



REQUEST FOR PROPOSALS #C-101-11

For the Management and Operation of the Lloyd Hall Café

Issued By:

The City of Philadelphia
Philadelphia Parks & Recreation
Michael DiBerardinis, Commissioner

&

Procurement Department
Hugh Ortman, Commissioner

Mandatory Pre-Proposal Meeting & Tour of Lloyd Hall:

August 3, 2010, 10:00 a.m.

Lloyd Hall
1 Boathouse Row
Philadelphia, PA 19130

**SEALED PROPOSALS WILL BE RECEIVED UNTIL AUGUST 27, 2010
AT 10:30 A.M. LOCAL TIME (THE "DEADLINE FOR SUBMITTING PROPOSALS")**

AT

**MUNICIPAL SERVICES BUILDING, 1401 JOHN F. KENNEDY BOULEVARD, ROOM 170A,
PHILADELPHIA, PA 19102**

**AND WILL BE OPENED IMMEDIATELY AFTER THE DEADLINE FOR SUBMITTING
PROPOSALS**

Questions regarding this Request for Proposals must be submitted in writing before
August 10, 2010 at 5:00 p.m. local time ("Deadline for Questions")

and directed to

Marc Wilken, Park Concessions Manager
Philadelphia Parks & Recreation,
One Parkway Building – 10th Floor, 1515 Arch Street, Philadelphia, PA 19102
or by e-mail at Marc.Wilken@phila.gov or by fax to 215-683-0205

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SECTION 1 – GENERAL INFORMATION

1.1 Background

- 1.1.1 The City of Philadelphia (“**City**”) owns “**Lloyd Hall**”, located at 1 Boathouse Row, Philadelphia, PA 19130. Lloyd Hall is operated by Philadelphia Parks & Recreation (“**Department**”). Lloyd Hall is part of Philadelphia’s famous Boathouse Row on Kelly Drive along the Schuylkill River. The Department is the legal successor to the Fairmount Park Commission. The chief official of the Department is the Commissioner of Parks & Recreation (the “**Commissioner**”). Department staff are stationed at Lloyd Hall to manage and operate the facility and recreation programs.
- 1.1.2 Lloyd Hall is a multi-purpose facility. It includes recreational space and also an indoor-outdoor café (“**Café**”). Lloyd Hall is a destination facility and is actively used by park users for recreational activities and as a place to rest and refresh.

1.2 Purpose of this Request for Proposals

This Request for Proposals (“**RFP**”) is being issued by the City. The City is requesting Proposals from all individuals and firms that would like to manage and operate the Café. By issuing this RFP and entering into a concession agreement for management and operation of the Café, the City hopes to provide an important amenity for park users and to generate revenue to reinvest in Lloyd Hall and the Fairmount Park system.

1.3 Respondents to this RFP; the Concession Agreement and Concessionaire

Each firm or individual that submits a proposal in response to this RFP (a “**Proposal**”) will be considered a “**Respondent**.” The City intends to enter into negotiations for a written contract (the “**Concession Agreement**”) with the Respondent who meets the City’s objectives and selection criteria set forth in this RFP. Upon execution of the Concession Agreement by the City and the successful Respondent, the successful Respondent will become the “**Concessionaire**” under the Concession Agreement. The Concession Agreement will give the Concessionaire an exclusive right (the “**License**” or “**Concession**”) to operate and manage the Café and to exercise the rights and perform the duties described in this RFP and the Concession Agreement.

1.4 Proposed Concession Summary

- 1.4.1 The Concessionaire will have complete responsibility for management and operation of the Café. The responsibilities of the Concessionaire will include, but are not limited to, those set forth

in this RFP in Section 3 and Section 4 and those set forth in the Concession Agreement. In consideration of the license granted to the Concessionaire under the Concession Agreement, the Concessionaire shall pay the City a Concession Fee as explained below in Section 3.21 and Section 6.8 of this RFP. As more fully explained below, each Respondent's Proposal must describe, at a minimum, the management and operating practices, personnel requirements and reporting procedures that it would employ in managing and operating the Café. The Respondent's Proposal must also include the Respondent's plan to market the Café and enhance the Café's revenue opportunities.

1.4.2 The City intends to enter into a professional services agreement with the Fairmount Park Conservancy (the "**Conservancy**"). The Conservancy is a nonprofit corporation founded in 2001 by the former Fairmount Park Commission to support the Fairmount Park system. Under the terms of the City's agreement with the Conservancy (the "**Conservancy Contract**"), the Conservancy will oversee the Concession. The City and the Conservancy will execute the Conservancy Contract on or before the commencement date of the Concession Agreement.

1.4.3 The Executive Director of the Conservancy is Katrina Wilhelm. The Conservancy's address and contact information is:

Fairmount Park Conservancy
One Penn Center - Suite 1670
1617 JFK Boulevard
Philadelphia, PA 19103
Phone Number: 215-988-9334
Fax Number: 215-988-9335

1.5 Respondent Qualifications

As more fully detailed below, each Respondent must demonstrate substantial experience in managing and operating a café and the financial capacity to operate and manage the Café at the highest level.

1.6 Mandatory Pre-Proposal Meeting and Tour of Lloyd Hall

1.6.1 A "**Mandatory Pre-Proposal Meeting and Tour**" will be held on the date and time, and at the location, stated on the cover page of this RFP. The purpose of the Mandatory Pre-Proposal Meeting and Tour is to review the requirements contained in this RFP and receive questions that potential Respondents may have. All potential Respondents are required to RSVP to the Project Manager (defined in Section 1.7 below) regarding their attendance at the Pre-Proposal Meeting.

1.6.2 As part of the Mandatory Pre-Proposal Meeting and Tour, City staff will conduct a tour of the Café and all of Lloyd Hall.

1.6.3 The City will not consider the Proposal of any Respondent that did not attend the Mandatory Pre-Proposal Meeting and Tour.

1.7 Project Manager; Questions about this RFP

1.7.1 The “**Project Manager**” for this RFP is Marc Wilken, Park Concessions Manager, Philadelphia Parks & Recreation. The Project Manager can be reached by the following means:

Email: marc.wilken@phila.gov

Fax: 215-683-0232

Mail: One Parkway Building – 10th Floor
1515 Arch Street
Philadelphia, PA 19102

Questions concerning this RFP, including any questions concerning the Concession Agreement, may be asked at the Pre-Proposal Meeting. Otherwise, questions must be submitted to the Project Manager in writing, by e-mail, fax or letter, no later than the Deadline for Questions stated on the cover page of this RFP. Questions submitted by telephone will not be answered by the City. The City is not obligated to answer or respond to any questions received after the Deadline for Questions.

1.7.2. The City will answer all questions asked at the Pre-Proposal Meeting or timely submitted to the City, and which the City in its sole discretion determines concern a material element of the proposal process or Concession Agreement. The City will provide its answers in writing by an addendum to this RFP prior to the Deadline for Submitting Proposals; and the City will post its answers on the following website:

<http://www.phila.gov/rfp/>. The City is not bound by any oral response made by any City employee to any questions.

1.7.3 The addenda issued by the City are the City’s only official method for communicating information to all potential Respondents. Respondents should check <http://www.phila.gov/rfp/> before submitting a Proposal to verify that they have reviewed all the addenda relating to this RFP. Each Respondent must acknowledge in its Proposal that it has reviewed all addenda to this RFP.

1.8 Review Entire RFP Carefully; RFP Will Be Part of Concession Agreement

All Respondents are encouraged to carefully read this entire RFP and its attachments before the Pre-Proposal Meeting and before submitting a Proposal.

This RFP will become part of the Concession Agreement.

1.9 No Obligation on City to Execute a Concession Agreement

This RFP does not commit the City to award a Concession Agreement. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. No other party, including any Respondent, is granted any rights by this RFP.

1.10 Modifications; Late Proposals

Until the Deadline for Submitting Proposals, a Respondent may submit a modified Proposal to replace all or any portion of a Proposal the Respondent submitted previously. The City will only consider the latest version of a Respondent's Proposal. The City will not consider or evaluate late Proposals and late modifications. A Respondent may withdraw its Proposal from consideration at any time before the Deadline for Submitting Proposals. To withdraw a Proposal, the Respondent must provide written notification to the Project Manager by e-mail, fax, or letter at the address for the Project Manager provided in Section 1.7.1.

1.11 Public Disclosure

This RFP, each Proposal, the Concession Agreement, and the written documents and communication related to them, may be subject to public disclosure, except as provided in this RFP.

1.12 Information and Data in this RFP Not Warranted

The City has provided information and data in this RFP to help potential Respondents understand Lloyd Hall, the Café, the purpose of this RFP and the Concession Agreement, and to help each Respondent prepare a Proposal. The City believes the information and data in this RFP are reliable, but the City does not represent or warrant that the information or data is accurate. Potential Respondents are encouraged to conduct their own investigations into any matter of concern to them about Lloyd Hall, the Café, this RFP, the Concession Agreement, or their Proposal.

1.13 Provisions of RFP Become Part of Concession Agreement

The contractual provisions set forth in Section 3 and Section 4 and related Appendices of this RFP will not be negotiated or modified, unless modified in writing by the City, in its sole discretion, before the Deadline for Submitting Proposals. If a Respondent is selected as the Concessionaire, the provisions of Section 3 and Section 4 of this RFP and their corresponding Appendices will bind the Respondent as the Concessionaire. Therefore, potential Respondents are strongly

encouraged to pay careful attention to the provisions of Section 3 and Section 4 of this RFP and their corresponding Appendices because they will become obligations of the Concessionaire under the Concession Agreement.

SECTION 2 – DESCRIPTION OF LLOYD HALL

2.1 Location and Access

Lloyd Hall is located at #1 Boathouse Row on Kelly Drive in close proximity to the Philadelphia Museum of Art, the Fairmount Water Works, and the Azalea Garden. Lloyd Hall is an active community recreation center; it is used by many local groups for league and free sports and community meetings. Views of Lloyd Hall are attached to this RFP at **Appendix 1**.

2.2 Features: Setting, Amenities, Parking, Landscape Improvements

2.2.1 Lloyd Hall is located in an iconic park setting at the convergence of the Schuylkill River recreation trail connections, at the head of Boathouse Row, and at the gateway to the City’s museum district on the Benjamin Franklin Parkway. The Philadelphia Museum of Art alone attracts nearly 1 million visitors each year.¹ Approximately 9,200 residents live within walking distance of Lloyd Hall.² Thousands of walkers, joggers, rollerbladers, and cyclists use the recreation path in front of Lloyd Hall each day.

2.2.2 The first floor of Lloyd Hall includes a lobby, gymnasium, indoor dining room, and the kitchen (“**Kitchen**”) which serves the Café. Outside the first floor, on the west side of the building, is a spacious patio overlooking the Schuylkill River. The kitchen contains a walk-up window and service counter (the “**Walk Up Window**”) that opens to the patio. On the north side of the building is a plaza that is heavily used as a resting spot by park users and, on many weekends, by roller-skate dancers and the spectators who watch them. Also on the first floor, accessible by separate entrances on the north side of the building, are public restrooms for park users. The second floor of Lloyd Hall includes a room which can be used for multiple purposes (“**Multi-Purpose Room**”), which opens onto a large deck (“**Deck**”) with a dramatic view of the river.

2.2.3 Adjacent to Lloyd Hall is a 110-space parking lot. The lot is open every day from 6:00 A.M. to 10:00 P.M. Drivers may park in the lot for free for up to two hours. Across Kelly Drive from Lloyd Hall is Sedgley Drive,

¹ See <http://www.philamuseum.org/visit/>

² This estimate is based on 2000 United States Census Data. Please see **Appendix 2** for additional supporting information.

which provides additional on-street parking for park users.

2.2.4 The City plans to make extensive improvements to the park and recreation path in the immediate vicinity of Lloyd Hall. The work will include restoration of the Italian Fountain and its adjoining landscape.

2.2.5 In addition, facing a portion of Lloyd Hall from the Schuylkill River is an island covered by mature trees and other vegetation. The City intends to construct a bridge to the island to enable park users to access a portion of the island. The City also intends to construct a boardwalk and observation decks around a portion of the island for park users to tour the island, observe the plant life and birds, and enjoy views of the river. Although the City has obtained preliminary designs for a bridge and boardwalk, it does not have a specific timeline for completing this project.

2.3 Previous Activity at Lloyd Hall

2.3.1 Prior Use as a Café

The Café was operated as a full service café between 1999 and 2004. In more recent years, an operator has provided a limited menu of packaged goods, cold beverages, and ice cream bars during the spring and summer season. Prior concessionaires served a variety of foods and beverages, including, but not limited to:

- hot and cold sandwiches;
- burgers, hot dogs, salads, French fries, pretzels, and nachos;
- packaged goods such as ice cream bars, potato chips, nutritional bars and candy; and
- fountain and bottled beverages such as water, soda, and sports drinks.

2.3.2 Contracted Events

From 1999 to 2004, former Café operators hosted and served approximately eight special events per year using the patio.

2.3.3 Use of Multi-Purpose Room

In 2009, approximately 80 meetings were held in the Multi-Purpose Room, 70 of which were held on weekdays. The majority of the meetings took place between the hours of 5:00 P.M. and 10:00 P.M..

2.4 Activity Levels: Lloyd Hall, Kelly Drive and Art Museum Area

2.4.1 Lloyd Hall

2.4.1.1 A schedule for league and free sports at the Lloyd Hall gymnasium through March 2010 is attached to this RFP as **Appendix 3**. In July and August of each year, Lloyd Hall hosts the Fairmount Park Rowing Camp for youth ages 13 to 17. Participants are selected by camp staff to be trained for the nationally renowned Thomas Eakins Head of the Schuylkill Regatta, which is held each year in late October. In addition, Philadelphia City Rowing, which conducts rowing programs for public high school students, began operating at Lloyd Hall this summer.

2.4.1.2 In 2009, the second floor Multi-Purpose Room and Deck were rented for 15 private events.

2.4.2 Special Events

Several public special events take place in the vicinity of Lloyd Hall each year. A list of events held in the vicinity of Lloyd Hall in 2009 is attached to this RFP in **Appendix 4**. During those events that are highlighted in yellow, a portion of Kelly Drive was closed, but vehicular access to Lloyd Hall was maintained via a short detour route through East Fairmount Park. Access to public parking at Lloyd Hall may be reduced during some highlighted special events. Future special events may similarly involve closure of Kelly Drive and affect public parking at Lloyd Hall.

2.4.3 Pedestrian and Bicycle Traffic

The Department measures pedestrian and bicycle traffic in the vicinity of Lloyd Hall using devices installed on the recreation path along Kelly Drive near Lloyd Hall and on the Schuylkill Banks recreation path. The recorded level of traffic for a 12-month period – over 900,000 park users – is attached to this RFP at **Appendix 5**.

2.4.4 Appendices are Provided for Informational Purposes

Appendix 3, Appendix 4 and Appendix 5 are provided for informational purposes only. The City does not guarantee that the same level of activities will take place in the Fairmount Park system in the future.

2.5 Lloyd Hall Licensed Facilities

The License given to the Concessionaire under the Concession Agreement will apply to the Lloyd Hall facilities listed below, all of which are included in the Café. **Facilities listed in Section 2.5.2 are subject to the provisions set forth in Section 3.10 of this RFP.** Please see **Appendix 6** for a floor plan of Lloyd Hall.

2.5.1 Facilities exclusively under the control and care of the Concessionaire

- The outdoor, upper tier Patio (“**Upper Patio**”), which is approximately 1200 square feet and can be used for outdoor dining, receptions, and events;
- The **Kitchen**, which is approximately 255 square feet and equipped with two sinks, a hood and fire suppression unit, and gas and electric rough-ins for kitchen cooking and refrigeration equipment;
- An air-conditioned first-floor dining room (“**Indoor Dining Room**”), which is approximately 355 square feet and offers direct views to Boathouse Row and the Schuylkill River;
- A first-floor storage room (“**Storage Room**”), which is approximately 221 square feet and is adjacent to the main entrance of Lloyd Hall;
- A food preparation and serving bar (“**Serving Bar**”) that is 160 square feet and accessible to the Multi Purpose Room and Deck by serving windows; and

2.5.2 Facilities of shared use between Concessionaire, Lloyd Hall staff and the public

- The outdoor, lower tier Patio (“**Lower Patio**”), which is approximately 900 square feet, which may be used for outdoor dining in conjunction with its active use as a public space.
- The second floor Multi-Purpose Room, which is approximately 460 square feet and affords an elevated view of the Schuylkill River and the Kelly Drive Recreation Path from the room and adjoining Deck;
- The Deck, which is approximately 1,010 square feet and affords a spectacular view of Boathouse Row and the Schuylkill River.

