

## Ice Vending Machine Franchise Agreement

This Ice Vending Machine Franchise Agreement is made and entered into by and between the City of Gulf Shores, Alabama, (hereinafter "City") and McDaniel Enterprises, LLC d/b/a Morgan's Ice (hereinafter Franchisee") as of the **27th day of June, 2016**.

### Recitals

- A. The City, as a municipal corporation of the State of Alabama, possesses the power to franchise and regulate the use of streets, avenues, alleys, and public places within its corporate limits by public utilities and private enterprises;
- B. The City desires to grant a franchise to Franchisee for the installation, operation, and maintenance of ice vending machines for the benefit of the public at approved locations in accordance with Section 220 of the Constitution of Alabama of 1901 and on the terms and conditions hereinafter set out
- C. Franchisee desires to acquire a franchise for the installation, operation, and maintenance of bulk ice vending machines on the terms and conditions hereinafter set out.

In consideration of the foregoing and of the mutual covenants and agreements hereinafter set out, the receipt and sufficiency of which is hereby mutually acknowledged, it is hereby understood, acknowledged, covenanted, and agreed by and between the parties as follows:

1. DEFINITIONS. As used in this Franchise Agreement, the following terms shall have the meanings assigned as follows:
  - a. "Franchised Vending Machine" shall mean not more than one (1) coin, currency, or credit card operated vending machine at the approved locations dispensing bagged ice for duration of the term of this Franchise.
  - b. "Approved Locations" shall mean locations for Franchised Vending Machine to be approved by City Council **at Lagoon Pass Public Park, Gulf Place, West 2<sup>nd</sup> Street and at such other locations** as may be adopted by resolutions by the City Council hereinafter adopted.
2. Grant of Franchise Rights. The City hereby grants to Franchisee, subject to the terms and conditions of this Agreement, the right, privilege, authority, and Franchise at any time and from time to time during the period covered by this franchise to install, operate, and maintain Franchised Vending Machines at the Approved Locations in the City of Gulf Shores, Alabama.
3. Service Undertaking of Franchisee. Franchisee hereby represents, covenants, and warrants as follows:
  - a. Franchisee shall install the Franchised Vending Machine at the Approved Locations and shall maintain such at the Approved Locations for the duration of the term of this Franchise.
  - b. Franchisee shall comply with all federal, state, county, and municipal laws and regulations applicable to its Franchised Vending Machines and business and will pay all governmental taxes, license fees, and imposts on such Franchised Vending Machines and business when due.
  - c. The siting, size, design, materials, and colors of each of the Franchised Vending Machines shall be subject in all respects to the prior written approval of the Planning Director. Franchisee shall obtain all necessary permits prior to the installation of Franchised Vending Machines and shall at Franchisee's sole expense restore any surface, paving, or public structure disturbed by such installation to a condition acceptable to the Director of Public Works of the City of Gulf Shores.
  - d. Franchisee will indemnify and hold the City, its officials, employees, agents, and servants harmless from any liability or claim of liability arising directly or indirectly, proximately or remotely from any act or omission on the part of Franchisee or its agents.

- e. Franchisee will ensure that no condition constituting a nuisance or hazard to public health or safety will at any time exist with respect to any of its Franchised Vending Machines. If at any time the City deems such condition to exist, it may act to cure such conditions without prior notice to Franchisee.
  - f. Franchisee will ensure that its Franchised Vending Machines are repaired promptly, refurbished regularly, and maintained in good condition and with the same appearance as at the time of initial approval by the Planning and Zoning Director. Franchisee acknowledges that, in addition to normal wear and tear, its Franchised Vending Machines will be exposed to extreme environmental conditions and to use and abuse patterns typical in a Gulf-front tourist-oriented community. Franchisee assumes all risks and expenses associated with maintaining its vending machines as required under this Franchise Agreement.
  - g. Franchisee will bear all costs of installation, operation, repair, and maintenance of its Franchised Vending Machines, along with any out of pocket expenses the city may incur for site preparation. The Franchisee will be required to reimburse the City for estimated electrical usage charges. City is not responsible for any product loss or damage due to any power outage, regardless of the cause.
  - h. Franchisee will be mindful of litter associated with the Franchised Vending Machines and make a conscious effort to keep consumables, such as plastic bags and twist ties contained. Franchisee will work with City staff to monitor and prevent excessive litter.
4. Books and Records of Franchisee. The books and records of Franchisee relative to its Franchised Vending Machines and operations shall be available for inspection or audit by the City during the hours of 8am to 5pm Monday through Friday, legal holidays exempted. If such books and records are not regularly maintained by Franchisee within the corporate limits of the City, Franchisee shall present such books and records for inspection or audit at City Hall upon twenty-four (24) hours oral or written demand for inspection or audit.
  5. Cancellation. The City shall have the right to cancel this Franchise for any reason deemed appropriate to the health, safety, or welfare of the public by the City Council in its discretion including, without limitation, material insufficiency or irregularity of services, material financial irregularities, violation of governmental fees, taxes, or imposts, or other material misfeasance, malfeasance, or nonfeasance under this Agreement. In the event the City believes cause for termination exists; it will give written notice to Franchisee of the basis on which it believes cause for termination exists and will give Franchisee not less than fourteen (14) days written notice of an opportunity to appear before a regular or special meeting of the City Council to present any evidence or explanation on the existence of cause for termination. Following such presentation, if the cause cited in such notice has not been cured in full, the City Council may elect to terminate this Agreement, may elect to continue this Agreement, either as written or under probationary conditions, or may elect such other action as may be in the best interest of the public. Franchisee shall be given written notice of the action of the City Council, and no termination shall become effective earlier than thirty (30) days following the giving of such notice. Franchisee shall have the right to cancel this Franchise for any reason deemed appropriate to Franchisee upon thirty (30) days prior written notice to the City. Upon such cancellation, Franchisee shall pay to the City all franchise fees that accrue through the date of removal of the Franchised Vending Machines, which removal shall occur within seven (7) days following the effective date of cancellation specified in Franchisee's notice.
  6. No Assignment or Transfer. By the execution of this Agreement, the City is contracting for the personal performance hereunder of Franchisee as presently constituted exclusively. This agreement and the rights of Franchisee hereunder may not be sold, assigned, pledged, or transferred in whole or in part by Franchisee in any judicial, bankruptcy, or receivership proceedings shall constitute a prohibited transfer hereunder. Any filing or judicial order that results in Franchisee being characterized a debtor-in-possession under Chapter 11 of the United States Bankruptcy Code or any successor law shall constitute a prohibited transfer hereunder. Any prohibited transfer hereunder shall immediately and automatically terminate this Agreement and the franchise rights granted hereunder.
  7. Insurance. Franchisee, as a condition to the grant of rights under this Agreement, shall furnish and maintain **Commercial General Liability insurance coverage in coverage amount not less than \$1,000,000** under a policy issued by an insurer with a rating of no less than A-VI under

