



Department of Purchasing & Contracting
1300 Commerce Drive, 2nd Floor
Decatur, Georgia 30030
Fax: (404) 371-2511

Date: February 7, 2017

Request for Quotation No. 17-3003562

DeKalb County, Georgia (the County) is requesting a quotation from qualified bidders who can demonstrate substantial experience in Concession Stand Services at the Browns Mill Family Aquatic Facility located at 4949 Browns Mill Road, Lithonia, Georgia 30038. The County is looking to award an annual contract with up to two (2) options to renew, however it reserves the right to renew the contract or solicit new services each year.

Proposed Service Period:

May 15, 2017 through September 11, 2017

Exhibits:

- A. Scope of Work
- B. Quote Form
- C. Reference Form and Reference Check Release Statement
- D. Bidders Affidavit
- E. Sample Contract

Payment Terms:

Revenue Generating – The selected bidder will pay an approved portion of total gross weekly sales to the County each Monday during the service period.

Percentage Revenue

The minimum percentage revenue is based on gross revenues defined as all revenues from food and beverage sales.

Proposed Revenue Percentage:

1st year percentage -30%

2nd year percentage -35%, if renewed

3rd year percentage -35%, if renewed

Federal Work Authorization Program:

All qualifying contractors and subcontractors performing work with DeKalb County, Georgia must register and participate in the federal work authorization program to verify the work eligibility information of new employees. In order for a Quotation to be considered, it is mandatory that the Bidders Affidavit be completed with bidder's proposal.

Due Date:

Quotes are due on or before 3:00 p.m., EST on **Wednesday, March 1, 2017.**

All questions are due via email on or before 5:00 p.m. EST on Friday, February 17, 2017. Bidders must complete and return: Quote Form, Reference Form and Reference Check Release Statement, Bidders Affidavit, and provide a copy of the bidder's valid business license and food service permit to the County by email to kjessie@dekalbcountyga.gov.

THE COUNTY RESERVES THE RIGHT TO REJECT ANY AND ALL QUOTES, TO WAIVE INFORMALITIES, AND/OR TO RE-ADVERTISE.

Thank you for your interest in doing business with the County.

Sincerely,

Karlene Jessie
Karlene N. Jessie
Procurement Agent
Department of Purchasing and Contracting

Exhibit(s)

EXHIBIT A SCOPE OF WORK

RFQ No. 17-3003562, Concession Stand Services at Browns Mill Family Aquatic Facility

DeKalb County, Georgia (hereinafter referred to as the “County”) is seeking a well-qualified individual, firm or joint venture (hereinafter referred to as the “Bidder”) to submit a quotation to provide Concession Stand Services at Browns Mill Family Aquatic Facility (BMFAF) located at 4949 Browns Mill Road, Lithonia, Georgia 30038.

I. BACKGROUND

The County opened the BMFAF, located at 4929 Browns Mill Road, Lithonia, Georgia 30038, in 2008. In 2016, the BMFAF averaged 500 swimmers daily and hosted a total of 50,000 over the summer.

The swim season at BMFAF begins on Saturday, May 27, 2017 and ends on September 4, 2017. The hours of operation are:

Monday through Saturday	10:00 AM to 8:00 PM
Sunday	1:00 PM to 7:00 PM

The following items are available for concession use:

1. Concession area: 20 x 8 square foot area
2. Popcorn Popper
3. Hog Dog Cooker
4. Microwave
5. Ice Machine
6. Double Sink
7. Refrigerator /Freezer
8. Three Serving Windows
9. Storage area
10. Tables for Patrons

II. SCOPE OF WORK

The general scope of services required for concession services at BMFAF includes, but is not necessarily limited to, the following:

A. FOOD PREPARATION

The following are the guidelines for food preparation:

1. All foods shall be prepared and/or cooked on site in the concession area.
2. Food items may not be prepared in private homes, except for baked goods such as cookies, cupcakes, brownies, etc.
3. Ready to eat foods shall not be touched by bare hands. Gloves, tongs, spatulas, deli tissue, aluminum foil, or other utensils are to be used. Ready to eat foods include foods that are unpackaged and edible without washing, cooking or additional preparation.

4. Food thermometers must be available and used appropriately.
5. Hand washing facilities shall be easily accessible for use by food handlers.
6. Person(s) with a cold or flu-like symptoms or who have cuts or sores on their hands may not handle food items.
7. Eating and smoking are not allowed in the food stand. All smokers must exit the pool area and engage in smoking 500 feet from all entrances.
8. Food items may be safely held at 45°F and below or at 140°F and above, in accordance with the DeKalb County Board of Health.
9. Disposable forks, knives, spoons, cups, plates, and napkins are to be provided to patrons.
10. Drinking water shall be obtained from a portable source.
11. Food shall be stored at the appropriate temperature, and in appropriate containers safely off the ground.
12. The concession stand may be required to cease operation if found to be operated in an unsafe manner.
13. All concession stand workers shall be 16 years of age or older.
14. Vendor must have a current business license, and food service permit from the DeKalb County Board of Health.
15. Vendor must provide a price list of foods.
16. The Concessionaire is responsible for removal and disposal of all trash that is generated from the concession stand, in a legal manner.
17. Floor must be spot mopped daily with a cleaning agent.