The Lower Patio, Multi-Purpose Room and Deck may be used as additional Café dining spaces if not booked for a community or City meeting or event.

2.6 Lloyd Hall Public Operations

Subject to available appropriation of funds by City Council, the City will maintain and repair Lloyd Hall in accordance with the City’s standard operations and

procedures for maintaining and repairing facilities in the Fairmount Park system; except, however, to the extent the Concessionaire is obligated to maintain and repair Lloyd Hall.

SECTION 3 – CONCESSION AGREEMENT: SPECIFIC PROVISIONS

3.1 Term of the Concession Agreement

The “**Initial Term**” of the Concession Agreement will start on the date the City executes the Concession Agreement and all the conditions set forth in Section 7.3 of this RFP have been completely satisfied (the “**Commencement Date**”). The Initial Term expires at 5:00 p.m. the day before the 1st anniversary of the Commencement Date. The City, at its sole discretion, may renew the Concession Agreement for up to three one-year periods (each period a “**Renewal Term**”). To renew the Concession Agreement, the City must provide written notice to the Concessionaire of the City’s desire to renew the agreement (“**Renewal Notice**”) at least 60 days before expiration of the Initial Term or then-current Renewal Term, as the case may be. In the Concession Agreement and this RFP, “**Term**” means the Initial Term and all Renewal Terms, if any. In the Concession Agreement and this RFP, the date the Concession Agreement expires, is terminated, or otherwise ends, is called the “**Concession Agreement Ending Date.**”

3.2 Use of Lloyd Hall: Uses Required, Uses Permitted, and Uses Prohibited

- 3.2.1 The License given by the City to the Concessionaire under the Concession Agreement applies only to those areas and facilities of Lloyd Hall listed and described in Section 2.5 of this RFP.
- 3.2.2 The Concessionaire shall manage and operate all aspects of the Café, including but not limited to: food preparation and service, marketing, advertising, staffing, and maintenance of the licensed spaces and equipment.
- 3.2.3 The Concessionaire in good faith shall cooperate and communicate regularly with the Conservancy to ensure the successful operation of the Concession and the successful management and operation of the Café during public hours. The Concessionaire shall be considerate of the day-to-day operations and work of the Department staff at Lloyd Hall and the public’s use of Lloyd Hall.

3.3 Operating Schedule; Lloyd Hall Public Hours

- 3.3.1 The public operating hours for Lloyd Hall are as follows:

September through June

Monday through Friday: 2:00 p.m. to 10:00 p.m.
Saturday and Sunday: 9:00 a.m. to 5:00 p.m.

July through August

Monday through Friday: 9:00 a.m. to 5:00 p.m.
Saturday and Sunday: 9:00 a.m. to 5:00 p.m.

- 3.3.2 Provided below in Section 3.3.2.1 is a *suggested* Operating Schedule for the Café. The Respondent may suggest an alternative operating schedule. The Concessionaire is not required to align its operating schedule for the Café with the public operating hours at Lloyd Hall listed in Section 3.3.1 above.

From April 1st through October 31st:

Monday through Friday: 7:00 a.m. to 7:00 p.m.
Saturday and Sunday: 8:00 a.m. to 8:00 p.m.

- 3.3.3 Once the City and Concessionaire have agreed on an Operating Schedule, the Concessionaire shall not change the Operating Schedule without obtaining the Conservancy's prior, written approval of the changes.
- 3.3.4 Despite the Operating Schedule, in the event of inclement weather, Concessionaire may open the Café later or close the Café earlier than the hours set forth in the Operating Schedule.

3.4 Café Personnel

- 3.4.1 Concessionaire shall employ and provide all personnel necessary and prudent for the safe, efficient, and successful management and operation of the Café.
- 3.4.2 Concessionaire shall cause its employees to conduct themselves at all times in a courteous and professional manner that reflects well upon Lloyd Hall, the Fairmount Park system, the Department and the City. Concessionaire shall train and supervise its employees and cause them to be well-groomed and neat. Concessionaire shall cause its employees to be outfitted in appropriate attire which clearly identifies them as Concessionaire's employees. The City may, in its sole reasonable discretion, require that the Concessionaire remove and replace any employee that does not meet the requirements of this Section 3.4.2.

3.5 Equipment for Café; Maintenance and Repair

3.5.1 The Concessionaire shall, at its sole cost and expense, install and provide all equipment, material, and supplies necessary for the safe, efficient and successful management and operation of the Café. Without limiting Concessionaire's obligation under the preceding sentence, Concessionaire shall provide all kitchen equipment, tables and chairs, patio furniture, serving utensils, glassware and plates, and other equipment, needed for the management and operation of the Café.

3.5.2 The City owns the equipment and fixtures at Lloyd Hall listed below. The Concessionaire may use some or all of this equipment and fixtures, and the Concessionaire shall maintain, repair, and replace the equipment and fixtures that Concessionaire does use:

3.5.2.1 Kitchen and Dining Room Equipment and Fixtures

- Stainless steel exhaust hood and fire suppression system;
- Three-compartment sink with garbage disposal;
- Hand washing sink;
- Safe; and
- Two built-in food storage pantries.

3.5.2.2 Patio and Dining Furniture

- Three (3) patio bar tables;
- Four (4) patio dining tables;
- 20 patio, dining chairs; and
- 34 patio bar chairs.

3.5.3 Concessionaire shall not make capital improvements or alterations to the Café or any part of Lloyd Hall, or install fixtures in the Café or any part of Lloyd Hall, without the prior written approval of the City and the Conservancy. Subject to the preceding sentence, not later than five days following the Concession Agreement Ending Date, the Concessionaire may remove fixtures that the Concessionaire has installed. The Concessionaire shall promptly repair all damages caused by its removal of its fixtures. Fixtures that the Concessionaire does not remove within five days following the Concession Agreement Ending Date (1) may be removed by the City and Concessionaire shall promptly pay the City's costs to remove them, or (2) shall become the property of the City. Concessionaire's obligations under this Section 3.5.3 survive the Concession Agreement Ending Date.

3.5.4 Concessionaire shall, at its sole cost and expense, maintain and operate

the Café in good and safe condition and in accordance with industry standards, including, but not limited to performing all necessary and prudent maintenance, repairs, and replacement of the equipment, materials, and supplies used by the Concessionaire. The Concessionaire shall be solely responsible for the maintenance and repair of the facilities listed in Section 2.5.1 of this RFP. The Concessionaire's responsibility for maintenance and repair of the facilities listed in Section 2.5.2 of this RFP extends to the Concessionaire's use of those facilities in connection with the operation of the Café for additional dining space and catered events or meetings.

- 3.5.5 At all times during the Term, the Concessionaire, at its sole cost and expense, shall promptly repair all damage to Lloyd Hall caused by the Concessionaire or its employees, agents, contractors, invitees, or clients and their guests, or otherwise arising from Concessionaire's exercise of its License under the Concession Agreement.
- 3.5.6 At all times during the Term, the City is not required to provide any services, materials or equipment related to the Café.
- 3.5.7 On the Concession Agreement Ending Date, Concessionaire shall leave the Café in the same condition in which it was found immediately prior to the Commencement Date, except for reasonable wear and tear, casualty covered by the Concessionaire's insurance (with the City as loss payee), and any capital improvements that Concessionaire made and which were approved in writing in advance by the Commissioner.
- 3.5.8 All maintenance and repair of a capital nature required of the Concessionaire in this Section 3.5 is subject to the prior written approval of the Commissioner. Concessionaire shall promptly complete all maintenance and repair approved by the Commissioner.

3.6 Storage: Additional Space

If Concessionaire needs more storage space than available in the Storage Room, Concessionaire shall arrange for off-site storage at Concessionaire's sole cost and expense.

3.7 Utilities

- 3.7.1 The Café has been operated previously, and the City does not know of any reported problems or insufficiencies in utilities and utility services for the Café. Nevertheless, the City makes no representations or warranties regarding the adequacy of the utilities and utility service available for the Café. The Concessionaire shall, at its sole cost and expense, connect to and or upgrade any existing utility service, or create a new utility system,

as needed for Concessionaire's management and operations of the Café, including, but not limited to supplying and installing any necessary feeder cables, meters, wiring, gas lines, water, sewer lines, pumps, etc. Before making any new utility connection, upgrading utility service, or creating any new utility system, the Concessionaire shall obtain all permits and approvals required by Applicable Laws and shall obtain the prior written approval of the Commissioner.

- 3.7.2 The Concessionaire shall promptly pay all charges and fees when and as they become due for all public utilities and utility service used at the Café, including but not limited to: gas, steam, heat, light, electricity, telephone, sewer rents, water meter and water charges. In addition, the Concessionaire shall, at its sole cost and expense, promptly pay all charges and fees when as and as they become due for new conduits, cables, or other means of providing or improving utility services to the Café. Without limiting the requirements set forth above in this Section 3.7, the Concessionaire is solely liable for all late charges, interest, penalties, and fees arising from the Concessionaire's failure to promptly pay all charges and fees imposed by any provider of utility service to the Café, or any installer of utility equipment at the Café.
- 3.7.3 The City is not required in any manner to provide or pay for utilities or utility service to the Café. The City is not liable for any interruption in utilities or utility service to the Café.
- 3.7.4 This Section 3.7 applies only to the Café listed in Section 2.5 of this RFP.

3.8 Marketing

- 3.8.1 Concessionaire shall use its best efforts to increase the Café business using all commercially reasonable means, including but not limited to marketing and publicizing the availability of the Café via the internet, newspaper ads, magazines and other means of communication. Concessionaire shall create and actively distribute printed materials that highlight the menu and price points for Café (collectively with other marketing and publicity activities, the "**Promotional Activities**").
- 3.8.2 At all times during the Term the Concessionaire shall include on its stationery letterhead and in all print, broadcast, and electronic publicity (including but not limited to the Concessionaire's website homepage), and advertising materials related to the Café Services, a prominent, easily legible statement that reads: "**Lloyd Hall Café is a Fairmount Park property operated by Philadelphia Parks & Recreation.**"
- 3.8.3 Concessionaire's Promotional Activities are subject to the Conservancy's prior written approval. Concessionaire may propose a plan for Promotional Activities and, if Concessionaire obtains the Conservancy's

approval of the plan, then as long as Concessionaire strictly complies with the approved plan Concessionaire does not need to obtain additional approval of its Promotional Activities from the Conservancy.

3.9 **Outdoor Grilling**

The City believes that an outdoor grill menu and service would be successful at the Café. The Concessionaire may operate a grill on the Upper Patio but is not obligated to do so. If the Concessionaire chooses to operate a grill on the Upper Patio, then the Concessionaire, at its sole cost and expense, shall obtain all necessary licenses and permits to operate an outdoor grill and provide all the equipment and staff necessary for the successful operation of an outdoor grill.

3.10 **Events; Administrative Requirements**

The primary function of the Concession is to provide quality Café food and beverage service to Park users. At the same time, however, as a way to supplement the Concessionaire's revenue from the Café, the Concessionaire may rent out the Multi-Purpose Room, Deck, Upper Patio and Lower Patio (collectively, the "**Rental Facilities**" and each individually a "**Rental Facility**") for special events, fundraising events, private parties, and other events, subject to the requirements described below:

3.10.1 Concessionaire may rent out the second floor Multi-Purpose Room during hours that it is not scheduled to be used by the public for community and charitable organization meetings. Scheduling of the Multi-Purpose Room for community and charitable organization meetings is administered by Lloyd Hall staff. Concessionaire shall check with Lloyd Hall staff regarding the availability of the Multi-Purpose Room to ensure there are no scheduling conflicts regarding use of the room.

3.10.1.1 Public use of the Multi-Purpose Room on Friday, Saturday and Sunday generally concludes no later than 3:00 P.M.

3.10.1.2 Concessionaire may offer each community and charitable organization using the Multi-Purpose Room the opportunity to have its meeting or event catered by the Concessionaire.

3.10.2 Concessionaire shall check with Lloyd Hall staff before renting the Rental Facilities, or any of them, for events on dates on which public parking may not be available because of certain annual events held at or in proximity to Lloyd Hall. The Concessionaire shall provide the Conservancy and Lloyd Hall staff with updated schedules of Concessionaire booked events on a frequent basis.

3.10.3 The City and Conservancy may use and or rent out (and retain the rental payments) the Rental Facilities, or any of them, before, during and after

the hours Lloyd Hall is open to the public. The City intends to limit that use to no more than five events in a calendar year. The Concessionaire shall check with Lloyd Hall staff to learn when the City or Conservancy have scheduled an event for the Rental Facilities, or any of them, and the City will endeavor to inform the Concessionaire at least 90 days before any event the City or Conservancy schedules at the Rental Facilities, or any of them.

- 3.10.4 The Concessionaire shall not rent any Rental Facility during any official City holiday without the prior written approval of the Conservancy.
- 3.10.5 Any rental by the Concessionaire in violation of any provision of Section 3.10.1 through Section 3.10.5 is void.
- 3.10.6 The following are the administrative requirements pertaining to events at Rental Facilities:

- 3.10.6.1 Responsiveness to the Public

- Concessionaire shall accept and respond to public inquiries regarding the availability of the Rental Facilities for catered meetings and private parties. The Concessionaire shall refer community meeting inquiries to the Lloyd Hall staff.

- 3.10.6.2 Site Tours

- Concessionaire shall provide site tours for prospective renters of any of the Rental Facilities in coordination with Lloyd Hall staff.

- 3.10.6.3 Bookings

- Concessionaire shall accept, book and confirm all reservations in a timely manner and provide timely notification of each booked event to the Lloyd Hall staff and Conservancy as described in Sections 3.10.1 and 3.10.2.

- 3.10.6.4 Site User Concession Agreement

- Concessionaire shall execute a site user Concession Agreement (“**User Agreement**”) with each renter of a Rental Facility to confirm the reservation. The Concessionaire must obtain the Conservancy’s approval of the form of the User Agreement. The Concessionaire may not amend or change the form of the User Agreement approved by Conservancy without its prior written approval.

3.10.7 Events Booked Beyond the Initial Term or Any Renewal Term

- 3.10.7.1 Concessionaire may book events beyond the end of the Initial Term of the Concession Agreement and, if it does, the Concessionaire shall cater or enter a sublicense agreement to cater those events and be fully responsible for them.
- 3.10.7.2 If the City renews the Concession Agreement for one or more Renewal Terms, the Concessionaire may book events beyond the end of each respective Renewal Term and, if it does, the Concessionaire shall cater or enter a sublicense agreement to cater those events and be fully responsible for them.
- 3.10.7.3 Despite the Concession Agreement Ending Date, the Concessionaire is solely responsible for fulfilling all its obligations under the contracts it signs with each of its clients, suppliers, and other third parties.

3.11 Cleaning; Trash Collection; Recycling

- 3.11.1 Concessionaire shall, at its sole cost and expense, clean-up and remove all waste, garbage, refuse, rubbish, organic debris and litter generated by and related to the Café. Clean-up may include but is not limited to: cleaning, sweeping and mopping or steam cleaning the Café at the closing each evening and at the conclusion of each event using any of the Rental Facilities.
- 3.11.2 Concessionaire shall provide proper waste and recycling receptacles for the Café, including but not limited to providing separate trash containers for recyclable materials in compliance with all Applicable Laws regarding recycling.

3.12 Environmentally-Friendly (“Green”) Products & Practices

The City of Philadelphia is implementing ecologically-friendly initiatives to benefit the environment and the health of Philadelphia’s visitors and residents. Therefore, the City strongly encourages the Concessionaire to employ ecologically-friendly practices and products in the management and operation of the Café.

