

REQUEST FOR PROPOSALS

Sealed proposals addressed to the City Council of the City of Seguin, Guadalupe County, Texas will be received at the Seguin City Hall, 205 North River, Seguin, Texas 78155 until 2:30 p.m., Tuesday, June 7, 2011, (CDST), to **provide food and refreshment concession services at the Seguin-Guadalupe County Coliseum and the City of Seguin Volleyball Complex**. Any proposal arriving after the 2:30 p.m. deadline will be returned unopened. At 3:00 p.m. the name of all Vendors submitting a Proposal will be read publicly but no contents of the Proposals will be disclosed.

Proposal Package No. 99-2011-16 is available on the City of Seguin website or by request made to the City of Seguin Purchasing Department.

The City of Seguin reserves the right to reject any and all Proposals, and to waive informalities. The City Council's decision will be final.

Douglas G. Faseler, City Manager
CITY OF SEGUIN, TEXAS

CITY OF SEGUIN
205 N. RIVER
SEGUIN, TEXAS 78155



REQUEST FOR PROPOSALS

Concession Services

Proposal No. 99-2011-16

May 6, 2011

Prepared by City of Seguin Purchasing Department

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**SECTION I
TERMS AND CONDITIONS**

1. DEFINITION OF TERMS

In this contract:

A. Bid documents means the entire packet of documents provided to bidders, including the Terms and Conditions, Specifications, Special and Supplementary Conditions, Bid Form and any addendum.

B. Bidder means a person or firm submitting a bid, proposal, or quote to provide equipment, material, and/or services necessary in the performance of these specifications, and competing for award of a contract.

C. Bid or Proposal means an offer to perform the requirements specified herein. Furnish or provide means to supply, equip, and deliver the specified equipment, material and/or services to the Purchaser.

D. City, Purchaser, or Owner shall refer to the City of Seguin, PO Box 591, Seguin, Texas 78156-0591.

E. Contract means the contract awarded pursuant to this solicitation.

F. Contractor means the bidder to which a contract award has been made by the City.

G. Purchase Order means the document issued by the City that creates a legal binding contract between the City and the Contractor and authorizes the Contractor to ship goods pursuant to the contract.

2. SUBMISSION OF PROPOSALS

A. The Bidder shall provide itemized price quotations and delivery schedules for the specified items/services outlined in this bid. Sealed proposals addressed to the City Manager's Office, City of Seguin, 205 N. River St., Seguin, Texas 78155 will be received until 2:30 p.m., Tuesday, June 7, 2011, and be publicly opened and read at 3:00 p.m. Proposals will be evaluated and awarded at a later date. Proposals shall be submitted in a sealed envelope (8 1/2" x 11" minimum) on forms provided herein, along with other information necessary to evaluate the proposal. Sealed envelopes shall be clearly marked as follows:

REQUEST FOR PROPOSALS

Concession Services

City of Seguin Proposal Package No. 99-2011-16

To be opened at 3:00 p.m., Tuesday, June 7, 2011

B. Bids will be submitted on the forms provided in these bid documents. If not submitted on the forms provided, the bid will be rejected. Facsimile bids will not be accepted.

C. Bids which are received after the date and time set for the bid opening will not be considered.

D. Each Bidder agrees that its price will remain firm and subject to acceptance by the City for a period of sixty (60) calendar days from the bid opening date.

3. ANTI-LOBBYING PROVISION

Bidders are prohibited from directly or indirectly communicating with City Council members regarding the Bidder's qualifications or any other matter related to the eventual award of a contract for the services requested under this Request for Proposals. Bidders are prohibited from contacting City staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the Bidder from the selection process.

Upon issuance of the Request for Proposals, all bidder communications and requests for clarification or objections shall be directed in writing to the Assistant Director of Finance for response, determination and dissemination to all bidders. Any communication by bidders or their representatives toward other city officers or employees regarding this Request for Proposals or the award of a contract are prohibited and will constitute grounds for disqualification of a proponent. A lobbyist or a proponent or any of their agents may not do any act or refrain from any act for the express purpose and intent of placing any City official under personal obligation to the lobbyist or proponent.

4. WITHDRAWAL OF BIDS

A Bidder may withdraw a bid only by a written request received the Assistant Director of Finance prior to the time set for bid opening. Bids may not be withdrawn after the time set for bid opening.

5. GENERAL CONDITIONS

Bidders will submit their bids upon the following express conditions:

A. Bidders shall thoroughly examine all drawings, specifications, plans, schedules, instructions, and all other contract documents pertaining to this bid.

B. Bidders shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of materials or equipment as required by the bid conditions. No plea of ignorance by the Bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City or the compensation to the vendor.

C. All materials, equipment, supplies which are new, non-standard to the City of Seguin, and/or items which are to be listed as an alternate or exception must be pre-approved PRIOR to placing them on a bid proposal. In order to fairly evaluate all bids, sufficient time requirements for possible field testing or demonstrations should be allowed.

D. Bidders are advised that City contracts are subject to all legal requirements under Local, State and Federal statutes, ordinances, and regulations.

E. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall benefit financially, directly or indirectly, in the sale to the City of any materials, supplies or services, except on behalf of the City as an officer or employee.

F. The City of Seguin is committed to maintaining fair and open competition as required by local, state, and federal laws and statutes. Every effort is made to maintain the highest level of ethical conduct in every aspect of the procurement process. Sharp business practices or high-pressure tactics will not be tolerated. Qualification and selection of vendors is based on those vendors who share the same high standards of ethical conduct.

6. DESCRIPTION OF GOODS

A. Any catalog or manufacturer's reference in this bid is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Any such references are made a part of these contract documents as if incorporated verbatim herein.

B. The term "Or Equal", if used, is intended to allow substitution of a brand which has all the essential performance, features, reliability, and other salient characteristics as the brand name and model stated in the item description. "Or equal" is intended to establish a level of quality and function and is not to be interpreted as a preference for a particular brand. Other brands meeting these minimum requirements will be accepted. Bid submitted on an "OR EQUAL" item must clearly identify the proposed product, the quantity of the product, model, and type, as applicable.

7. PREPARATION OF BID

Bidders will prepare bids in accordance with the following:

A. Specifications are written to encourage competition. The specifications herein shall be the basis of comparison between bidders. There is no intent to discriminate against any supplier or Vendor but rather, to set a definite standard of performance. Bidders are required to quote services and/or equipment that will meet or exceed the minimum or maximum specifications herein.

B. All information required by the bid documents will be furnished. The bidder will print or type its name, in ink, and manually sign the bid sheet. The bid sheet, with original signatures, must be submitted.

C. All prices shall be quoted as required in the specifications. Unit prices will be shown when called for on the bid sheet, and where there is a conflict between the unit price and the total price, the unit price will govern.

D. In case of ambiguity or lack of clarity in stating prices in the bid, Purchaser reserves the right to adopt the price written in words or reject the bid. Any ambiguity in the bid as a result of omission, error, unintelligible or illegible wording shall be construed in the favor of the City.

E. Alternate bids will not be considered unless expressly authorized by the bid documents.

F. The prices quoted in the bid shall be firm and not subject to escalation except where otherwise clearly indicated by the Bidder. If the prices are subject to escalation, Bidder shall provide the basis for the escalation.

G. Any omission in the specifications of any minor requirement necessary to make each unit complete and functional shall not relieve the Supplier of responsibility to furnish any material or equipment necessary.

H. The City reserves the right to request clarification to assist in evaluating the bidder's response when the bid response is unclear with respect to product pricing, packaging or other factors. The information provided is not intended to change the bid response in any fashion and such information must be provided within two days from request.