The successful bidder will be subject to random inspections by the DeKalb County Board of Health.

List of suggested items to be sold include, but are not limited to, the following:

1. Chips (various)
2. Candy (various)
3. Hot Dogs
4. Nachos (with cheese and/or chili)
5. Fresh Fruit
6. Peanuts
7. Fruit Snacks
8. Water
9. Fruit Juice
10. Sports Drinks
11. Ice Cream

Note: Fried foods that require grease are prohibited. Failure to comply with this is grounds for termination of the contract.

B. PRICING

The successful bidder may only charge prices that have been approved by the Director of DeKalb County's Department of Recreation, Parks and Cultural Affairs in advance. Anytime during the term of the agreement, the successful bidder must submit any and all proposed price changes for approval.

C. HOURS OF OPERATION

The successful bidder is required to conduct business during the hours of operations of Browns Mill Family Aquatic Facility. The Concession stands must be opened 15 minutes prior to the facility opening and must provide uninterrupted service while the facility is opened.

D. CUSTOMER SERVICE

The successful bidder must provide the highest quality of service to all customers. A sufficient quantity of inventory must be carried to ensure that the premises will be fully stocked at all times. All inventories must be top quality, new and fresh. The successful bidder shall maintain adequate staff on duty that uses the utmost skill and diligence in the conduct of the successful bidder's business on the premises. All employees of the successful bidder shall be courteous and helpful to the public. The Director of Recreation, Parks and Cultural Affairs must approve of any proposed changes to the terms of Operations.

E. PROHIBITED USES

The proposed agreement shall prohibit the successful bidder from selling or providing alcoholic beverages, including beer and wine, and drugs and/or tobacco products and accessories on the premises.

F. LICENSES, PERMITS & TAXES

The successful bidder shall obtain all required licenses, permits, or other requirements in order to fully perform the scope of work in this solicitation, which includes a food service permit from the DeKalb County Board of Health.

G. EQUIPMENT MAINTENANCE AND REPAIR

The successful bidder shall safeguard and maintain DeKalb County owned equipment. If successful bidder damages equipment due to negligence, the successful bidder is required to pay the full amount of the repair cost. If the facility is rented for private functions, and the concession stand is not being utilized, the concession stand shall be secured/locked before concessionaire leaves the premises.

H. WASTE AND TRASH REMOVAL

Removal of the successful bidder's waste and trash from the concession area and transfer to designated waste receptacles will be the sole responsibility of the successful bidder. Should it become necessary for the County to remove waste or trash, the successful bidder will be billed for all costs associated with trash removal. The County's method of removal shall be at the County's discretion.

I. NON-COMPLIANCE FEES

Fees for non-compliance with the terms of the proposed agreement shall include Three Hundred Dollars (\$300) per incident for violation of use and Three Hundred Dollars (\$300) per incident for failure to maintain (see Attachment C for a non-inclusive list).

J. FEES

The County requires the successful bidder to remit payment weekly, on the Monday following the week services were rendered, in the form of a lump sum of the

previously discussed percentages from total gross revenue. The week shall be defined as Monday through Sunday. The successful bidder must submit daily legible Cash Out Daily Report from the cash register to BMFAF Front Office personnel by close of business each day.

K. SECURITY

DeKalb County's Department of Recreation, Parks and Cultural Affairs will provide security.

L. MINIMUM QUALIFICATION REQUIREMENTS

Bidders must demonstrate the minimum qualifications in order to be considered for award of the proposed agreement. The successful bidder must have a minimum of three (3) years of experience within the last five (5) years in the management of a fast food and/or concession operation. Management is defined as the active involvement in the day-to-day operation of the business. Bidders must also have a food service permit from the DeKalb County Department of Health. All employees of the successful bidder shall be courteous and helpful to the public.

M. FACILITY RENTAL

If the County is contacted by patrons who desire to rent the facility outside of the regular operating hours (i.e. birthday parties), the patrons will have the option to bring their own food. They also may have the Concessionaire provide food, if they chose to do so. However, the patron/renter must negotiate terms with the concessionaire and work out an agreement amongst themselves. If the renter chooses to provide their own food, they will not have any access to the concession stand nor will they be able to cook any food on the facility premises.

