concessionaires to occupy the Complex shall continue only so long as all of the terms of this Agreement are strictly and promptly complied with by Concessionaires.

1.4 The County reserves the right to enter any portion of the Complex for any reason at any time. The County also retains the right to schedule the upstairs meeting room at the Complex for use by itself or others at such times and for such other meetings it deems necessary, on the condition that such other meetings shall not unreasonably interfere with Concessionaires use of the meeting room.

1.5 The County also retains the right to enter the Complex and to make any and all repairs and other improvements it deems necessary during the term of this Agreement.

The goals of this Agreement are to provide:

- a) quality services for the citizens of Galveston County through baseball and softball practices; leagues and tournament scheduling; promotions; advertising; and concession operations;
- b) profitable management of the Complex, and cost-effective fees and pricing; and
- c) revenue to the County that may be used for future maintenance and development of Jack Brooks Park. This Agreement shall be interpreted so as to further these goals and purposes.

**Article II  
Term**

2.1 The Agreement shall be for a primary term of three (3) years beginning on the Commencement Date and terminating at midnight on the expiration of three (3) years from the Commencement Date.

2.2 Concessionaires and County may extend this Agreement for two (2) further periods of one (1) year each by Concessionaires giving the County written notice of Concessionaires' desire to do so at any time within ninety (90) days prior to the expiration of the primary term or first option period, whichever is applicable, but not less than thirty (30) days prior to expiration. Each renewal shall be on such terms and conditions as may be agreed by the County and Concessionaires at the time of each renewal. But, under no circumstances shall the term of this Agreement, including all extensions thereof exceed a maximum period of five years.

**Article III  
Permits and Approval  
Right of Reversion**

3.1 This Agreement:

- a) is made and accepted subject to the terms, reservations, conditions, restrictions, reversionary rights and easements recited or otherwise set forth in the Quitclaim Deeds found of record in Volume 2331, Pages 344 et. seq. and in Volume 2587, Pages 453 et. seq. in the Deed Records of the County Clerk of Galveston County, Texas;
- b) is made and accepted subject to all easements, rights of way, roadways, encroachments, and prescriptive rights, whether of record or not; all previously recorded restrictions, reservations, covenants, and conditions, if any; any and all oil and gas and other mineral leases, mineral severances and other instruments that affect the property; any discrepancies, conflicts or shortages in area or boundary lines; any encroachments or overlapping of improvements, and to all zoning laws, regulations and ordinances of municipal and/or governmental authorities, if any, but only to the extent they are still in effect relating to the hereinabove described property.
- c) is subject to all necessary Federal, State and/or local permits required for purposes of construction including but not limited to permits of the U.S. Army Corps of Engineers, the Texas Parks and Wildlife Department, the County of Galveston and the City of Hitchcock, if any, being secured.

**Article IV  
Ownership of Title to Improvements**

4.1 All improvements in place upon and within the Complex, with the exception of those personal property items supplied by Concessionaires, belong to and shall remain the property of the County during the full term of this Agreement and any renewal thereof. Concessionaires will not commit waste upon, remove, or voluntarily or negligently destroy any improvements unless to construct other improvements that will, at all times, meet the requirements specified herein.

**Article V**  
**Modifications**

5.1 Concessionaires may, from time to time, upon prior written approval being obtained from the County's Authorized Representative, make such permanent changes, alterations and additions to the Complex (such changes, alterations, and additions hereinafter to be called "Modifications") as Concessionaires deem desirable for the purpose of maintaining the Complex as an efficient high-class facility, provided:

- a) such Modifications do not diminish the value or utility of the improvements or change the use thereof,
- b) all Modifications are designed, engineered, developed and once completed, maintained and operated at no expense to the County,
- c) all Modifications meet the requirements specified herein; and
- d) all Modifications must complement the intended use of the Complex as a facility for baseball and softball practices, games and tournaments.

5.2 All Modifications made by Concessionaires shall remain the property of the concessionaires during the term of the Agreement. Such Modifications may not be removed from the Complex prior to the end of the term without prior written consent from the County.

5.3 Concessionaires covenant and agree that in the event Concessionaires wish to make Modifications to the improvements, Concessionaires will, at Concessionaires' sole cost, risk and expense and prior to commencement of construction prepare and submit to the County's Authorized Representative preliminary plans and specifications for review and approval for the construction of such Modifications. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the County for improvement of Park properties. Any revisions or changes to Concessionaires' plans and specifications submitted by the County to Concessionaires shall be incorporated by Concessionaires into the final plans and specifications for the construction of the Modifications. The County agrees that its revisions and changes to Concessionaires' plans and specifications shall not be unreasonably burdensome. Approval of the plans and specifications by the County and the Concessionaires shall be evidenced by both parties signing a set of the plans and specifications.

5.4 Upon approval of the plans and specifications, and prior to the commencement of construction of the Modifications, Concessionaires will obtain a building permit, if required, from the appropriate authority or authorities for the construction of the Modifications. In addition, Concessionaires shall require their Contractor to furnish the County (owner) payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code in an amount sufficient to pay the estimated construction costs of such Modifications. Such bonds shall be conditioned that the Concessionaires shall complete the Modifications in accordance with the plans and specifications and that the Concessionaires and Concessionaires' Contractors and Subcontractors shall pay for all labor, materials, tools, supplies and equipment furnished in connection with the construction. The payment and performance bonds shall be approved by the County which approval shall not be unreasonably withheld.

5.5 Concessionaires further agree that upon approval of the plans and specifications, and the obtaining of all necessary building permits and payment and performance bonds, Concessionaires will thereafter proceed with reasonable diligence and without unreasonable interruption, to build and construct such Modifications on the Complex in a good and workmanlike manner, substantially in accordance with the plans and specifications and in compliance with the regulations and requirements of all regulatory authorities having jurisdiction. Concessionaires further agree to allow inspection of the progress to be made by the County's representative and that in a case of disagreement with respect to the compliance with approved plans, such disputes will be submitted to the County Engineer, whose decision shall be binding on all points contested. Concessionaires further agree to tender to County a copy of the "as-built" plans and specifications upon completion of the construction of the Modifications. In addition, Concessionaires agree that all additional utility connections and expense to the Complex necessitated by the Modifications shall be at the Concessionaires' expense

**Article VI**  
**Consideration – Operation**

6.1 A consideration for use of the Complex, Concessionaires, in addition to the surrender to the County of the Complex at the expiration or termination of this Agreement as herein provided, shall pay to the County an annual fee as follows:

| <u>YEAR</u>        | <u>FEE</u> |
|--------------------|------------|
| One                | \$xxxxx.00 |
| Two                | \$xxxxx.00 |
| Three              | \$xxxxx.00 |
| Four (if extended) | \$xxxxx.00 |
| Five (if extended) | \$xxxxx.00 |

6.2 Payments shall be structured on a quarterly basis with payments due as follows:

| <u>Year</u>              | <u>Payment Amount</u>        | <u>Due on or Before</u> |
|--------------------------|------------------------------|-------------------------|
| One                      | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/2 annual fee               | December 15             |
| Two                      | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |
| Three                    | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |
| Four<br>(if<br>extended) | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |

|          |                              |              |
|----------|------------------------------|--------------|
| Five     | 1/4 <sup>th</sup> annual fee | March 15     |
| (if      | 1/4 <sup>th</sup> annual fee | June 15      |
| extended | 1/4 <sup>th</sup> annual fee | September 15 |
|          | 1/4 <sup>th</sup> annual fee | December 15  |

6.3 Payments shall be by cashier's check or money order made payable to the County of Galveston. Cash payments or personal checks will not be accepted.

**Article VII  
Utilities**

- 7.1 The Complex shall be maintained and operated with expenses divided as follows:
- a) County shall be responsible for prompt payment of all water, sewer, electricity and waste disposal expenses.
  - b) Concessionaires shall be responsible for all other utility expenses including telephone.

**Article VIII  
Taxes**

8.1 Concessionaires may be subject to ad valorem taxes upon all improvements purchased or constructed by Concessionaires, as well as all Modifications and personal property owned by Concessionaires and used at or in connection with the Complex.

8.2 Concessionaires' interest in this Agreement may also be the basis for an ad valorem tax. Concessionaires covenant to pay such ad valorem taxes as may be lawfully assessed against such personal property as such taxes become due.

8.3 Concessionaires also covenant to pay Texas State Sales Taxes and Federal Income Taxes as such taxes become due.

8.4 Concessionaires agree to provide to County receipts or other certified documentation that all taxes have been paid within thirty (30) days of the due date of such taxes.

**ARTICLE IX  
Bookkeeping**

9.1 Concessionaires shall keep full, complete, and proper books, records, and accounts of all gross receipts, both for cash and on credit, of each separate activity. Said books, records, and accounts, including any sales tax reports that may be required by any government or governmental agency, shall at all reasonable times be open to inspection by the County or its authorized representatives or agents.



**Article X**  
**Repairs and Maintenance**

- 10.1 County agrees to provide the following services on the following schedule:
- a) Trash removal, once daily, five days per week (Monday through Friday)
  - b) Cleaning restrooms, once daily, six days per week (Sunday through Friday)
  - c) Grass trimming and edging for sidewalks and parking areas, once per week
  - d) Mowing grounds surrounding the Complex, once per week
  - e) Maintaining exterior of Concession building, as required
  - f) Maintaining field lighting, as required (20% outage as deemed by the Little League Lighting Regulations)

10.2 Concessionaires covenant and agree, at Concessionaires' sole cost and expense, to keep the remainder of the Complex in good, safe, and clean condition and to make, at Concessionaires' cost and expense, all repairs and replacements, excepting those listed above as the County's responsibility that may be necessary and required to keep same in good, safe, and sound condition.

- 10.3 Specifically, Concessionaires agree to provide the following, at Concessionaires' cost and expense:
- a) Striping, lining, continued maintenance and detailing of fields as required
  - b) Scoreboard maintenance and replacement as required
  - c) Audio system maintenance and replacement as needed for field public address systems
  - d) Irrigation of fields along with repair and maintenance as needed
  - e) Dragging fields
  - l) Maintaining interior of Concession Building to include compliance with local health regulations
  - g) Safety netting between the fields and the bleachers
  - h) Dirt covering over the exposed concrete behind each backstop
  - i) The initial preparation of the three infield areas to make them ready for use during the first season of play
  - j) Edging and trimming of all fenced areas

This list of Concessionaires' responsibilities is by way of example only and shall not be construed to be all inclusive.

10.4 The County, acting through its agents or representatives, shall have the right to enter the Complex or any part thereof, from time to time, regardless of whether Concessionaires are open for business or present, for inspection of same and for repairs, maintenance and correction of any defaults of Concessionaires during the term of this agreement.

10.5 The County, acting through its agents or representatives, shall have the right to impose reasonable regulations to ensure proper maintenance care and upkeep of the Complex and surrounding grounds outside of the Complex which need attention due to Concessionaires' operations within the Complex.

10.6 The degree of maintenance required of Concessionaires shall be in keeping with other public parks operated by the County. If Concessionaires neglect or refuse to do so, the County may, but is not required to, perform such maintenance repairs for the account of Concessionaires and Concessionaires shall promptly reimburse the County for the costs thereof, provided that the County shall first give Concessionaires fifteen (15) days prior written notice of its intention to perform such maintenance or repairs at their own expense. Failure on the part of Concessionaires to repair or maintain the Complex or to promptly reimburse the County as herein provided, shall be grounds for termination of this Agreement.

10.7 Concessionaires covenant and agree to comply with all valid laws, ordinances, rules, and regulations now or hereafter made by any governmental authority having jurisdiction on the premises respecting fire, cleanliness, health, and safety.

### **Article XI Operation**

11.1 Concessionaires agree that all areas of the Complex shall be permanently identified as being publicly owned and operated as a public outdoor recreational facility in all signs, literature and advertising and that the Concessionaires will be identified solely as concessionaires (licensees) operating in a public park so as to not mislead the public into believing that the area is private.

11.2 Concessionaires also agree that signs shall be posted identifying the facility as being open and, upon payment of a fee, available to the public. Such signs shall also contain such other information as is required by the County.

11.3 Concessionaires further agree to make the various facilities and structures on the Complex open and available to the public for public use at all times on a nondiscriminatory basis. All fees charged shall be fair and reasonable and nondiscriminatory.

11.4 County's Authorized Representative has the right to close Jack Brooks Park to the public for any reason or no reason at any time. If the Authorized Representative decides to close the Park, Concessionaires will likewise close the Complex for such period of time as Jack Brooks Park is closed to the public.

11.5 Concessionaires shall comply with applicable State and local laws governing the operation of all portions of the Complex. Violation of any Federal, State, County, or City laws, ordinances, and/or regulations may be considered as cause for termination of this Agreement.

11.6 Concessionaires warrant that no liens of any type or kind will be voluntarily or involuntarily placed on the property and that any liens so permitted or suffered will be cleared within ten (10) working days.

11.7 Concessionaires shall obtain and pay for all permits or licenses that may be required for operation of all portions of the Complex. In addition, Concessionaires shall meet all requirements of the County, City, and State Health Departments with regard to the handling and dispensing of food and non-alcoholic beverages.

11.8 Concessionaires shall not erect any signs on the complex or in the vicinity thereof without obtaining the advance written approval of the County. Outfield fence advertising signage may not include advertising for alcoholic beverages, snuff or tobacco products, political office holders or candidates or any other enterprise that, in the opinion of the Authorized Representative, is inconsistent with the operation of a youth sports complex.

11.9 Concessionaires may enter into advertising relative to the Complex that is consistent with the dignified approach necessitated by the reputation of the Complex.

11.10 Complex operating hours are determined by Concessionaires. The initial hours that Concessionaires will be open are set forth in their proposal. These hours may change as permitted by the Authorized Representative.

11.11 Concessionaires will schedule ball fields for practice by softball and/or baseball organizations, league play by softball and/or baseball organizations, tournaments by softball and/or baseball organizations, and meetings in the Concession Building meeting room.

11.12 Concessionaires may establish reasonable admission fees for events sponsored at the Complex

11.13 Concessionaires will manage and operate the concession stand at the Complex, providing food and non-alcoholic beverage sales and merchandising of other appropriate products.

11.14 Examples of the variety of food and beverages sold at the concession may include but are not limited to such items as hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc.), bottled water, and coffee. No alcoholic beverages will be permitted to be sold.