I. Bidders shall not include federal taxes nor State of Texas limited sales, excise and use taxes in bid prices since the City of Seguin is exempt from payment of such taxes under section 151.309 of the Texas Tax Code.

J. By submitting a bid, each bidder certifies that it is a duly qualified, capable, and bondable business entity, that it is not in or contemplating bankruptcy or receivership and that it is not currently delinquent with respect to payment of taxes assessed by any political subdivision. (See paragraph 10A.(11)).

K. By submitting a bid, each bidder certifies that it does not currently owe any money to the City.

L. If a bid bond is required, the submitted bond must be an original submitted on the form provided by the City in the Bid Documents.

8. CLARIFICATION TO BID DOCUMENTS

If any bidder is in doubt as to the true meaning of the specifications, other bid documents, or any part thereof, they may submit a written request for clarification to the Assistant Director of Finance. **A request for clarification must be received by the Assistant Director of Finance no later than five (5) days prior to the scheduled bid opening.**

9. EXCEPTIONS

If Bidder takes exceptions to any provisions of the specifications, the exceptions must be specifically and clearly identified by section in Bidder's bid, and Bidder's proposed alternative must also be provided in the bid. Bidders cannot take a 'blanket exception' to the entire bid document.

10. ADDENDA

Any clarification or interpretation of the bid, if made, will be made only by written addendum issued through the Purchasing Department and signed by the City of Seguin Assistant Director of Finance. A copy of such Addendum will be mailed or delivered to each person receiving bids. Addenda to the bid documents may be issued in response to a request for clarification or objection, or for any other reason the City considers advisable. Once issued, an addendum becomes a part of the bid documents. All addenda can be viewed and downloaded at the City's website: www.seguintexas.gov. It is the bidder's responsibility to check this site to determine if the City has issued any addenda.

The City will not be responsible for any other explanation or interpretation of the bid made or given prior to the award of the contract.

11. REJECTION OF BIDS

A. The City of Seguin reserves the right to accept or reject any or all bids, and to waive any informalities and technicalities. The City of Seguin shall consider all factors it believes to be relevant in selecting the offer that provides the best value for the City including, but not limited to, the offered price. Causes for bidder disqualification and rejection of bids may include, but shall not be limited to:

1. Bidder's current inability to satisfactorily perform the work or service, or the bidder's previous failure to properly and timely perform its obligations under a contract with the City. Purchaser may make such investigation as is deemed necessary to determine the ability of the Bidder to provide the equipment, material, and/or services as required by this specification and to determine the adequacy of the proposed equipment, material, and/or services. The Bidder shall furnish, upon request, all such data and information requested for this purpose. The information provided is not intended to change the bid response in any fashion and such information must be provided within two days from request.
2. Bidder's current violation of any City ordinance.
3. Bidder's misstatement or concealment of any material fact in the bid.
4. The bid's nonconformance to law or the requirements of the bid.
5. Failure to use the bid/proposal form furnished by the City of Seguin.
6. Failure to properly complete the proposal.
7. Lack of signature by an authorized representative on the proposal form.
8. Alteration of bid form.
9. Evidence of collusion among proposers.
10. Omission of proposal guarantee (if required).
11. In the event that a bidder is, or subsequently becomes, delinquent in the payment of his, her or its City taxes, including state and local sales taxes, or any other City financial obligation, such fact shall constitute grounds for rejection of the bid, or if awarded the bid, for cancellation of the contract.

12. AWARD OF CONTRACT

A. Factors to be considered in the evaluation of the bids are price, quality, reputation and experience of Bidder, past relationship with City, long term cost, safety record, operating history of equipment, conformance to specifications, delivery, and other factors as deemed appropriate by the Purchaser.

B. The contract will be awarded to the lowest responsible bidder or to the bidder who provides goods and/or services at the best value for the City, based on the base bid plus any selected alternatives provided the amount does not exceed the funds then estimated by the City as available to finance the contract. If the contract is bid with alternatives, the City reserves the right to select any combination of alternatives and will compare all bids using the selected alternatives. If the amount of the bids exceeds the funds available to finance the contract, the City may (a) reject all bids or (b) may award the contract based on the base bid with such deductions as produces a net total which is available within the available funds. Notwithstanding the foregoing, the City reserves the right to reject any and all bids.

- C. The City reserves the right to award a contract(s) on the basis of the low bid for each item or the total low bid.

13. CONTRACT

A. This Request for Proposals (RFP), combined with the Vendor's response (proposal) submitted to and accepted by the City, constitutes a contract between the City of Seguin and the selected vendor at the time the Seguin City Council awards the contract to such vendor.

B. No further documentation is required, although the contracting parties may supplement the contract with further documentation. By submitting a proposal, the vendor agrees to comply with the Terms and Conditions and other requirements set forth in this RFP and to be further bound to the representations and information the vendor provides in his response to this RFP.

C. Acceptance of bidder's offer may be in the form of a "notice of award", a P.O. (purchase order) or a "contract".

14. RESERVATIONS

THE CITY EXPRESSLY RESERVES THE RIGHT TO ACCEPT, REJECT OR CANCEL ANY AND ALL PROPOSALS and:

- A.** Waive any defect, irregularity, or informality in any proposal or bidding procedure;
- B.** Extend the bid closing time and date. Notification will be made by addendum;
- C.** Reissue a bid invitation or proposal;
- D.** Procure any item by other allowable means;
- E.** Increase or decrease the quantity specified, unless the bidder specifies otherwise;
- F.** Waive minor deviations from the specifications when a bid meets the intent of the specifications and consider such bid if it is determined the bid's total cost is lower, the purpose for the bid is improved or not impaired, the bid amounts to the best value for the city, and/or the waiver otherwise results in a measurable benefit on behalf of the city;
- G.** Consider and accept an alternate bid as provided herein when most advantageous to the City;
- H.** Extend any contract when most advantageous to the City;
- I.** Award any bid to multiple parties if it is in the best interest of the City;
- J.** Purchase off of existing contracts available to the City through "Cooperative Purchasing Agreements" if available.

15. WARRANTIES

A. WARRANTY FOR PRODUCT: The Contractor warrants to the City that all goods delivered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, will be of merchantable quality, good workmanship, free from defects, and fit for all purposes specified in this contract. The Contractor shall not limit or exclude any implied warranties, and any attempt to do so shall render this contract voidable at the option of the City. The Contractor will provide copies of applicable warranties or guarantees to the Purchasing Manager. The City may return goods not meeting applicable warranties to the Contractor at the Contractor's expense.

B. WARRANTY FOR PRICE: The City will pay the price for goods specified by the

Contractor's bid. The Contractor warrants its price to be no higher than the Contractor's current prices or charges on orders by others for products or services of the kind and specification covered by this bid contract for similar quantities under similar or like conditions and methods of purchase. In the event Contractor breaches this warranty, the prices or charges shall be reduced to Contractor's current prices or charges on orders by others, or in the alternative, City may cancel this contract without liability to Contractor without liability to Contractor for breach or Contractor's actual expense.

C. SAFETY WARRANTY: Contractor warrants that the goods sold to the City conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) as amended. In the event the goods do not so conform, the Contractor must correct or replace the goods at the Contractor's expense. If the Contractor fails to do so within a reasonable time, the City, at its discretion, may cause the correction to be made at the Contractor's expense, or may return the goods at the Contractor's expense and terminate this contract.