If the Concessionaire intends to use any disposable products at the Café, the City encourages the Concessionaire to use chlorine-free, biodegradable products such as paper towels, napkins, utensils, and plates. Additionally, the City encourages the Concessionaire to use “Green Seal” ecologically-friendly products such as soaps and cleaners for operating and cleaning purposes. A list of “Green Seal” certified products can be found at

<http://www.green Seal.org/findaproduct/index.cfm>. The City also encourages the serving of sustainable food products and the training of staff on environmentally-friendly food practices.

3.13 Subcontracting

- 3.13.1 Subject to the requirements of Section 6.5 of the RFP, Concessionaire may elect to have some services and supplies provided by a subcontractor (for example, without limitation, catering, cleaning, and paper goods). Despite the immediately preceding sentence, the City reserves the right to approve any of Concessionaire's subcontracts. Despite any subcontracts that Concessionaire may enter into, Concessionaire is not relieved of any of its obligations under the Concession Agreement.
- 3.13.2 Concessionaire shall cause all its subcontracts to specify that the City is designated as third party beneficiary of the subcontract. Concessionaire shall also cause its subcontracts to specify that the subcontractor is bound by the same requirements as Concessionaire under the Concession Agreement including, without limitation, indemnification of the City, insurance, maintenance and preservation of records, and audit by the City.
- 3.13.3 Concessionaire shall include in each of its subcontracts a provision that the subcontractor shall continue to provide the services it would have under its subcontract with the Concessionaire for the remainder of the term of its agreement if:
 - a. the City terminates the Concession Agreement,
 - b. the subcontractor is not in default under its subcontract or the Concession Agreement, and
 - c. the City provides written notice to the subcontractor of the City's desire that the subcontractor continue to provide those services.
- 3.13.4 No subcontract relieves Concessionaire of any of its obligations under the Concession Agreement. Concessionaire is as responsible for the acts and omissions of its subcontractors, or persons either directly or indirectly employed by them, as it is for the acts and omissions of Concessionaire or persons directly or indirectly employed by Concessionaire.
- 3.13.5 Any purported subcontract(s) in violation of this Section 3.13 or of any other Section in the Concession Agreement is void.

3.14 Menu and Pricing Points; Alcoholic Beverages

- 3.14.1 Concessionaire shall provide menus that demonstrate quality, variety, and price points that reflect the casual, recreational atmosphere at Lloyd Hall. Concessionaire shall provide catering menus that demonstrate quality, variety and a range of price points suitable for varied types of events.
- 3.14.2 Except as provided in Section 3.14.2.1, the Concessionaire shall not sell, distribute or permit any liquor or malt or brewed beverages in or on the Café. For purposes of this RFP and the Concession Agreement, liquor and malt or brewed beverages are those beverages defined as liquor or malt or brewed beverages in the Pennsylvania Liquor Code, currently codified at 47 P.S. §§ 1-101 et. seq.
- 3.14.2.1 The Concessionaire, or its contractors or subcontractors, may serve alcoholic beverages in the Rental Facilities solely for private events. It is a condition precedent to the right of the Concessionaire and its contractors and subcontractors to serve alcoholic beverages during events in the Rental Facilities that they have all permits and licenses required under Applicable Laws for the serving of alcoholic beverages.

3.15 Prohibited Uses; Signs

The Concessionaire shall not use the Café for any use not expressly required or permitted under the Concession Agreement. Without limiting the application of the preceding sentence, the Concessionaire shall not at any time erect, hang, or paint any sign on or about the interior or exterior of Lloyd Hall without the prior approval of the Commissioner. Nor shall the Concessionaire, without the approval of the Commissioner, place, erect or display on or about the interior or exterior of the Café or any portion of Lloyd Hall, any utilitarian items that promote and advertise any product, including, but not limited to bicycle racks and trash receptacles. The City, through the Conservancy, intends to work with the Concessionaire to design signs that will draw park users and vehicular traffic to Lloyd Hall but also reflect the iconic park setting at Lloyd Hall. In addition to the Commissioner's approval, the Concessionaire shall obtain all approvals required by Applicable Laws for any signs the Concessionaire wishes to place, erect, hang, or paint in or on the Café or Lloyd Hall.

3.16 Security

- 3.16.1 In managing and operating the Café under the Concession Agreement, the Concessionaire shall, in coordination with the Conservancy and Lloyd Hall staff, maintain security within the Café.

3.16.2 During the Term of the Concession Agreement, the Concessionaire shall work with Lloyd Hall staff to secure Lloyd Hall at closing of the Café each evening and the conclusion of each event for which the Concessionaire has provided services.

3.17 Alterations to Lloyd Hall

Except as otherwise provided in Section 6.10 of this RFP regarding the Concessionaire's Facility Improvement Plan, the Concessionaire shall not make, cause, or permit any alterations to the Café or any other portion of Lloyd Hall without the prior review and written approval of the City and the Conservancy. The Concessionaire shall submit to the City and Conservancy plans and specifications for the proposed alterations and all additional information the City or Conservancy may reasonably request. The City and Conservancy's approval of any proposed alterations may be conditioned upon a requirement that the Concessionaire provides the City with a performance and payment bond satisfactory to the City in all respects and upon other requirements the City deems necessary or prudent to protect the interests of the City.

3.18 Smoking Policy

Smoking in Lloyd Hall is strictly prohibited. The Concessionaire shall not permit smoking in any indoor area of the Café. Smoking is permitted outside of Lloyd Hall where the City has placed proper receptacles for cigarette and cigar butts. Concessionaire may, at its sole cost and expense, place appropriate receptacles around the Patio to accommodate smokers. If Concessionaire places any additional receptacles, then Concessionaire shall promptly maintain and clean the receptacles following the closure of the Café each evening and the conclusion of each event.

3.19 Persons with Disabilities

Lloyd Hall is an ADA accessible building. An ADA accessible elevator provides access to the second floor Multi-Purpose Room, Deck and Serving Bar. The Concessionaire shall comply with all Applicable Laws to provide safe access for everyone, including persons with disabilities. The Concessionaire is encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level required. The Concessionaire is not obligated, however, to make capital improvements or alterations to the Café or any other portion of Lloyd Hall in order to comply with Applicable Laws.

3.20 Licenses and Permits

The Concessionaire shall, at its sole cost and expense, obtain and maintain during the Term all licenses and permits related to management and operation of the Café required under all Applicable Laws. The Concessionaire shall procure and maintain, and shall cause each of its contractors and subcontractors to procure and

maintain, all necessary approvals, permits and licenses related to its respective management and operation of the Café.

3.21 Concession Fee; Reporting and Payment Schedule

- 3.21.1 In the Concession Agreement, the “**Concession Fee**” means the combined **Minimum Annual Guaranteed Amount (“MAG”)** and **Gross Revenue Percentage Fee**, explained more fully in Section 6.8 of this RFP. The Concessionaire shall pay the MAG in equal monthly installments during the Term. Concessionaire shall pay the Concession Fee monthly to the City without deduction, setoff, or counterclaim no later than the 15th day of the month following the month in which the Concessionaire receives gross revenue upon which the Gross Revenue Percentage Fee portion of the Concession Fee is based. Concessionaire shall pay the Concession Fee by check made payable to “**City of Philadelphia – Parks and Recreation Programs Fund**” and shall deliver the payment to the Conservancy offices at the address provided in Section 1.4.3.
- 3.21.2 Together with its Concession Fee payment, Concessionaire shall prepare and submit to the Conservancy a monthly “**Accounting Report**”. Concessionaire shall list in the Accounting Report the Concessionaire’s daily Gross Revenues from all categories of income associated with management and operation of the Café. Concessionaire shall also include in the Accounting Report a description of the activities undertaken by the Concessionaire on or with respect to Lloyd Hall, including but not limited to marketing the Café and a list of private events held in the Rental Facilities. Concessionaire shall submit the Accounting Report to the Conservancy no later than the 15th day of each month for the preceding month’s activities, together with the Concession Fee.
- 3.21.3 Within 120 days following the end of Concessionaire’s fiscal year, Concessionaire shall submit to the Conservancy a report that includes (1) an annual summary description of the Concessionaire’s activities related to the Café, including a detailed income and expense statement, (2) the Concessionaire’s annual financial statement prepared by a Certified Public Accountant according to Generally Accepted Accounting Principles (GAAP), consistently applied, and (3) the Concessionaire’s tax return for the most recent calendar year. Concessionaire shall also promptly submit to the Conservancy all supplemental reports, documents, records, and other information that the Conservancy may reasonably require.
- 3.21.4 The requirements of Sections 3.21.1—3 survive the Concession Agreement Ending Date until Concessionaire has made the final Concession Fee Payment and submitted to the City the final Accounting Report and annual documents that those Sections require.

3.22 Ownership of Lloyd Hall

At all times during the Term of the Concession Agreement, Lloyd Hall is and will remain owned by the City of Philadelphia. No provision in the Concession Agreement creates, grants, or gives to the Concessionaire any legal title, easement, leasehold, or other interest in Lloyd Hall other than a mere license.

SECTION 4 – GENERAL CONTRACT PROVISIONS

4.1 Ethics Requirements

4.1.1 The Concessionaire and its sub-licensees, contractors, and subcontractors must not offer or give, directly or indirectly, anything of value to any City official, officer or employee, including any gift, gratuity, favor, entertainment or loan, the receipt of which would violate Executive Order No. 002-04 issued by the Mayor of Philadelphia on August 12, 2004. Similarly, the Concessionaire and its sub-licensees, contractors, and subcontractors must not offer or give, directly or indirectly, anything of value to any City officer, director, or employee which if received by any City official, officer, or employee would violate Executive Order No. 002-04.

4.1.2 Any person who offers or gives anything of value to any City official, officer, or employee, the receipt of which violates Executive Order No. 002-04, is subject to sanctions with respect to City contracts. The sanctions may range from disqualification from participation in particular City contract(s), to debarment, depending on the nature of the particular violation. The terms and duration of the sanctions will be pursuant to any rules the Procurement Commissioner promulgates with respect to contracts subject to competitive bidding, or as the Director of Finance promulgates with respect to all other contracts.

4.1.3 If the Concessionaire or its sub-licensees, contractors, and subcontractors offer or give, directly or indirectly, anything of value to any City officer, director, or employee in violation of Section 4.1.1 above, the Concessionaire will commit an Event of Default under the Concession Agreement. In addition, the City shall return or discard the item given to the City officer, director, or employee.

4.2 Tax Requirements

4.2.1 Any contractor, vendor of goods, or provider of services, who bids on and is awarded a contract by the City is subject to Philadelphia's business tax ordinances and regulations. The Concession Agreement is entered into in the City of Philadelphia, and the Concessionaire's delivery of goods into

the City, or performance of services in the City, is “doing business” in the City and subjects the Concessionaire to the City’s tax requirements, including without limitation one or more of the following taxes:

- a. Business Privilege Taxes
- b. Net Profits Tax
- c. City Wage Tax

4.2.2 Promptly following the Commencement Date, the Concessionaire, if not already paying the taxes listed above, shall apply to the City of Philadelphia Department of Revenue for a tax account number and to file appropriate business tax returns as required by Applicable Law. Applications may be submitted to the Department of Revenue at: Municipal Services Building, Public Service Concourse, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102. Questions about the application and the taxes should be directed to the Taxpayer Service Unit at: (215) 686-6600.

4.2.3. In addition to the City’s tax requirements, the Concessionaire shall timely pay all federal, state, and local taxes, assessments, and levies, however characterized (collectively, “**Assessments**”) that apply to the Concession, the Concession Agreement, and the Concessionaire’s activities under the Concession Agreement. The Concessionaire is solely liable for all late charges, interest, penalties, and fees arising from the Concessionaire’s failure to timely pay all Assessments.

4.2.4 The City is not obligated at any time during the Term to pay any Assessments related to the Concession, the Concession Agreement, or the Concessionaire’s activities under the Concession Agreement.

4.2.5 The Concessionaire’s failure to comply with the requirements of the Concession Agreement regarding payment of Assessments, or Concessionaire’s failure to otherwise pay an Assessment as required by Applicable Laws, is an Event of Default of the Concession Agreement.

4.3 Confidential and Proprietary Information of the City

The Concessionaire shall treat all information it obtains from the City that is not generally available to the public as confidential and proprietary to the City. The Concessionaire shall exercise all reasonable precautions to prevent any confidential and propriety information it obtains from the City from being disclosed to any other person or entity. The Concessionaire shall promptly indemnify, defend, and hold harmless the City from and against all liabilities, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney’s fees) resulting from or related to any use or disclosure of any City confidential or proprietary information by the Concessionaire or its

employees, or by any person acquiring that information, directly or indirectly, from the Concessionaire or its employees. The Concessionaire's obligations under this Section 4.3 survive the Concession Agreement Ending Date.

4.4 Indemnification, Release and Insurance

The Concessionaire shall promptly indemnify, defend, and release the City, as set forth in **Appendix 7** to the RFP. In addition, on or before the Commencement Date the Concessionaire shall obtain and, throughout the Term, shall maintain the types and minimum amounts of insurance set forth in **Appendix 7**. As a condition precedent to the effectiveness of the License the City gives to Concessionaire under the Concession Agreement, Concessionaire must provide the City of Philadelphia Risk Manager, on behalf of the City, with a certificate of insurance that shows the Concessionaire has obtained the types and required amounts of insurance. Concessionaire must cause copies of the certificate of insurance to be delivered to all the officials at the addresses specified in **Appendix 7**.

4.5 City's Right to Inspect

4.5.1 Concessionaire shall keep and make available complete and accurate books of accounts, financial records, and other records (collectively, "**Books and Records**") within the City of Philadelphia relating to the Concessionaire's management and operation of the Café. The Concessionaire shall maintain its Books and Records in accordance with generally accepted accounting principles consistently applied.

4.5.2 The City may inspect and audit all of the Concessionaire's Books and Records and Concessionaire's affairs at all reasonable times at Lloyd Hall, the City's offices, or other place the City may reasonably require.

4.6 Default

4.6.1 The Concessionaire will commit an "**Event of Default**" under the Concession Agreement if:

- a. Concessionaire fails to timely pay to the City in full the Concession Fee; or
- b. Concessionaire fails to timely perform, observe, fulfill, or comply with any other obligation, requirement, or prohibition imposed on or applicable to Concessionaire under the Concession Agreement.

4.6.2 If the Concessionaire commits an Event of Default under Section 4.6.1 above, and,

- a. in the case of an Event of Default under Section 4.6.1.(a), Concessionaire fails to cure the Event of Default within 5 days after receiving written notice from the City of the Event of Default,
- b. in the case of an Event of Default under Section 4.6.1.(b), Concessionaire fails to cure the Event of Default within 30 days after receiving written notice from the City of the Event of Default,
- c. in the case of an Event of Default under Section 4.6.1.(b) that cannot reasonably be cured within 30 days after receiving the City's written notice of the Event of Default, Concessionaire fails to actively start to cure the Event of Default within the 30-day period and then continuously and diligently pursue the cure to completion in not more than 90 days after receiving the City's written notice of the Event of Default, or
- d. in the case of any Event of Default that poses a threat of imminent harm to persons or property,

then without further notice the City may, in its absolute discretion, immediately suspend or terminate the Concession Agreement, in whole or in part, without liability to Concessionaire.

4.6.3 In addition to the City's rights and remedies under Section 4.6.2 above, Concessionaire is liable for all damages, costs, and expenses suffered or incurred by the City arising from or related to the Event of Default. Also, if Concessionaire commits an Event of Default and fails to cure the Event of Default within the applicable cure period (if any), then the City may exercise all rights and remedies available to it at law or in equity, in addition to the remedies available to the City under the Concession Agreement. The City may exercise its remedies under the Concession Agreement, at law, or in equity, separately, cumulatively, successively, and repeatedly, in the City's absolute discretion.

4.6.4 The City's failure or delay in providing written notice of an Event of Default to Concessionaire does not relieve or excuse the Concessionaire from any liability arising from or related to the Event of Default and does not waive any of the City's rights or remedies upon delivering written notice to the Concessionaire of the Event of Default and Concessionaire's failure to cure the Event of Default in the applicable cure period provided under Section 4.6.2, or in the case of an Event of Default that poses a threat of imminent harm to person or property, immediately and without notice.