11.15 Examples of the type of merchandise that may be sold or rented include the following types of items: pennants, baseball caps, T-shirts, souvenir balls and bats, discs for disc golf, commemorative programs, and other suitable sports equipment or memorabilia.

11.16 County, acting through its Authorized Representative, may prohibit Concessionaires from the sale of any food, beverage or item of merchandise it finds objectionable.

11.17 Concessionaires will coordinate and be responsible for advertising and promotions of the Complex.

11.18 Concessionaires shall promptly pay all debts and expenses incurred by it in the operation of the Complex.

11.19 Concessionaires shall keep the Complex and surrounding areas in a clean and sanitary condition at all time. Concessionaires shall store all trash in the containers provided for that purpose.

11.20 Concessionaires shall not keep any explosive or hazardous waste or materials at the Complex, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the Complex.

11.21 Vendors shall not be permitted or engaged by Concessionaires within the Complex without prior written approval being obtained by Concessionaires from the County's Authorized Representative.

11.22 No vending machines shall be permitted within the Complex without prior written approval being obtained by Concessionaires from the County's Authorized Representative.

11.23 Prices for all food products, merchandise, services and items including routine tournament fees shall be clearly posted.

11.24 Concessionaires may set additional special tournament fees for specific events.

11.25 Concessionaires agree that outside lighting and other operations in the Complex will not be operated at such hours or with such brightness or noise intensity as to constitute a nuisance to the occupants of private property in the area.

## **Article XII Insurance**

12.1 Concessionaires covenant and agree that the Concessionaires will, throughout the term of this Agreement, at the Concessionaires' cost and expense, maintain in force and effect a policy or policies of insurance with deductibles of no more than five thousand (\$5,000.00) dollars in which the County of Galveston, the Galveston County Commissioners Court, the Galveston County Parks Department, and Concessionaires are named as insureds.

12.2 This insurance shall be of the kind commonly known as public liability and property damage insurance, insuring the insureds against liability under any claim by any third parties for personal injuries or property damage arising out of or related to the Concessionaires' operations of the Complex in the amount not less than the minimum amounts set forth in Chapter 101 of the Texas Civil Practice and Remedies Code, commonly known as the Texas Tort Claims Act, as it currently exists or hereinafter may be amended. Such policy of insurance shall be on the Texas Standard Form and shall be carried in a good and responsible company or companies authorized to do business in the State of Texas.

12.3 The insurance coverage shall be in minimum amounts as follows:

a) one hundred thousand dollars (\$100,000.00) for damages arising out of bodily injury to or death of one person in any one accident;

b) three hundred thousand dollars (\$300,000.00) for damages arising out of bodily injury to or death of two or more persons in any one accident; and

c) one hundred thousand dollars (\$100,000.00) for any injury to or destruction of property in any one accident.

12.4 Concessionaires shall furnish the County with a certificate evidencing the issuance of such insurance and the payment in advance of the premiums thereon no later than the date of execution of this Agreement by the County. At least thirty (30) days prior to the expiration of any such policy or policies or

insurance, Concessionaires shall renew the same and furnish the County with evidence of such renewal and the payment of the premium thereon.

12.5 Concessionaires agree, at the Concessionaires' expense, to obtain and maintain during the entire term of this Agreement a policy or policies of Workers' Compensation insurance covering all employees of the Concessionaires used in the operation and management of the Complex.

12.6 Concessionaires covenant and agree, that the Concessionaires will, throughout the term of this Agreement, at the Concessionaires' sole cost and expense, keep Concessionaires' personal property items, and all replacement thereof, and all other contents of the Complex premises insured against loss, damage, and destruction by theft, vandalism, malicious mischief, windstorm, fire and such other hazards as are covered by and protected against under policies of insurance commonly referred to and known as "windstorm and hail", and "fire and extended coverage insurance" in an amount not less than one hundred percent (100%) of the full replacement value of said personal property items and all other contents. In the event there is damage or destruction to the personal property items and/or other contents, Concessionaires shall have fifteen (15) days after such damage or destruction occurs to repair or replace same.

12.7 During the construction of any modifications on the Complex premises, Concessionaires will also obtain and keep, or cause to be obtained and kept, such insurance as is required by the County at the time of such construction.

12.8 Concessionaires agree to waive any right of recovery against the County for loss or damage to persons or property. Concessionaires further agree that no insurance company or companies with which Concessionaires may maintain any insurance in force and effect with respect to the Complex premises and modifications, the contents thereof~ and any materials to be incorporated in the Complex premises, shall be subrogated to any claim of Concessionaires against the County.

12.9 County is under no obligation to furnish insurance coverage of any kind covering the Complex. In addition, in the event of partial or complete destruction of the Complex, County shall have no duty or obligation to make any repairs or to otherwise restore the Complex or any part thereof to the condition it was in prior to such partial or complete destruction.

### **Article XIII Assignment of Agreement**

13.1 This Agreement shall not be assigned or sold in whole or in part unless and until the County, acting solely through its Commissioners' Court, authorizes such assignment or sale, pursuant to duly authorized written Resolution. Such approval of assignment, if made, will be provided to Concessionaires in writing delivered by the County's Authorized Representative.

### **ARTICLE XIV Default by Concessionaires**

14.1 If, during the term of this Agreement, Concessionaires shall make default in the prompt and punctual payment of any amount payable by Concessionaires to the County, or shall make default in any other payment provided for herein, or if Concessionaires shall abandon the premises, or shall make default in any other covenant of the Concessionaires contained in this Agreement, including but not limited to failure to perform necessary maintenance and repairs or obtain all required insurance, or to maintain the

Complex as a public recreational facility and such default shall continue for fifteen (15) days (ten (10) days in the event of Insurance requirements) after written notice thereof by the County's Authorized Representative to Concessionaires (without being fully remedied within such fifteen (15) or ten (10) day period) or if such default is of a kind or nature which is not capable of being physically remedied within such time and the Concessionaires do not begin and proceed diligently to remedy such default within such fifteen (15) or ten (10) day period and continue without interruption (except that if Concessionaires are delayed by strike, lockout, shortage of material or labor, act of God, riot, failure of carriers to transport materials, or by order, regulation or requisition of any governmental authority, or other causes beyond Concessionaires' control, the time of such delay or interruption shall not be counted against Concessionaires) until the same is completely remedied, the County, acting through its County Commissioners' Court, shall have the right to declare this Agreement forfeited and the Agreement term hereof ended.

14.2 In the event the County declares this Agreement forfeited and the Agreement term ended, the County shall have the right to re-enter the Complex, with process of law and to remove all persons or chattels there from, as though such date of termination was originally set forth for the expiration hereof, and, except for the payment of all fees which may accrue through the date of such termination, and the performance of each, every and all of the other obligations of the Concessionaires which may accrue to such date, Concessionaires' obligations hereunder and this Agreement shall cease and terminate and Concessionaires shall be under no further obligation to the County hereunder, provided the Concessionaires surrender to the County the complete physical possession of the Complex, including the Improvements thereon and all personal property and effects owned by the Concessionaires relating thereto, on or before such date of termination.

#### **Article XV Termination**

15.1 County or Concessionaires may terminate this Agreement at any time, with or without cause, by giving written notice, sent by certified mail, to the other party no less than ninety (90) days prior to the desired termination date.

15.2 Upon termination of this Agreement, whether by expiration of its initial term or (any renewal thereof) by voluntary cancellation by Concessionaires or County, or by cancellation by the County by reason of default by Concessionaires, the title to all modifications constructed by Concessionaires shall vest in the County.

15.3 Upon such termination, Concessionaires shall remove their personal property as well as their non-permanent trade fixtures and all such other modifications as the County shall direct, and shall restore the Complex to the same condition as it was at the commencement thereof, ordinary wear and tear and damage by unavoidable causes excluded.

#### **Article XVI Employees of Concessionaires**

16.1 Concessionaires shall at all times employ only those persons of good moral character, and Concessionaires shall not retain any employee that the County's Authorized Representative considers to be unfit for such employment, or otherwise objectionable. All employees of the Concessionaires shall be neatly dressed at all times and shall conduct themselves courteously in their relations with the public.

Concessionaires shall observe the rate of pay, benefits, and working conditions that are being generally paid or afforded to persons employed in similar businesses in the County.

**ARTICLE XVII**  
**Quality of Service**

17.1 All items sold by Concessionaires shall be of first class quality and the service provided by Concessionaires shall be rendered courteously and efficiently. The County's Authorized Representative reserves the right to prohibit the sale of any item(s) that it deems objectionable and shall have the right to order the improvement of the quality of either the merchandise or the services rendered. Failure of the Concessionaires to abide by the terms of this Article shall be grounds for termination of this Agreement.

**ARTICLE XVIII**  
**Indemnification**

18.1 Concessionaires shall protect, indemnify, and hold harmless the County of Galveston, Texas, its Commissioners, officers, and employees from and against any and all claims, demands, and causes of action of any nature whatsoever for injury to, or death of persons, or loss or damage to property occurring on the Complex or in any manner growing out of or connected with Concessionaires' use and occupation of the Complex during the term of this Agreement. Concessionaires shall give the County prompt notice of any claim coming to Concessionaires' knowledge that in any way directly or indirectly affects either Concessionaires or the County. All parties shall have the right to participate in the defense of such claim to the extent of their interest.

**ARTICLE XIX**  
**Fees and Prices**

19.1 All fees, charges, and prices for services rendered and foods, beverages, merchandise and other goods sold by Concessionaires shall be approved by the County's Authorized Representative and shall be competitive with similar sources in the Gulf Coast Region. Concessionaires are granted the right, once said fees, charges, and prices are established, to increase same a percentage equal to but not greater than the average annual cost of living index increase for the Houston/Galveston SMSA as established by the U.S. Department of Labor. Any increase above this must be approved by the County's Authorized Representative.

19.2 Concessionaires are not granted the authority for allowing free food or services except as may be approved by the County's Authorized Representative.

19.3 Concessionaires' initial proposed fee structure is attached as EXHIBIT "B".

**Article XX**  
**Independent Contractor**

20.1 This Agreement is not a contract of employment. No relationship of employer and employee exists between the County and Concessionaires or between the County and any employee or agent of Concessionaires. Concessionaires shall at all times be deemed to be Independent Contractors operating under a concession license. Concessionaires are not authorized to bind the County to any

agreements or obligations. The County shall not be liable for any acts or omissions of Concessionaires, employees or agents thereof, in performing the duties prescribed herein.

**Article XXI  
Non-Discrimination**

21.1 Concessionaires agree that in the use and occupancy of the Complex, no discrimination of any kind shall be practiced by any party that is based upon a person's race, sex, color, religion, ancestry, national origin, disability, age, military status, or sexual orientation, whether in employment or in the provision of goods and services.

**Article XXII  
Americans With Disabilities Act**

22.1 Concessionaires agree to comply with the Americans with Disabilities Act, which requires access to the Complex for handicapped, disabled, or differently abled persons.

**Article XXIII  
Waiver of Default**

23.1 Any waiver of the County of any default or breach of this Agreement shall not be construed to be a continuing waiver of such default or breach, nor as a waiver of permission, express or implied, or any other or subsequent default or breach.

**ARTICLE XXIV  
General Clauses**

24.1 **Meaning of Words.** All references to the parties of this Agreement and all covenants, conditions, and agreements of this Agreement shall apply to and be binding upon the County and Concessionaires and their respective legal representatives, successors, and assigns (when assignment is made in accordance with the provisions hereof) as if they were in each case fully named and stated. In this Agreement, both County and Concessionaires are referred to in the singular, plural, and/or neuter gender. However, such words and all other terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any number (singular or plural) and any other gender (masculine, feminine, or neuter) as the sense of the writing herein may require number and gender.



24.2 **Notice.** Any notice required or permitted between the parties under this agreement must be in writing and shall be delivered in person or mailed, return receipt requested, or may be transmitted by fax as follows:

Hon. Mark A. Henry, County Judge  
County Courthouse, 2nd Floor  
Galveston, Texas 77550  
Fax: (409) 770-5560

with a copy to:

Julie Diaz  
Director  
Galveston County Parks Department  
4102 Main (FM 519)  
La Marque, Texas 77568  
Fax: (409) 934-1140

with a second copy to:

Rufus G. Crowder, CPPO CPPB  
Purchasing Agent  
Galveston County  
722 Moody, 5<sup>th</sup> Floor  
Galveston, TX 77550  
Fax: (409) 621-7997

Robert Boemer  
Director  
Galveston County Legal Department  
722 Moody, 5<sup>th</sup> Floor  
Galveston, TX 77550  
Fax: (409) 770-5560

and to Concessionaires at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as Concessionaires may from time to time designate by written notice to the County.

24.3 **Severability.** This Agreement is made under the applicable laws of the State of Texas, and if any term, clause, provision, part, or portion of this Agreement shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this Agreement shall not be affected thereby and the invalid or illegal term, clause, provision, part, or portion shall be deleted and ignored as if the same had not been written.

24.4 **Amendments.** Any and all provisions and clauses in this Agreement may be amended or deleted by the County and Concessionaires only by mutual agreement, and any such change shall be in writing and attached to this Agreement as an addendum.

24.5 **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of Texas. Venue for an action arising under this contract shall lie exclusively in Galveston County.

24.6 **Execution of Agreement.** This Agreement is executed to be effective as of the commencement date.

**Concessionaires**

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

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

*County of Galveston*

The County of Galveston, acting by and through Mark A. Henry, County Judge, pursuant to Order of the Commissioners Court of Galveston County, Texas, adopted on this date of execution hereby acknowledges that the foregoing Agreement has been submitted to it and that the Court has authorized its execution.

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

**Mark A. Henry**  
**County Judge**

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

Attest:

\_\_\_\_\_

**Dwight Sullivan**  
**County Clerk**

**Veterans' Sports Complex  
Concession Agreement  
Jack Brooks Park**

**This Agreement** is made and entered into effective as of the Commencement Date, by and between the **County of Galveston**, a political subdivision of the State of Texas and \_\_\_\_\_ . It is for the management and operation of the **Galveston County Veterans Sports Complex** located in Jack Brooks Park in Hitchcock, Texas.