16. PROTESTS

A. The City Council is the final authority on issues relating to this contract. The Assistant Director of Finance is the City's representative in the award and administration of this contract, and will issue and receive all documents, notices, and correspondence.

B. Any protest to the City's consideration of any bid must be submitted in writing and delivered to the City of Seguin, ATTN: Assistant Director of Finance.

C. The protest may be delivered in person to the department offices located at 816 Fred Byrd Drive, Seguin, Texas, or by certified mail, return receipt requested, to the following address: City of Seguin, Purchasing Department, ATTN: Assistant Director of Finance, PO Box 591, Seguin, Texas 78156-0591.

D. The written protest must include the following information before it may be considered By the City:

- 1.** Name, mailing address, and business phone number of the protesting party;
- 2.** Identification of the bid or proposal being protested;
- 3.** A precise and concise statement of the reason/reasons for the protest which should provide enough factual information to enable the City to determine the basis of the protest;
- 4.** Any documentation or other evidence supporting the protest.

E. The Purchasing Department, in conjunction with the department responsible for the bid or proposal solicitation, will attempt to resolve the protest, including, at the City's option, meeting with the protesting party. If the protest is successfully resolved by mutual agreement, written verification of the resolution of each ground addressed in the protest will be provided to the City Manager. If the Purchasing Department is unable to resolve the protest, the protesting party may request the protest be reviewed and resolved by the City Manager.

F. A request for the City Manager's review must be in writing and received by the Purchasing Department within three (3) business days from the date the Purchasing Department informs the protesting party the protest cannot be resolved. The request for review must be delivered in person to the Purchasing Department at the address stated

above or by certified mail, return receipt requested, to the mailing address stated above. If the protesting party fails or refuses to request a review by the City Manager within the three (3) days, the protest is deemed finalized and no further review by the City is required. Applicable documentation and other information applying to the protest may be submitted by the protesting party to the Purchasing Department before review by the City Manager. If the protesting party requests a review by the City Manager, such documentation will be forwarded to the City Manager for consideration. The City Manager may likewise notify the protesting party or any City department to provide additional information.

G. The decision reached by the City Manager will be final, but the protesting party may still appear before the City Council during the hearing of citizens' session.

17. SHIPMENT & DELIVERY

A. Bidder is to quote its lowest and best price F.O.B. Destination on each item to shipping location in Seguin, Texas unless otherwise specified in the IFB. Pricing shall include packaging, transportation, unloading, and any trade and cash discounts, which may be taken if earned.

B. The bidder certifies all materials, parts, and equipment supplied or represented in response to this IFB shall be new and unused unless noted elsewhere in this IFB.

C. The title and risk of loss of the goods will not pass to the City until receipt and acceptance takes place at the FOB point. The City department receiving deliveries or issuing purchase orders under this contract will inspect and accept any and all deliveries made and may reject those items which are damaged or which do not conform to the specifications. The Contractor is responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries at no additional cost.

D. Delivery dates pertaining to this specification must be clearly stated in the bid form where required and include weekends and holidays. The bidder will clearly state in the bid the time required for delivery upon receipt of contract or purchase order. Failure to specify delivery date or state unrealistically short or long delivery dates may cause the bid to be disqualified. Proposed delivery time must be specific and such phrases "as required", "as soon as possible", or "prompt" may result in disqualification of the bid. "TIME OF THE ESSENCE FOR DELIVERY" section of specifications shall govern the delivery date(s), if such section is included within the specifications.

E. Vendor must keep the City advised as to the status of the delivery. When delivery delay can be foreseen, the Vendor shall give prior notice to the City.

F. Default in promised delivery, without acceptable reasons, or failure to meet specifications without remedy shall cause the City to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting vendor. This does not limit any other remedies to the City for damage entitled under the Uniform Commercial Code.

18. TERMINATION

A. DEFAULT: Failure by either party to perform any of its provisions will constitute a default and breach of contract, in which case, the other party may require corrective action within 10 days from the date the defaulting party receives written notice citing the

nature of the breach. Failure of the defaulting party to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed 10 days will authorize the other party to terminate this agreement by written notice.

B. CONVENIENCE: The City reserves the right to terminate this contract upon 30 days written notice for any reason deemed by the City Council to serve the public interest. Termination for convenience will not be made when termination is authorized under any other provisions of this contract. In the event of such termination the City will pay the Contractor those costs directly attributable to supplies obtained in compliance with the contract prior to termination. Provided, however, that no costs will be paid to the Contractor which are recoverable in the normal course of doing business. The City is not liable for loss of any profits anticipated to be made hereunder.

C. FUNDING: The City retains the right to terminate this contract at the expiration of each of City's budget periods. This contract is conditioned on a best efforts attempt by City to obtain and appropriate funds for payment of any debt due by City herein.

19. PAYMENTS

A. Payment of invoices by the City shall be made in full thirty (30) days after receipt and acceptance of all equipment or performance of services covered by each purchase order. Bidder shall state his bid in accordance with the standard payment terms and conditions of the City of Seguin of Net 30 days. All bids must be stated in terms of dollars and cents, the bidder's lowest, best, and final price.

B. Invoices submitted or otherwise used pursuant to the bid awarded under this IFB shall be presented to the City in the following form and content:

1. Each invoice must reference the City of Seguin contract, agreement, or P.O. number;
2. Only one contract, agreement, or project shall be billed on a particular invoice;
3. Each invoice must have a billing or invoice number and an Invoice Total.

C. The invoice requirements stated herein shall not be read to disallow or exclude other information that may be otherwise required or requested by the City. Such information required herein must be submitted only on an invoice and not in any other non-invoice form or document.

20. DISCOUNTS

Prompt payment discounts will not be considered in determining low bids and making awards.

21. ASSIGNMENT

No right or interest in the contract shall be assigned, nor delegation of any obligation made by Vendor without the written permission of the City. Any attempted assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

22. WAIVER

No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

23. FORCE MAJEURE

In the event that the performance by either party of any of its obligations under this contract is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

24. GRATUITIES

The City may, by written notice to the Vendor, cancel this contract without liability to the City if it is determined by the City that gratuities have been offered to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations in respect to the performance of such a contract. In the event City, as set forth in this paragraph, cancels this contract the City shall be entitled to recover from the Vendor all additional costs incurred by City as a result of the cancellation.

25. ENTIRETY OF AGREEMENT/AMENDMENTS

This represents the entire agreement between the parties relating to the subject matter of this contract. Any prior agreements, promises, negotiations, or representations between the parties are not binding unless included in this contract. All amendments to this contract must be in writing and executed by both parties.

26. SEVERABILITY

In case any one or more of the provisions contained in this contract is held to be invalid or unenforceable in any respect by a court of proper jurisdiction, the invalidity, illegality or unenforceability will not affect any other provision of this contract, and this contract will be construed as if the invalid or unenforceable provision was not contained herein.

27. INSURANCE

If required, specific insurance provisions will be included in bid specifications. An original, certified copy of an insurance certificate must be submitted within ten days from request. The successful vendor will be required to maintain, at all times during performance of the contract, the insurance detailed in bid specifications. Failure to provide this document may result in disqualification of bid.

28. INDEMNITY

The Vendor will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts errors or omissions of the Vendor, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Vendor or its agents or employees. This obligation by the Vendor will not be limited by reason of the specification of any particular insurance

coverage required under this Agreement.