4.7 Non-Indebtedness

4.7.1 The Concessionaire represents and warrants that Concessionaire, and all

entities under common control with the Concessionaire or controlled by it are not as of the Commencement Date indebted to the City, and Concessionaire shall not at any time during the Term of the Concession Agreement be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. The Concessionaire shall remain current during the Term of the Concession Agreement with all such payments and shall inform the City upon receipt of any notices of delinquent payments. In addition to any other rights or remedies available to the City under the Concession Agreement, at law, or in equity, the Concessionaire acknowledges that any breach or failure to conform to Concessionaire's representation, warranty, and covenant in this Section 4.7.1 may, at the option of the City, result in the termination of the Concession Agreement. In addition, Concessionaire understands that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

- 4.7.2 The Concessionaire shall cause its subcontractors (if any) to make a certification to the City similar to that made by the Concessionaire in Section 4.7.1 above. The Concessionaire shall include the provisions in Section 4.7.1 in each subcontract under the Concession Agreement, with appropriate adjustment for the name of the subcontractor.

4.8 Condition of Lloyd Hall

The City makes no representation or warranty regarding the condition of Lloyd Hall, including its suitability for the Concession. Concessionaire accepts the License given by the Concession Agreement and agrees to use the Café in its "AS IS" condition for the purposes set forth in the Concession Agreement. Concessionaire submitted its Proposal and has entered into the Concession Agreement solely based on Concessionaire's own investigation of the condition of the Café and Lloyd Hall.

4.9 Safety Measures

The Concessionaire shall, at its sole cost and expense, take all steps necessary and desirable for the safe exercise of the Concession and to prevent any injury or damage to any person or property in, on, or about the Café arising in connection with Concessionaire's exercise of the License and its management and operation of the Café.

4.10 Compliance with Applicable Laws

"Applicable Law" and "Applicable Laws" mean all present and future state,

federal, and municipal laws, ordinances, regulations, orders, rules, official opinions and interpretations, and requirements, that apply to any of the following: the Concession Agreement, the License, the Concessionaire, the Café, and Concessionaire's exercise of the License and operations of the Café. The Concessionaire shall promptly comply with all Applicable Laws, including but not limited to:

- 4.10.1 The Fair Practices Ordinance of the Philadelphia Code (Chapter 9-1100), (which prohibits discrimination against any person on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, handicap, or marital status) and the Mayor's Executive Order No. 4-86 (which prohibits, among other things, discrimination against persons with AIDS in employment and services), as they may be amended from time to time;
- 4.10.2 All federal, state, and local requirements regarding the application, obtaining, and maintaining licenses, certificates, permits, and other approvals required for operation of the Concession; and
- 4.10.3 The tax requirements of all governmental authorities having jurisdiction over the Concession, the Concession Agreement, and Concessionaire's operations under the Concession Agreement.

4.11 Entire Agreement; No Amendment

- 4.11.1 The Concession Agreement is the complete, final, and exclusive expression of the City's and Concessionaire's agreement about the Concession. All prior negotiations and agreements, if any, between the City and Concessionaire relating to the Concession are superseded by and merged into the Concession Agreement.
- 4.11.2 The Concession Agreement may not be amended or modified except in writing signed by the City officials who signed the original Concession Agreement and also signed by Concessionaire's duly authorized officers. Any proposed or purported amendment of the Concession Agreement made without strictly complying with this Section 4.11.2 is void. No course of conduct between the City or the Conservancy and Concessionaire, and no industry custom, is effective to amend the Concession Agreement or waive any of the Concessionaire's obligations under the Concession Agreement.

4.12 No Joint Venture or Partnership

The Concession Agreement does not create a joint venture or partnership between the City and the Concessionaire. The Concessionaire is an independent entity and is not an agent of the City.

4.13 Severability

The provisions of the Concession Agreement are severable. If any provision of the Concession Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, then that provision is deemed adjusted to the minimum extent necessary to cure the invalidity or unenforceability. Except as provided in the next sentence, the invalidity or unenforceability of one or more of the provisions in the Concession Agreement does not affect any other provision of the Concession Agreement. If any provision of the Concession Agreement is held invalid or unenforceable so that the City is deprived of a material consideration to it under the Concession Agreement, however, then the City may, in its absolute discretion, terminate the Concession Agreement without liability to the Concessionaire.

4.14 Waiver of Jury Trial

THE CONCESSIONAIRE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING UNDER OR RELATED TO THE CONCESSION AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY TORT CLAIM). THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE CITY TO ENTER INTO THE CONCESSION AGREEMENT. THE CONCESSIONAIRE SHALL INCLUDE A PROVISION IN ALL ITS SUBCONTRACTS UNDER THE CONCESSION AGREEMENT UNDER WHICH ITS CONTRACTORS ALSO WAIVE TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING UNDER OR RELATED TO THE CONCESSION AGREEMENT.

4.15 Place of Contract; Governing Law

The Concession Agreement is made in Philadelphia, Pennsylvania, is governed by Pennsylvania law, and is to be interpreted in accordance with Pennsylvania Law without reference to choice of law provisions.

4.16 Counterparts

The Concession Agreement may be executed by the parties in any number of counterparts, each of which is an original and all of which together are one and the same document.

4.17 Assignment Prohibited

Except as set forth in Section 3.13 above, Concessionaire shall not assign the Concession Agreement or any of its rights or obligations under the Concession Agreement. Any attempted assignment by Concessionaire in violation of this provision is void and is deemed an offer by Concessionaire to the City to immediately terminate the Concession Agreement, which the City may accept or decline in the City's sole discretion.

4.18 Venue

Concessionaire agrees that all claims arising under or related to the Concession Agreement must be filed in the Court of Common Pleas of Philadelphia County. Concessionaire consents to the exclusive jurisdiction of the Court of Common Pleas of Philadelphia County and Pennsylvania courts of appeal. Concessionaire waives its right to file a motion to remove venue for any proceeding to another jurisdiction or to any federal court.

4.19 Validity of City Approvals

4.19.1 Unless expressly specified otherwise in the Concession Agreement, any review, approval, permission, or consent that the Concessionaire is required to obtain from the City under the Concession Agreement will not be valid or effective unless obtained or confirmed in writing from the Commissioner of the Department of Parks and Recreation or the Commissioner's designee.

4.19.2 Unless expressly specified otherwise in the Concession Agreement, all reports, notices, plans, specifications, certificates, requests for approval, and submissions required of the Concessionaire that must be delivered to or approved by the City and or the Conservancy must be submitted by the Concessionaire, in the case of the City, to the Commissioner or the Commissioner's designee, and in the case of the Conservancy to the Executive Director of the Conservancy.

4.20 Interpretation

Concessionaire agrees that the rule of interpreting any ambiguities in an agreement against the drafter of the agreement does not apply to the interpretation of the Concession Agreement.

4.21 [Reserved.]

4.22 Time of the Essence

Time is of the essence in Concessionaire's compliance with the Concession Agreement.

4.23 Force Majeure Event

4.23.1 Concessionaire is excused from compliance with any obligation or limitation under the Concession Agreement where (1) compliance with the obligation or limitation is rendered impossible by any unexpected event in the nature of a hurricane, tornado, earthquake, war, terrorism, riot, embargo, or labor strike (except a strike by Concessionaire's own

employees), (2) the breakdown or failure of any apparatus, equipment or machinery in Lloyd Hall required in connection with the Café where the breakdown or failure is not in any way the fault of Concessionaire, and (3) Concessionaire cannot reasonably make alternative arrangements to comply with the obligation or limitation despite the unexpected event ((1), (2), and (3) together, a “**Force Majeure Event**”).

4.23.2 Concessionaire is excused from compliance with any obligation or limitation under the Concession Agreement because of a Force Majeure Event only for the duration of the Force Majeure Event or until Concessionaire can sooner reasonably make alternative arrangements to enable its compliance. If the Force Majeure Event renders impossible Concessionaire’s compliance with a material obligation or limitation under the Concession Agreement, and if the Force Majeure Event continues for 2 months or longer, then the City may terminate the Concession Agreement in its sole discretion.

4.23.3 The City is excused from complying with any requirements or limitations applicable to it under the Concession Agreement if the City cannot comply because of any acts of God, acts of public enemy, riot, freight embargo, strike, other work stoppage, government action, breakdown or failure of apparatus, equipment or machinery employed in supplying required services or any act or condition beyond the reasonable control of the City.

SECTION 5 – ELIGIBILITY TO SUBMIT A PROPOSAL

5.1 General

To be eligible for award of the Concession Agreement and the License, a Respondent must demonstrate that it has the skills and capacity to successfully manage and operate the Café.

5.2 Management Experience and Qualifications

In order to receive consideration for award of the Concession Agreement, a Respondent must demonstrate to the City’s satisfaction that the Respondent has both sufficient experience and sufficient financial resources to meet the requirements set forth in the RFP (“**Management Experience and Qualifications**”). Please see Section 6.4 of the RFP for qualification requirements.

5.3 Records and Reports

Respondents must have the capability to maintain and furnish management records and reports, as required in Section 3.21 and 4.5, in a format satisfactory to the City.

5.4 Respondents Restricted

5.4.1 No Proposal will be accepted from, and the Concession Agreement will not be awarded to, any person, firm, or corporation that is in arrears or is in default of any debt to the City (including without limitation tax delinquencies), any contract obligation, or any surety obligations to the City, or has failed to comply with any existing or previous contract with the City, or has failed to execute a contract that the person, firm, or corporation negotiated with the City.

5.4.2 The City will not accept any Proposal from, nor award the Concession Agreement to, any official, officer, director, official, or employee of the City or Conservancy. The City will not accept any Proposal from, nor award the Concession Agreement to, any person, firm, or corporation in which any official, officer, director, or employee of the City or Conservancy has a direct or indirect financial interest, including but not limited to a firm in which a City or Conservancy official's, officer's, director's, or employee's parent, grandparent, spouse, sibling, child, or relative in-law is an officer, director, or employee.

5.4.3 The City will not accept any Proposal from, nor award the Concession Agreement to, any Respondent that is involved in litigation against the City, including but not limited to negotiation to settle a claim against the City.

5.5 Respondents May Submit Only One Proposal

A Respondent must not be a party to more than one Proposal in connection with this RFP. If a Respondent is a party to more than one Proposal, the City may reject all those Proposals.

SECTION 6 – PROPOSAL SUBMISSION REQUIREMENTS

6.1 Responsiveness

To be eligible for award of the Concession Agreement, a Respondent's Proposal must be responsive to this RFP. For its Proposal to be considered responsive to this RFP, a Respondent must follow all the instructions in this RFP and submit all the materials and information required by this RFP.

6.2 Form of Proposal

- 6.2.1 Each Respondent must submit one original signed cover letter and Proposal and eight (8) copies of the cover letter and Proposal. The original letter must be signed by a person with authority to bind the Respondent to all of the provisions of its Proposal.
- 6.2.2 Each Respondent's Proposal must follow the form of this RFP. It must be typed on 8-1/2" x 11" paper and marked clearly on the cover page with Respondent's name and clearly refer to this RFP. Pages should be numbered clearly. Respondents must not submit Proposals in plastic sleeves or spiral binders. Illustrations may be included. Oversized drawings may be submitted, but they must be accompanied by 8½" x 11" sectionals or reduced to 8 ½" x 11". **Each Respondent must seal its Proposal in envelopes, packets, or boxes, as the case may be, to ensure confidentiality of the information prior to the Deadline for Submitting Proposals. The City will only accept Proposals in hard copy and will not accept Proposals by facsimile or by e-mail.**
- 6.2.3 Wherever a Respondent is providing information required by this RFP, the Respondent must identify the information by using the corresponding Section number, Appendix or Form of this RFP that requires the information.
- 6.2.4 Each Respondent's Proposal must include the following (please see other provisions of this RFP for a fuller explanation of several of the matters listed):
1. Signed cover letter;
 2. Description of company profile, organization, and personnel (see 6.4);
 3. Management Experience and Qualifications, and at least three references (see 5.2 and 6.4.7);
 4. Completed Solicitation for Participation and Commitment Form (see 6.5);
 5. Financial Information (see 6.6);
 6. Statement of Understanding of the Purpose of this RFP (see 6.7);
 7. Completed Concession Fee Proposal Form (see 6.8);
 8. Completed Rental Fee Schedule Proposal Form (see 6.9);
 9. Facility Improvement Plan, if applicable (See 6.10);
 10. Pro-Forma (see 6.11);
 11. Operating Plan (see 6.12).
- 6.2.5 Each Respondent must print the following information on the outside of the envelope, packet, or box in which it submits its Proposal:
1. Respondent's name and address
 2. Identification as "Proposal for Management and Operation of the Lloyd

Hall Café”

3. Deadline for Submitting Proposals, as stated on the cover page of this RFP

6.3 Submission of Proposal by “Deadline for Submitting Proposals”; Oral Presentations

- 6.3.1 Each Respondent must submit its Proposal to the City no later than the Deadline for Submitting Proposals. Each Respondent is solely responsible for delivery of its Proposal on time and to the proper location. The “Deadline for Submitting Proposals” and the location for submitting Proposals are set forth on the cover page of this RFP.
- 6.3.2 The City may request one or more Respondents to make a supplemental oral presentation to City officials after the Deadline for Submitting Proposals. The date and time of the oral presentations will be determined by the City.

6.4 Company Profile; Operating Experience

Each Respondent must:

- 6.4.1 Submit a resume or detailed description of the Respondent’s professional qualifications, demonstrating extensive experience in the industry, or affiliation with individuals and firms, or either of them, with that expertise. The resume or detailed description must include the number of Respondent’s employees and number of years Respondent has been in business.
- 6.4.2 Explain its corporate organizational structure and ownership.
- 6.4.3 Provide the names and addresses of all owners and corporate officers of the entity submitting the Proposal.
- 6.4.4 Provide its Federal Employer Identification Number.
- 6.4.5 Identify all parent, subsidiary, affiliate, and partnership relationships of its company with other businesses (collectively, “**Related Companies**”).
- 6.4.6 If Respondent is a partnership or a joint venture, give the date of the partnership or joint venture agreement, the county and state where the agreement was filed, and list the name and address of each partner or joint venture entity and the percentage of ownership of each partner or joint venture entity. If Respondent is a corporation or limited liability company, the Respondent must provide a copy of its articles of incorporation, give the date and state of the company’s organization and

incorporation, and list the names and addresses of the company's board of directors and officers, or managers or members, as the case may be.

- 6.4.7 Provide at least three (3) recent references with whom the Respondent has worked and who can describe such matters as the Respondent's financial and operational capability (e.g. operating quality café or restaurant services at facilities comparable in size to Lloyd Hall). The Respondent must include the name of the reference entity, a description of the nature of the listed reference's experience with the Respondent, and the name, title, address, email address, and telephone number of a contact person at the reference entity.
- 6.4.8 List all contracts the Respondent and all its Related Companies have had with the City, or with the City, in the last five (5) years.
- 6.4.9 If Respondent or any of its Related Companies has filed for bankruptcy protection in the last five (5) years (or had a bankruptcy petition filed against it), Respondent must provide a brief explanation of the circumstances and outcome of the filing.
- 6.4.10 List all surety companies that have previously issued performance bonds on behalf of Respondent or any of Respondent's Related Companies, the addresses of each surety company, the amount of each bond, and the term of each bond. List any performance bonds that were called in the last five years due to unsuccessful completion of the contract.

6.5 Participation of Minority, Woman and Disabled Owned Business Enterprises In City Contracts

The Concession Agreement is subject to Mayor's Executive Order, No.02-05 relating to the participation of minority-owned, women-owned, and disabled-owned businesses (collectively, "M/W/DSBEs") in City contracts. Respondents are required to respond to the requirements specified in **Appendix 8** of this RFP and should submit the "**Solicitation for Participation and Commitment Form**" (the "**S & C Form**") attached to this RFP as **Form A** to identify its solicitations and any commitments made with M/W/DSBEs to participate in the Concession Agreement. Respondents must indicate on the S & C Form the work being performed and the dollar amount and percentage of work being performed by each M/W/DSBE firm. Respondents are also required to submit documentation of their "Good Faith Efforts" (as more fully described in **Appendix 8**), whether or not they have achieved any commitments with M/W/DSBEs. For a listing of firms certified as M/W/DSBEs, please visit <http://mbec.phila.gov/home/directory.asp>. The City may, in its sole discretion, reject any Proposal that does not include a completed S & C Form.