Definitions

1. **County** - means the County of Galveston, Texas.
2. **Concessionaires** - means \_\_\_\_\_
3. **Complex** - means the Galveston County Veterans Sports Complex located in Jack Brooks Park in Hitchcock, Texas. The Complex consists of three fenced and lighted 300-foot baseball fields; a 2,485 square foot concession building that contains a concession stand, restrooms, press box and meeting room; a paved plaza area surrounding the building; and a 157-car parking lot. The location of the complex is more fully shown in Exhibit "A" attached hereto.
4. **Commencement Date** - means the latter of the date of execution of this agreement by the County or the date of its approval by the United States Department of the Interior.
5. **Authorized Representative** - means the Director of the County Parks Department or his written designee. Unless otherwise stated, County's Authorized Representative is authorized to act on the County's behalf on all aspects of this Agreement.

**Recitals**

**Whereas**, the County is the Owner of the Complex; and

**Whereas**, the County desires to grant to Concessionaires the exclusive right, for the term hereafter stated, to manage and operate the Complex.

**Now, Therefore, Know All Men By These Presents:**

That for and in consideration of the public improvements and other payments to be made by Concessionaires and for the further consideration of the mutual covenants, terms, provisions, and conditions contained herein, the parties hereby agree as follows:

**Article I  
Scope and Use**

1.1 That the County, subject, however, to any conditions, restrictions, covenants, rights-of-way, or easements affecting the Complex, as well as the mutual covenants, terms, provisions and conditions contained herein, grants to Concessionaires, for the term hereinafter set forth the exclusive right to:

- a) schedule baseball and/or softball practices, league games, tournaments, and other related events at the Complex;
- b) establish reasonable fees for admission during said events;
- c) operate and manage the concession stand at the Complex;
- d) offer for sale sports merchandise, souvenirs, food, and non-alcoholic beverages, and such other items of merchandise as are customarily offered for sale under similar circumstances at refreshment stand concessions within Galveston County; and
- e) schedule the upstairs meeting room at the Complex for coaches meetings or other related uses;

all of said rights being granted, at and in the Complex.

1.2 No other use of the Complex shall be permitted unless consent to such use is first obtained in writing from the County's Authorized Representative.

1.3 No portion of the Complex is being leased to Concessionaires. Concessionaires are licensees and not lessees of the Complex. The right of Concessionaires to occupy the Complex shall continue only so long as all of the terms of this Agreement are strictly and promptly complied with by Concessionaires.

1.4 The County reserves the right to enter any portion of the Complex for any reason at any time. The County also retains the right to schedule the upstairs meeting room at the Complex for use by itself or others at such times and for such other meetings it deems necessary, on the condition that such other meetings shall not unreasonably interfere with Concessionaires use of the meeting room.

1.5 The County also retains the right to enter the Complex and to make any and all repairs and other improvements it deems necessary during the term of this Agreement.

The goals of this Agreement are to provide:

- a) quality services for the citizens of Galveston County through baseball and softball practices; leagues and tournament scheduling; promotions; advertising; and concession operations;
- b) profitable management of the Complex, and cost-effective fees and pricing; and
- c) revenue to the County that may be used for future maintenance and development of Jack Brooks Park. This Agreement shall be interpreted so as to further these goals and purposes.

**Article II  
Term**

2.1 The Agreement shall be for a primary term of three (3) years beginning on the Commencement Date and terminating at midnight on the expiration of three (3) years from the Commencement Date.

2.2 Concessionaires and County may extend this Agreement for two (2) further periods of one (1) year each by Concessionaires giving the County written notice of Concessionaires' desire to do so at any time within ninety (90) days prior to the expiration of the primary term or first option period, whichever is applicable, but not less than thirty (30) days prior to expiration. Each renewal shall be on such terms and conditions as may be agreed by the County and Concessionaires at the time of each renewal. But, under no circumstances shall the term of this Agreement, including all extensions thereof exceed a maximum period of five years.

**Article III  
Permits and Approval  
Right of Reversion**

3.1 This Agreement:

- a) is made and accepted subject to the terms, reservations, conditions, restrictions, reversionary rights and easements recited or otherwise set forth in the Quitclaim Deeds found of record in Volume 2331, Pages 344 et. seq. and in Volume 2587, Pages 453 et. seq. in the Deed Records of the County Clerk of Galveston County, Texas;
- b) is made and accepted subject to all easements, rights of way, roadways, encroachments, and prescriptive rights, whether of record or not; all previously recorded restrictions, reservations, covenants, and conditions, if any; any and all oil and gas and other mineral leases, mineral severances and other instruments that affect the property; any discrepancies, conflicts or shortages in area or boundary lines; any encroachments or overlapping of improvements, and to all zoning laws, regulations and ordinances of municipal and/or governmental authorities, if any, but only to the extent they are still in effect relating to the hereinabove described property.
- c) is subject to all necessary Federal, State and/or local permits required for purposes of construction including but not limited to permits of the U.S. Army Corps of Engineers, the Texas Parks and Wildlife Department, the County of Galveston and the City of Hitchcock, if any, being secured.

**Article IV  
Ownership of Title to Improvements**

4.1 All improvements in place upon and within the Complex, with the exception of those personal property items supplied by Concessionaires, belong to and shall remain the property of the County during the full term of this Agreement and any renewal thereof. Concessionaires will not commit waste upon, remove, or voluntarily or negligently destroy any improvements unless to construct other improvements that will, at all times, meet the requirements specified herein.

**Article V**  
**Modifications**

5.1 Concessionaires may, from time to time, upon prior written approval being obtained from the County's Authorized Representative, make such permanent changes, alterations and additions to the Complex (such changes, alterations, and additions hereinafter to be called "Modifications") as Concessionaires deem desirable for the purpose of maintaining the Complex as an efficient high-class facility, provided:

- a) such Modifications do not diminish the value or utility of the improvements or change the use thereof,
- b) all Modifications are designed, engineered, developed and once completed, maintained and operated at no expense to the County,
- c) all Modifications meet the requirements specified herein; and
- d) all Modifications must complement the intended use of the Complex as a facility for baseball and softball practices, games and tournaments.

5.2 All Modifications made by Concessionaires shall remain the property of the concessionaires during the term of the Agreement. Such Modifications may not be removed from the Complex prior to the end of the term without prior written consent from the County.

5.3 Concessionaires covenant and agree that in the event Concessionaires wish to make Modifications to the improvements, Concessionaires will, at Concessionaires' sole cost, risk and expense and prior to commencement of construction prepare and submit to the County's Authorized Representative preliminary plans and specifications for review and approval for the construction of such Modifications. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the County for improvement of Park properties. Any revisions or changes to Concessionaires' plans and specifications submitted by the County to Concessionaires shall be incorporated by Concessionaires into the final plans and specifications for the construction of the Modifications. The County agrees that its revisions and changes to Concessionaires' plans and specifications shall not be unreasonably burdensome. Approval of the plans and specifications by the County and the Concessionaires shall be evidenced by both parties signing a set of the plans and specifications.

5.4 Upon approval of the plans and specifications, and prior to the commencement of construction of the Modifications, Concessionaires will obtain a building permit, if required, from the appropriate authority or authorities for the construction of the Modifications. In addition, Concessionaires shall require their Contractor to furnish the County (owner) payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code in an amount sufficient to pay the estimated construction costs of such Modifications. Such bonds shall be conditioned that the Concessionaires shall complete the Modifications in accordance with the plans and specifications and that the Concessionaires and Concessionaires' Contractors and Subcontractors shall pay for all labor, materials, tools, supplies and equipment furnished in connection with the construction. The payment and performance bonds shall be approved by the County which approval shall not be unreasonably withheld.

5.5 Concessionaires further agree that upon approval of the plans and specifications, and the obtaining of all necessary building permits and payment and performance bonds, Concessionaires will thereafter proceed with reasonable diligence and without unreasonable interruption, to build and construct such Modifications on the Complex in a good and workmanlike manner, substantially in accordance with the plans and specifications and in compliance with the regulations and requirements of all regulatory authorities having jurisdiction. Concessionaires further agree to allow inspection of the progress to be made by the County's representative and that in a case of disagreement with respect to the compliance with approved plans, such disputes will be submitted to the County Engineer, whose decision shall be binding on all points contested. Concessionaires further agree to tender to County a copy of the "as-built" plans and specifications upon completion of the construction of the Modifications. In addition, Concessionaires agree that all additional utility connections and expense to the Complex necessitated by the Modifications shall be at the Concessionaires' expense

**Article VI**  
**Consideration – Operation**

6.1 A consideration for use of the Complex, Concessionaires, in addition to the surrender to the County of the Complex at the expiration or termination of this Agreement as herein provided, shall pay to the County an annual fee as follows:

| <u>YEAR</u>        | <u>FEE</u> |
|--------------------|------------|
| One                | \$xxxxx.00 |
| Two                | \$xxxxx.00 |
| Three              | \$xxxxx.00 |
| Four (if extended) | \$xxxxx.00 |
| Five (if extended) | \$xxxxx.00 |

6.2 Payments shall be structured on a quarterly basis with payments due as follows:

| <u>Year</u>              | <u>Payment Amount</u>        | <u>Due on or Before</u> |
|--------------------------|------------------------------|-------------------------|
| One                      | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/2 annual fee               | December 15             |
| Two                      | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |
| Three                    | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |
| Four<br>(if<br>extended) | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |

|          |                              |              |
|----------|------------------------------|--------------|
| Five     | 1/4 <sup>th</sup> annual fee | March 15     |
| (if      | 1/4 <sup>th</sup> annual fee | June 15      |
| extended | 1/4 <sup>th</sup> annual fee | September 15 |
|          | 1/4 <sup>th</sup> annual fee | December 15  |

6.3 Payments shall be by cashier's check or money order made payable to the County of Galveston. Cash payments or personal checks will not be accepted.

**Article VII  
Utilities**

- 7.1 The Complex shall be maintained and operated with expenses divided as follows:
- a) County shall be responsible for prompt payment of all water, sewer, electricity and waste disposal expenses.
  - b) Concessionaires shall be responsible for all other utility expenses including telephone.

**Article VIII  
Taxes**

8.1 Concessionaires may be subject to ad valorem taxes upon all improvements purchased or constructed by Concessionaires, as well as all Modifications and personal property owned by Concessionaires and used at or in connection with the Complex.

8.2 Concessionaires' interest in this Agreement may also be the basis for an ad valorem tax. Concessionaires covenant to pay such ad valorem taxes as may be lawfully assessed against such personal property as such taxes become due.

8.3 Concessionaires also covenant to pay Texas State Sales Taxes and Federal Income Taxes as such taxes become due.

8.4 Concessionaires agree to provide to County receipts or other certified documentation that all taxes have been paid within thirty (30) days of the due date of such taxes.

**ARTICLE IX  
Bookkeeping**

9.1 Concessionaires shall keep full, complete, and proper books, records, and accounts of all gross receipts, both for cash and on credit, of each separate activity. Said books, records, and accounts, including any sales tax reports that may be required by any government or governmental agency, shall at all reasonable times be open to inspection by the County or its authorized representatives or agents.



**Article X**  
**Repairs and Maintenance**

- 10.1 County agrees to provide the following services on the following schedule:
- a) Trash removal, once daily, five days per week (Monday through Friday)
  - b) Cleaning restrooms, once daily, six days per week (Sunday through Friday)
  - c) Grass trimming and edging for sidewalks and parking areas, once per week
  - d) Mowing grounds surrounding the Complex, once per week
  - e) Maintaining exterior of Concession building, as required
  - f) Maintaining field lighting, as required (20% outage as deemed by the Little League Lighting Regulations)

10.2 Concessionaires covenant and agree, at Concessionaires' sole cost and expense, to keep the remainder of the Complex in good, safe, and clean condition and to make, at Concessionaires' cost and expense, all repairs and replacements, excepting those listed above as the County's responsibility that may be necessary and required to keep same in good, safe, and sound condition.

- 10.3 Specifically, Concessionaires agree to provide the following, at Concessionaires' cost and expense:
- a) Striping, lining, continued maintenance and detailing of fields as required
  - b) Scoreboard maintenance and replacement as required
  - c) Audio system maintenance and replacement as needed for field public address systems
  - d) Irrigation of fields along with repair and maintenance as needed
  - e) Dragging fields
  - D) Maintaining interior of Concession Building to include compliance with local health regulations
  - g) Safety netting between the fields and the bleachers
  - h) Dirt covering over the exposed concrete behind each backstop
  - i) The initial preparation of the three infield areas to make them ready for use during the first season of play
  - j) Edging and trimming of all fenced areas

This list of Concessionaires' responsibilities is by way of example only and shall not be construed to be all inclusive.

10.4 The County, acting through its agents or representatives, shall have the right to enter the Complex or any part thereof, from time to time, regardless of whether Concessionaires are open for business or present, for inspection of same and for repairs, maintenance and correction of any defaults of Concessionaires during the term of this agreement.

10.5 The County, acting through its agents or representatives, shall have the right to impose reasonable regulations to ensure proper maintenance care and upkeep of the Complex and surrounding grounds outside of the Complex which need attention due to Concessionaires' operations within the Complex.

10.6 The degree of maintenance required of Concessionaires shall be in keeping with other public parks operated by the County. If Concessionaires neglect or refuse to do so, the County may, but is not required to, perform such maintenance repairs for the account of Concessionaires and Concessionaires shall promptly reimburse the County for the costs thereof, provided that the County shall first give Concessionaires fifteen (15) days prior written notice of its intention to perform such maintenance or repairs at their own expense. Failure on the part of Concessionaires to repair or maintain the Complex or to promptly reimburse the County as herein provided, shall be grounds for termination of this Agreement.

10.7 Concessionaires covenant and agree to comply with all valid laws, ordinances, rules, and regulations now or hereafter made by any governmental authority having jurisdiction on the premises respecting fire, cleanliness, health, and safety.

### **Article XI Operation**

11.1 Concessionaires agree that all areas of the Complex shall be permanently identified as being publicly owned and operated as a public outdoor recreational facility in all signs, literature and advertising and that the Concessionaires will be identified solely as concessionaires (licensees) operating in a public park so as to not mislead the public into believing that the area is private.

11.2 Concessionaires also agree that signs shall be posted identifying the facility as being open and, upon payment of a fee, available to the public. Such signs shall also contain such other information as is required by the County.

11.3 Concessionaires further agree to make the various facilities and structures on the Complex open and available to the public for public use at all times on a nondiscriminatory basis. All fees charged shall be fair and reasonable and nondiscriminatory.

11.4 County's Authorized Representative has the right to close Jack Brooks Park to the public for any reason or no reason at any time. If the Authorized Representative decides to close the Park, Concessionaires will likewise close the Complex for such period of time as Jack Brooks Park is closed to the public.