29. CONFIDENTIALITY

The City of Seguin is governed by the Public Information Act (“The Act”), Chapter 552 of the Texas Government Code. All information submitted by prospective bidders during the bidding process is subject to release under The Act. On each page where proprietary information appears, information considered confidential must be labeled. Failure to so label the proprietary or confidential information shall be considered as a waiver of any confidentiality rights or interests. Disclosure of requested information will be determined in accordance with the Texas Public Information Act. You are not encouraged to submit such data and information unless it is absolutely required to understand and evaluate your response. If such data and information is submitted, you agree that the City shall not be liable for disclosure of such data and information and hereby release the City from any liability. In the event a request for public information is filed with the City which involves information labeled as confidential, you will be notified by the City of the request so that you will have an opportunity to contact the Attorney General as to why such information should not be released.

30. CONFLICT OF INTEREST

A person or vendor seeking to contract with the City must file a Conflict of Interest Questionnaire (CIQ) if the person has a business relationship with the City, and either: has a business relationship with a city official or a city official’s family member; or has given a gift worth more than \$250 to a city official or city official’s family member within the previous 12-month period. A vendor required to file a CIQ must do so with the City Secretary within seven business days of: (1) beginning contract discussions with the city; (2) submitting to the City an application, response to a request for proposals or bid; or (3) learning of the existence of the applicable business relationship. Vendors should see Texas Local Government Code Chapter 176 in an effort to determine its applicability. The conflict of interest questionnaire form is included herein and is available from the Texas Ethics Commission at www.ethics.state.tx.us.

31. NOTICES

All notices called for or required by this agreement will be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage pre-paid, or by hand delivery, and will be effective five days after mailing.

Assistant Director of Finance
City of Seguin
205 N. River Street
Seguin, Texas 78155

32. QUESTIONS

Questions regarding interpretation of bids, bid results or bid awards should be directed in writing to the Assistant Director of Finance and be referenced by bid number.

SECTION II

SPECIFIC INFORMATION FOR VENDORS

1. SCOPE AND INTENT

The City of Seguin, Texas ("City") is seeking competitive proposals from vendors to provide Concession Services at the Seguin-Guadalupe County Coliseum and the City of Seguin Volleyball Complex. There are, on average, 200 events per year at the Seguin-Guadalupe County Coliseum. The average annual attendance for these events is over 60,000 guests. The total square footage of the Coliseum is over 12,000 square feet. There is one concession stand in the Coliseum. Maximum capacity for Coliseum events is 1,000 persons for a banquet-style setup or 1,200 for a theater-style setup. The City of Seguin Volleyball Complex has 18 courts. These courts are primarily used for three seasons of volleyball leagues: summer, spring, and fall. There is a break of one to two weeks between seasons. There is one concession stand at the Volleyball Complex. The intent of this Request for Proposals (RFP) is to seek out and select an individual or firm who will provide a high quality of service at reasonable prices for patrons at these locations, with a focus on customer service.

The City is committed to maintaining fair and open competition as required by local, state, and federal laws and statutes. Every effort is made to maintain the highest level of ethical conduct in every aspect of the procurement process. Sharp business practice or high-pressure tactics will not be tolerated. Qualification and selection of vendors is based on those vendors who share the same high standards of ethical conduct.

It is the intention of the City to execute a final contract with the vendor whose proposal is deemed most advantageous to the City in accordance with the evaluation criteria specified in this RFP. The City may conduct post-proposal discussions with all vendors deemed by the City to be reasonably qualified for selection for award. "Post-Proposal discussions" include, but are not limited to: requests for additional information, interviews, and requests for proposal modifications or revisions. The City may reject any part of any, or all, proposals.

2. DEFINITION OF TERMS

Proposer or Vendor shall mean a person, firm or corporation who submits a Proposal to provide equipment, material, and/or services necessary in the performance of these specifications.

City, Purchaser or Owner shall refer to City of Seguin, PO Box 591, Seguin, Texas 78156-0591.

RFP shall refer to this Request for Proposals (No. 99-2011-16).

Proposal shall mean a written offer to perform the requirements specified herein.

Furnish or provide shall mean to supply, equip, and deliver the specified equipment, material and/or services to the Purchaser.

Liquor License shall mean the licenses issued by the Texas Alcoholic Beverage Commission for serving the following: beer, wine, and mixed drinks.

City Equipment shall mean the appliances and equipment owned by the City and set forth in

the attached Exhibit 4.

3. PROJECTED SCHEDULE

The projected schedule of events for this Request for Proposal is as follows:

1 st Advertisement of Request for Proposals	May 6, 2011
2 nd Advertisement of Request for Proposals	May 13, 2011
Pre-proposal Conference	May 11, 2011
10:00 a.m. Seguin-Guadalupe County Coliseum 950 S. Austin St., Seguin, Texas 78155	
Receive RFP Responses	June 7, 2011
Proposal evaluation	June 7-June 17, 2011
Conduct discussions (if necessary)	June 7-June 17, 2011
Present recommendation to City Council	July 5, 2011
Commencement date of contract with approved concessionaire	August 1, 2011

4. PRE-PROPOSAL CONFERENCE

The City will conduct a Pre-Proposal Conference for all interested parties.

Date: May 11, 2011
Time: 10:00 a.m.
Location: Seguin-Guadalupe County Coliseum
950 S. Austin St., Seguin, TX 78155

Attendance at this conference is not required to submit a proposal. However, vendors are strongly urged to attend, as this session presents an opportunity for the proposer to clarify any concerns regarding proposal requirements. The proposer is cautioned that, although the proposal conference is optional, no modification or changes will be allowed in the pricing because of the failure of the proposer to have attended the conference. **Vendors will be required to mail or fax any pertinent questions as indicated below, no later than 2 days prior to the conference**, in order to allow the City to prepare adequate responses. Questions should be addressed in writing to:

Willa Hagemann
Assistant Director of Finance
PO Box 591
Seguin, Texas 78156-0591
FAX (830)-401-2499
Email: whagemann@seguintexas.gov

Each vendor submitting a proposal will be held responsible for having examined each site and being satisfied as to the existing conditions under which he or she will be obligated to operate or that will in any manner affect his or her services under the contract to include electrical service availability. No allowances shall be made in this connection on behalf of the bidder for any error or negligence on his or her part

5. RECEIPT AND OPENING OF PROPOSALS

The Proposer shall provide itemized price quotations for the specified items/services outlined in this RFP. Sealed proposals should be addressed to the City Manager's Office, City of Seguin, 205 N. River St., Seguin, Texas 78155. Proposals will be received until 2:30 p.m., Tuesday, June 7, 2011. At 3:00 p.m. the name of all Vendors submitting a Proposal will be read publicly but no contents of the Proposals will be disclosed. Proposals will be evaluated and awarded at a later date. All Proposers must submit an original and four (4) copies of their Proposal, properly signed with a manual signature of an authorized representative of the firm. Proposals are to be delivered in one box or envelope, with the due date and time on the outside of the box. Sealed envelopes shall be clearly marked as follows:

SEALED PROPOSAL
Concession Services
City of Seguin RFP Package No 99-2011-16
To be opened at 3:00 p.m., Tuesday, June 7, 2011

Proposals which are received after the specified time and date will not be considered and will be returned unopened.

6. ANTI-LOBBYING PROVISION

Bidders are prohibited from directly or indirectly communicating with City Council members regarding the Bidder's qualifications or any other matter related to the eventual award of a contract for the services requested under this Request for Proposals. Bidders are prohibited from contacting City staff members regarding their qualifications or the award of a contract, unless in response to an inquiry from a staff member. Any violation will result in immediate disqualification of the Bidder from the selection process.