6.6 Financial Information

Each Respondent must provide evidence of its financial capacity and stability; accountant prepared financial statements for the most recent fiscal year ended that are in accordance with generally accepted accounting principles; and a federal tax return. Each Respondent must also provide creditor reference(s) and a description of the loans or lines of credit made available to the Respondent and dates that the accounts were established as well as the name of the Respondent's creditor's account officer(s). By submitting a Proposal each Respondent authorizes the City to contact the Respondent's creditor references regarding that information.

6.7 Understanding the Purpose of this RFP and the Rights and Obligations of the Concessionaire

Sections 3 and 4 of this RFP set forth the minimum requirements that the Concessionaire must fulfill. Each Respondent must provide a brief narrative that demonstrates its understanding of this RFP's goals and objectives, the nature and scope of the work involved, and how Respondent's expertise will enable Respondent to fulfill the goals and objectives of this RFP and maximize the potential of the Lloyd Hall Café. Also, each Respondent must describe its approach to the proposed Concession, including Respondent's work plan and strategy.

6.8 Concession Fee Proposal: MAG and Gross Revenue Percentage Fee

6.8.1 Using **Form B**, each Respondent must propose a **MAG** payment to the City of not less than \$10,000 per year for the right to manage and operate the Café.

In addition to the MAG, also using **Form B**, each Respondent must propose a **Gross Revenue Percentage Fee** to be paid monthly to the City for management and operation of the Café.

6.8.1.1 In this RFP and the Concession Agreement, "**Gross Revenues**" means all revenue received by the Concessionaire from management and operation of the Café or exercise of the License, from all sources and however characterized. Without limiting the definition of Gross Revenues immediately above, Gross Revenues include, but are not limited to, the following: revenue from food and beverage sales; revenue from private events, special events and other special uses of the Rental Facilities; and all other fees, sales, rentals, charges, or costs imposed by the Concessionaire, however characterized, for use of any of the Café, the Rental Facilities, or for goods or services Concessionaire provides at or from the Café.

6.9 Rental Fee Schedule

Using **Form C**, each Respondent must propose a standard “**Rental Fee Schedule**” for use of the Rental Facilities.

- 6.9.1 Rental Fees may vary by season, time and day of the week, room or area being rented, and type of event (e.g., birthday party, cocktail reception, fundraiser, etc.).
- 6.9.2 The Rental Fee Schedule is subject to the written approval of the Conservancy.

6.10 Facility Improvement Plan; Renewal Term Facility Improvement Plan

The Respondent shall submit a plan that documents all fixed equipment, non-fixed equipment and/or improvements the Respondent plans to make at Lloyd Hall during the Initial Term of the Concession Agreement (“**Facility Improvement Plan**”). The Facility Improvement Plan must include a description of the costs of the fixed equipment, non-fixed equipment and improvements the Respondent plans to make at Lloyd Hall. The City also requests a short narrative description of the Respondent’s long- term vision for improvements to the Café and how those improvements might improve park users’ experience and the sales and marketing of the Café. The narrative may be provided at the discretion of the Respondent as a supplement to the Respondent’s Facility Improvement Plan.

6.10.1 If a Respondent is selected to execute the Concession Agreement with the City, then the City shall endeavor to review the Respondent’s Facility Improvement Plan not later than 30 days following execution of the Concession Agreement. The Facility Improvement Plan is not approved unless the Commissioner or the Commissioner’s designee approves it in writing. The Commissioner may, however, review the Facility Improvement Plan prior to the City’s and Concessionaire’s execution of the Concession Agreement.

6.10.1.1 Following the later of the Commencement Date or the Commissioner’s approval of the Facility Improvement Plan, the Concessionaire shall promptly commence and diligently implement the Facility Improvement Plan, but in no event shall Concessionaire fail to complete the Facility Improvement Plan within 90 days following the later of the Commencement Date or the Commissioner’s approval. The Concessionaire shall not implement any component of the Facility Improvement Plan not expressly approved by the Commissioner.

6.10.2 Equipment the Concessionaire installs that is not a fixture remains the property of the Concessionaire.

- 6.10.3 All capital improvements and fixtures are subject to the provisions of Section 3.5.3 of the RFP.
- 6.10.4 The City will not consider Proposals that request or require reimbursement to the Concessionaire of any portion of Concessionaire's capital improvement cost if the Concession Agreement is terminated following an Event of Default or a Force Majeure Event before the end of the Term.
- 6.10.5 If the City renews the Concession Agreement for one or more Renewal Terms in accordance with Section 3.1 above, then the Concessionaire shall submit to the City any plans the Concessionaire has for making fixed equipment, non-fixed equipment and/or improvements to Lloyd Hall ("**Renewal Term Facility Improvement Plan**") during the upcoming Renewal Term. The Concessionaire shall submit its Renewal Term Facility Improvement Plan reasonably promptly following the Concessionaire's receipt of the City's Renewal Notice. The Concessionaire's Renewal Term Facility Improvement Plan may be implemented upon receipt of the City's written approval and shall be subject to the provisions of this Section 6.10.

6.11 Pro-Forma

Each Respondent must include in its proposal a pro-forma projection of the revenue and Concession Fees for the Initial Term and Renewal Terms (i.e., a four-year projection) for the Café. The pro-forma projection must include explanations of the assumptions used in its formulation.

6.12 Operating Plan

- 6.12.1 All Proposals must include a detailed operating plan for management and operation of the Café ("**Operating Plan**"). At a minimum, the following must be included in the Operating Plan:
- 6.12.1.1 A detailed description of how the Respondent would manage and operate the Café, including but not limited to: an Operating Schedule, staffing requirements and equipment needs. Despite Section 3.3.2 of the RFP and the City's suggesting Operating Schedule, each Respondent may submit a proposed Operating Schedule that the Respondent believes is appropriate for the Café. The Respondent's proposed Operating Schedule may include extended hours to accommodate morning and evening traffic, or either of them, or operating hours between November 1st and March 31st.
- 6.12.1.2 Sample café menus that demonstrate quality, variety and price points reflecting the casual, recreational atmosphere at Lloyd

Hall.

- 6.12.1.3 Business development and marketing plan for maximizing the number of guests at the Rental Facilities, including but not limited to the development of clientele for private events and meetings and use of the Patio for barbequing/grilling.
 - 6.12.1.4 Sample catered event menus that demonstrate quality, variety and a range of price points for varied types of private events.
 - 6.12.1.5 Identification of Respondent's on-site management team and description of the team's background and experience.
 - 6.12.1.6 An estimated number of employees and the positions the employees will fill in Concessionaire's management and operation of the Café.
 - 6.12.1.7 The customer service standards Respondent deems necessary to manage and operate the Café.
 - 6.12.1.8 Description of any other requirements not mentioned in Section 3 of this RFP that are required to ensure the safe, sanitary and legal management and operation of the Café.
- 6.12.2 If the City renews the Concession Agreement for one or more Renewal Terms in accordance with Section 3.1 above, then the Concessionaire shall submit to the Conservancy an updated Operating Plan ("**Annual Operating Plan**") for managing and operating the Café during the upcoming Renewal Term. The Concessionaire shall submit its Annual Operating Plan reasonably promptly following the Concessionaire's receipt of the City's Renewal Notice, but not later than 10 business days before the start of the upcoming Renewal Term. The Concessionaire's Annual Operating Plan is subject to the Conservancy's approval, which may be subject to conditions and changes the Conservancy reasonably requires.

6.13 Confidential Information

- 6.13.1 If a Respondent chooses to include material of a confidential nature, then the Respondent must mark the confidential material as noted below and explain why it is confidential. The City will exercise reasonable care to honor confidentiality requests, subject to Applicable Laws.
- 6.13.2 Each Respondent must identify the pages of its Proposal that contain confidential information by prominently marking those pages as explained below. Respondents are reminded that the mere designation of information as confidential does not necessarily make it so under

Applicable Law. Respondents should include the following notice in the front of each copy of their Proposal:

NOTICE

The information on pages _____ of this Proposal, identified by the words “**Confidential Proprietary Information**” in boldface type of at least 12 points in the top right-hand corner of each page, contain proprietary information that the Respondent desires not be disclosed. The Respondent requests that such information be used only for evaluation of Respondent’s Proposal, and not be disclosed to the public except as may be required by Applicable Law.

6.14 Objections

In its Proposal, a Respondent may state objections to the requirements of this RFP. Any objections must be stated in a separate section of the Proposal, must identify the specific provisions and language of this RFP that Respondent objects to, must state the reason(s) for each objection, and must propose alternative provisions. By not objecting to a provision and submitting a Proposal in response to this RFP, a Respondent irrevocably agrees that the provision is acceptable to it. The City may, in its sole discretion, evaluate a Proposal, in part, on the number and nature of objections made by the Respondent to the provisions of this RFP. In no event will the City’s selection of a Respondent for further negotiations leading to a Concession Agreement constitute acceptance by the City of any objection or proposed alternative provision set forth in that Respondent’s Proposal.

SECTION 7 – CONDITIONS REGARDING PROPOSALS; RESERVATION OF RIGHTS BY CITY; EFFECTIVENESS OF CONCESSION AGREEMENT

7.1 Conditions Regarding Proposals

By submitting a Proposal in response to this RFP, the Respondent acknowledges and agrees to the following conditions relative to its Proposal:

7.1.1 The Respondent is fully responsible for all its costs associated with the development, preparation, and submission of its Proposal and all other materials it submits in response to this RFP. The City assumes no contractual or other obligations toward Respondent as a result of the issuance of this RFP, the preparation or submission of a Proposal by Respondent, the City’s evaluation of Proposals, or the City’s selection of Respondent for further negotiations;

7.1.2 It is Respondent’s responsibility to ensure that its Proposal is complete,

accurate, and submitted by the Deadline for Submitting Proposals set forth on the cover page of this RFP;

- 7.1.3 Upon submission, Respondent's Proposal becomes the property of the City and will not be returned to the Respondent;
- 7.1.4 Respondent will promptly permit the City to inspect projects and facilities referred to in Respondent's statement of its Management Experience Qualifications and References;
- 7.1.5 Respondent will promptly provide additional information or more detailed information upon request by the City, including information inadvertently omitted by a Respondent;
- 7.1.6 Respondent will promptly send representatives for interviews with City officials when requested by the City;
- 7.1.7 Respondent's Proposal shall remain open for acceptance by the City and in full effect for at least 120 calendar days from the Deadline for Submitting Proposals set forth on the cover page of this RFP;
- 7.1.8 Respondent may not issue news releases (including, but not limited to, commercial advertising) pertaining to this RFP without prior written approval of the City;
- 7.1.9 Respondent may withdraw or modify its Proposal at any time prior to the Deadline for Submitting Proposals by sending the City a written notice of withdrawal or by submitting the modification in writing, signed in the same manner and by the same person(s) who signed Respondent's initial Proposal, to the address specified on the cover page of this RFP for submitting Proposals.

7.2 Reservation of Rights

The City reserves, and may in its sole discretion exercise, the following rights and options with respect to the proposal submission, evaluation and selection process under this RFP at any time prior to execution of the Concession Agreement:

- 7.2.1 To reject any Proposal if, in the City's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP, the Respondent does not meet the qualifications set forth in the RFP, or it is otherwise in the City's best interest to do so;
- 7.2.2 To reject all Proposals, or to postpone, cancel and reissue the RFP or not reissue the RFP if, in the City's sole judgment, it is in the City's best interest to do so;

- 7.2.3 To supplement, amend, or otherwise modify any section of this RFP at any time prior to selection of one or more Respondents for negotiation;
- 7.2.4 To waive any Proposal informality, defect, or deviation from the requirements of this RFP that, in the sole judgment of the City, is not material to the Proposal;
- 7.2.5 To request that some or all of the Respondents clarify, modify or supplement their respective Proposals, including information inadvertently omitted;
- 7.2.6 To request interviews or oral presentations from one or more Respondents;
- 7.2.7 To request recent financial statements from a Respondent as a means of verifying its capability to meet all the obligations of the Concessionaire;
- 7.2.8 To conduct investigations with respect to the qualifications of each Respondent and call a Respondent's references;
- 7.2.9 To enter into negotiations and discussions with any one or more Respondents regarding any aspect or provision of their Proposals; and
- 7.2.10 To make modifications to the responsibilities of the Concessionaire as set forth in this RFP that, in the City's reasonable discretion, are not material without informing other Respondents or permitting other Respondents to modify their respective Proposals, unless the City, in its sole discretion, determines that permitting other respondents to modify their Proposals is in the City's best interest.

7.3 Concession Agreement Effectiveness

The Concession Agreement will not be binding upon the City, and a Respondent will not become the Concessionaire, until after all of the following have occurred:

- 7.3.1 The Concession Agreement has been signed by the Respondent and approved by the City's legal counsel;
- 7.3.2 The Concession Agreement has been executed by the City; and
- 7.3.3 The Respondent has submitted certificates of insurance in accordance with Section 4.4 of this RFP and **Appendix 7**.

7.4 Acceptance of the Provisions of this RFP

By submitting a Proposal in response to this RFP, the Respondent expressly acknowledges and agrees to all the provisions contained in this RFP, including but not limited to the rights reserved by the City.

SECTION 8 – EVALUATION OF PROPOSALS

8.1 Selection Committee

Those Proposals that the City determines in its sole discretion are responsive to this RFP will be reviewed by a “**Selection Committee**” comprised of City officials and employees.

8.2 Proposal Evaluation Criteria

8.2.1 The Selection Committee will evaluate Proposals by considering the criteria listed below. No particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list.

8.2.1.1 Demonstrated experience at operating facilities that are similar in size and nature to the Lloyd Hall Café.

8.2.1.2 Proposed Concession Fee and Facility Improvement Plan.

8.2.1.3 Financial capacity to perform the services required by the RFP and presented in the Respondent’s Proposal.

8.2.1.4 The proposed Operating Plan.

8.2.1.5 Menu quality, variety and range of pricing points.

8.2.1.6 Any other factors the Selection Committee considers relevant to the evaluation to the Proposal.

8.2.2 The Selection Committee may ask one or more Respondents to discuss their respective Proposals with the Selection Committee. Discussion may cover any matter related to this RFP or that the City deems relevant to the proposed Concession.

8.3 Award of Concession Agreement

The City will award the Concession Agreement to the Respondent whose proposal the City, in its sole discretion, determines best meets the goals of the City in issuing this RFP and is in the best interest of the City. For that reason, the City may not necessarily award the Concession Agreement to the Respondent

offering the highest Concession Fee.

8.4 Amendments of Concession Agreement

The City reserves the right, in its sole discretion, but subject to the Concessionaire's agreement, to amend the Concession Agreement in light of then-prevailing circumstances as a condition to renewing the Concession Agreement.

SECTION 9 – SIGNING OF PROPOSALS

Each Respondent must sign its Proposal using one of the forms on the following pages as is appropriate for the Respondent's form of business organization. The Proposal must be signed by a person authorized to bind the entity submitting the Proposal.

[The remainder of this page left blank intentionally; signature page follows.]