N. INSURANCE

Prior to commencing work, Contractor shall, at its sole expense, procure and maintain insurance of the types and in the amounts described below from insurer(s) authorized to transact business in the state where the work or operations will be performed by Contractor. Such insurance shall be placed with admitted insurers that maintain an A.M. Best's rating of not less than "A" (Excellent) with a Financial Size Category of VII or better with coverage forms acceptable to Contractor. The insurance described below shall be maintained uninterrupted for the duration of the project, including any warranty periods, and shall protect Contractor, and others as required by contract, for liabilities in connection with work performed by or on behalf of Contractor, its agents, representatives, employees or Contractors.

1. Certificates of Insurance in companies doing business in Georgia and acceptable to the County covering:
 - (a) Statutory Workers' Compensation Insurance, or proof that Contractor is not required to provide such coverage under State law;
 - (1) Employer's liability insurance by accident, each accident \$1,000,000
 - (2) Employer's liability insurance by disease, policy limit \$1,000,000
 - (3) Employer's liability insurance by disease, each employee \$1,000,000
 - (b) Professional Liability Insurance on the Contractor's services in this Agreement with limit of \$1,000,000;
 - (c) Commercial General Liability Insurance covering all operations with combined

- (d) single limit of \$1,000,000;
 - (d) Comprehensive Automobile Liability Insurance with form coverage for all owned, non-owned and hired vehicles with combined single limit of \$1,000,000.
 - (e) Umbrella or Excess Insurance. Umbrella or excess insurance is to be provided with General Liability, Auto Liability and Employers Liability scheduled as underlying policies with limits not less than the following:
 - \$5,000,000 per occurrence
 - \$5,000,000 aggregate
2. Additional Insured Requirement:
- (a) The County, its elected officials, officers, employees and agents, hereinafter referred to in this article and in the article entitled “Certificates of Insurance” as “the County and its officers” are to be named as additional insured on all policies of insurance except worker’s compensation insurance with no cross suits exclusion. The County and its officers shall be included as additional insureds under commercial general liability and commercial umbrella insurance, for liabilities arising out of both the ongoing and completed operations of Contractor. Such additional insured coverage shall be endorsed to Contractor’s policy by attachment of ISO Additional Insured Endorsement forms CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (products-completed operations), or form(s) providing equivalent coverage.
 - (b) All coverages required of the Contractor will be primary over any insurance or self-insurance program carried by the County.
 - (c) If the Contractor is a joint venture involving two (2) or more entities, then each independent entity will satisfy the limits and coverages specified here or the joint venture will be a named insured under each respective policy specified.
3. The Contractor shall provide Fidelity Bond coverage. Coverage limits shall not be less than the amount scheduled in the contract.
4. Certificates of Insurance must be executed in accordance with the following provisions:
- (a) Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with this Agreement;
 - (b) Certificates to contain the location and operations to which the insurance applies;
 - (c) Certificates to contain Contractor’s protective coverage for any subcontractor’s operations;
 - (d) Certificates to contain Contractor’s contractual liability insurance coverage;
 - (e) Certificates are to be **issued** to:
 - DeKalb County, Georgia**
 - Director of Purchasing & Contracting**
 - The Maloof Center, 2nd Floor**
 - 1300 Commerce Drive**
 - Decatur, Georgia 30030**

5. The Contractor shall be wholly responsible for securing certificates of insurance coverage as set forth above from all subcontractors who are engaged in this work.
6. The Contractor agrees to carry statutory Workers' Compensation Insurance and to have all subcontractors likewise carry statutory Workers' Compensation Insurance.
7. Contractor agrees to waive all rights of subrogation and other rights of recovery against the County and its officers and shall cause each Subcontractor to waive all rights of subrogation for all coverage, excluding Professional E&O.
8. Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of the Contractor's obligation to maintain such coverage. Contractor understands and agrees that the purchase of insurance in no way limits the liability of the Contractor.
9. Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least sixty (60) days prior written notice to the County. Policies and Certificates of Insurance listing the County and its officers as additional insureds (except for workers' compensation insurance) shall conform to all terms and conditions (including coverage of the indemnification and hold harmless agreement) contained in this Contract.
10. If the County shall so request, the Contractor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies. Contractor shall be responsible and have the financial wherewithal to cover any deductibles or retentions included on the certificate of insurance.

**EXHIBIT B
QUOTE FORM**

RFQ NO. 17-3003562

CONCESSION SERVICES FOR AT BROWNS MILL FAMILY AQUATIC FACILITY

BIDDER'S NAME: _____

TYPE OF PRODUCT		UNIT OR SIZE	PRICE
1.	Candy (various)		
2.	Chips (various)		
3.	Fresh Fruit		
4.	Fruit Juice		
5.	Fruit Snacks		
6.	Hot Dogs		
7.	Ice Cream		
8.	Nachos (with cheese and chili)		
9.	Nachos (with cheese or chili)		
10.	Peanuts		
11.	Sports Drinks		
12.	Water		
ALTERNATE ITEMS (PLEASE SPECIFY BELOW.)			
1.			
2.			
3.			
4.			
5.			