Upon issuance of the Request for Proposals, all bidder communications and requests for clarification or objections shall be directed in writing to the Assistant Director of Finance for response, determination and dissemination to all bidders. Any communication by bidders or their representatives toward other city officers or employees regarding this Request for Proposals or the award of a contract are prohibited and will constitute grounds for disqualification of a proponent. A lobbyist or a proponent or any of their agents may not do any act or refrain from any act for the express purpose and intent of placing any City official under personal obligation to the lobbyist or proponent.

7. EXCEPTIONS

In cases where the Proposers wish to take exception to any part of this specification, they shall so state on the front of their Proposal. Any exceptions contained in the Proposal or drawings shall be listed in a "Statement of Exceptions."

8. ADDENDA

Only written addenda issued through the Purchasing Department and signed by the City of

Seguin Assistant Director of Finance are valid. Any and all other changes are unauthorized and will be considered invalid.

No verbal or written information, which is obtained other than through this RFP or its addenda, shall be binding on the City of Seguin. No employee of City of Seguin is authorized to interpret any portion of this RFP or give information as to the requirements of the RFP in addition to that contained in or amended to this written RFP document, except as stated in 1.5 of this RFP.

9. CLARIFICATION TO BID DOCUMENTS

If any bidder is in doubt as to the true meaning of the specifications, other bid documents, or any part thereof, they may submit a written request for clarification to the Assistant Director of Finance. **A request for clarification must be received no later than five (5) days prior to the scheduled bid opening.**

10. VENDOR QUALIFICATIONS

The City of Seguin reserves the right to reject any Proposal or part of any Proposal, if indication or review of any services or equipment proposed is deemed to have an unsatisfactory performance record or does not completely meet the requirements stated herein.

Purchaser may make such investigation as is deemed necessary to determine the ability of the Proposer to provide the equipment, material, and/or services as required by this RFP and to determine the adequacy of the proposed equipment, material, and/or services. The Proposer shall furnish, upon request and in a timely manner, all such data and information requested for this purpose.

11. OBLIGATION OF PROPOSER

Proposers are required to submit their Proposals upon the following express conditions:

- A. Proposers shall thoroughly examine all specifications, plans, instructions, and all other contract documents pertaining to this RFP.
- B. Proposers shall make all investigations necessary to thoroughly inform themselves regarding plant and facilities for delivery of materials or equipment as required by the RFP conditions.
- C. No plea of ignorance by the Proposer of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Proposer to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City of Seguin.
- D. The Proposer certifies that Proposer is not debarred or excluded from bidding by any Federal agency; has not been convicted within a three year period or had a civil judgment against them for commission of fraud in obtaining or performing a public contract, has not within a three year period been terminated on a public contract for cause or default.
- E. Right of Withdrawal: A proposal may not be withdrawn before the expiration of ninety (90) days after the proposal due date.
- F. The City will not reimburse the Proposer for any costs associated with the preparation and submittal of any proposal, or for any travel and/or per diem costs that are incurred.
- G. Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose the

vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. The Conflict of Interest Questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Conflict of Interest Questionnaires shall be submitted with your proposal.

12. CONTRACT AND TERM

- A. The City reserves the right to accept or reject any and all proposals and to re-solicit for proposals, as it shall deem to be in the best interest of the City. Receipt of any proposal shall under no circumstances obligate the City to accept the lowest cost proposal. The City of Seguin has the right to award a contract to the Proposer with the high evaluation score based on the Evaluation Criteria described in Section 16. The City reserves the right to reject any or all proposals submitted, to waive informalities and accept the Proposal that is the most advantageous to the public interest.
- B. After selection of the successful proposal, a formal written agreement will be entered into between the parties. The proposal, or any part hereof, submitted by the successful proposer may be attached to and become a part of the contract. The term of the contract shall be for two (2) years commencing May 1, 2011. The City of Seguin will have the right to exercise an option for an additional two-year term.

13. INSURANCE REQUIREMENTS

The successful Vendor must obtain the required insurance coverage as defined in Exhibit 1 (Insurance Requirements), and provide proof of coverage prior to contract approval. In addition to the requirements described in Exhibit 1 Vendor must carry, at his own expense, Liquor Liability insurance in an amount not less than one million dollars (\$1,000,000), with the City of Seguin named as additional insured. A Vendor's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

14. PROPOSAL CONTENTS

A proposal is defined as an offer to provide services and products which meet, or exceed, all requirements of this RFP. To be compliant the Vendor must submit:

- A. A cover letter signed by owner or corporate officer, expressing the Vendor's intent to provide services and products as required in this RFP.
- B. A Vendor Profile which describes the background and experience of the Vendor's firm and Vendor's contact individuals. Vendors must clearly demonstrate that they are qualified to provide food and beverage service in a consistent and revenue positive manner. A minimum of five (5) years of experience in providing concession and/or food services is required. Examples should be provided of Vendor's experience in concessions similar to the Seguin-Guadalupe County Coliseum and the City of Seguin Volleyball Complex. A minimum of three professional references indicating recent experience pertaining to concessions must be provided. Reference information shall include a description of the service provided.
- C. A Pricing Proposal which details all pricing of the proposed offering. The Pricing Proposal must be submitted in the format provided in Section III (Vendors Proposal

Form). Vendor may suggest items additional to those on the supplied list. The City may choose any, all, or none of those additional suggested items. Vendor shall compensate the City for the use of its facility, utilities and provided equipment through a percentage of sales. Vendors shall propose a percentage of all concessions' monthly gross sales receipts to be paid to the City of Seguin. The proposed percentage may not be less than 12.5%.

D. A list and explanation of the equipment to be provided at the site(s).

Any proposal submission which lacks any of these components will not constitute a proposal, will not be evaluated, and will not be eligible for contract award. There will be no exceptions.

15. REVIEW AND EVALUATION OF PROPOSALS

An evaluation team will be appointed by the City. All proposals will be reviewed for completeness and those found to be either incomplete or non-responsive will be rejected from further consideration. The evaluation team will determine if a reply is "non-responsive" and their decision will be final. Responsive and complete proposals will be evaluated by the City's evaluation team, who will provide an evaluation of cost proposals and selection of Vendors for further evaluation.

The City may make such investigation as is deemed necessary to determine the ability of the Vendor to provide the equipment, material, and/or services as required by this specification and to determine the adequacy of the proposed equipment, material, and/or services. The Vendor shall furnish, upon request and in a timely manner, all such data and information requested for this purpose.

The City shall consider, as a competent vendor, only those vendors who are fully capable of complying with all terms and conditions set forth in this RFP. All terms and conditions set forth in this RFP shall become a part of the final contract.

The evaluation team will review the proposals and rank each from best-to-least-desirable based on compliance with the Evaluation Criteria specified in Section 14.0 of this RFP. Discussions may be conducted individually with vendors who submit responsive proposals and who are determined reasonably qualified for award of the contract.

16. EVALUATION CRITERIA

Proposals will be evaluated according to the following criteria:

Vendor References/Experience. This evaluation will consider the Vendor's experience, qualifications with similar projects, professional references, and any other factor which could reasonably be asserted as being relevant to successful performance.

Maximum Score 20

Quality of Products and Services. This evaluation will consider the quality of food and beverages offered and the potential of Proposers to provide quality service.

Maximum Score 20

Pricing. This evaluation will consider competitiveness of pricing for food and beverages.

Maximum Score 25

Compensation. This evaluation will consider competitiveness of proposed percentage of all concessions' monthly gross sales receipts to be paid to the City of Seguin.

Maximum Score 30

Additional items/products offered.