If Respondent is an INDIVIDUAL, PARTNERSHIP, or JOINT VENTURE, the Respondent must date and sign the RFP here:

This ____ day of _____, 2010

Name of Respondent

Signature of Individual or Authorized Signer

Printed Name and Title of Signer

Additional Authorized Signer (if applicable)

Printed Name & Title of Additional Authorized Signer (if applicable)

Federal Employer Identification Number

Phone Number

E-mail Address

Street Address

City, State, Zip Code

If Respondent is a CORPORATION or LIMITED LIABILITY COMPANY, the Respondent must sign and date the RFP here:

This ____ day of _____, 2010

Corporate Name

Signature of Authorized Official

Printed Name and Title of Signer

Additional Authorized Signer (if applicable)

Printed Name & Title of Additional Authorized Signer (if applicable)

Federal Employer Identification Number

Phone Number

E-mail Address

Street Address

City, State, Zip Code

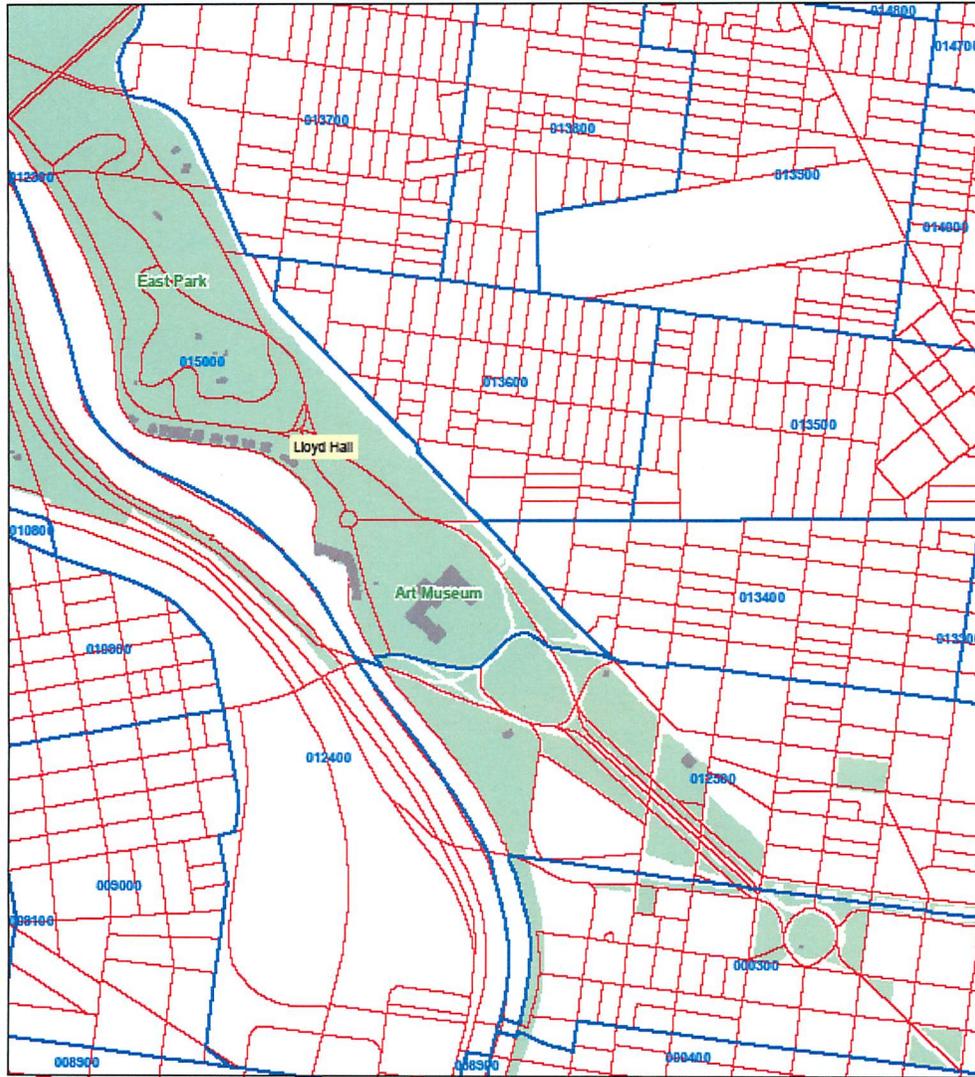
APPENDIX 1

LLOYD HALL – PHOTOS



APPENDIX 2

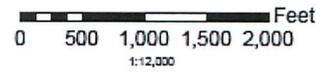
LLOYD HALL – CENSUS MAP



Census blocks within 1/4 mile and 1/2 mile of Lloyd Hall were selected. The corresponding total population was found online at <http://www.census.gov/main/www/cen2000.html>
Only blocks on the East side of the Schuylkill River were counted, and numbers were rounded to the nearest hundred.
2,000 people within 1/4 mile
9,200 people within 1/2 mile

Census 2000 Data

- Census Tracts
- Census Blocks



* Please note that census data relates to census block # 013600.

APPENDIX 3

LLOYD HALL – LEAGUE AND FREE SPORTS SCHEDULE



CITY OF PHILADELPHIA FAIRMOUNT PARK

Lloyd Hall, #1 Boathouse Row,
Kelly at Water Works Drive, Philadelphia, PA 19130
215-685-3936/37 - fax: 685-3935

Schedule December through March 2009/2010

Gymnasium

Monday	- 4:30 PM to 6:00 PM - 6:00 PM to 8:00 PM - 8:00 PM to 10:00 PM	-Free Play Basketball -IRS employees -Philadelphia Jugglers Club
Tuesday	- 4:30 PM to 6:00 PM - 6:00 PM to 8:00PM - 8:00 PM to 10:00 PM	-Free Play Basketball -Palmer's Barber Shop -International Folk Dancing
Wednesday	-4:30 PM to 6:00 PM -6:00 PM to 10:00 PM	-Free Play Basketball -SEPTA League
Thursday	-4:30 PM to 6:00 PM -6:00 PM to 10:00 PM	-Free Play Basketball -Brother's United Basketball Fellowship
Friday	-4:30 PM to 5:45 PM -6:00 PM to 8:00 PM -8:00 PM to 10:00 PM	-Free Play Basketball -Water Department Volleyball League -Adult Co-ed Free Play Volleyball
Saturday	-9:00 AM to 5:00 PM	-Fairmount Sports Association
Sunday	-9:00 AM to 1:00 PM -1:00 PM to 4:45 PM	-Adult Free Play Basketball -Adult Co-ed Free Play Volleyball

Please Note:

To participate in a designated Adult activity you must be 18 years of Age. Proof of Age required on request.

Sneakers only.

Bring your own Basketball

APPENDIX 4

2009 SPECIAL EVENTS ALONG LLOYD HALL & KELLY DRIVE

Please note that events on the Kelly Drive Bike Path typically begin and end at Lloyd Hall (21 scheduled events for calendar year 2010).

Location	Event	Event Date	Event Day
Kelly Drive Bike Path	NERRC Winter 10K	7-Mar-10	Sunday
Lloyd Hall Gym	Polar Bear Plunge	8-Mar-10	Sunday
Kelly Drive/Schuylkill River	Manny Flick Regatta	14-Mar-09	Saturday
Lloyd Hall Gym, Kelly Drive Bike Path	JEVS Wellness Walk	20-Mar-10	Saturday
Kelly Drive/Schuylkill River	Manny Flick Regatta	21-Mar-10	Sunday
Kelly Drive/Schuylkill River	Manny Flick Regatta	28-Mar-10	Sunday
Kelly Drive/Schuylkill River	Murphy Cup Regatta	3-Apr-10	Saturday
Kelly Drive Bike Path	City Six 5K	3-Apr-10	Saturday
Kelly Drive Bike Path	Falcon Fun Run	10-Apr-10	Saturday
Kelly Drive/Schuylkill River	Manny Flick Regatta	11-Apr-10	Sunday
Kelly Drive Bike Path	Walk for Parkinsons	17-Apr-10	Saturday
Kelly Drive/Schuylkill River	Kerr Cup Regatta	17-Apr-10	Saturday
Kelly Drive/Schuylkill River	Manny Flick Regatta	18-Apr-10	Sunday
Kelly Drive Bike Path	Penn Relay 20K	18-Apr-10	Sunday
Kelly Drive Bike Path	American Genocide Walk	24-Apr-10	Saturday
Kelly Drive/Schuylkill River	Catholic Championship Regatta	25-Apr-10	Sunday
Kelly Drive/Schuylkill River	City Championship Regatta	2-May-10	Sunday
Lloyd Hall Gym	Dad Vail Regatta Registration	7-May-10	Friday
Kelly Drive/Schuylkill River	Dad Vail Regatta	8-May-10	Saturday
Lloyd Hall Gym	Race for the Cure Registration	8-May-10	Friday
Kelly Drive	Race for the Cure	9-May-10	Saturday
Kelly Drive/Schuylkill River	Dr. White Regatta	9-May-10	Sunday
Kelly Drive/Schuylkill River	Stotesbury Regatta	14-May-10	Friday
Kelly Drive/Schuylkill River	Stotesbury Regatta	15-May-10	Saturday
Kelly Drive Bike Path	SMA Run Walk & Roll	16-May-10	Sunday
Kelly Drive Bike Path	Mercy Votech	22-May-10	Saturday
Kelly Drive Bike Path	A Race Through Time	23-May-10	Sunday
Kelly Drive	Oddssey Half Marathon	29-May-10	Saturday
Kelly Drive/Schuylkill River	Independence Dragon Boat Festival	5-Jun-10	Saturday
Kelly Drive	Bike Championship	6-Jun-09	Sunday
Kelly Drive/Schuylkill River	Schuylkill Navy Regatta	12-Jun-10	Saturday
Kelly Drive Bike Path	Prediction Run	17-Jun-10	Thursday
Kelly Drive Bike Path	Eritrean Martyrs Walk	19-Jun-10	Saturday
Kelly Drive Bike Path	Liver Walk	19-Jun-10	Saturday
Kelly Drive Bike Path	Alpha Kappa Alpha Sorority 5K	26-Jun-10	Saturday
Kelly Drive and Bike Path	Philadelphia Triathlon	26-Jun-10	Saturday
Kelly Drive and Bike Path	Philadelphia Triathlon	27-Jun-10	Sunday
Kelly Drive/Schuylkill River	Independence Day Regatta	2-Jul-10	Friday
Kelly Drive/Schuylkill River	Independence Day Regatta	3-Jul-10	Saturday
Kelly Drive/Schuylkill River	Independence Day Regatta	4-Jul-10	Sunday
Kelly Drive/Schuylkill River	Philadelphia Youth Regatta	17-Jul-10	Saturday
Lloyd Hall Gym	20x24 Relay Event	17-Jul-10	Saturday
Lloyd Hall Gym	20x24 Relay Event	18-Jul-10	Sunday
Kelly Drive	Quakercity Masters Regatta	31-Jul-10	Saturday
Kelly Drive	Granfondo	8-Aug-10	Sunday
Kelly Drive	Bayada Nurses Regatta	28-Aug-10	Saturday
Lloyd Hall, Kelly Drive	Century Bike Race	11-Sep-10	Saturday
Lloyd Hall Gym, East & West Park	Bike Philly	12-Sep-09	Sunday
Kelly Drive Bike Path	Miles for Migraines	12-Sep-09	Saturday
Kelly Drive	Philadelphia Distance Run & 5K	19-Sep-10	Sunday
Kelly Drive/Schuylkill River	Hutchinson Cup Regatta	25-Sep-10	Saturday
Kelly Drive Bike Path	Stroll & Roll	26-Sep-09	Sunday
Kelly Drive/Schuylkill River	Dragon Boat Festival	2-Oct-10	Saturday
Kelly Drive Bike Path	Philly Health Cares 5K	3-Oct-10	Sunday
Kelly Drive Bike Path	Temple Public Health	3-Oct-10	Sunday
Kelly Drive/Schuylkill River	Navy Day Regatta	9-Oct-10	Saturday
Kelly Drive/Schuylkill River	Row for the Cure Regatta	10-Oct-10	Sunday
Kelly Drive Bike Path	SFDV	10-Oct-10	Sunday
Kelly Drive and Bike Path	Breast Cancer Walk	15-Oct-10	Friday
Kelly Drive and Bike Path	Breast Cancer Walk	16-Oct-10	Saturday
Kelly Drive and Bike Path	Breast Cancer Walk	17-Oct-10	Sunday
Kelly Drive	AIDS Walk	18-Oct-09	Sunday
Lloyd Hall Gym	Head of the Schuylkill Regatta Registration	29-Oct-10	Friday
Kelly Drive/Schuylkill River	Head of the Schuylkill Regatta	24-Oct-10	Saturday
Kelly Drive/Schuylkill River	Head of the Schuylkill Regatta	25-Oct-10	Sunday
Kelly Drive Bike Path	MDA Walk	6-Nov-10	Sunday
Kelly Drive Bike Path	Hydrocephalus Walk	7-Nov-10	Sunday
Kelly Drive/Schuylkill River	Frostbite Regatta	13-Nov-10	Saturday
Kelly Drive Bike Path	Tower of Hope	13-Nov-10	Saturday
Kelly Drive/Schuylkill River	Bill Braxton Memorial Regatta	14-Nov-10	Sunday
Kelly Drive Bike Path	Roman Run	14-Nov-10	Sunday
Kelly Drive Bike Path	Philadelphia Marathon	21-Nov-10	Sunday
Kelly Drive	Schuylkill Navy Cross Country	25-Nov-10	Sunday
Total 2009 Events	65		

* Events highlighted in yellow require a portion of Kelly Drive to be closed. However, vehicular access to Lloyd Hall may be made via a short alternative route through East Park.

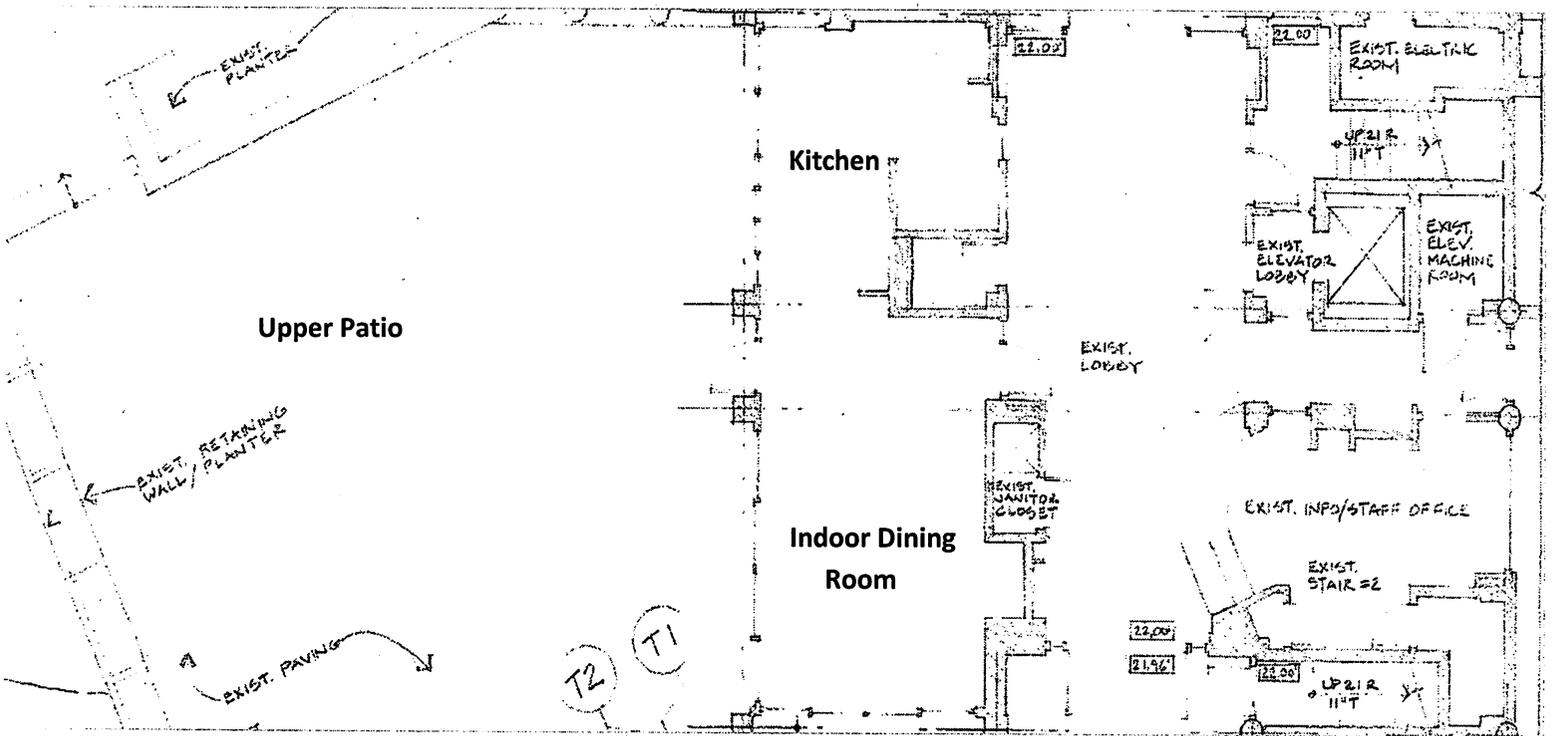
** Events highlighted in pink may impact the availability of public parking at Lloyd Hall.