EXHIBIT B, Cntd
QUOTE FORM

State below the Proposed Percentage of Gross Earnings to be paid to the County.

	Minimum Percentage to be Paid to the County
Monday through Saturday	
Sunday	
Holidays	

Bidder's Name _____ Phone Number _____

Bidder's Address _____

Contact Person _____ Email Address _____

EXHIBIT C

Reference Form and Reference Check Release Statement

List below at least five (5) references, including company name, contact name, address, email address, telephone numbers and contract period, for whom you have provided concession stand services, who can verify your experience and ability to perform the same type of service listed in the RFQ.

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		

Company Name		Contract Period	
Contact Person Name and Title		Telephone Number (include area code)	
Complete Primary Address		City	State
			Zip Code
Email Address		Fax Number (include area code)	

REFERENCE CHECK RELEASE STATEMENT

You are authorized to contact the references provided above for purposes of this RFQ.

Signed _____ Title _____
 (Authorized Signature of Responder)

Company Name _____ Date _____

EXHIBIT D

BIDDER AFFIDAVIT

By executing this affidavit, the undersigned verifies its compliance with O.C.G.A. § 13-10-91, as amended, stating affirmatively that the bidder submitting a bid to DEKALB COUNTY, GA, a political subdivision of the State of Georgia, has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91, as amended].

BY: Authorized Officer or Agent
(Bidder's Name)

Federal Work Authorization
Enrollment Date

Title of Authorized Officer or Agent of Bidder

Identification Number

Printed Name of Authorized Officer or Agent

Address (*do not include a post office box)

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
_____ DAY OF _____, 20__

Notary Public
My Commission Expires: _____

EXHIBIT E
SAMPLE CONTRACT

AGREEMENT FOR PROFESSIONAL SERVICES

DEKALB COUNTY, GEORGIA

PROJECT NO.: X X X -RFO 17-3003562

THIS AGREEMENT made as of this ___ day of ___, 2017 (hereinafter called the “execution date”) by and between DEKALB COUNTY, a political subdivision of the State of Georgia (hereinafter referred to as the “County”), and _____, (hereinafter referred to as “Contractor”), shall constitute the terms and conditions under which the Contractor shall provide _____ to the _____ of DeKalb County, Georgia.

WITNESSETH: That for and in consideration of the mutual covenants and agreements herein set forth, the County and the Contractor hereby agree as follows:

ARTICLE I. CONTRACT TIME

The Contractor shall commence the Work under this Contract on May XX, 2017 and end on September XX, 2017. The Contract Time may be extended only by Change Order approved and executed by the DeKalb County Chief Executive Officer or his/her designee and the Contractor in accordance with the terms of this Contract.

ARTICLE II. CONTRACT TERM

The Contractor shall commence the Work under this Contract within ten (10) days from the acknowledgement of receipt of the Notice to Proceed (“Commencement Date”). The Initial Term of this Agreement shall be for twelve (12) calendar months, beginning on the Commencement Date. This annual contract comes with two (2) options to renew. Prior to the expiration of the Initial Term, the parties have the option to renew this agreement for a First annual Renewal Term of twelve (12) calendar months. Prior to the expiration of the First annual Renewal Term, the parties have the option to renew this Agreement for a Second annual Renewal Term of twelve (12) calendar months. Without further action by either party, this Agreement will terminate at the end of the Initial Term or at the end of each annual Renewal Term. Each option to renew must be exercised prior to the beginning of each annual Renewal Term and, is only effective upon adoption and approval by the DeKalb County Governing Authority and the Contractor in accordance with the terms of this Contract.

ARTICLE III. PAYMENT

As consideration for all rights and privileges granted hereunder, the Contractor shall pay to the County a weekly combined percentage of gross earnings, based on the following daily rates:

1. Monday through Sunday – an amount equal to _____ Percentage,
and

2. Holidays – an amount equal to _____ Percentage. The Contractor shall remit payments every Monday during the term of the Contract. Payments shall be for the preceding Monday through Sunday and calculated using the daily rates stated above. Payments should be remitted to:

Recreation, Parks and Cultural Affairs
Department 1950 West Exchange Place
Tucker, Georgia 30084
Attention: Bernita Reese, Justin Blanton or RPCAD Accounting
Personnel

In case of termination of this Agreement before completion of the services outlined herein, the Contractor will pay the County for only vending services provided through the date of termination as determined by the County.