Maximum Score 5

Total Evaluation Score 100

17. REQUIREMENTS AND SERVICES TO BE PROVIDED

- A. Vendor will operate and maintain all concession services at the Seguin-Guadalupe County Coliseum and the City of Seguin Volleyball Complex in accordance with quality standards which shall be determined at the sole discretion of the City in conformance with generally accepted professional standards. Successful Proposer shall have exclusive rights to provide all concession services at these locations.
- B. Vendor will provide and operate the Concession in a professional, clean and efficient manner, and in compliance with all Texas Department of State Health Services standards, as well as the standards of the City of Seguin Code of Ordinances, Chapter 22, Article II.
- C. Vendor will provide adequate, well-trained, well-groomed, courteous staff to manage the operation, prepare food and serve patrons.
- D. All concession staff shall be dressed in City approved uniforms or attire at all times. Concessionaire will provide a uniform for all workers, which shall consist of a clean, well-pressed, collared shirt bearing the name of the Concessionaire. Each worker shall display a nametag with the name of the worker and the Concessionaire. The City may request changes in personnel if problems arise with a worker(s). With respect to the Coliseum, workers may not wear shorts. With respect to the Volleyball Complex, workers may wear shorts. While working, workers are prohibited from participating in an ongoing event in any capacity other than that fitting their job description, and may not eat catered food.
- E. Vendor shall be responsible for the maintenance of all City Equipment, including provision of proof of annual inspection. Vendor will be responsible for the payment of repairs to City Equipment in the amount of \$500.00 or less. The City shall be responsible for repairs to City Equipment that exceed \$500.00.
- F. Vendor shall propose a percentage of all concessions' monthly gross sales receipts to be paid to the City of Seguin. The proposed percentage may not be less than 12.5%.
- G. All sales must be recorded by means of cash registers that publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded in a sales slip. This includes all sales of alcoholic beverages to customers who have contracted with the City for events to be held in the Seguin-Guadalupe County Coliseum and are thereby required to use the services of the City's contracted concessionaire. Vendor will be required to submit cash register tapes to the City after each event. The

register tapes must be submitted by 5:00 p.m. the day following the event. If the event is on a Saturday or Sunday, the register tapes must be submitted by 5:00 p.m. the following Monday. Register tapes must be submitted to the City of Seguin Finance Office, 205 N. River Street, Seguin, TX 78155.

- H. Payment will be made to the City on or before the twenty-first (21st) day of the calendar month following each month of the term. Payments must be accompanied by a monthly gross receipts report, in the format shown at Exhibit 3. Cash register tapes must be submitted with each payment to the City of Seguin.
- I. Vendor will maintain accounting records that will, to the satisfaction of the City's Finance Director, correctly and accurately reflect the gross receipts and disbursements of the Vendor, in connection with all City concessions. The method of accounting, including bank accounts, established for the concession will be separate from the accounting system used for any other business operated by Vendor or for recording Vendor's personal financial affairs. All such records shall be subject to inspection and audit by the City and its agents upon reasonable advance notice to the Vendor.
- J. At execution of a contract between Vendor and the City, Vendor will furnish to the City a deposit in the amount of three thousand dollars (\$3,000) to be applied against the first twenty thousand dollars (\$20,000) in sales as consideration for the rights granted.
- K. **BASE PROPOSAL:** At all times during the term of this Agreement, Concessionaire shall be required to maintain licenses with the Texas Alcoholic Beverage Commission (TABC) **for the service of beer and wine.** Concessionaire must have a license for the service of beer and wine in place by August 1, 2011. Concessionaire shall be responsible for complying with all state and local laws, regulations and rules with respect to the sale and consumption of alcoholic beverages during Coliseum events.
- L. **ALTERNATE PROPOSAL:** At all times during the term of this Agreement, Concessionaire shall be required to maintain licenses with the Texas Alcoholic Beverage Commission (TABC) **for the service of beer, wine, and mixed drink.** Concessionaire must have a license for the service of beer and wine in place by August 1, 2011. Concessionaire must show proof of application to Texas Alcoholic Beverage Commission (TABC) for license for service of mixed drink by August 1, 2011. Concessionaire shall be responsible for complying with all state and local laws, regulations and rules with respect to the sale and consumption of alcoholic beverages during Coliseum events.

SECTION III
VENDOR'S PROPOSAL FORM

(Page 1 of 4)

The undersigned agrees if this proposal is accepted, to furnish all items upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The City reserves the right to accept or reject, in part or in whole, any proposals submitted and to waive any technicalities for the best interest of the City.

BASE PROPOSAL: Concessionaire shall be required to maintain licenses with the Texas Alcoholic Beverage Commission (TABC) for the service of **beer and wine:**

Proposed percentage of all concessions monthly gross sales receipts to be paid to the City of Seguin (may not be less than 12.5%)

_____ %

Proposed percentage amount written in words

ALTERNATE PROPOSAL: Concessionaire shall be required to maintain licenses with the Texas Alcoholic Beverage Commission (TABC) for the service of beer, wine, **and mixed drink**

Proposed percentage of all concessions monthly gross sales receipts to be paid to the City of Seguin (may not be less than 12.5%)

_____ %

Proposed percentage amount written in words

In case of ambiguity or lack of clarity in stating prices in the Proposal, Purchaser reserves the right to adopt the price written in words or reject the Proposal.

Firm Name and Address:

Signature _____

Printed Name _____

Title _____

Date _____

Phone Number _____

Fax Number _____

Email address _____

Vendor's Proposal Form (page 2 of 4)

**PROPOSED ITEMS
Seguin-Guadalupe County Coliseum**

SALE ITEM	SIZE	BRAND	PRICE	COMMENTS
Soft Drink	12 oz.			
Soft Drink	16 oz.			
Soft Drink	24 oz.			
Soft Drink	32 oz.			
Iced Tea	24 oz.			
Coffee	12 oz.			
Domestic Can Beer	12 oz.			
Imported Can Beer	12 oz.			
Wine Cooler	12 oz.			
Set-Up (Ice & Bucket)				
Hot Dog	Reg.			
Chili Dog	Reg.			
Nachos	Reg.			
Frito Pie	Reg.			
Sausage-on-a-Stick	Reg.			
Fries	Reg.			
Popcorn	Box			
Assorted Candy	Pkg.			
Assorted Gum	Pkg.			
Chips	Bag			
Hot Chocolate	12 oz.			
Pastries	Ea.			
Breakfast Taco	Ea.			
Hamburger	¼ lb.			
Cheeseburger	¼ lb.			
Grilled Cheese	Ea.			
Grilled Ham & Cheese	Ea.			
Pizza	Slice			
Grilled Chicken Sandwich	Ea.			
Vendor suggested Items (list below and provide size, brand, & pricing information):				

Vendor's Proposal Form (page 3 of 4)

**PROPOSED ITEMS
COLISEUM BAR SERVICE**

SALE ITEM	SIZE	BRAND	PRICE	COMMENTS
Domestic Keg Beer	Per Keg			
Imported Keg Beer	Per Keg			
Wine Cooler	Bottle			
Wine	Glass			
Bottle of Wine	3 Liter			
Bottle of Wine	750 Mil.			
Bottle of Champagne	Bottle			
Margarita	Glass			
Mixed Drink	Glass			
Premium Mixed	Glass			
Vendor suggested Items (list below and provide size, brand, & pricing information):				

Bar Packages

House Brands Package:

Price includes ice, bar napkins, drink stirrers and plastic cups. Bar package prices are priced per person. List your brands of choice for house selections.