*** Events highlighted in green require closure of Kelly Drive. Only pedestrian access will be available at Lloyd Hall

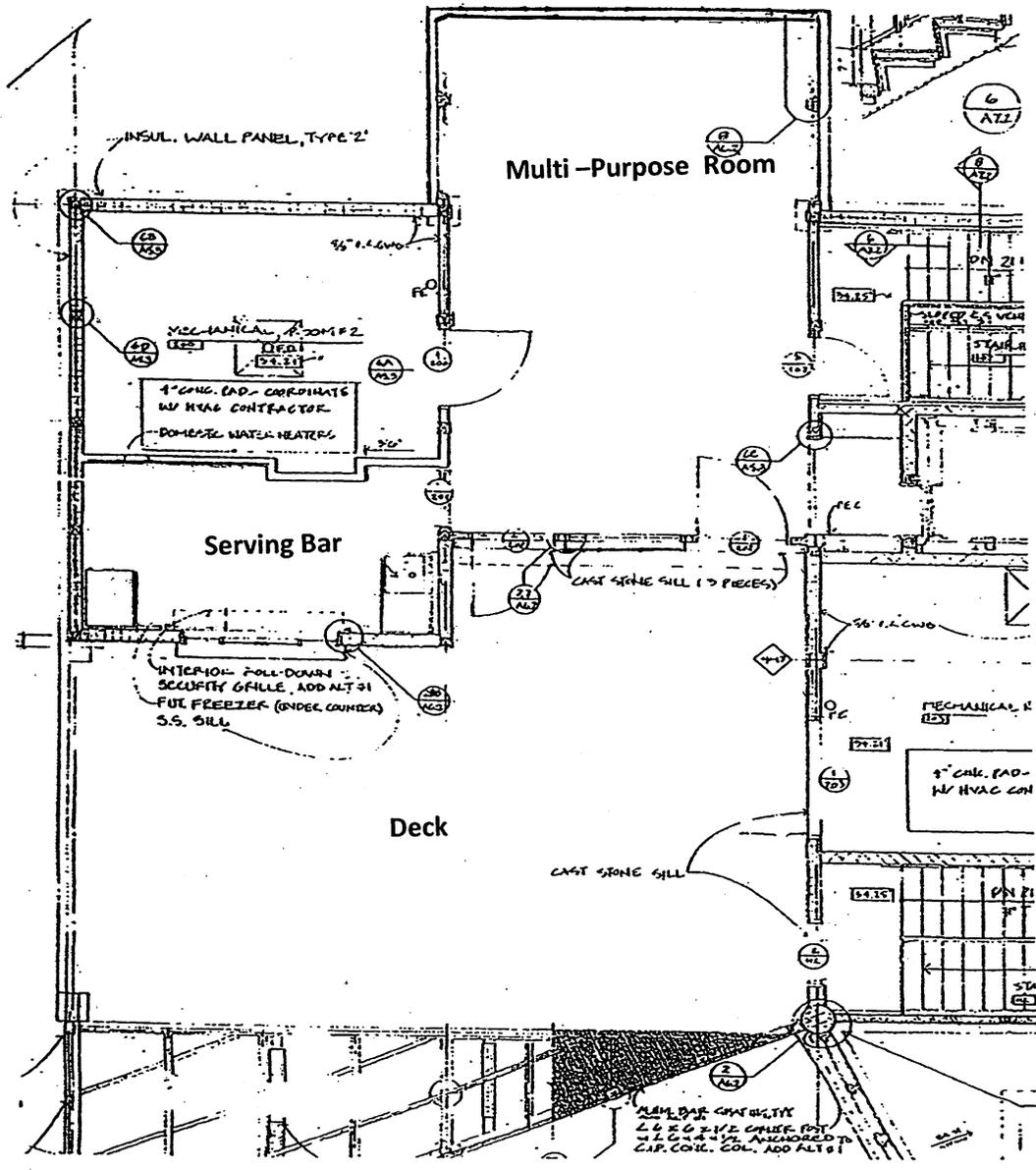
APPENDIX 6

LLOYD HALL – FLOOR PLAN

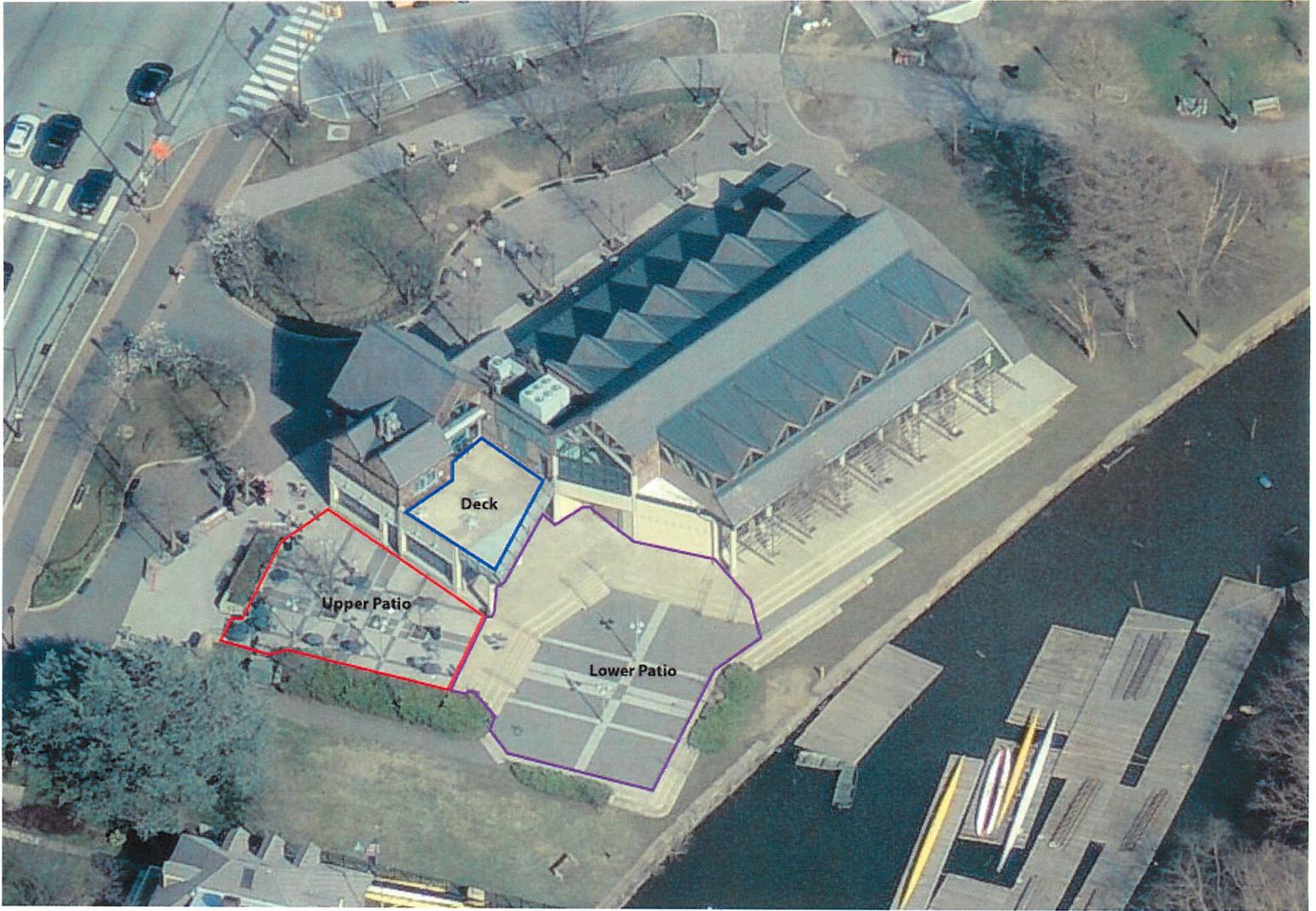
Lloyd Hall
Ground Floor Partial Interior and Exterior Floor Plan



Second Floor Interior and Exterior of Lloyd Hall



Exterior View of Lloyd Hall



APPENDIX 7

INDEMNIFICATION, RELEASE AND INSURANCE

1. Indemnification

Concessionaire shall promptly indemnify, defend, hold harmless the Fairmount Park Conservancy (the “**Conservancy**”) and the City of Philadelphia (the “**City**”) from and against all claims, suits, causes of actions, cost recovery actions, costs, interest and expenses, demands, judgments, liabilities, damages, liens, mechanics or materialmen’s liens and claims of lien (including reasonable attorney’s fees and costs) (individually, a “**Claim**” and collectively the “**Claims**”), arising in whole or in part from the Concessionaire’s or any of its contractors’ or subcontractors’, employees’, invitees’, agents’, successors’ and assigns’ entry onto and use of Lloyd Hall, including but not limited to property damage and personal injury (including death). In the event of any Claim, Concessionaire shall promptly defend the Claim on behalf of the Conservancy and the City, and Concessionaire shall pay, perform and discharge any judgment, order or decree entered or agreed to on account of the Claim. Concessionaire may not settle any Claim without the prior written approval of the Conservancy and the City. Despite the previous provisions of this Appendix 7 Paragraph 1, the Conservancy and City each have the right, but not the obligation, to defend itself with respect to a Claim and appoint its own counsel to defend the Claim. The provisions of this Appendix 7 survive the expiration or sooner termination of the Concession Agreement.

2. Release

In consideration of the Concession and License given to the Concessionaire by Conservancy, Concessionaire, for itself and its officers, directors, employees, agents, sub-licensees, contractors and subcontractors, successors and assigns, and any person claiming by, through, or under them, or any of them (collectively, the “**Releasers**”), remises, quitclaims, releases and forever discharges the Conservancy and the City, and their respective officials, officers, directors, employees, boards, commissions, agents, successors and assigns (acting officially or otherwise) (collectively, the “**Releasees**”), from any and all, and all manner of, actions and causes of action, suits, claims, liabilities and demands whatsoever in law or in equity which the Concessionaire or any of the Releasers may have against the Conservancy, the City or any of the Releasees, relating in any way to any condition in, on, or about Lloyd Hall during the exercise of the Concession and License, the entry onto or use of Lloyd Hall pursuant to the Concession Agreement and the RFP, or relating in any way to the exercise of any rights or performance of any obligations under the Concession Agreement or the RFP.

3. Insurance

A. On or before the Commencement Date, the Concessionaire shall promptly procure and throughout the Term shall maintain, at its sole cost and expense, the types and minimum limits of insurance coverage specified below. Concessionaire shall procure all insurance required below from reputable insurers who are acceptable to the Conservancy and the City and who are authorized to do business in the Commonwealth of

Pennsylvania. Concessionaire shall cause the insurance policies to provide for at least thirty (30) days prior written notice to be given to the Conservancy and the City in the event coverage is materially changed, cancelled, non-renewed, or scheduled to lapse. All insurance required in this Appendix 7 must be written on an "occurrence" basis and not a "claims-made" basis, unless otherwise noted below.

- i. **Worker's Compensation and Employers' Liability**
 - a. Workers Compensation – Statutory Limits;
 - b. Employers Liability:
\$100,000 Each Accident – Bodily Injury by Accident;
\$100,000 Each Employee – Bodily Injury by Disease;
\$500,000 Policy Limit – Bodily Injury by Disease;
 - c. Other states endorsement including Pennsylvania.
- ii. **General Liability Insurance**
 - a. Limits of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$100,000 per occurrence for damage to rented premises; \$1,000,000 personal and advertising injury; and \$2,000,000 products and completed operations aggregate.
 - b. Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability and broad form property damage (including completed operations) liability.
- iii. **Auto Liability Insurance**
 - a. Limits of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - b. Coverage: Owned, non-owned, hired, rented or leased vehicles.
- iv. **Professional Liability Insurance** (only applicable for Concessionaire's architectural and engineering consultants)
 - a. Limit of Liability: \$1,000,000 per occurrence, with a deductible not to exceed \$50,000.
 - b. Coverage: Architectural and engineering services errors and omissions including liability assumed under contract.
 - c. This coverage may be written on a "claims-made" basis provided that coverage for occurrences happening during the performance of the services required under this contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after the completion of the services.

- v. **Umbrella Liability Insurance** at limits totaling \$5,000,000 per occurrence when combined with insurance required under i. through iii. above.
- vi. **Liquor Liability Insurance**
Limit of liability: \$2,000,000 per occurrence combined single limit for liability arising out of the manufacture, distribution, sale or service of alcoholic beverages, if applicable.
- vii. **Property Insurance (“All Risk”)**
Covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Concessionaire’s care, custody and control, or used by Concessionaire under the Concession Agreement and RFP, in an amount equal to the full replacement cost with no penalty for coinsurance. The City shall be named as loss payee.
- viii. **Builders Risk/Installation Floater**
During any period of construction, Concessionaire (or Concessionaire’s contractors or subcontractors) shall maintain “all risk” builder’s risk insurance in an amount equal to the anticipated completion value of the project under construction. The coverage shall remain in full force and effect during any period of construction or improvements.
- ix. **Business Interruption Insurance**
Concessionaire shall maintain coverage for loss of earnings, the annual Concession Fee (in an amount equal to annual Concession Fee for one year) and necessary continuing expenses due to interruptions of business operations.
- x. Conservancy and the City of Philadelphia, and their respective officials, officers, directors, employees and agents must be named as additional insureds on all policies required above except the Workers Compensation and Employers’ Liability. All such policies must include an endorsement stating that the coverage afforded the additional insureds is primary to any other coverage available to them.
- xi. Original certificates of insurance evidencing the required coverage and the Conservancy’s and City’s status as additional insureds must be delivered to (i) the Conservancy and (ii) the City of Philadelphia, Risk Manager, One Parkway Building, 14th Floor, 1515 Arch Street, Philadelphia, Pa 19102, Attention: Nella Goodwin, with a copy to the Commissioner of the Department of Parks and Recreation, and (iii) the Fairmount Park Conservancy, Executive Director, 1617 John F. Kennedy Boulevard, Suite 1670, Philadelphia, PA 19102, at least five (5) business days prior to entry onto Lloyd Hall by Concessionaire. Concessionaire must furnish copies of the original policies of all insurance required under this Agreement at any time within ten (10) days after written request by Conservancy.
- xii. Concessionaire and its contractors and subcontractors shall not permit any lapse in or termination or cancellation of the insurance coverage required under this **Appendix 7**, the RFP, and the Concession Agreement. Concessionaire must

ensure that replacement coverage meeting the requirements of this **Appendix 7** are in effect prior to the expiration of the policy period.

- xiii. If Concessionaire fails to procure and maintain such insurance, the Conservancy and the City are not limited in the proof of any damages which the Conservancy or the City may claim against the Concessionaire or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance. The Conservancy and the City may also be entitled to recover damages from the Concessionaire for such breach, the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation, reasonable collection fees, suffered or incurred during any period when Concessionaire, its contractors or subcontractors shall have failed or neglected to provide the insurance as required herein.

B. Self Insurance

The Concessionaire may not self-insure any of the coverage required under this **Appendix 7**, the RFP, or the Concession Agreement, without the prior written approval of the City's Risk Manager. In the event that the Concessionaire wants to self-insure any of the coverages listed above, it shall submit to the City's Risk Manager, prior to the Commencement Date, a certified copy of Concessionaire's most recent audited financial statement, and other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the City's Risk Manager. If the City's Risk Manager approves the Concessionaire's proposed self-insurance, Concessionaire acknowledges and agrees that the Conservancy and City, and their respective officials, officers, directors, employees, agents, successors and assigns are entitled to receive the same coverages and benefits under Concessionaire's self-insurance program that they would have received had the insurance requirements been satisfied by a reputable carrier authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City of Philadelphia. If at the time of the Commencement Date Concessionaire self-insures its workers' compensation and employers' liability coverage, Concessionaire may, in lieu of the foregoing, furnish the Conservancy and the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate.