ARTICLE IV. SCOPE OF WORK

A. The term “Work” means all concession services identified in the Scope of Work, attached hereto as Attachment A and incorporated herein by reference and all other services and things necessary to provide the County with concession services as required by law and the Scope of Work. The Contractor agrees to complete the Work in a good, firm, substantial and workmanlike manner in strict conformity with this Contract. Unless otherwise stipulated, the Contractor shall furnish all of the Work in accordance with applicable law and the Contract, and all incidental work necessary to complete the Work in an acceptable manner.

ARTICLE V. GENERAL CONDITIONS

A. Accuracy of Work The Contractor shall be responsible for the accuracy of the Work and any error and/or omission made by the Contractor in any phase of the Work under

this Agreement.

B. Additional Work The County shall in no way be held liable for any work performed under this section which has not first been approved in writing by the County in the manner required by applicable law and/or the terms of this Contract. The County may at any time order changes within the scope of the Work without invalidating the Contract upon seven (7) days written notice to the Contractor. The Contractor shall proceed with the performance of any changes in the Work so ordered by the County unless such change entitles the Contractor to a change in Contract Price, and/or Contract Term, in which event the Contractor shall give the County written notice thereof within fifteen (15) days after the receipt of the ordered change, and the Contractor shall not execute such changes until it receives an executed Change Order from the County. No extra cost or extension of time shall be allowed unless approved by the County and authorized by execution of a Change Order. The parties' execution of any Change Order constitutes a final settlement of all matters relating to the change in the Work which is the subject of the Change Order. The County shall not be liable for payment for any work performed under this section which has not first been approved in writing by the County in the manner required by applicable law and/or the terms of this Contract.

C. Ownership of Documents All documents, including drawings, estimates, specifications, and data are and remain the property of the County. The Contractor agrees that the County may reuse any and all plans, specifications, drawings, estimates, or any other data or documents described herein in its sole discretion without first obtaining permission of the Contractor and without any payment of any monies to the Contractor therefore. However, any reuse of the documents by the County on a different site shall be at its risk and the Contractor shall have no liability where such documents are reused.

D. Right to Audit The County shall have the right to audit all books and records, including electronic records, relating or pertaining to this contract or agreement, including but not limited to all financial and performance related records, property, and equipment purchased in whole or in part with County funds and any documents or materials which support those records, kept under the control of the Contractor, including but not limited to those kept by the Contractor's employees, agents, assigns, successors and subcontractors. The County also has the right to communicate with Contractor's employees related to the audited records.

The Contractor shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this contract and for seven (7) years after termination or expiration, including any and all renewals thereof. The books and records, together with supporting documents and materials shall be made available, upon request to the County or its designee, during normal business hours at the Contractor's office or place of business. In the event that no such location is available, then the books, records, and supporting documents shall be made available for audit at a time and location which is convenient for the County.

E. Successors and Assigns The Contractor agrees it shall not sublet, assign, transfer, pledge, convey, sell, or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous written consent of the County. If the County consents to any such assignment or transfer, then the Contractor binds itself, its partners, successors and assigns to all covenants of this Contract. Nothing contained in this Contract shall create, nor be interpreted to create privity, or any other relationship whatsoever, between the County and any person, or entity or than Contractor.

F. Reviews and Acceptance Work performed by the Contractor shall be subject to review and acceptance in stages as required by the County. Acceptance shall not relieve the Contractor of its professional obligation to correct, at his own expense, any errors in the Work.

G. Termination of Agreement The Contractor understands and agrees that the date of the beginning of Work, rate of progress, and time for completion of the Work are essential conditions of this Contract. The County may, for its own convenience and at its sole option, without cause and without prejudice to any other right or remedy of County, elect to terminate the Contract by delivering to the Contractor, at the address listed in the Notices article of this Contract, a written notice of termination specifying the effective date of termination. Such notice shall be delivered to Contractor at least seven (7) calendar days prior to the effective date of termination. If Contractor's services are terminated by the County, the termination will not affect any rights or remedies of the County then existing or which may thereafter accrue against Contractor or its surety. In case of termination of this Contract before completion of the Work, Contractor will be paid only for the portion

of the Work satisfactorily performed through the effective date of termination as determined by the County. Neither party shall be entitled to recover lost profits, special, consequential or punitive damages, attorney's fees or costs from the other party to this Contract for any reason whatsoever. This Contract shall not be deemed to provide any third-party with any remedy, claim, right of action, or other right. The parties' obligations pursuant to this Section shall survive any acceptance of Work, or termination or expiration of this Contract.