_____	_____
_____	_____
_____	_____
_____	_____

Enter proposed house brands package price here: \$ _____ per person.

Premium Brands Package:

Price includes ice, bar napkins, drink stirrers, plastic cups, garnishes and mixers. Bar package prices are priced per person. (Garnishes: lemons, limes, cherries; Mixers: tonic water, Red Bull, orange, pineapple, cranberry juice, club soda)

List your brands of choice for premium selections.

_____	_____
_____	_____
_____	_____
_____	_____

Enter proposed premium brands package price here: \$ _____ per person.

EXHIBIT 1
INSURANCE REQUIREMENTS AND INDEMNITY

The Vendor will procure and maintain at its expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Vendor or its agents, subcontractors or employees. Before commencing the work the Vendor will furnish to the City an original certificate or certificates in a form satisfactory to the City, showing that Vendor has complied with this paragraph.

The Vendor shall not cause any insurance policy to be cancelled or permit it to lapse, and all insurance policies shall include an endorsement to the effect that the insurance policy shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance until notice has been mailed to the City of Seguin, ATTN: Director of Finance, P.O. Box 591, Seguin, TX 78156-0591. The notice shall state the date when such cancellation or reduction shall be effective. The cancellation date shall not be less than thirty (30) days after such notice.

Commercial general liability and motor vehicle insurance will be written with the City as an additional insured and will be endorsed to provide a waiver of the carrier’s right of subrogation against the City. The types and amounts of insurance required are set forth below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability	\$1,000,000 combined single limits
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$500,000 per occurrence

The stated limits of insurance are **minimum only**. They do not limit the Vendor’s indemnity obligation, and it will be the Vendor’s responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City’s acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Vendor from compliance with these requirements.

The Vendor will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts errors or omissions of the Vendor, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Vendor or its agents or employees. This obligation by the Vendor will not be limited by reason of the specification of any particular insurance coverage required under this Agreement.

EXHIBIT 3

PROPOSED AGREEMENT FOR THE OPERATION OF CONCESSION SERVICES

This Agreement for Operation of Concession Services (the "Agreement") is entered into by and between the City of Seguin, a Texas municipal corporation, ("City") acting herein by and through its City Manager and _____ . ("Concessionaire").

WHEREAS, Concessionaire desires to manage the City's concession facilities at the Seguin-Guadalupe County Coliseum ("Coliseum") and the Volleyball Complex; and

WHEREAS, the Seguin City Council has authorized Concessionaire to be the designated operator of the concession facilities under the specified arrangements outlined below;

NOW, THEREFORE, City and Concessionaire agree as follows:

1. City hereby acknowledges receipt of \$3,000 to be applied against the first \$20,000 of sales from Concessionaire as consideration for the rights granted herein.
2. Concessionaire shall have the exclusive right to operate the concession facility at the Coliseum for the provision of concession services at scheduled events requiring the same with the exception of catered meals.
3. Concessionaire shall have the exclusive right to operate a concession stand at the Volleyball Complex.
4. Items and Prices/ Customer Service
 - a. Concessionaire will not charge a price for an item sold at any concession facility in excess of that listed on Exhibit "A" to this Agreement, and will not sell any item which is not listed on Exhibit "A". A request for adjustment in prices or additions to concession items must be approved by City Council and shall be limited to once per year. Any such request must be submitted in writing to the City Manager annually by November 15, who will present the request to City Council in December of that year. Following approval by City Council, the adjustments will be effective on January 1 for the calendar year.
 - b. With regard to the Coliseum, Concessionaire will provide each Coliseum client a typed document listing the prices and services to be offered, which document shall be approved by the Coliseum Manager. No changes will be made or approved to said document nor will any prices, items or services deviate from said document unless approved by the Seguin City Council as per Section 4(a) above.
 - c. Concessionaire shall post an 8 1/2 x 11 sign in plain view in each concession area which provides the name of the Concessionaire and the following phone numbers for customer service issues:
 - i. With regard to the Coliseum, the customer service phone number shall be that of the Coliseum Management office.
 - ii. With regard to the Volleyball Complex, the customer service phone number shall be that of the Parks & Recreation office.

- d. Concessionaire shall inform all Coliseum clients of all service options available for their events.
 - e. At all times during the term of this Agreement, Concessionaire shall be required to maintain licenses with the Texas Alcoholic Beverage Commission (TABC) for the service of beer, wine, and mixed drink. Concessionaire shall be responsible for complying with all state and local laws, regulations and rules with respect to the sale and consumption of alcoholic beverages during Coliseum events.
6. Insurance and Indemnity
- a. The Vendor will procure and maintain at its expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Vendor or its agents, subcontractors or employees. Before commencing the work the Vendor will furnish to the City an original certificate or certificates in a form satisfactory to the City, showing that Vendor has complied with this paragraph.
 - b. The Vendor shall not cause any insurance policy cancelled or permit to lapse, and all insurance policies shall include an endorsement to the effect that the insurance policy shall not be subject to cancellation or to reduction in the required limits of liability or amounts of insurance until notice has been mailed to the City of Seguin, ATTN: Director of Finance, P.O. Box 591, Seguin, TX 78156-0591. The notice shall state the date when such cancellation or reduction shall be effective. The cancellation date shall not be less than thirty (30) days after such notice.
 - c. Commercial general liability and motor vehicle insurance will be written with the City as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The types and amounts of insurance required are set forth below:

TYPE	AMOUNTS
1. Worker's Compensation	Statutory
2. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability	\$1,000,000 combined single limits
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$500,000 per occurrence

- d. The stated limits of insurance are minimum only. They do not limit the Vendor's indemnity obligation, and it will be the Vendor's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Vendor from compliance with these requirements.

- e. The Vendor will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts errors or omissions of the Vendor, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of ay damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation or enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of the Vendor or its agents or employees. This obligation by the Vendor will not be limited by reason of the specification of any particular insurance coverage required under this Agreement.
7. Concessionaire will provide well-trained, well-groomed and courteous workers. Concessionaire will provide a uniform for all workers, which shall consist of a clean, well-pressed, collared shirt bearing the name of the Concessionaire. Each worker shall display a nametag with the name of the worker and the Concessionaire. The City may request changes in personnel if problems arise with a worker(s). In addition,
 - a. With respect to the Coliseum, workers may not wear shorts.
 - b. With respect to the Volleyball Complex, workers may wear shorts.
 - c. While working, workers are prohibited from participating in an ongoing event in any capacity other than that fitting their job description and may not eat catered food.
8. City will not be liable to Concessionaire or to any other person for loss, theft, vandalism, or damage, or injury of any kind to any person or property.
9. This Agreement may be terminated at the option of either party for non-performance of any covenant contained herein or when the City Manager deems that such cancellation is in the best interest of the City. Notice of such cancellation will be delivered to the interested party by certified mail, return receipt requested, at least thirty (30) days prior to the date of termination of this Agreement.
10. Concessionaire will comply with all state and City statutes, regulations, and ordinances governing the operation of concession facilities under this Agreement.
11. Concessionaire will monitor and maintain the concession facilities and areas surrounding them. The "area surrounding" will be construed to mean property subject to trash or debris blown, carried by patrons, or otherwise distributed from any concession facility. Trash and debris includes paper, bottles, wrappers, caps, and other waste materials originating from the concession facility. The City Manager will have the right to suspend operations of any concession facility until further notice should this provision be violated. Notice of such suspension will be delivered in writing at least twenty four (24) hours prior to the effective time of suspension.
12. Concessionaire will perform the following maintenance at the following sites, to wit:
 - a. With respect to the Coliseum, Concessionaire is solely responsible for the maintenance of equipment provided for its use by the City of Seguin.