C. Insurance Not a Limit of Liability. The insurance requirements set forth in this **Appendix 7** do not modify, limit or reduce the Concessionaire's and its contractors and subcontractors indemnifications of the Conservancy and the City under this **Appendix 7**, the RFP, and the Concession Agreement, or limit any of their respective liability under this **Appendix 7**, the RFP, and the Concession Agreement to the limits of the policy(ies) of required insurance.

D. Proceeds for Property Damage. Concessionaire shall cause all proceeds of property damage and Builder's Risk policies to be payable to the City to use for the restoration or repair of Lloyd Hall.

E. Waiver of Subrogation. Concessionaire shall cause each policy of insurance required under this **Appendix 7**, excepting Worker's Compensation policies, to include a provision for a waiver of subrogation in favor of the Conservancy and the City.

F. Fidelity Bond. Concessionaire shall, at its sole cost and expense obtain and maintain during the Initial Term and any Renewal Term(s) of the Concession Agreement, a fidelity bond in an amount equal to \$100,000, covering Concessionaire's employees who have financial responsibilities related to the receipt and disbursement of funds under the Concession Agreement. In lieu of a fidelity bond, Concessionaire may obtain coverage for crime insurance with limits of \$100,000. The fidelity bond or crime insurance, whichever is obtained by Concessionaire, shall name the Conservancy and the City as a beneficiary. The Concessionaire shall submit evidence of the existence of the fidelity bond or crime insurance to the Conservancy and the City prior to Commencement Date.

G. Increase in Insurance Amounts. From time to time, but not more than once each year, the Conservancy or the City may, in its reasonable discretion, require the Concessionaire to obtain additional types and amounts of insurance, or either of them, than what Concessionaire is obligated to obtain and maintain under this **Appendix 7, Paragraph 3.**

APPENDIX 8

**City of Philadelphia
Office of Economic Opportunity (OEO)
Mayor's Executive Order 02-05**

**INSTRUCTIONS, FORMS AND CONTRACT PROVISIONS FOR THE PARTICIPATION OF
MINORITY, WOMAN AND DISABLED
OWNED BUSINESS ENTERPRISES (M/W/DSBEs)
in City Contracts**

The Concession Agreement is subject to the **Mayor's Executive Order 02-05**. The following instructions, forms and contract provisions, as well as Executive Order 02-05 (a copy of which may be obtained at the OEO Office) are hereby incorporated in and made a part of any contract resulting from the RFP.

Respondent is subject to the provisions of Mayoral Executive Order 02-05 and is required to respond to the requirements specified in the RFP for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises DSBES (collectively, ("M/W/DSBEs") as those terms are defined in Executive Order 02-05.

Respondent shall submit a "**Solicitation for Participation and Commitment Form**" (**S & C Form**) identifying its solicitations and any commitments made with M/W/DSBEs to participate in the contract. Respondent is also required to submit documentation of its "Good Faith Efforts" (as more fully described below), whether or not it has achieved any commitments with M/W/DSBEs.

This information, the S&C Form identifying Respondent's solicitations and commitments of M/W/DSBEs and documentation of Respondents' Good Faith Efforts, must be submitted with the Proposal, although the OEO reserves the right to request these documents as well as any additional or clarifying information at any time prior to contract award. The submission of this information is an element of responsiveness to the RFP and failure to do so may result in the rejection of the Respondent. Respondent hereby verifies that all forms, information and documentation submitted to the OEO are true and correct and is notified that the submission of false information by the Respondent is subject to the penalties of 18 Pa. C. S. Section 4904 relating to unsworn falsification to authorities.

M/W/DSBE PARTICIPATION

MBE RANGES	<u>5% TO 10%</u>
<u>AND/OR</u>	
WBE RANGES	<u>5% TO 10%</u>
DSBE RANGES	<u>BEST EFFORTS</u>

Under the authority of the Mayor's Executive Order 02-05, in addition to participation ranges, the RFP is subject to Good Faith Efforts for the inclusion of MBEs, WBEs and DSBES in the contract. "*Good Faith Efforts*" are those efforts, the scope, intensity and

appropriateness of which would reasonably be expected to achieve meaningful M/W/DSBE participation in the contract. 'Good Faith Efforts' include but are not limited to:

- Efforts made to solicit through all reasonable and available means the interest of OEO-certified businesses that have the capability to perform the work detailed in the RFP. Such efforts include use of the OEO Directory of Certified Firms, attendance at the Pre-Proposal Meeting, advertising in minority focused publications, written mailings to certified M/W/DSBEs. Respondents should determine with certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations.
- Efforts made to allocate a portion of the services to an MBE, WBE, and/or DSBE even when Respondent might otherwise prefer to perform these services with its own forces. The OEO may consider for approval a joint venture arrangement between Respondent and a M/W/DSBE for performance of the contract. Any such joint venture arrangements must identify the M/W/DSBEs division of work and its share in risk and profits; these arrangements shall be memorialized in writing and are subject to the OEO's approval.
- Evidence that Respondent has provided interested MBEs, WBEs and DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner and to assist them in responding to a solicitation.
- Efforts to assist interested M/W/DSBEs in obtaining any necessary licensure, obtaining lines of credit, manufacturer training, and access to major suppliers, necessary equipment, materials, or related assistance or services required for the performance of the services.
- Efforts made to negotiate in good faith with interested M/W/DSBEs. A Respondent using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the City's Antidiscrimination Policy into consideration.
- Efforts to provide an appropriate balance of both certified MBEs, WBEs and DSBEs in the project.

A. Solicitation for Participation and Commitment.

1. The Solicitation for Participation and Commitment Form ("S & C Form") shall contain:
 - The company name, address, contact name, telephone number, fax number and OEO certification number of each MBE, WBE and DSBE solicited for participation in the contract, regardless of whether commitments resulted from this solicitation. If Respondent receives unsolicited quotations from a MBE(s), WBE(s) or DSBEs or if Respondent makes solicitations of MBE(s), WBE(s) or DSBEs but receives no quotations, these MBE(s), WBE(s) or DSBEs must also

be identified on the S & C Form.

- A detailed description of the services/supply effort that was solicited and a quotation received for each MBE, WBE or DSBE. This description shall include the services or the supply effort solicited/quoted, describing such service or supply effort as it relates to a distinct element of the contract as determined by the Respondent. Respondents should avoid utilizing one-word descriptions of the services to be performed or the material to be supplied and should provide a detailed description.
- Disclosure of any second tier subcontracts. If the listed MBE, WBE or DSBE subcontractor with whom the Respondent has a commitment, intends to subcontract more than ten percent (10%) of the described work (not including the cost of materials, equipment or supplies incident to the performance of services under the contract), Respondent must provide, on a duplicate copy of the S & C Form, the name and address of each second tier subcontractor(s) (identifying whether it is or is not a MBE, WBE or DSBE), a detailed description of the services, and dollar amount of the subcontracted services.
- The dollar amount and percentage of commitment made reflected by the quotation provided to the Respondent by each identified MBE, WBE and/or DSBE.
- The reason(s) if no commitment is made or no quote is received from each identified MBE, WBE and/or DSBE.

Upon completion of the S & C Form(s), Respondent should indicate at the bottom of each form the total percentage commitment made to the type of business.

B. Documentation of Good Faith Efforts

1. Respondent must document its Good Faith Efforts by submitting a brief narrative, on its company's letterhead, documenting all of Respondent's efforts made to solicit M/W/DSBE participation in the contract. The narrative shall contain and discuss, at a minimum, the following:
 - If no commitment resulted from Respondent's solicitation(s), please explain what good faith efforts were made and why they were unsuccessful. Explain what type of service or supply effort Respondent made solicitations for.
 - Did Respondent attempt to negotiate price and scope with any interested M/W/DSBEs (please be specific, attaching any dated price quotations and correspondence)?
 - Did Respondent offer any business assistance to M/W/DSBEs (e.g., introduction to manufacturer, helped provide access to line of credit, etc.)?
 - Were efforts made to provide to M/W/DSBEs information about the

scope of work required?

- Is Respondent awarding/subcontracting any work or supply effort in connection with the contract to a non-M/W/DSBE? If so, please explain why. Identify the name of the awarded firm(s), provide the awarded firms' quotation and any price adjusted quotations, scope of work and experience of the awarded firm(s).

C. Evaluation of Good Faith Efforts

OEO will review Respondent's submission and any other evidence OEO deems relevant to its evaluation to determine whether Respondent made adequate good faith efforts to include M/W/DSBEs in contracting opportunities associated with the contract. OEO will make a recommendation to the Executive Director or President of the Conservancy or his/her designee. If the Executive Director or President of the Conservancy or his/her designee, after review of the OEO's recommendation and supporting documentation, concurs that Respondent did not make good faith efforts, Respondent will be deemed not responsible and its Proposal rejected.

GENERAL PROVISIONS

1. Any M/W/DSBE that is listed on the S & C Form or the Joint Venture Eligibility Information Form must be certified by the OEO in accordance with Executive Order 02-05 in order to receive consideration towards Respondent's Good Faith Efforts.
2. M/W/DSBE subcontractor(s) must perform a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work that provides for a distinct element of the subcontract (as required by the services to be performed in accordance with the RFP). The distinct element is worthy of the dollar amount of the subcontract value and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The OEO may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF. If it is determined during the review of the S & C Form that the work described on the form does not constitute a CAF, the participation will not be considered in the evaluation of the Respondent's good faith efforts.
3. Listing of an M/W/DSBE as a subcontractor on the S & C Form, constitutes a representation by Respondent, that such M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Respondent has made a binding commitment with the firm prior to the submission of the S & C Form. This listing is also a representation by Respondent that if awarded the contract, Respondent will subcontract with the listed firm(s) for the work described and dollar/percentage amount(s) set forth on the S & C Form, unless the Conservancy alters the scope of services prior to the commencement of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total dollar amount of the contract and any

additional increases.

4. If a joint venture arrangement has been entered into with a MBE, WBE or DSBE, the following criteria must be met:
 - The MBE, WBE or DSBE partner(s) must be certified by the OEO;
 - The MBE, WBE or DSBE partner(s) must derive substantial benefit from the arrangement;
 - The MBE, WBE or DSBE partner(s) must be substantially involved in all phases of the contract including, but not limited to, the performance, with its own workforce, of a portion of the on-site work where appropriate, and administrative responsibilities such as proposing, planning, staffing and daily management;
 - The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interests, contributes working capital and other resources, etc).

If Respondent has entered into a joint venture arrangement, the joint venture partners must complete and submit a "Joint Venture Eligibility Information Form" (available at the OEO Office). This form should be submitted with the Proposal and the form will be reviewed by the OEO or approval or disapproval of the joint venture arrangement. If the joint venture arrangement is not approved by the OEO, the arrangement will not be considered in the evaluation of the Respondent's good faith efforts.

5. In calculating the percentage of participation by a M/W/DSBE, Respondent shall apply the standard mathematical rules in rounding off numbers. In the event of an inconsistency between the dollar and percentage amounts listed on the S & C Form, the percentage will govern.
6. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE, MBE and DSBE or WBE and DSBE), will only be credited in one category i.e., either as a Minority (MBE), Woman (WBE) or Disabled (DSBE) Business Enterprise; Respondents will designate on the S & C Form which category, MBE, WBE or DSBE, is submitted for consideration.
7. Certification of a business by the OEO shall not be a representation of the firm's financial or technical ability to perform specified work. The Conservancy reserves the right to evaluate a firm's ability to satisfy financial, technical or other criteria separate and apart from certification before or after selection of the successful Respondent or award of the contract.
8. If Respondent is a certified M/W/DSBE submitting a RFP as a prime, Respondent must still respond to the OEO requirements specified in the RFP and demonstrate its Good Faith Efforts.

9. Except as otherwise provided herein, no changes or modifications to the participation arrangements specified on the **S & C Form** or **Joint Venture Eligibility Information Form**, including but not limited to substitutions for the listed firms, changes or reductions in described work and/or listed dollar/percentage amounts, shall be permitted.
 - a) Following contract award, the successful Respondent may, under appropriate circumstances and with the prior written approval of the OEO, make changes or modifications to the participation arrangements contained in its original submission. Requests for such changes or modifications must be submitted to the OEO in writing with appropriate justification.
 - b) The OEO may from time to time request revised form(s) or other documentation from the successful Respondent to ensure satisfaction of Respondent's commitments.
10. In the event the scope of the successful Respondent's contract is increased by change order (sometimes referred to as a modification) and/or amendment, it shall be the responsibility of the successful Respondent to maintain the participation levels committed to on the increased scope of its contract.
11. The successful Respondent agrees to cooperate with the OEO in its compliance monitoring efforts and to submit, within the time limits prescribed by the OEO, all documentation which may be requested by the OEO, including but not limited to, copies of subcontracts with the M/W/DSBEs, invoices, telephone logs and correspondence with the M/W/DSBEs, canceled checks, etc. These documents shall be maintained by the successful Respondent for a period of three (3) years following acceptance of final payment under the contract. The successful Respondent also agrees to submit reports and other documentation to the OEO, including reports through IMPACT, the City's electronic payment verification system, as deemed necessary by the OEO to ascertain the successful Respondent's fulfillment of its M/W/DSBE participation commitments.
12. It is understood and agreed that the successful Respondent's compliance with the requirements for M/W/DSBE participation is material to the contract. Any failure to comply with these requirements shall constitute a substantial breach of the contract. It is understood and agreed that if the Director of Neighborhood and Business Services or his designee determines that the successful Respondent hereunder has failed to comply with the requirements for M/W/DSBE participation, the Conservancy and the City may, in addition to any other rights and remedies the Conservancy and the City may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:
 - a) Terminate the contract, in whole or in part.
 - b) Suspend the successful Respondent from proposing on and/or participating in any future Conservancy or City contracts for a period of up to three (3)

years.

- c) Recover as liquidated damages, an amount equal to one percent of the total dollar amount of the Concession Fee for each one percent (or fraction thereof) of the shortfall toward the applicable M/W/DSBE commitment.

Should you have any questions related to the Contract Provisions, please contact Julie Simmons of the OEO staff at (215) 686-6390 or fax (215) 686- 3878.

Form A: Solicitation for Participation and Commitment Form

FORM A

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM (Bid) Minority (MBE), Women (WBE), and Disabled (DSBE) Business Enterprises				COMMERCE DEPARTMENT OFFICE OF ECONOMIC OPPORTUNITY (OEO)			
Bid Number		Name of Bidder		Date of Bid Opening			
List below ALL MBE/WBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.							
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE		Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name			By Phone	By Mail	Yes (if Yes, give date)	NO	
Address							
Contact Person			Quote Received		Amount Committed To		
Telephone Number Fax #			YES	NO	Dollar Amount		
OEO CERTIFICATION #				\$			
				Percent of Total Bid			
		%					
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE		Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name			By Phone	By Mail	Yes (if Yes, give date)	NO	
Address							
Contact Person			Quote Received		Amount Committed To		
Telephone Number Fax #			YES	NO	Dollar Amount		
OEO CERTIFICATION #				\$			
				Percent of Total Bid			
		%					
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE		Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name			By Phone	By Mail	Yes (if Yes, give date)	NO	
Address							
Contact Person			Quote Received		Amount Committed To		
Telephone Number Fax #			YES	NO	Dollar Amount		
OEO CERTIFICATION #				\$			
				Percent of Total Bid			
		%					
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE		Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name			By Phone	By Mail	Yes (if Yes, give date)	NO	
Address							
Contact Person			Quote Received		Amount Committed To		
Telephone Number Fax #			YES	NO	Dollar Amount		
OEO CERTIFICATION #				\$			
				Percent of Total Bid			
		%					

(Rev. 11/2000js)

¹ M/W/DSBEs listed above must be certified by the OEO prior to bid submission date.

² Failure to give reason for no commitment may result in rejection of your bid.

FORM B

CONSESSION FEE PROPOSAL FORM

Concession Fee (MAG) for operation, management and maintenance of the Facilities:

2010: \$ _____ plus _____% of Gross Revenues.
MAG at least \$10,000

Renewal Terms (if applicable)

2011: \$ _____ plus _____% of Gross Revenues.
MAG at least \$10,000

2012: \$ _____ plus _____% of Gross Revenues.
MAG at least \$10,000

2013: \$ _____ plus _____% of Gross Revenues.
MAG at least \$10,000