11.5 Concessionaires shall comply with applicable State and local laws governing the operation of all portions of the Complex. Violation of any Federal, State, County, or City laws, ordinances, and/or regulations may be considered as cause for termination of this Agreement.

11.6 Concessionaires warrant that no liens of any type or kind will be voluntarily or involuntarily placed on the property and that any liens so permitted or suffered will be cleared within ten (10) working days.

11.7 Concessionaires shall obtain and pay for all permits or licenses that may be required for operation of all portions of the Complex. In addition, Concessionaires shall meet all requirements of the County, City, and State Health Departments with regard to the handling and dispensing of food and non-alcoholic beverages.

11.8 Concessionaires shall not erect any signs on the complex or in the vicinity thereof without obtaining the advance written approval of the County. Outfield fence advertising signage may not include advertising for alcoholic beverages, snuff or tobacco products, political office holders or candidates or any other enterprise that, in the opinion of the Authorized Representative, is inconsistent with the operation of a youth sports complex.

11.9 Concessionaires may enter into advertising relative to the Complex that is consistent with the dignified approach necessitated by the reputation of the Complex.

11.10 Complex operating hours are determined by Concessionaires. The initial hours that Concessionaires will be open are set forth in their proposal. These hours may change as permitted by the Authorized Representative.

11.11 Concessionaires will schedule ball fields for practice by softball and/or baseball organizations, league play by softball and/or baseball organizations, tournaments by softball and/or baseball organizations, and meetings in the Concession Building meeting room.

11.12 Concessionaires may establish reasonable admission fees for events sponsored at the Complex

11.13 Concessionaires will manage and operate the concession stand at the Complex, providing food and non-alcoholic beverage sales and merchandising of other appropriate products.

11.14 Examples of the variety of food and beverages sold at the concession may include but are not limited to such items as hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc.), bottled water, and coffee. No alcoholic beverages will be permitted to be sold.

11.15 Examples of the type of merchandise that may be sold or rented include the following types of items: pennants, baseball caps, T-shirts, souvenir balls and bats, discs for disc golf, commemorative programs, and other suitable sports equipment or memorabilia.

11.16 County, acting through its Authorized Representative, may prohibit Concessionaires from the sale of any food, beverage or item of merchandise it finds objectionable.

11.17 Concessionaires will coordinate and be responsible for advertising and promotions of the Complex.

11.18 Concessionaires shall promptly pay all debts and expenses incurred by it in the operation of the Complex.

11.19 Concessionaires shall keep the Complex and surrounding areas in a clean and sanitary condition at all time. Concessionaires shall store all trash in the containers provided for that purpose.

11.20 Concessionaires shall not keep any explosive or hazardous waste or materials at the Complex, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the Complex.

11.21 Vendors shall not be permitted or engaged by Concessionaires within the Complex without prior written approval being obtained by Concessionaires from the County's Authorized Representative.

11.22 No vending machines shall be permitted within the Complex without prior written approval being obtained by Concessionaires from the County's Authorized Representative.

11.23 Prices for all food products, merchandise, services and items including routine tournament fees shall be clearly posted.

11.24 Concessionaires may set additional special tournament fees for specific events.

11.25 Concessionaires agree that outside lighting and other operations in the Complex will not be operated at such hours or with such brightness or noise intensity as to constitute a nuisance to the occupants of private property in the area.

## **Article XII Insurance**

12.1 Concessionaires covenant and agree that the Concessionaires will, throughout the term of this Agreement, at the Concessionaires' cost and expense, maintain in force and effect a policy or policies of insurance with deductibles of no more than five thousand (\$5,000.00) dollars in which the County of Galveston, the Galveston County Commissioners Court, the Galveston County Parks Department, and Concessionaires are named as insureds.

12.2 This insurance shall be of the kind commonly known as public liability and property damage insurance, insuring the insureds against liability under any claim by any third parties for personal injuries or property damage arising out of or related to the Concessionaires' operations of the Complex in the amount not less than the minimum amounts set forth in Chapter 101 of the Texas Civil Practice and Remedies Code, commonly known as the Texas Tort Claims Act, as it currently exists or hereinafter may be amended. Such policy of insurance shall be on the Texas Standard Form and shall be carried in a good and responsible company or companies authorized to do business in the State of Texas.

12.3 The insurance coverage shall be in minimum amounts as follows:

- a) one hundred thousand dollars (\$100,000.00) for damages arising out of bodily injury to or death of one person in any one accident;
- b) three hundred thousand dollars (\$300,000.00) for damages arising out of bodily injury to or death of two or more persons in any one accident; and
- c) one hundred thousand dollars (\$100,000.00) for any injury to or destruction of property in any one accident.

12.4 Concessionaires shall furnish the County with a certificate evidencing the issuance of such insurance and the payment in advance of the premiums thereon no later than the date of execution of this Agreement by the County. At least thirty (30) days prior to the expiration of any such policy or policies or

insurance, Concessionaires shall renew the same and furnish the County with evidence of such renewal and the payment of the premium thereon.

12.5 Concessionaires agree, at the Concessionaires' expense, to obtain and maintain during the entire term of this Agreement a policy or policies of Workers' Compensation insurance covering all employees of the Concessionaires used in the operation and management of the Complex.

12.6 Concessionaires covenant and agree, that the Concessionaires will, throughout the term of this Agreement, at the Concessionaires' sole cost and expense, keep Concessionaires' personal property items, and all replacement thereof, and all other contents of the Complex premises insured against loss, damage, and destruction by theft, vandalism, malicious mischief, windstorm, fire and such other hazards as are covered by and protected against under policies of insurance commonly referred to and known as "windstorm and hail", and "fire and extended coverage insurance" in an amount not less than one hundred percent (100%) of the full replacement value of said personal property items and all other contents. In the event there is damage or destruction to the personal property items and/or other contents, Concessionaires shall have fifteen (15) days after such damage or destruction occurs to repair or replace same.

12.7 During the construction of any modifications on the Complex premises, Concessionaires will also obtain and keep, or cause to be obtained and kept, such insurance as is required by the County at the time of such construction.

12.8 Concessionaires agree to waive any right of recovery against the County for loss or damage to persons or property. Concessionaires further agree that no insurance company or companies with which Concessionaires may maintain any insurance in force and effect with respect to the Complex premises and modifications, the contents thereof and any materials to be incorporated in the Complex premises, shall be subrogated to any claim of Concessionaires against the County.

12.9 County is under no obligation to furnish insurance coverage of any kind covering the Complex. In addition, in the event of partial or complete destruction of the Complex, County shall have no duty or obligation to make any repairs or to otherwise restore the Complex or any part thereof to the condition it was in prior to such partial or complete destruction.

### **Article XIII Assignment of Agreement**

13.1 This Agreement shall not be assigned or sold in whole or in part unless and until the County, acting solely through its Commissioners' Court, authorizes such assignment or sale, pursuant to duly authorized written Resolution. Such approval of assignment, if made, will be provided to Concessionaires in writing delivered by the County's Authorized Representative.

### **ARTICLE XIV Default by Concessionaires**

14.1 If, during the term of this Agreement, Concessionaires shall make default in the prompt and punctual payment of any amount payable by Concessionaires to the County, or shall make default in any other payment provided for herein, or if Concessionaires shall abandon the premises, or shall make default in any other covenant of the Concessionaires contained in this Agreement, including but not limited to failure to perform necessary maintenance and repairs or obtain all required insurance, or to maintain the

Complex as a public recreational facility and such default shall continue for fifteen (15) days (ten (10) days in the event of Insurance requirements) after written notice thereof by the County's Authorized Representative to Concessionaires (without being fully remedied within such fifteen (15) or ten (10) day period) or if such default is of a kind or nature which is not capable of being physically remedied within such time and the Concessionaires do not begin and proceed diligently to remedy such default within such fifteen (15) or ten (10) day period and continue without interruption (except that if Concessionaires are delayed by strike, lockout, shortage of material or labor, act of God, riot, failure of carriers to transport materials, or by order, regulation or requisition of any governmental authority, or other causes beyond Concessionaires' control, the time of such delay or interruption shall not be counted against Concessionaires) until the same is completely remedied, the County, acting through its County Commissioners' Court, shall have the right to declare this Agreement forfeited and the Agreement term hereof ended.

14.2 In the event the County declares this Agreement forfeited and the Agreement term ended, the County shall have the right to re-enter the Complex, with process of law and to remove all persons or chattels there from, as though such date of termination was originally set forth for the expiration hereof, and, except for the payment of all fees which may accrue through the date of such termination, and the performance of each, every and all of the other obligations of the Concessionaires which may accrue to such date, Concessionaires' obligations hereunder and this Agreement shall cease and terminate and Concessionaires shall be under no further obligation to the County hereunder, provided the Concessionaires surrender to the County the complete physical possession of the Complex, including the Improvements thereon and all personal property and effects owned by the Concessionaires relating thereto, on or before such date of termination.

#### **Article XV Termination**

15.1 County or Concessionaires may terminate this Agreement at any time, with or without cause, by giving written notice, sent by certified mail, to the other party no less than ninety (90) days prior to the desired termination date.

15.2 Upon termination of this Agreement, whether by expiration of its initial term or (any renewal thereof) by voluntary cancellation by Concessionaires or County, or by cancellation by the County by reason of default by Concessionaires, the title to all modifications constructed by Concessionaires shall vest in the County.

15.3 Upon such termination, Concessionaires shall remove their personal property as well as their non-permanent trade fixtures and all such other modifications as the County shall direct, and shall restore the Complex to the same condition as it was at the commencement thereof, ordinary wear and tear and damage by unavoidable causes excluded.

#### **Article XVI Employees of Concessionaires**

16.1 Concessionaires shall at all times employ only those persons of good moral character, and Concessionaires shall not retain any employee that the County's Authorized Representative considers to be unfit for such employment, or otherwise objectionable. All employees of the Concessionaires shall be neatly dressed at all times and shall conduct themselves courteously in their relations with the public.

Concessionaires shall observe the rate of pay, benefits, and working conditions that are being generally paid or afforded to persons employed in similar businesses in the County.

**ARTICLE XVII**  
**Quality of Service**

17.1 All items sold by Concessionaires shall be of first class quality and the service provided by Concessionaires shall be rendered courteously and efficiently. The County's Authorized Representative reserves the right to prohibit the sale of any item(s) that it deems objectionable and shall have the right to order the improvement of the quality of either the merchandise or the services rendered. Failure of the Concessionaires to abide by the terms of this Article shall be grounds for termination of this Agreement.

**ARTICLE XVIII**  
**Indemnification**

18.1 Concessionaires shall protect, indemnify, and hold harmless the County of Galveston, Texas, its Commissioners, officers, and employees from and against any and all claims, demands, and causes of action of any nature whatsoever for injury to, or death of persons, or loss or damage to property occurring on the Complex or in any manner growing out of or connected with Concessionaires' use and occupation of the Complex during the term of this Agreement. Concessionaires shall give the County prompt notice of any claim coming to Concessionaires' knowledge that in any way directly or indirectly affects either Concessionaires or the County. All parties shall have the right to participate in the defense of such claim to the extent of their interest.

**ARTICLE XIX**  
**Fees and Prices**

19.1 All fees, charges, and prices for services rendered and foods, beverages, merchandise and other goods sold by Concessionaires shall be approved by the County's Authorized Representative and shall be competitive with similar sources in the Gulf Coast Region. Concessionaires are granted the right, once said fees, charges, and prices are established, to increase same a percentage equal to but not greater than the average annual cost of living index increase for the Houston/Galveston SMSA as established by the U.S. Department of Labor. Any increase above this must be approved by the County's Authorized Representative.

19.2 Concessionaires are not granted the authority for allowing free food or services except as may be approved by the County's Authorized Representative.

19.3 Concessionaires' initial proposed fee structure is attached as EXHIBIT "B".

**Article XX**  
**Independent Contractor**

20.1 This Agreement is not a contract of employment. No relationship of employer and employee exists between the County and Concessionaires or between the County and any employee or agent of Concessionaires. Concessionaires shall at all times be deemed to be Independent Contractors operating under a concession license. Concessionaires are not authorized to bind the County to any

agreements or obligations. The County shall not be liable for any acts or omissions of Concessionaires, employees or agents thereof, in performing the duties prescribed herein.

**Article XXI  
Non-Discrimination**

21.1 Concessionaires agree that in the use and occupancy of the Complex, no discrimination of any kind shall be practiced by any party that is based upon a person's race, sex, color, religion, ancestry, national origin, disability, age, military status, or sexual orientation, whether in employment or in the provision of goods and services.

**Article XXII  
Americans With Disabilities Act**

22.1 Concessionaires agree to comply with the Americans with Disabilities Act, which requires access to the Complex for handicapped, disabled, or differently abled persons.

**Article XXIII  
Waiver of Default**

23.1 Any waiver of the County of any default or breach of this Agreement shall not be construed to be a continuing waiver of such default or breach, nor as a waiver of permission, express or implied, or any other or subsequent default or breach.

**ARTICLE XXIV  
General Clauses**

24.1 **Meaning of Words.** All references to the parties of this Agreement and all covenants, conditions, and agreements of this Agreement shall apply to and be binding upon the County and Concessionaires and their respective legal representatives, successors, and assigns (when assignment is made in accordance with the provisions hereof) as if they were in each case fully named and stated. In this Agreement, both County and Concessionaires are referred to in the singular, plural, and/or neuter gender. However, such words and all other terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any number (singular or plural) and any other gender (masculine, feminine, or neuter) as the sense of the writing herein may require number and gender.



24.2 **Notice.** Any notice required or permitted between the parties under this agreement must be in writing and shall be delivered in person or mailed, return receipt requested, or may be transmitted by fax as follows:

Hon. Mark A. Henry, County Judge  
County Courthouse, 2nd Floor  
Galveston, Texas 77550  
Fax: (409) 770-5560

with a copy to:

Julie Diaz  
Director  
Galveston County Parks Department  
4102 Main (FM 519)  
La Marque, Texas 77568  
Fax: (409) 934-1140

with a second copy to:

Rufus G. Crowder, CPPO CPPB  
Purchasing Agent  
Galveston County  
722 Moody, 5<sup>th</sup> Floor  
Galveston, TX 77550  
Fax: (409) 621-7997

Robert Boemer  
Director  
Galveston County Legal Department  
722 Moody, 5<sup>th</sup> Floor  
Galveston, TX 77550  
Fax: (409) 770-5560

and to Concessionaires at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as Concessionaires may from time to time designate by written notice to the County.