Concessionaire will make no alterations or additions to said premises or equipment without prior written consent of the Coliseum Manager.

- b. With respect to the Volleyball Complex, Concessionaire will perform all maintenance to the concession facilities, including, without limitation, the installation of screens, windows, and sinks, to make and keep such facilities in compliance with all applicable health and safety codes. The Concessionaire will also be responsible for all plumbing and electrical repairs and modifications as well as securing the premises from theft or burglary, but such modifications must be approved by the City Manager and Building Inspection Department in writing before work begins.
 - c. Vendor shall be responsible for the maintenance of all City Equipment (set forth in the attached Exhibit 4), including provision of proof of annual inspection. Vendor will be responsible for the payment of repairs to City Equipment in the amount of \$500.00 or less. The City shall be responsible for repairs to City Equipment that exceed \$500.00.
13. Concessionaire will assure that all electric lights (other than night security lights) are properly turned *off* at the conclusion of all scheduled events and that all utilities are used in a prudent manner.
14. Term
 - a. The term of the Concession will be for a period of two (2) years commencing on August 1, 2011, and terminating on July 31, 2013.
 - b. The City of Seguin will have the right to exercise an option for an additional two-year term commencing on August 1, 2013 and ending on July 21, 2015, on the same terms, covenants, and conditions herein. The City of Seguin must notify the Concessionaire in writing six (6) months prior to the contractual expiration date if the contract will not be extended, otherwise, the extension will be automatic.
15. Concessionaire will pay the City of Seguin for the concession and use granted herein as follows:
 - a. _____ (___%) of the amount of the Concessionaire's monthly gross receipts as herein defined. (The term "gross receipts" will mean the gross amounts received by the Concessionaire from all cash or credit sales, and all charges for services of any type or nature made per this Agreement or related thereto.)

When a percentage of gross receipts is not suitable or applicable for a particular activity not otherwise provided for herein, the City may establish a minimum monthly amount as payment for the privilege of engaging therein. Said amount will be set by mutual consent of the City and Concessionaire and will be reasonable in accordance with the revenue to be generated.
 - b. Payment will be made to the City on or before the twenty first (21st) day of the calendar month following each month of the term provided herein. Payment may be made by check or draft issued and payable to the City of Seguin, and mailed or otherwise delivered to the City of Seguin Finance Department, P.O. Box 591, Seguin, Texas 78156-0591. In the event payment is not made on or before said date, a penalty of two hundred dollars (\$200) will be added to the unpaid amount.

16. Accounting Records

Concessionaire will be required to maintain a method of accounting which will, to the satisfaction of the City's Finance Director, correctly and accurately reflect the gross receipts and disbursements of Concessionaire in the connection with the concession. The method of accounting, including bank accounts, established for the concession will be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method will include the keeping of the following documents:

- a. Regular books of accounting such as general ledgers.
 - b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
 - c. State and Federal income tax returns and sales tax returns, checks, and other documents providing payment of sums shown which the City will keep in confidence to the extent allowed by law.
 - d. Cash register tapes (daily tapes may be separated but will be retained so that from day to day the sales can be identified).
 - e. Any other reporting records that the City Finance Director or its auditor deems necessary for proper reporting of receipts.
- A. All sales must be recorded by means of cash registers that publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded in a sales slip. This includes all sales of alcoholic beverages to customers who have contracted with the City for events to be held in the Seguin-Guadalupe County Coliseum and are thereby required to use the services of the City's contracted concessionaire. Vendor will be required to submit cash register tapes to the City after each event. The register tapes must be submitted by 5:00 p.m. the day following the event. If the event is on a Saturday or Sunday, the register tapes must be submitted by 5:00 p.m. the following Monday. Register tapes must be submitted to the City of Seguin Finance Office, 205 N. River Street, Seguin, TX 78155.

18. All documents, books and accounting records will be open for inspection and re-inspection at any reasonable time during the term of this Agreement and for twelve (12) months thereafter. In addition, the City Finance Director or its auditor may from time to time conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of the business so that accuracy of the above records can be confirmed. If the report of gross sales made by the concessionaire should be found to be less than the amount of gross sales disclosed by such audit and observation, Concessionaire will pay the delinquent amount within thirty (30) days of billing therefore. If the additional amount due exceeds two percent (2%), and there is no reasonable basis for the failure to report and pay thereon, Concessionaire will also pay the cost of the audit and the penalty heretofore provided for delinquent payments. All information obtained in connection with the City's inspections of records or audit will be treated as confidential information and will be exempt from public disclosure to the extent allowable by law.

19. Concessionaire will furnish the City's Finance Director with a monthly gross receipts report showing the amount payable to the City. Such a report will accompany each monthly payment as required to be made as provided herein. The monthly reporting period will be by calendar month, rather than monthly anniversary date of the effective date of this Agreement. In addition thereto, Concessionaire will furnish the City's Finance Director with an annual profit and loss statement and a balance sheet prepared by a person and in a form acceptable to the City. The annual financial statements will be submitted not later than April 15th of each calendar year.

20. Default and Termination

Failure by either party to perform any of its provisions will constitute a default and breach of contract, in which case, the other party may require corrective action within 10 days from the date the defaulting party receives written notice citing the nature of the breach. Failure of the defaulting party to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed 10 days will authorize the other party to terminate this agreement by written notice.

The following events shall be deemed to be events of default under this contract:

- a. Concessionaire becomes defunct, merges or joins with another entity, changes the name or changes physical location of its business without the City's written consent.
- b. Concessionaire shall make an assignment for the benefit of creditors or a receiver or trustee shall be appointed for Concessionaire or its property.
- c. Concessionaire shall file a petition under any section or chapter of the National Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof; or Concessionaire shall be adjudged bankrupt or insolvent in proceedings filed against Concessionaire thereunder and such adjudication shall not be vacated or set aside or stayed within sixty (60) days thereafter.
- d. Concessionaire fails to maintain, or otherwise loses, any of its TABC liquor licenses for the sale of alcoholic beverages.
- e. Concessionaire fails to maintain financial records and register receipts required under Section 16 of this Agreement.

21. Vacate Premises

Upon notice of contract termination Concessionaire must remove all owned property at the Coliseum within 10 business days. Any property not removed in 10 business days will become property of the City of Seguin.

22. Closing of Facility

The City reserves the right to close the Coliseum while it is undergoing renovations or repairs, opens as an emergency shelter, or suffers irrevocable damage, through man-made acts or acts of God. The City shall not be responsible for lost revenue to the Concessionaire in the event the Coliseum must be closed. The Concessionaire shall resume normal operations when the facility is reopened.

23. Anti-Discrimination

The Concessionaire may not refuse service to any clients on the basis of race, color, religion, national origin or sex.

EXECUTED this _____ day of _____, 2011.

CONCESSIONAIRE

CITY OF SEGUIN, TEXAS

By: _____

By: _____
City Manager

EXHIBIT 4
CITY OWNED EQUIPMENT AND APPLIANCES

1. Walk-in cooler
2. Grill
3. Popcorn machine (2)
4. Margarita machine
5. Deep fryer
6. Portable ice/beer trough (2)
7. All shelving and work stations
8. Under-counter beer storage cooler

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of person 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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer 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 filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire 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 of 10 percent or more?

Yes No

D. Describe each employment or business relationship with the local government officer named in this section.

4

Signature of person doing business with the governmental entity

Date