H. Indemnification Agreement The Contractor shall be responsible from the execution date or from the time of the beginning of the Work, whichever shall be the earlier, for all injury or damage of any kind resulting from the Work, to persons or property, including employees and property of the County. The Contractor shall exonerate, indemnify, and save harmless the County, its elected officials, officers, employees, agents and servants, hereinafter collectively referred to in this Section as "the County Indemnitees," from and against all claims or actions based upon or arising out of any damage or injury (including without limitation any injury or death to persons and any damage to property) caused by or sustained in connection with the performance of this Contract or by conditions created thereby or arising out of or any way connected with Work performed under this Contract, as well as all expenses incidental to the defense of any such claims, litigation, and actions. Furthermore, Contractor shall assume and pay for, without cost to the County Indemnitees, the defense of any and all claims, litigation, and actions suffered through any act or omission of the

Contractor, or any Subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. Notwithstanding any language or provision in this Contract, Contractor shall not be required to indemnify any County Indemnitee against claims, actions, or expenses based upon or arising out of the County Indemnitee's sole negligence. As between the County Indemnitees and the Contractor as the other party, the Contractor shall assume responsibility and liability for any damage, loss, or injury, including death, of any kind or nature whatever to person or property, resulting from any kind of claim made by Contractor's employees, agents, vendors, Suppliers or Subcontractors caused by or resulting from the performance of Work under this Contract, or caused by or resulting from any error, omission, or the negligent or intentional act of the Contractor, vendors, Suppliers, or Subcontractors, or any of their officers, agents, servants, or employees. The

Contractor shall defend, indemnify, and hold harmless the County Indemnitees from and against any and all claims, loss, damage, charge, or expense to which they or any of them may be put or subjected by reason of any such damage, loss, or injury. The Contractor expressly agrees to provide a full and complete defense against any claims brought or actions filed against the County Indemnitees, where such claim or action involves, in whole or in part, the subject of the indemnity contained in this Contract, whether such claims or actions are rightfully or wrongfully brought or filed. The County has the sole discretion to choose the counsel who will provide the defense. No provision of this Contract and nothing herein shall be construed as creating any individual or personal liability on the part of any elected official, officer, employee, agent or servant of the County, nor shall the Contract be construed as giving any rights or benefits hereunder to anyone other than the parties to this Contract. The parties' obligations pursuant to this Section shall survive any acceptance of Work, or termination or expiration of this Contract.

I. Insurance Prior to commencing work, Contractor shall, at its sole expense, procure and maintain insurance of the types and in the amounts described below from insurer(s) authorized to transact business in the state where the work or operations will be performed by Contractor. Such insurance shall be placed with admitted insurers that maintain an A.M. Best's rating of not less than "A" (Excellent) with a Financial Size Category of VII or better with coverage forms acceptable to Contractor. The insurance described below shall be maintained uninterrupted for the duration of the project, including any warranty periods, and shall protect Contractor, and others as required by contract, for liabilities in connection with work performed by or on behalf of Contractor, its agents, representatives, employees or Contractors.

1. Certificates of Insurance in companies doing business in Georgia and acceptable to the County covering:
 - (a) Statutory Workers' Compensation Insurance, or proof that Contractor is not required to provide such coverage under State law;
 - (1) Employer's liability insurance by accident, each accident \$1,000,000
 - (2) Employer's liability insurance by disease, policy limit \$1,000,000
 - (3) Employer's liability insurance by disease, each employee \$1,000,000
 - (b) Professional Liability Insurance on the Contractor's services in this Agreement with limit of \$1,000,000;
 - (f) Commercial General Liability Insurance covering all operations with

combined single limit of \$1,000,000;

- (g) Comprehensive Automobile Liability Insurance with form coverage for all owned, non-owned and hired vehicles with combined single limit of \$1,000,000.
- (h) Umbrella or Excess Insurance. Umbrella or excess insurance is to be provided with General Liability, Auto Liability and Employers Liability scheduled as underlying policies with limits not less than the following:
\$5,000,000 per occurrence
\$5,000,000 aggregate

2. Additional Insured Requirement:

- (a) The County, its elected officials, officers, employees and agents, hereinafter referred to in this article and in the article entitled “Certificates of Insurance” as “the County and its officers” are to be named as additional insured on all policies of insurance except worker’s compensation insurance with no cross suits exclusion. The County and its officers shall be included as additional insureds under commercial general liability and commercial umbrella insurance, for liabilities arising out of both the ongoing and completed operations of Contractor. Such additional insured coverage shall be endorsed to Contractor’s policy by attachment of ISO Additional Insured Endorsement forms CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (products-completed operations), or form(s) providing equivalent coverage.
- (b) All coverages required of the Contractor will be primary over any insurance or self-insurance program carried by the County.
- (c) If the Contractor is a joint venture involving two (2) or more entities, then each independent entity will satisfy the limits and coverages specified here or the joint venture will be a named insured under each respective policy specified.

3. The Contractor shall provide Fidelity Bond coverage. Coverage limits shall not be less than the amount scheduled in the contract.