24.3 **Severability.** This Agreement is made under the applicable laws of the State of Texas, and if any term, clause, provision, part, or portion of this Agreement shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this Agreement shall not be affected thereby and the invalid or illegal term, clause, provision, part, or portion shall be deleted and ignored as if the same had not been written.

24.4 **Amendments.** Any and all provisions and clauses in this Agreement may be amended or deleted by the County and Concessionaires only by mutual agreement, and any such change shall be in writing and attached to this Agreement as an addendum.

24.5 **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of Texas. Venue for an action arising under this contract shall lie exclusively in Galveston County.

24.6 **Execution of Agreement.** This Agreement is executed to be effective as of the commencement date.

**Concessionaires**

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

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

*County of Galveston*

The County of Galveston, acting by and through Mark A. Henry, County Judge, pursuant to Order of the Commissioners Court of Galveston County, Texas, adopted on this date of execution hereby acknowledges that the foregoing Agreement has been submitted to it and that the Court has authorized its execution.

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

**Mark A. Henry**  
**County Judge**

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

**Attest:**

\_\_\_\_\_

**Dwight Sullivan**  
**County Clerk**

**Veterans' Sports Complex  
Concession Agreement  
Jack Brooks Park**

**This Agreement** is made and entered into effective as of the Commencement Date, by and between the **County of Galveston**, a political subdivision of the State of Texas and \_\_\_\_\_ . It is for the management and operation of the **Galveston County Veterans Sports Complex** located in Jack Brooks Park in Hitchcock, Texas.

Definitions

1. **County** - means the County of Galveston, Texas.
2. **Concessionaires** - means \_\_\_\_\_
3. **Complex** - means the Galveston County Veterans Sports Complex located in Jack Brooks Park in Hitchcock, Texas. The Complex consists of three fenced and lighted 300-foot baseball fields; a 2,485 square foot concession building that contains a concession stand, restrooms, press box and meeting room; a paved plaza area surrounding the building; and a 157-car parking lot. The location of the complex is more fully shown in Exhibit "A" attached hereto.
4. **Commencement Date** - means the latter of the date of execution of this agreement by the County or the date of its approval by the United States Department of the Interior.
5. **Authorized Representative** - means the Director of the County Parks Department or his written designee. Unless otherwise stated, County's Authorized Representative is authorized to act on the County's behalf on all aspects of this Agreement.

**Recitals**

**Whereas**, the County is the Owner of the Complex; and

**Whereas**, the County desires to grant to Concessionaires the exclusive right, for the term hereafter stated, to manage and operate the Complex.

**Now, Therefore, Know All Men By These Presents:**

That for and in consideration of the public improvements and other payments to be made by Concessionaires and for the further consideration of the mutual covenants, terms, provisions, and conditions contained herein, the parties hereby agree as follows:

**Article I  
Scope and Use**

1.1 That the County, subject, however, to any conditions, restrictions, covenants, rights-of-way, or easements affecting the Complex, as well as the mutual covenants, terms, provisions and conditions contained herein, grants to Concessionaires, for the term hereinafter set forth the exclusive right to:

- a) schedule baseball and/or softball practices, league games, tournaments, and other related events at the Complex;
- b) establish reasonable fees for admission during said events;
- c) operate and manage the concession stand at the Complex;
- d) offer for sale sports merchandise, souvenirs, food, and non-alcoholic beverages, and such other items of merchandise as are customarily offered for sale under similar circumstances at refreshment stand concessions within Galveston County; and
- e) schedule the upstairs meeting room at the Complex for coaches meetings or other related uses;

all of said rights being granted, at and in the Complex.

1.2 No other use of the Complex shall be permitted unless consent to such use is first obtained in writing from the County's Authorized Representative.

1.3 No portion of the Complex is being leased to Concessionaires. Concessionaires are licensees and not lessees of the Complex. The right of Concessionaires to occupy the Complex shall continue only so long as all of the terms of this Agreement are strictly and promptly complied with by Concessionaires.

1.4 The County reserves the right to enter any portion of the Complex for any reason at any time. The County also retains the right to schedule the upstairs meeting room at the Complex for use by itself or others at such times and for such other meetings it deems necessary, on the condition that such other meetings shall not unreasonably interfere with Concessionaires use of the meeting room.

1.5 The County also retains the right to enter the Complex and to make any and all repairs and other improvements it deems necessary during the term of this Agreement.

The goals of this Agreement are to provide:

- a) quality services for the citizens of Galveston County through baseball and softball practices; leagues and tournament scheduling; promotions; advertising; and concession operations;
- b) profitable management of the Complex, and cost-effective fees and pricing; and
- c) revenue to the County that may be used for future maintenance and development of Jack Brooks Park. This Agreement shall be interpreted so as to further these goals and purposes.

**Article II  
Term**

2.1 The Agreement shall be for a primary term of three (3) years beginning on the Commencement Date and terminating at midnight on the expiration of three (3) years from the Commencement Date.

2.2 Concessionaires and County may extend this Agreement for two (2) further periods of one (1) year each by Concessionaires giving the County written notice of Concessionaires' desire to do so at any time within ninety (90) days prior to the expiration of the primary term or first option period, whichever is applicable, but not less than thirty (30) days prior to expiration. Each renewal shall be on such terms and conditions as may be agreed by the County and Concessionaires at the time of each renewal. But, under no circumstances shall the term of this Agreement, including all extensions thereof exceed a maximum period of five years.

**Article III  
Permits and Approval  
Right of Reversion**

3.1 This Agreement:

- a) is made and accepted subject to the terms, reservations, conditions, restrictions, reversionary rights and easements recited or otherwise set forth in the Quitclaim Deeds found of record in Volume 2331, Pages 344 et. seq. and in Volume 2587, Pages 453 et. seq. in the Deed Records of the County Clerk of Galveston County, Texas;
- b) is made and accepted subject to all easements, rights of way, roadways, encroachments, and prescriptive rights, whether of record or not; all previously recorded restrictions, reservations, covenants, and conditions, if any; any and all oil and gas and other mineral leases, mineral severances and other instruments that affect the property; any discrepancies, conflicts or shortages in area or boundary lines; any encroachments or overlapping of improvements, and to all zoning laws, regulations and ordinances of municipal and/or governmental authorities, if any, but only to the extent they are still in effect relating to the hereinabove described property.
- c) is subject to all necessary Federal, State and/or local permits required for purposes of construction including but not limited to permits of the U.S. Army Corps of Engineers, the Texas Parks and Wildlife Department, the County of Galveston and the City of Hitchcock, if any, being secured.

**Article IV  
Ownership of Title to Improvements**

4.1 All improvements in place upon and within the Complex, with the exception of those personal property items supplied by Concessionaires, belong to and shall remain the property of the County during the full term of this Agreement and any renewal thereof. Concessionaires will not commit waste upon, remove, or voluntarily or negligently destroy any improvements unless to construct other improvements that will, at all times, meet the requirements specified herein.

## **Article V Modifications**

5.1 Concessionaires may, from time to time, upon prior written approval being obtained from the County's Authorized Representative, make such permanent changes, alterations and additions to the Complex (such changes, alterations, and additions hereinafter to be called "Modifications") as Concessionaires deem desirable for the purpose of maintaining the Complex as an efficient high-class facility, provided:

- a) such Modifications do not diminish the value or utility of the improvements or change the use thereof,
- b) all Modifications are designed, engineered, developed and once completed, maintained and operated at no expense to the County,
- c) all Modifications meet the requirements specified herein; and
- d) all Modifications must complement the intended use of the Complex as a facility for baseball and softball practices, games and tournaments.

5.2 All Modifications made by Concessionaires shall remain the property of the concessionaires during the term of the Agreement. Such Modifications may not be removed from the Complex prior to the end of the term without prior written consent from the County.

5.3 Concessionaires covenant and agree that in the event Concessionaires wish to make Modifications to the improvements, Concessionaires will, at Concessionaires' sole cost, risk and expense and prior to commencement of construction prepare and submit to the County's Authorized Representative preliminary plans and specifications for review and approval for the construction of such Modifications. All of such plans and specifications, including architecture of buildings shall conform to standards of appearance and quality set by the County for improvement of Park properties. Any revisions or changes to Concessionaires' plans and specifications submitted by the County to Concessionaires shall be incorporated by Concessionaires into the final plans and specifications for the construction of the Modifications. The County agrees that its revisions and changes to Concessionaires' plans and specifications shall not be unreasonably burdensome. Approval of the plans and specifications by the County and the Concessionaires shall be evidenced by both parties signing a set of the plans and specifications.

5.4 Upon approval of the plans and specifications, and prior to the commencement of construction of the Modifications, Concessionaires will obtain a building permit, if required, from the appropriate authority or authorities for the construction of the Modifications. In addition, Concessionaires shall require their Contractor to furnish the County (owner) payment and performance bonds in accordance with Chapter 2253 of the Texas Government Code in an amount sufficient to pay the estimated construction costs of such Modifications. Such bonds shall be conditioned that the Concessionaires shall complete the Modifications in accordance with the plans and specifications and that the Concessionaires and Concessionaires' Contractors and Subcontractors shall pay for all labor, materials, tools, supplies and equipment furnished in connection with the construction. The payment and performance bonds shall be approved by the County which approval shall not be unreasonably withheld.

5.5 Concessionaires further agree that upon approval of the plans and specifications, and the obtaining of all necessary building permits and payment and performance bonds, Concessionaires will thereafter proceed with reasonable diligence and without unreasonable interruption, to build and construct such Modifications on the Complex in a good and workmanlike manner, substantially in accordance with the plans and specifications and in compliance with the regulations and requirements of all regulatory authorities having jurisdiction. Concessionaires further agree to allow inspection of the progress to be made by the County's representative and that in a case of disagreement with respect to the compliance with approved plans, such disputes will be submitted to the County Engineer, whose decision shall be binding on all points contested. Concessionaires further agree to tender to County a copy of the "as-built" plans and specifications upon completion of the construction of the Modifications. In addition, Concessionaires agree that all additional utility connections and expense to the Complex necessitated by the Modifications shall be at the Concessionaires' expense

**Article VI**  
**Consideration – Operation**

6.1 A consideration for use of the Complex, Concessionaires, in addition to the surrender to the County of the Complex at the expiration or termination of this Agreement as herein provided, shall pay to the County an annual fee as follows:

| <u>YEAR</u>        | <u>FEE</u> |
|--------------------|------------|
| One                | \$xxxxx.00 |
| Two                | \$xxxxx.00 |
| Three              | \$xxxxx.00 |
| Four (if extended) | \$xxxxx.00 |
| Five (if extended) | \$xxxxx.00 |

6.2 Payments shall be structured on a quarterly basis with payments due as follows:

| <u>Year</u>              | <u>Payment Amount</u>        | <u>Due on or Before</u> |
|--------------------------|------------------------------|-------------------------|
| One                      | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/2 annual fee               | December 15             |
| Two                      | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |
| Three                    | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |
| Four<br>(if<br>extended) | 1/4 <sup>th</sup> annual fee | March 15                |
|                          | 1/4 <sup>th</sup> annual fee | June 15                 |
|                          | 1/4 <sup>th</sup> annual fee | September 15            |
|                          | 1/4 <sup>th</sup> annual fee | December 15             |

|          |                              |              |
|----------|------------------------------|--------------|
| Five     | 1/4 <sup>th</sup> annual fee | March 15     |
| (if      | 1/4 <sup>th</sup> annual fee | June 15      |
| extended | 1/4 <sup>th</sup> annual fee | September 15 |
|          | 1/4 <sup>th</sup> annual fee | December 15  |

6.3 Payments shall be by cashier's check or money order made payable to the County of Galveston. Cash payments or personal checks will not be accepted.

**Article VII  
Utilities**

- 7.1 The Complex shall be maintained and operated with expenses divided as follows:
- a) County shall be responsible for prompt payment of all water, sewer, electricity and waste disposal expenses.
  - b) Concessionaires shall be responsible for all other utility expenses including telephone.

**Article VIII  
Taxes**

8.1 Concessionaires may be subject to ad valorem taxes upon all improvements purchased or constructed by Concessionaires, as well as all Modifications and personal property owned by Concessionaires and used at or in connection with the Complex.

8.2 Concessionaires' interest in this Agreement may also be the basis for an ad valorem tax. Concessionaires covenant to pay such ad valorem taxes as may be lawfully assessed against such personal property as such taxes become due.

8.3 Concessionaires also covenant to pay Texas State Sales Taxes and Federal Income Taxes as such taxes become due.

8.4 Concessionaires agree to provide to County receipts or other certified documentation that all taxes have been paid within thirty (30) days of the due date of such taxes.

**ARTICLE IX  
Bookkeeping**

9.1 Concessionaires shall keep full, complete, and proper books, records, and accounts of all gross receipts, both for cash and on credit, of each separate activity. Said books, records, and accounts, including any sales tax reports that may be required by any government or governmental agency, shall at all reasonable times be open to inspection by the County or its authorized representatives or agents.



**Article X**  
**Repairs and Maintenance**

- 10.1 County agrees to provide the following services on the following schedule:
- a) Trash removal, once daily, five days per week (Monday through Friday)
  - b) Cleaning restrooms, once daily, six days per week (Sunday through Friday)
  - c) Grass trimming and edging for sidewalks and parking areas, once per week
  - d) Mowing grounds surrounding the Complex, once per week
  - e) Maintaining exterior of Concession building, as required
  - f) Maintaining field lighting, as required (20% outage as deemed by the Little League Lighting Regulations)

10.2 Concessionaires covenant and agree, at Concessionaires' sole cost and expense, to keep the remainder of the Complex in good, safe, and clean condition and to make, at Concessionaires' cost and expense, all repairs and replacements, excepting those listed above as the County's responsibility that may be necessary and required to keep same in good, safe, and sound condition.

- 10.3 Specifically, Concessionaires agree to provide the following, at Concessionaires' cost and expense:
- a) Striping, lining, continued maintenance and detailing of fields as required
  - b) Scoreboard maintenance and replacement as required
  - c) Audio system maintenance and replacement as needed for field public address systems
  - d) Irrigation of fields along with repair and maintenance as needed
  - e) Dragging fields
  - I) Maintaining interior of Concession Building to include compliance with local health regulations
  - g) Safety netting between the fields and the bleachers
  - h) Dirt covering over the exposed concrete behind each backstop
  - i) The initial preparation of the three infield areas to make them ready for use during the first season of play
  - j) Edging and trimming of all fenced areas

This list of Concessionaires' responsibilities is by way of example only and shall not be construed to be all inclusive.