Best's Ratings. Such policy shall name the City as an Additional Insured against liability for bodily injury, death, or property damage, including Product Liability, arising directly or indirectly from the property or operations of this Franchisee. Proof of coverage shall be given annually to the City in the form of a Certificate of Insurance. Any lapse in the coverage required in this paragraph shall result in an automatic and immediate suspension of the franchise rights granted Franchisee hereunder.

8. Nonexclusively. The franchise rights granted hereunder shall be nonexclusive, and the City may at any time and from time to time award similar or other franchise rights to other persons or entities.
9. No Agency. Franchisee acknowledges that it is an independent contractor and not the agent of the City for any purpose. The City assumes no responsibility for the collection of moneys owed to Franchisee.
10. Effectivity; Cost of Preparation and Publication; Term. **This Agreement shall become effective upon the 27th day of June 2016**, following the enactment of an ordinance granting the franchise rights described hereunder. Franchisee agrees to pay all costs and expenses incurred by the City in the enactment of its enabling ordinance, including the expense of ordinance publication, if necessary. **This Agreement shall expire, unless sooner terminated or extended in writing, on the 26th day of June, 2017**. The parties may agree in writing to extend this Agreement thereafter upon such terms, if any, which may be found mutually agreeable.
11. Consideration for Franchise Rights. In addition to the prompt payment of all taxes and license fees otherwise applicable to the business of Franchisee and the performance of Franchisee's service undertaking, **Franchisee shall pay to the City of Gulf Shores an amount equal to \$365.00 for a one (1) year term due at time of inception of this agreement for the operation of each Franchised Vending Machine(s) in the City. Franchisee will pay an amount equal to \$1,000 "security bond" to the City at such time application has been approved.**
12. Retained Power of Regulation; Removal of Facilities. The City retains its rights and power to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional reasonable regulations as it shall find necessary in the exercise of the police power. At the expiration or termination of the term of the franchise rights granted hereunder, the City shall have the right to require Franchisee, at Franchisee's sole expense, to remove all of Franchisee's Franchised Vending Machines from the Approved Locations in a manner satisfactory to the City. Such removal and restoration shall be accomplished within seven (7) days after written notice by the City requiring removal. If Franchisee fails to remove any or all of the Franchised Vending Machines to complete restoration within such period, the City may effect removal and restoration and charge Franchisee the cost of such work. In the event legal action is brought to collect such charges, the City shall also collect its reasonable costs of collection, including a reasonable attorney's fee liquidated at twenty percent (20%) of the aggregate amount of such charges.
13. Fee. The Fee to be paid by Franchisee commencing on the Effective date for the operation of the Franchised Vending Machines described herein shall be in quarterly payments, each in the amount equal to **twenty-five percent (25%) of gross revenues** for the following periods:
  - a. January - March Due no later than April 30<sup>th</sup>
  - b. April - June Due no later than July 30<sup>th</sup>
  - c. July - September Due no later than October 30<sup>th</sup>
  - d. November-December Due no later than January 30<sup>th</sup>
14. Additional Benefits Offered. Franchisee will provide ice at no charge to the City's Beach Patrol.
15. Term of Operation. Franchisee reserves the right to remove Franchised Vending Machines from Approved Locations in the event of a hurricane or tropical storm.
16. Notices. Any notice required or permitted hereunder shall be in writing and shall be directed to the parties by first class mail or hand delivery at the following addresses and shall be effective upon deposit in the United States mail or upon hand delivery:

As to the City:

City of Gulf Shores  
P.O. Box 299  
Gulf Shores, AL 36542

As to Franchisee:

McDaniel Enterprises LLC  
dba Morgan’s Ice  
P.O. Box 1517  
Robertsdale, AL 36567

- 17. Complete Agreement. This Agreement sets out the complete understanding of the parties with respect to the subject matter hereof and may not be amended except in writing whose execution by the City has been approved by ordinance or formal resolution of the City Council.

IN WITNESS WHEREOF, the City and Franchisee have executed this Franchise Agreement as of the date first above written.

CITY OF GULF SHORES

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Robert Craft, Mayor

McDaniel Enterprises, LLC

By \_\_\_\_\_  
Mark McDaniel