4. Certificates of Insurance must be executed in accordance with the following provisions:

- (c) Certificates to contain policy number, policy limits, and policy expiration date of all policies issued in accordance with this Agreement;
- (d) Certificates to contain the location and operations to which the insurance applies;
- (c) Certificates to contain Contractor's protective coverage for any subcontractor's operations;
- (d) Certificates to contain Contractor's contractual liability insurance coverage;
- (e) Certificates are to be **issued** to:

**DeKalb County, Georgia
Director of Purchasing & Contracting
The Maloof Center, 2nd Floor
1300 Commerce Drive
Decatur, Georgia 30030**

5. The Contractor shall be wholly responsible for securing certificates of insurance coverage as set forth above from all subcontractors who are engaged in this work.
6. The Contractor agrees to carry statutory Workers' Compensation Insurance and to have all subcontractors likewise carry statutory Workers' Compensation Insurance.
7. Contractor agrees to waive all rights of subrogation and other rights of recovery against the County and its officers and shall cause each Subcontractor to waive all rights of subrogation for all coverage, excluding Professional E&O.
8. Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of the Contractor's obligation to maintain such coverage. Contractor understands and agrees that the purchase of insurance in no way limits the liability of the Contractor.
9. Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least sixty (60) days prior written notice to the County. Policies and Certificates of Insurance listing the County and its officers as additional insureds (except for workers' compensation insurance) shall conform to all terms and conditions (including coverage of the indemnification and hold harmless agreement) contained in this Contract.
10. If the County shall so request, the Contractor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies. Contractor shall

be responsible and have the financial wherewithal to cover any deductibles or retentions included on the certificate of insurance.

J. Georgia Laws Govern The laws of the State of Georgia shall govern the construction of this Contract without regard for conflicts of laws. Should any provision of this Contract require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction, that a document is to be construed more strictly against the party who itself or through its agent prepared same; it being agreed that the agents of all parties have participated in the preparation hereof, and all parties have had an adequate opportunity to consult with legal counsel. In interpreting this Contract in its entirety, the printed provisions of this Contract, and any additions written or typed hereon, shall be given equal weight, and there shall be no inference by operation of law or otherwise; that any provision of this Contract shall be construed against either party hereto.

K. Venue This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits or causes of action arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.

L. Contractor and Subcontractor Evidence of Compliance; Federal Work Authorization Pursuant to O.C.G.A. §13-10-91, the County cannot enter into a contract for the physical performance of services unless the Contractor, its Subcontractor(s) and sub-subcontractor(s), as that term is defined by state law, register and participate in the Federal Work Authorization Program to verify specific information on all new employees. Contractor certifies that it has complied and will continue to comply throughout the Contract Term with O.C.G.A. §13-10-91 and any related and applicable Georgia Department of Labor Rule. Contractor agrees to sign an affidavit evidencing its compliance with O.C.G.A. §13-10-91. The signed affidavit is attached to this Contract as Attachment A. Contractor agrees that in the event it employs or contracts with any Subcontractor(s) in connection with this Contract, Contractor will secure from each Subcontractor an affidavit that certifies the Subcontractor's current and continuing compliance with O.C.G.A. §13-10-91 throughout the Contract Term.

M. County Representative The County may designate a representative through whom the Contractor will contact the County. In the event of such designation, said representative shall be

consulted and his written recommendation obtained before any request for extra work is presented to the County. Payments to the Contractor shall be made only upon itemized bill submitted to and approved by said representative.

N. Contractor's Status The Contractor will supervise and direct the Work, including the Work of all Subcontractors. Only persons skilled in the type of work which they are to perform shall be employed. The Contractor shall, at all times, maintain discipline and good order among his employees, and shall not employ any unfit person or persons or anyone unskilled in the work assigned him. The relationship between the County and the Contractor shall be that of owner and independent contractor. Other than the consideration set forth herein, the Contractor, its officers, agents, servants, employees, and any Subcontractors shall not be entitled to any County employee benefits including, but not limited to social security, insurance, paid annual leave, sick leave, worker's compensation, free parking or retirement benefits. All services provided by Contractor shall be by employees of Contractor or its Subcontractors and subject to supervision by Contractor. No officer or employee of Contractor or any Subcontractor shall be deemed an officer or employee of the County. Personnel policies, tax responsibilities, social security payments, health insurance, employee benefits and other administrative policies, procedures or requirements applicable to the

Work or services rendered under this Contract shall be those of the Contractor, not the County.