10.4 The County, acting through its agents or representatives, shall have the right to enter the Complex or any part thereof, from time to time, regardless of whether Concessionaires are open for business or present, for inspection of same and for repairs, maintenance and correction of any defaults of Concessionaires during the term of this agreement.

10.5 The County, acting through its agents or representatives, shall have the right to impose reasonable regulations to ensure proper maintenance care and upkeep of the Complex and surrounding grounds outside of the Complex which need attention due to Concessionaires' operations within the Complex.

10.6 The degree of maintenance required of Concessionaires shall be in keeping with other public parks operated by the County. If Concessionaires neglect or refuse to do so, the County may, but is not required to, perform such maintenance repairs for the account of Concessionaires and Concessionaires shall promptly reimburse the County for the costs thereof, provided that the County shall first give Concessionaires fifteen (15) days prior written notice of its intention to perform such maintenance or repairs at their own expense. Failure on the part of Concessionaires to repair or maintain the Complex or to promptly reimburse the County as herein provided, shall be grounds for termination of this Agreement.

10.7 Concessionaires covenant and agree to comply with all valid laws, ordinances, rules, and regulations now or hereafter made by any governmental authority having jurisdiction on the premises respecting fire, cleanliness, health, and safety.

### **Article XI Operation**

11.1 Concessionaires agree that all areas of the Complex shall be permanently identified as being publicly owned and operated as a public outdoor recreational facility in all signs, literature and advertising and that the Concessionaires will be identified solely as concessionaires (licensees) operating in a public park so as to not mislead the public into believing that the area is private.

11.2 Concessionaires also agree that signs shall be posted identifying the facility as being open and, upon payment of a fee, available to the public. Such signs shall also contain such other information as is required by the County.

11.3 Concessionaires further agree to make the various facilities and structures on the Complex open and available to the public for public use at all times on a nondiscriminatory basis. All fees charged shall be fair and reasonable and nondiscriminatory.

11.4 County's Authorized Representative has the right to close Jack Brooks Park to the public for any reason or no reason at any time. If the Authorized Representative decides to close the Park, Concessionaires will likewise close the Complex for such period of time as Jack Brooks Park is closed to the public.

11.5 Concessionaires shall comply with applicable State and local laws governing the operation of all portions of the Complex. Violation of any Federal, State, County, or City laws, ordinances, and/or regulations may be considered as cause for termination of this Agreement.

11.6 Concessionaires warrant that no liens of any type or kind will be voluntarily or involuntarily placed on the property and that any liens so permitted or suffered will be cleared within ten (10) working days.

11.7 Concessionaires shall obtain and pay for all permits or licenses that may be required for operation of all portions of the Complex. In addition, Concessionaires shall meet all requirements of the County, City, and State Health Departments with regard to the handling and dispensing of food and non-alcoholic beverages.

11.8 Concessionaires shall not erect any signs on the complex or in the vicinity thereof without obtaining the advance written approval of the County. Outfield fence advertising signage may not include advertising for alcoholic beverages, snuff or tobacco products, political office holders or candidates or any other enterprise that, in the opinion of the Authorized Representative, is inconsistent with the operation of a youth sports complex.

11.9 Concessionaires may enter into advertising relative to the Complex that is consistent with the dignified approach necessitated by the reputation of the Complex.

11.10 Complex operating hours are determined by Concessionaires. The initial hours that Concessionaires will be open are set forth in their proposal. These hours may change as permitted by the Authorized Representative.

11.11 Concessionaires will schedule ball fields for practice by softball and/or baseball organizations, league play by softball and/or baseball organizations, tournaments by softball and/or baseball organizations, and meetings in the Concession Building meeting room.

11.12 Concessionaires may establish reasonable admission fees for events sponsored at the Complex

11.13 Concessionaires will manage and operate the concession stand at the Complex, providing food and non-alcoholic beverage sales and merchandising of other appropriate products.

11.14 Examples of the variety of food and beverages sold at the concession may include but are not limited to such items as hot dogs, nachos, popcorn, ice cream, chips, french fries, peanuts, soft drinks (cola, caffeine free, diet, non-cola, non-carbonated, etc.), bottled water, and coffee. No alcoholic beverages will be permitted to be sold.

11.15 Examples of the type of merchandise that may be sold or rented include the following types of items: pennants, baseball caps, T-shirts, souvenir balls and bats, discs for disc golf, commemorative programs, and other suitable sports equipment or memorabilia.

11.16 County, acting through its Authorized Representative, may prohibit Concessionaires from the sale of any food, beverage or item of merchandise it finds objectionable.

11.17 Concessionaires will coordinate and be responsible for advertising and promotions of the Complex.

11.18 Concessionaires shall promptly pay all debts and expenses incurred by it in the operation of the Complex.

11.19 Concessionaires shall keep the Complex and surrounding areas in a clean and sanitary condition at all time. Concessionaires shall store all trash in the containers provided for that purpose.

11.20 Concessionaires shall not keep any explosive or hazardous waste or materials at the Complex, conduct any offensive occupation thereon, or operate any machinery thereon that may injure the Complex.

11.21 Vendors shall not be permitted or engaged by Concessionaires within the Complex without prior written approval being obtained by Concessionaires from the County's Authorized Representative.

11.22 No vending machines shall be permitted within the Complex without prior written approval being obtained by Concessionaires from the County's Authorized Representative.

11.23 Prices for all food products, merchandise, services and items including routine tournament fees shall be clearly posted.

11.24 Concessionaires may set additional special tournament fees for specific events.

11.25 Concessionaires agree that outside lighting and other operations in the Complex will not be operated at such hours or with such brightness or noise intensity as to constitute a nuisance to the occupants of private property in the area.

## **Article XII Insurance**

12.1 Concessionaires covenant and agree that the Concessionaires will, throughout the term of this Agreement, at the Concessionaires' cost and expense, maintain in force and effect a policy or policies of insurance with deductibles of no more than five thousand (\$5,000.00) dollars in which the County of Galveston, the Galveston County Commissioners Court, the Galveston County Parks Department, and Concessionaires are named as insureds.

12.2 This insurance shall be of the kind commonly known as public liability and property damage insurance, insuring the insureds against liability under any claim by any third parties for personal injuries or property damage arising out of or related to the Concessionaires' operations of the Complex in the amount not less than the minimum amounts set forth in Chapter 101 of the Texas Civil Practice and Remedies Code, commonly known as the Texas Tort Claims Act, as it currently exists or hereinafter may be amended. Such policy of insurance shall be on the Texas Standard Form and shall be carried in a good and responsible company or companies authorized to do business in the State of Texas.

12.3 The insurance coverage shall be in minimum amounts as follows:

a) one hundred thousand dollars (\$100,000.00) for damages arising out of bodily injury to or death of one person in any one accident;

b) three hundred thousand dollars (\$300,000.00) for damages arising out of bodily injury to or death of two or more persons in any one accident; and

c) one hundred thousand dollars (\$100,000.00) for any injury to or destruction of property in any one accident.

12.4 Concessionaires shall furnish the County with a certificate evidencing the issuance of such insurance and the payment in advance of the premiums thereon no later than the date of execution of this Agreement by the County. At least thirty (30) days prior to the expiration of any such policy or policies or

insurance, Concessionaires shall renew the same and furnish the County with evidence of such renewal and the payment of the premium thereon.

12.5 Concessionaires agree, at the Concessionaires' expense, to obtain and maintain during the entire term of this Agreement a policy or policies of Workers' Compensation insurance covering all employees of the Concessionaires used in the operation and management of the Complex.

12.6 Concessionaires covenant and agree, that the Concessionaires will, throughout the term of this Agreement, at the Concessionaires' sole cost and expense, keep Concessionaires' personal property items, and all replacement thereof, and all other contents of the Complex premises insured against loss, damage, and destruction by theft, vandalism, malicious mischief, windstorm, fire and such other hazards as are covered by and protected against under policies of insurance commonly referred to and known as "windstorm and hail", and "fire and extended coverage insurance" in an amount not less than one hundred percent (100%) of the full replacement value of said personal property items and all other contents. In the event there is damage or destruction to the personal property items and/or other contents, Concessionaires shall have fifteen (15) days after such damage or destruction occurs to repair or replace same.

12.7 During the construction of any modifications on the Complex premises, Concessionaires will also obtain and keep, or cause to be obtained and kept, such insurance as is required by the County at the time of such construction.

12.8 Concessionaires agree to waive any right of recovery against the County for loss or damage to persons or property. Concessionaires further agree that no insurance company or companies with which Concessionaires may maintain any insurance in force and effect with respect to the Complex premises and modifications, the contents thereof~ and any materials to be incorporated in the Complex premises, shall be subrogated to any claim of Concessionaires against the County.

12.9 County is under no obligation to furnish insurance coverage of any kind covering the Complex. In addition, in the event of partial or complete destruction of the Complex, County shall have no duty or obligation to make any repairs or to otherwise restore the Complex or any part thereof to the condition it was in prior to such partial or complete destruction.

### **Article XIII Assignment of Agreement**

13.1 This Agreement shall not be assigned or sold in whole or in part unless and until the County, acting solely through its Commissioners' Court, authorizes such assignment or sale, pursuant to duly authorized written Resolution. Such approval of assignment, if made, will be provided to Concessionaires in writing delivered by the County's Authorized Representative.

### **ARTICLE XIV Default by Concessionaires**

14.1 If, during the term of this Agreement, Concessionaires shall make default in the prompt and punctual payment of any amount payable by Concessionaires to the County, or shall make default in any other payment provided for herein, or if Concessionaires shall abandon the premises, or shall make default in any other covenant of the Concessionaires contained in this Agreement, including but not limited to failure to perform necessary maintenance and repairs or obtain all required insurance, or to maintain the

Complex as a public recreational facility and such default shall continue for fifteen (15) days (ten (10) days in the event of Insurance requirements) after written notice thereof by the County's Authorized Representative to Concessionaires (without being fully remedied within such fifteen (15) or ten (10) day period) or if such default is of a kind or nature which is not capable of being physically remedied within such time and the Concessionaires do not begin and proceed diligently to remedy such default within such fifteen (15) or ten (10) day period and continue without interruption (except that if Concessionaires are delayed by strike, lockout, shortage of material or labor, act of God, riot, failure of carriers to transport materials, or by order, regulation or requisition of any governmental authority, or other causes beyond Concessionaires' control, the time of such delay or interruption shall not be counted against Concessionaires) until the same is completely remedied, the County, acting through its County Commissioners' Court, shall have the right to declare this Agreement forfeited and the Agreement term hereof ended.

14.2 In the event the County declares this Agreement forfeited and the Agreement term ended, the County shall have the right to re-enter the Complex, with process of law and to remove all persons or chattels there from, as though such date of termination was originally set forth for the expiration hereof, and, except for the payment of all fees which may accrue through the date of such termination, and the performance of each, every and all of the other obligations of the Concessionaires which may accrue to such date, Concessionaires' obligations hereunder and this Agreement shall cease and terminate and Concessionaires shall be under no further obligation to the County hereunder, provided the Concessionaires surrender to the County the complete physical possession of the Complex, including the Improvements thereon and all personal property and effects owned by the Concessionaires relating thereto, on or before such date of termination.

#### **Article XV Termination**

15.1 County or Concessionaires may terminate this Agreement at any time, with or without cause, by giving written notice, sent by certified mail, to the other party no less than ninety (90) days prior to the desired termination date.

15.2 Upon termination of this Agreement, whether by expiration of its initial term or (any renewal thereof) by voluntary cancellation by Concessionaires or County, or by cancellation by the County by reason of default by Concessionaires, the title to all modifications constructed by Concessionaires shall vest in the County.

15.3 Upon such termination, Concessionaires shall remove their personal property as well as their non-permanent trade fixtures and all such other modifications as the County shall direct, and shall restore the Complex to the same condition as it was at the commencement thereof, ordinary wear and tear and damage by unavoidable causes excluded.

#### **Article XVI Employees of Concessionaires**

16.1 Concessionaires shall at all times employ only those persons of good moral character, and Concessionaires shall not retain any employee that the County's Authorized Representative considers to be unfit for such employment, or otherwise objectionable. All employees of the Concessionaires shall be neatly dressed at all times and shall conduct themselves courteously in their relations with the public.

Concessionaires shall observe the rate of pay, benefits, and working conditions that are being generally paid or afforded to persons employed in similar businesses in the County.

**ARTICLE XVII**  
**Quality of Service**

17.1 All items sold by Concessionaires shall be of first class quality and the service provided by Concessionaires shall be rendered courteously and efficiently. The County's Authorized Representative reserves the right to prohibit the sale of any item(s) that it deems objectionable and shall have the right to order the improvement of the quality of either the merchandise or the services rendered. Failure of the Concessionaires to abide by the terms of this Article shall be grounds for termination of this Agreement.

**ARTICLE XVIII**  
**Indemnification**

18.1 Concessionaires shall protect, indemnify, and hold harmless the County of Galveston, Texas, its Commissioners, officers, and employees from and against any and all claims, demands, and causes of action of any nature whatsoever for injury to, or death of persons, or loss or damage to property occurring on the Complex or in any manner growing out of or connected with Concessionaires' use and occupation of the Complex during the term of this Agreement. Concessionaires shall give the County prompt notice of any claim coming to Concessionaires' knowledge that in any way directly or indirectly affects either Concessionaires or the County. All parties shall have the right to participate in the defense of such claim to the extent of their interest.

**ARTICLE XIX**  
**Fees and Prices**

19.1 All fees, charges, and prices for services rendered and foods, beverages, merchandise and other goods sold by Concessionaires shall be approved by the County's Authorized Representative and shall be competitive with similar sources in the Gulf Coast Region. Concessionaires are granted the right, once said fees, charges, and prices are established, to increase same a percentage equal to but not greater than the average annual cost of living index increase for the Houston/Galveston SMSA as established by the U.S. Department of Labor. Any increase above this must be approved by the County's Authorized Representative.

19.2 Concessionaires are not granted the authority for allowing free food or services except as may be approved by the County's Authorized Representative.