O. Georgia Open Records Act Contractor will be expected to comply with the applicable provisions of the Georgia Open Records Act, O.C.G.A. §50-18-70 *et seq.*

P. First Source Jobs Ordinance and Preferred Employees The Contractor is required to comply with the DeKalb County First Source Jobs Ordinance, Code of DeKalb County as Revised 1988, section 2-231 *et seq.*, and among other things, is required to make a good faith effort to hire DeKalb County residents for at least fifty percent 50% of all jobs created by an Eligible Project, as that term is defined in the First Source Ordinance, using the First Source Registry. Contractors, subcontractors, and independent contractors bidding on this contract will be encouraged by DeKalb County to have 25% or more of their labor forces for this project consist of Preferred Employees selected from the First Source Registry. The First Source Registry has Preferred Employees trained by U.S. Department of Labor registered apprenticeship programs and other partners. For information on Preferred Employees, please contact the DeKalb County Workforce Development by telephone at 404-

687-3417 or 404-687-7171 or in person at 320 Church Street, Decatur, GA 30030.

Q. Business License Contractor shall submit a copy of its current, valid business license with this Contract if required. If the Contractor is a Georgia corporation, Contractor shall submit a valid county or city business license. If Contractor is a joint venture, Contractor shall submit valid business licenses for each member of the joint venture. If the Contractor is not a Georgia corporation, Contractor shall submit a certificate of authority to transact business in the state of Georgia and a copy of its current, valid business license issued by its home jurisdiction. If Contractor holds a professional license, then Contractor shall submit a copy of the valid professional license. Failure to provide the business license, certificate of authority, or professional license required by this section, may result in the Contract being terminated. Contractor shall ensure that any insurance, license, permit or certificate submitted in response to the County's RFQ or as part of the Contract shall be current and valid when submitted, and shall remain valid, current and maintained in good standing for the Contract Term.

R. Sole Agreement This Contract constitutes the sole contract between the County and the Contractor. The terms, conditions, and requirements of this Contract may not be modified, except by Change Order. No verbal agreement or conversation with any officer, agent, or employee of the County, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations herein contained. No representations, oral or written, shall be binding on the parties unless expressly incorporated herein. No Change Order shall be enforceable unless approved by official action of the County as provided by law or in this Contract.

S. Attachments and Appendices. This Contract includes the following Attachments and Appendices all of which are incorporated herein by reference: Attachment A, Scope of Work.

T. Severability If any provision of this Contract or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Contract or the application of such provision to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

U. Notices. Any notice or consent required to be given by or on behalf of any party hereto to any other party hereto shall be in writing and shall be sent to the County's Chief

Executive Officer and the Executive Assistant or to the Contractor or his authorized representative on the work site by

(a) registered or certified United States mail, return receipt requested, postage prepaid, (b) personal delivery, or (c) overnight courier service. All notices sent to the addresses listed below shall be binding unless said address is changed in writing no less than fourteen days before such notice is sent. Future changes in address shall be effective upon written notice being given by the Contractor to the County's Executive Assistant or by the County to the Contractor's authorized representative via certified first class U.S. mail, return receipt requested. Such notices will be addressed as follows:

If to the County:

Chief Executive Officer
Malooof Administration Bldg
1300 Commerce Drive
Decatur, Georgia 30030

and

Executive Assistant
1300 Commerce Drive
Decatur, Georgia 30030

With a copy to: Director of the Department of Purchasing and Contracting
1300 Commerce Drive, 2nd Floor
Decatur, Georgia 30030

With a copy to: Director of the Recreation, Parks and Cultural Affairs
1950 West Exchange Place
Tucker, Georgia 30084

If to the Contractor:

With a copy to:

V. Counterparts This Contract may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Contract.

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three (3) counterparts, each to be considered as an original by their authorized representative.

CONTRACTOR

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)
Signature

_____ **by Dir.**(SEAL)
MICHAEL L. THURMOND

Name (Typed or Printed)

Chief Executive Officer
DeKalb County, Georgia

Title

Federal Tax I.D. Number

ATTEST:

ATTEST:

Signature

BARBARA H. SANDERS-NORWOOD, CCC
Clerk of the Chief Executive Officer
and Board of Commissioners of
DeKalb County, Georgia

Name (Typed or Printed)

Title

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Department Director

County Attorney Signature

County Attorney Name (Typed or Printed)

ATTACHMENT A

Contractor Affidavit under O.C.G.A. §13-10-91

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of DEKALB COUNTY has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the Contract Term and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. §13-10-91. Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

CONCESSION STAND SERVICES AT BROWNS MILL FAMILY AQUATIC FACILITY

Name of Project

DEKALB COUNTY GOVERNMENT

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20____ in _____ (city), _____(state).

By:

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the
_____ day of _____, 2017.

ATTACHMENT B

Violations List, non-inclusive

1. Failure to make payments by the requested due date
2. Failure to open the concessions area during regular operating hours
3. Failure to remove all liter from the concession area
4. Failure to comply with the DeKalb County Board of Health Food regulations
5. Failure to provide daily cash out reports
6. Failure to secure concession area during non-operating hours
7. Loss of key to the facility