19.3 Concessionaires' initial proposed fee structure is attached as EXHIBIT "B".

**Article XX**  
**Independent Contractor**

20.1 This Agreement is not a contract of employment. No relationship of employer and employee exists between the County and Concessionaires or between the County and any employee or agent of Concessionaires. Concessionaires shall at all times be deemed to be Independent Contractors operating under a concession license. Concessionaires are not authorized to bind the County to any

agreements or obligations. The County shall not be liable for any acts or omissions of Concessionaires, employees or agents thereof, in performing the duties prescribed herein.

**Article XXI  
Non-Discrimination**

21.1 Concessionaires agree that in the use and occupancy of the Complex, no discrimination of any kind shall be practiced by any party that is based upon a person's race, sex, color, religion, ancestry, national origin, disability, age, military status, or sexual orientation, whether in employment or in the provision of goods and services.

**Article XXII  
Americans With Disabilities Act**

22.1 Concessionaires agree to comply with the Americans with Disabilities Act, which requires access to the Complex for handicapped, disabled, or differently abled persons.

**Article XXIII  
Waiver of Default**

23.1 Any waiver of the County of any default or breach of this Agreement shall not be construed to be a continuing waiver of such default or breach, nor as a waiver of permission, express or implied, or any other or subsequent default or breach.

**ARTICLE XXIV  
General Clauses**

24.1 **Meaning of Words.** All references to the parties of this Agreement and all covenants, conditions, and agreements of this Agreement shall apply to and be binding upon the County and Concessionaires and their respective legal representatives, successors, and assigns (when assignment is made in accordance with the provisions hereof) as if they were in each case fully named and stated. In this Agreement, both County and Concessionaires are referred to in the singular, plural, and/or neuter gender. However, such words and all other terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any number (singular or plural) and any other gender (masculine, feminine, or neuter) as the sense of the writing herein may require number and gender.



24.2 **Notice.** Any notice required or permitted between the parties under this agreement must be in writing and shall be delivered in person or mailed, return receipt requested, or may be transmitted by fax as follows:

Hon. Mark A. Henry, County Judge  
County Courthouse, 2nd Floor  
Galveston, Texas 77550  
Fax: (409) 770-5560

with a copy to:

Julie Diaz  
Director  
Galveston County Parks Department  
4102 Main (FM 519)  
La Marque, Texas 77568  
Fax: (409) 934-1140

with a second copy to:

Rufus G. Crowder, CPPO CPPB  
Purchasing Agent  
Galveston County  
722 Moody, 5<sup>th</sup> Floor  
Galveston, TX 77550  
Fax: (409) 621-7997

Robert Boemer  
Director  
Galveston County Legal Department  
722 Moody, 5<sup>th</sup> Floor  
Galveston, TX 77550  
Fax: (409) 770-5560

and to Concessionaires at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as Concessionaires may from time to time designate by written notice to the County.

24.3 **Severability.** This Agreement is made under the applicable laws of the State of Texas, and if any term, clause, provision, part, or portion of this Agreement shall be adjudged invalid or illegal for any reason, the validity of any other part or portion of this Agreement shall not be affected thereby and the invalid or illegal term, clause, provision, part, or portion shall be deleted and ignored as if the same had not been written.

24.4 **Amendments.** Any and all provisions and clauses in this Agreement may be amended or deleted by the County and Concessionaires only by mutual agreement, and any such change shall be in writing and attached to this Agreement as an addendum.

24.5 **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of Texas. Venue for an action arising under this contract shall lie exclusively in Galveston County.

24.6 **Execution of Agreement.** This Agreement is executed to be effective as of the commencement date.

**Concessionaires**

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

**Date:** \_\_\_\_\_

*County of Galveston*

The County of Galveston, acting by and through Mark A. Henry, County Judge, pursuant to Order of the Commissioners Court of Galveston County, Texas, adopted on this date of execution hereby acknowledges that the foregoing Agreement has been submitted to it and that the Court has authorized its execution.

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

**Mark A. Henry**  
**County Judge**

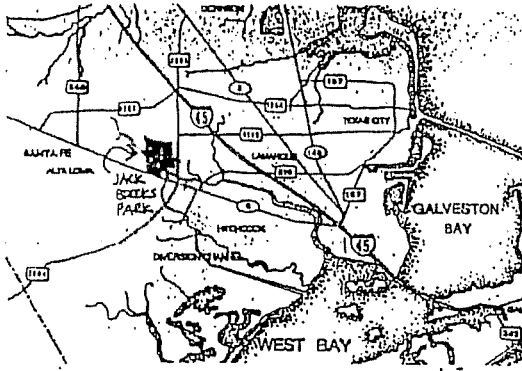
**Date:** \_\_\_\_\_

**Attest:**

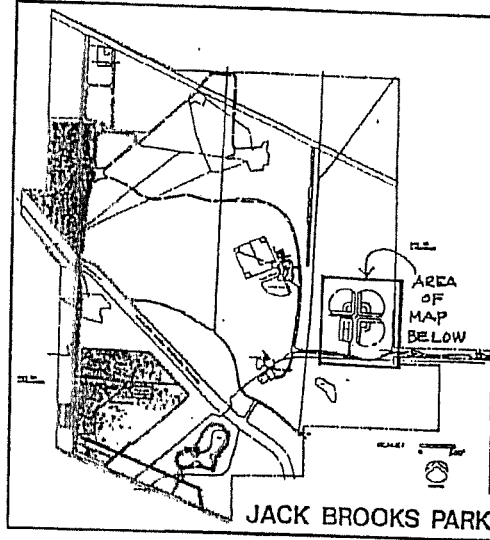
\_\_\_\_\_  
**Dwight Sullivan**  
**County Clerk**

**EXHIBIT A**

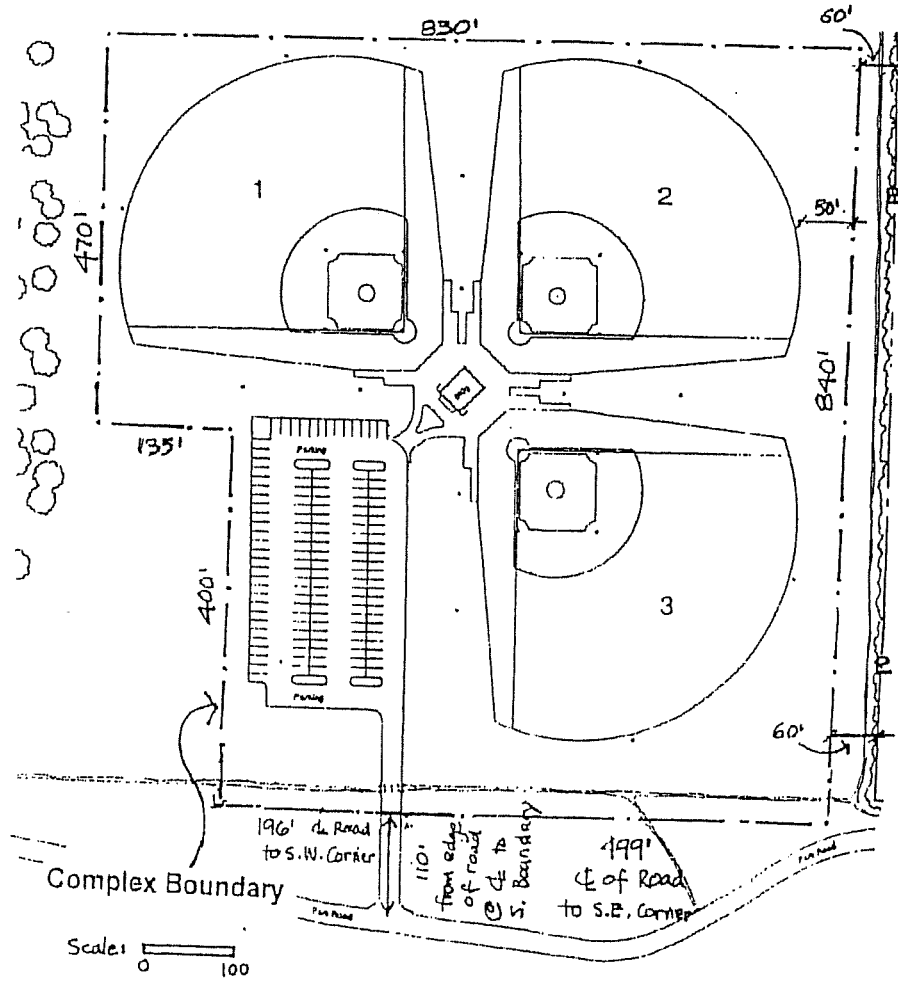
EXHIBIT A



Vicinity Map



JACK BROOKS PARK



**PROPOSAL FORM  
VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK  
COUNTY OF GALVESTON, TEXAS**

THE COMPANY OF: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

FEIN (TAX ID): \_\_\_\_\_

The following shall be returned with your proposal. Failure to do so may be ample cause for rejection of proposal as non responsive. It is the responsibility of the Proposer to ensure that Proposer has received all addenda.

- | Items:   | Confirmed (X):                      |
|--|-------------------------------------|
| 1. References (if required)                          | _____                               |
| 2. Addenda, if any                                   | #1 _____ #2 _____ #3 _____ #4 _____ |
| 3. One (1) original and four (4) copies of submittal | _____                               |
| 4. Proposal Forms                                    | _____                               |
| 5. Vendor Qualification packet                       | _____                               |
| 6. Debarment Certification                           | _____                               |
| 7. Payment Terms:                                    | _____ net 30 _____ Other            |
| 8. Anti-Collusion Affidavit                          | _____                               |
| 9. Three signed contracts (included in packet)       | _____                               |

Person to contact regarding this proposal: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Name of person authorized to bind the Company: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail address: \_\_\_\_\_

**PROPOSER MUST SIGN HERE BELOW:**

By signing here, the company does hereby attest that it has fully read the instructions, conditions and general and special provisions and understands them.

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

Authorized Signature: \_\_\_\_\_

Name & Title Printed: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

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

**EXCEPTIONS** (if no exceptions are taken, state NONE):

\_\_\_\_\_  
\_\_\_\_\_

*The remainder of this page intentionally left blank*

**PROPOSAL FORM**  
**VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK**  
**GALVESTON COUNTY, TEXAS**

Proposer shall use this form to provide the information for notice.

1. Contact information for notice:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_

2. If a copy of notice is requested, please complete below:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_

3. If second or more copies are requested for notice, please supplement this form and clearly mark the supplement as "Supplementary Notice Information."

Proposer to submit reference information. Proposer shall use this form to provide minimum required reference information. If Proposer wishes to provide more than the minimum, Proposer should supplement this form and should clearly mark the supplement as "Supplementary Reference Information."

1. References who can attest to the Proposer's capability to carry out the requirements set forth in this proposal:

Business Name of Organization: \_\_\_\_\_  
Name of Person: \_\_\_\_\_  
Title of Individual within Organization, if applicable \_\_\_\_\_  
Business address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_

Business Name of Organization: \_\_\_\_\_  
Name of Person: \_\_\_\_\_  
Title of Individual within Organization, if applicable \_\_\_\_\_  
Business address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_

Business Name of Organization: \_\_\_\_\_  
Name of Person: \_\_\_\_\_  
Title of Individual within Organization, if applicable \_\_\_\_\_  
Business address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_

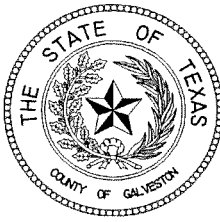
**PROPOSAL FORM  
VETERAN'S SPORTS COMPLEX IN JACK BROOKS PARK  
GALVESTON COUNTY, TEXAS**

References of major supplier of Proposer who can speak to the financial capability of the Proposer to carry out the requirements set forth in this proposal:

1. Business Name of Supplier \_\_\_\_\_  
Name of Person: \_\_\_\_\_  
Title of Individual within business: \_\_\_\_\_  
Business address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_
  
2. Business Name of Supplier \_\_\_\_\_  
Name of Person: \_\_\_\_\_  
Title of Individual within business: \_\_\_\_\_  
Business address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_
  
3. Business Name of Supplier \_\_\_\_\_  
Name of Person: \_\_\_\_\_  
Title of Individual within business: \_\_\_\_\_  
Business address: \_\_\_\_\_  
Telephone number: \_\_\_\_\_ Facsimile number: \_\_\_\_\_

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**County of Galveston**

**ACKNOWLEDGMENT AND CERTIFICATION REGARDING DEBARMENT,  
SUSPENSION, AND OTHER INELGIBILITY**

**Executive Orders 12549 & 12689 Certification, Debarment and Suspension**

Solicitation Number: RFP #B162004

Solicitation Title: Veteran's Sports Complex in Jack Brooks Park

**Contractor hereby CERTIFIES that:**

Contractor, and all of its principals, is not presently debarred, suspended, proposed for debarment, proposed for suspension, or declared ineligible under Executive Order 12549 or Executive Order 12689, Debarment and Suspension, and is not in any other way ineligible for participation in Federal or State assistance programs;

Contractor, and all of its principals, were not and have not been debarred, suspended, proposed for debarment, proposed for suspension, or declared ineligible under Executive Order 12549 or Executive Order 12689, Debarment and Suspension, and were not and have not been in any other way ineligible for participation in Federal or State assistance programs at the time its' proposal was submitted in the procurement identified herein and at any time since submission of its' proposal;

Contractor has included, and shall continue to include, this certification in all contracts between itself and any sub-contractors in connection with services performed under this contract; **and**

Contractor shall notify Galveston County in writing immediately, through written notification to the Galveston County Purchasing Agent, if Contractor is not in compliance with Executive Order 12549 or 12689 during the term of its contract with Galveston County.

Contractor **Represents** and **Warrants** that the individual executing this Acknowledgment and Certification on its behalf has the full power and authority to do so and can legally bind the Contractor hereto.

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Printed Name & Title

State of Texas  
County of Galveston

§  
§  
§

**NON-COLLUSION AFFIDAVIT**

Before me, the undersigned notary, on this day personally appeared \_\_\_\_\_ (Affiant), whom being first duly sworn, deposes and certifies that:

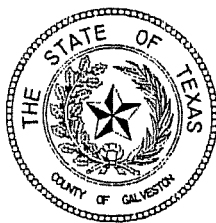
- Affiant is the \_\_\_\_\_ of \_\_\_\_\_, that  
(Individual, Partner, Corporate Officer) (Name of Proposer)  
submitted the attached Bid/Proposal in **RFP No. B162004 Veteran’s Sports Complex in Jack Brooks Park**
- Affiant is a duly authorized representative of Proposer and is authorized to make this Non-Collusion Affidavit;
- The attached Proposal/Bid is genuine and is not a collusive or sham Proposal/Bid;
- The attached Proposal/Bid has been independently arrived at without collusion with any other bidder, proposer, person, firm, competitor, or potential competitor;
- Bidder/Proposer has not colluded, conspired, connived or agreed, directly or indirectly, with any other bidder, proposer, person, firm, competitor, or potential competitor, to submit a collusive or sham bid or that such other bidder, proposer, person, firm, competitor, or potential competitor shall refrain from bidding/proposing;
- Bidder/Proposer has not in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, proposer, person, firm, competitor, or potential competitor to fix the price or prices in the attached Bid/Proposal or of the bid/proposal any other bidder/proposer;
- Bidder/Proposer has not in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, proposer, person, firm, competitor, or potential competitor to fix the overhead, profit or cost element of the Bid/Proposal price or prices of any other bidder/proposer, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against Galveston County or any person interested in the proposed contract;
- Affiant has not in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, proposer, person, firm, competitor, or potential competitor, paid or agreed to pay any other bidder, proposer, person, firm, competitor, or potential competitor any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the price or prices in the attached Bid/Proposal or the bid/proposal of any other Bidder/Proposer; and
- Affiant certifies that Affiant is fully informed regarding the accuracy of the statements contained herein, and under penalties of perjury, certifies and affirms the truth of the statements herein, such penalties being applicable to the Bidder/Proposer as well as to Affiant signing on its behalf.

\_\_\_\_\_  
**Signature of Affiant**

**SWORN TO and SUBSCRIBED** before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



# County of Galveston Purchasing Department Vendor Qualification Packet

(rev. 1.2, March 29, 2010)

All interested parties seeking consideration for qualified vendor status with the County of Galveston should complete and return only the following attached forms to:

Galveston County Purchasing Department  
722 Moody Avenue, (21st Street), 5<sup>th</sup> Floor  
Galveston, Texas 77550  
(409) 770-5371 office  
(409) 621-7987 fax

- Form PEID:** Person /Entity Information Data  
**Form W-9:** Request for Taxpayer Identification Number and Certification  
*(please note that the included form may not be the latest revised form issued by the Internal Revenue Service. Please check the IRS website at <http://www.irs.gov/pub/irs-pdf/fw9.pdf> for the latest revision of this form.)*  
**Form CIQ:** Conflict of Interest Questionnaire  
*(please note that the included form may not be the latest revised form issued by the State of Texas Ethics Commission. Please check the Texas Ethics Commission website at for the latest revision of this form. Please note that Galveston County Purchasing Agent is not responsible for the filing of this form with the Galveston County Clerk per instructions of the State of Texas Ethics Commission).*

**Certificate(s) of Insurance:** If the person or entity seeking qualified vendor status with the County will be performing work at or on any County owned facility and/or property, Certificate(s) of Insurance are required to be submitted prior to performing any work.

Insurance requirements are as follows:

### **Public Liability and Property Damage Insurance:**

Successful vendor agrees to keep in full force and effect, a policy of public liability and property damage insurance issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners of the State of Texas, with coverage provisions insuring the public from any loss or damage that may arise to any person or property by reason of services rendered by vendor. Vendor shall at its own expense be required to carry the following minimum insurance coverages:

- For damages arising out of bodily injury to or death of one person in any one occurrence – one hundred thousand and no/100 dollars (\$100,000.00);
- For damages arising out of bodily injury to or death of two or more persons in any one occurrence – three hundred thousand and no/100 dollars (\$300,000.00); and
- For injury to or destruction of property in any one occurrence – one hundred thousand and no/100 dollars (\$100,000.00).

This insurance shall be either on an occurrence basis or on a claims made basis. Provided however, that if the coverage is on a claims made basis, then the vendor shall be required to purchase, at the termination of this agreement, tail coverage for the County for the period of the County's relationship with the vendor under this agreement. Such coverage shall be in the amounts set forth in subparagraphs (1), (2), and (3) above.

**Worker's Compensation Insurance:**

Successful vendor shall also carry in full force Workers' Compensation Insurance policy(ies), if there is more than one employee, for all employees, including but not limited to full time, part time, and emergency employees employed by the vendor. Current insurance certificates certifying that such policies as specified above are in full force and effect shall be furnished by the vendor to the County.

**The County of Galveston shall be named as additional insured on policies listed in subparagraphs above and shall be notified of any changes to the policy(ies) during the contractual period.** Insurance is to be placed with insurers having a Best rating of no less than A. The vendor shall furnish the County with certificates of insurance and original endorsements affecting coverage required by these insurance clauses. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The vendor shall be required to submit annual renewals for the term of any contractual agreement, purchase order or term contract, with Galveston County prior to expiration of any policy.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity.

The County agrees to provide vendor with reasonable and timely notice of any claim, demand, or cause of action made or brought against the County arising out of or related to utilization of the property. Vendor shall have the right to defend any such claim, demand, or cause of action at its sole cost and expense and within its sole and exclusive discretion. The County agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the property without the prior written consent of the vendor.

In no event shall the County be liable for any damage to or destruction of any property belonging to the vendor unless specified in writing and agreed upon by both parties.

**Procurement Policy - Special Note:**

Understand that it is, according to Texas Local Government Code, Section 262.011, Purchasing Agents, subsections (d), (e), and (f), the sole responsibility of the Purchasing Agent to supervise all procurement transactions.

Therefore, be advised that all procurement transactions require proper authorization in the form of a Galveston County purchase order from the Purchasing Agent's office prior to commitment to deliver supplies, materials, equipment, including contracts for repair, service, and maintenance agreements. Any commitments made without proper authorization from the Purchasing Agent's office, pending Commissioners' Court approval, may become the sole responsibility of the individual making the commitment including the obligation of payment.

**Code of Ethics - Statement of Purchasing Policy:**

Public employment is a public trust. It is the policy of Galveston County to promote and balance the objective of protecting the County's integrity and the objective of facilitating the recruitment and

retention of personnel needed by Galveston County. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public office.

Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Galveston County procurement organization.

To achieve the purpose of these instructions, it is essential that those doing business with Galveston County also observe the ethical standards prescribed here.

**General Ethical Standards:** It shall be a breach of ethics to attempt to realize personal gain through public employment with Galveston County by any conduct inconsistent with the proper discharge of the employee's duties.

It shall be a breach of ethics to attempt to influence any public employee of Galveston County to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Galveston County to participate directly or indirectly in procurement when the employee knows that:

- The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement.
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.
- Any other person, business or organization with which the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

**Gratuities:** It shall be a breach of ethics to offer, give or agree to give any employee of Galveston County, or for any employee or former employee of Galveston County to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

**Kickbacks:** It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Galveston County, or any person associated therewith, as an inducement for the award of a subcontract or order.

**Contract Clause:** The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation by Galveston County.

**Confidential Information:** It shall be a breach of ethics for any employee or former employee of Galveston County to knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any person.

**Questions/Concerns:**

If you have any questions or concerns regarding the information or instructions contained within this packet, please contact any member of the Purchasing Department staff at (409) 770-5371.

## CONFLICT OF INTEREST DISCLOSURE REPORTING

Proposer may be required under Chapter 176 of the Texas Local Government Code to complete and file a conflict of interest questionnaire (CIQ Form). If so, the completed CIQ Form must be filed with the County Clerk of Galveston County, Texas.

If Proposer has an employment or other business relationship with an officer of Galveston County or with a family member of an officer of Galveston County that results in the officer or family member of the officer receiving taxable income that exceeds \$2,500.00 during the preceding 12-month period, then Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

If Proposer has given an officer of Galveston County or a family member of an officer of Galveston County one or more gifts with an aggregate value of more than \$250.00 during the preceding 12-months, then Proposer **MUST** complete a CIQ Form and file the original of the CIQ Form with the County Clerk of Galveston County.

The Galveston County Clerk has offices at the following locations:

Galveston County Clerk  
Galveston County Justice Center, Suite 2001  
600 59<sup>th</sup> Street  
Galveston, Texas 77551

Galveston County Clerk  
North County Annex, 1<sup>st</sup> Floor  
174 Calder Road  
League City, Texas 77573

Again, if Proposer is required to file a CIQ Form, the original completed form is filed with the Galveston County Clerk (not the Purchasing Agent).

For Proposer's convenience, a blank CIQ Form is enclosed with this proposal. Blank CIQ Forms may also be obtained by visiting the Galveston County Clerk's website and/or the Purchasing Agent's website – both of these web sites are linked to the Galveston County homepage, at <http://www.co.galveston.tx.us>.

As well, blank CIQ Forms may be obtained by visiting the Texas Ethics Commission website, specifically at [http://www.ethics.state.tx.us/whatsnew/conflict\\_forms.htm](http://www.ethics.state.tx.us/whatsnew/conflict_forms.htm).

Chapter 176 specifies deadlines for the filing of CIQ Forms (both initial filings and updated filings).

It is Proposer's sole responsibility to file a true and complete CIQ Form with the Galveston County Clerk if Proposer is required to file by the requirements of Chapter 176. Proposer is advised that it is an offense to fail to comply with the disclosure reporting requirements dictated under Chapter 176 of the Texas Local Government Code.

If you have questions about compliance with Chapter 176, please consult your own legal counsel. Compliance is the individual responsibility of each person, business, and agent who is subject to Chapter 176 of the Texas Local Government Code.



**COUNTY of GALVESTON  
Purchasing Department**

rev. 1.3, March 29, 2010

|                   |  |
|-------------------|--|
| <b>FORM PEID:</b> | <b>Request for Person-Entity Identification Data</b> |
|-------------------|--|

Instructions: Please type or print clearly when completing sections 1 thru 4 and return completed form to:

**Galveston County Purchasing Agent**  
**722 Moody Avenue (21st. Street), 5th Floor**  
**Galveston, Texas 77550**  
**(409) 770-5371 office**  
**(409) 621-7987 fax**

1.

|                        |  |  |  |
|------------------------|--|--|--|
| <b>Business Name:</b>  |  |  |  |
| <b>Attention Line:</b> |  |  |  |

2.

|                          |  |               |               |
|--------------------------|--|---------------|---------------|
| <b>Physical Address:</b> |  |               |               |
| <b>City:</b>             |  | <b>State:</b> | <b>Zip+4:</b> |

3.

|                                 |  |               |              |
|---------------------------------|--|---------------|--------------|
| <b>Billing / Remit Address:</b> |  |               |              |
| <b>City:</b>                    |  | <b>State:</b> | <b>Zip+4</b> |

4.

|                             |  |  |  |
|-----------------------------|--|--|--|
| <b>Main Contact Person:</b> |  |  |  |
| <b>Main Phone Number:</b>   |  |  |  |
| <b>Fax Number:</b>          |  |  |  |
| <b>E-mail Address:</b>      |  |  |  |

Areas below are for County use only.

|                      |                       |
|----------------------|-----------------------|
| <b>Requested By:</b> | <b>Phone / Ext. #</b> |
| <b>Department:</b>   | <b>Date:</b>          |

|                                      |  |                                      |
|--------------------------------------|--|--------------------------------------|
| <b>Action Requested - Check One:</b> | <b>IFAS PEID Vendor Number:</b>        |                                      |
| <input type="checkbox"/> Add New     | <input type="checkbox"/> Change Data   | <input type="checkbox"/> Re-activate |
| <input type="checkbox"/> Inactivate  | <input type="checkbox"/> Employee      | <input type="checkbox"/> Attorney    |
| <input type="checkbox"/> Landlord    | <input type="checkbox"/> Foster Parent | <input type="checkbox"/> Refund      |
| <input type="checkbox"/> One Time    | <input type="checkbox"/> Foster Child  |                                      |

## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type  
See Specific Instructions on page 2.

|  |   |
|--|---|
| Name (as shown on your income tax return)  |   |
| Business name, if different from above   |   |
| Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership<br><input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee<br><input type="checkbox"/> Other (see Instructions) ▶ |   |
| Address (number, street, and apt. or suite no.)  | Requester's name and address (optional) |
| City, state, and ZIP code  |   |
| List account number(s) here (optional)   |   |

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

|                                |
|--------------------------------|
| Social security number         |
| or                             |
| Employer identification number |

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out Item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, Item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the Instructions on page 4.

|                  |                            |        |
|------------------|----------------------------|--------|
| <b>Sign Here</b> | Signature of U.S. person ▶ | Date ▶ |
|------------------|----------------------------|--------|

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

| IF the payment is for . . .  | THEN the payment is exempt for . . .   |
|--|--|
| Interest and dividend payments   | All exempt payees except for 9   |
| Broker transactions  | Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker |
| Barter exchange transactions and patronage dividends                                   | Exempt payees 1 through 5  |
| Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup> | Generally, exempt payees 1 through 7 <sup>2</sup>  |

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its Instructions.

<sup>2</sup>However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A *disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.*

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

### What Name and Number To Give the Requester

| For this type of account:   | Give name and SSN of:   |
|---|---|
| 1. Individual   | The individual  |
| 2. Two or more individuals (joint account)  | The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup> |
| 3. Custodian account of a minor (Uniform Gift to Minors Act)  | The minor <sup>2</sup>  |
| 4. a. The usual revocable savings trust (grantor is also trustee)   | The grantor-trustee <sup>3</sup>  |
| b. So-called trust account that is not a legal or valid trust under state law   | The actual owner <sup>1</sup>   |
| 5. Sole proprietorship or disregarded entity owned by an individual   | The owner <sup>3</sup>  |
| For this type of account:   | Give name and EIN of:   |
| 6. Disregarded entity not owned by an individual  | The owner   |
| 7. A valid trust, estate, or pension trust  | Legal entity <sup>4</sup>   |
| 8. Corporate or LLC electing corporate status on Form 8832  | The corporation   |
| 9. Association, club, religious, charitable, educational, or other tax-exempt organization  | The organization  |
| 10. Partnership or multi-member LLC   | The partnership   |
| 11. A broker or registered nominee  | The broker or nominee   |
| 12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity   |

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

**FORM CIQ**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information in this section is being disclosed.

\_\_\_\_\_  
 Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes       No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

Yes       No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4**

\_\_\_\_\_  
 Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
 Date