



## **RFP C-102-13**

### **For the Management and Operation of the Dell Music Center Concession Stands**

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Issued By:

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

&

Procurement Department  
Hugh Ortman, Commissioner

#### **Mandatory Pre-Proposal Meeting & Tour of Dell Music Center:**

Wednesday, March 20, 2013 at 10:00 AM Local Time  
Dell Music Center  
Ridge Avenue & Huntingdon Street  
Philadelphia, PA 19132

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**SEALED PROPOSALS WILL BE RECEIVED UNTIL THURSDAY, APRIL 4, 2013  
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**

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Questions regarding this Request for Proposals must be submitted in writing no later than  
Wednesday, March 20, 2013 at **5:00 p.m. local time** ("Deadline for Questions")  
and directed to

Sylvia Kennedy, Concessions Manager  
by e-mail at [Sylvia.Kennedy@Phila.Gov](mailto:Sylvia.Kennedy@Phila.Gov)

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## **I. Project Overview**

### **A. Introduction / Statement of Purpose**

The City of Philadelphia (the “City”), by and through Philadelphia Parks & Recreation (“the Department”), owns and operates an open outdoor amphitheater known as the Dell Music Center, formerly known as the Robin Hood Dell East (the “Dell” or “Concession Premises”). The Dell is the fourth largest performance venue in Philadelphia, following the Wells Fargo Center, Temple’s Liacouras Center and the Mann Music Center. The amphitheater has 5,384 reserved seats and an additional 600 people can be accommodated in the lawn seating area. The Dell, located in scenic East Fairmount Park, is Philadelphia’s premier outdoor entertainment venue. The Dell is a community-service venue that provides citizens of Philadelphia with an opportunity to attend summer concerts, featuring widely renowned entertainers as well as local talent. The Dell is located at Ridge Avenue and Huntingdon Street, Philadelphia, PA. The City will host an annual concert series at the Dell known as “Essence of Entertainment”. Presently, the series consists of 8 to 10 shows, which will include a series of diverse music including, but not limited to Gospel, Latin, Jazz, R&B, Oldies Soul Classic, and Caribbean. The Dell has a Concession Area comprised of four Concession Stands which provide Dell patrons with a variety of prepared foods and beverages. The Department is in need of qualified and experienced Concessionaires interested in operating and managing Concession Stand(s) at the Dell.

### **B. Department Overview**

The City of Philadelphia’s Procurement Department will be issuing this Request for Proposal (“RFP”) on the behalf of Philadelphia Parks & Recreation (“Department”). The Department will be responsible for the management of the contract(s) resulting from this RFP.

### **C. Request for Proposals**

The City is requesting Proposals from all individuals and firms that would like to manage and operate a Concession Stand located at the Dell. It is the City's intent to award to the highest responsible and responsive Applicant(s). The City intends to make separate awards for each of the Concession Stands described in section I.D below. As a result, multiple concession opportunities are available which may result in multiple concessionaire awards being made under separately executed Concession Agreement(s). Successful Applicant(s) will be required to enter into the agreement. The Concession Agreement (“Concession Agreement”) will award Concessionaire a nontransferable concession for food vending operations in one or more of the Concession Stands at the Dell as described in I.D below. By issuing this RFP and entering into a Concession Agreement for management and operation of a Concession Stand, the City hopes to provide an important amenity for Dell patrons and to generate revenue to reinvest in the Dell.

#### **D. Description of Concession Stands and Locations**

In this RFP, "Concession Stand" is defined as a self-contained food service operation, located at the Dell, which is used to store, prepare, display, and serve food intended for individual portion service. As stated in Section I.C above, the City intends to make separate awards for each Concession Stand at the Dell. Concessionaires who are awarded multiple Concession Stands must employ individual operator(s) at each Concession Stand awarded to them. The Dell currently has four Concession Stands, a large main Concession Stand and three smaller Stands of which two (2) are currently vacant. The two vacant Concession Stands, Side Concession Stands #2 and #4, which will be filled as a result of this RFP, are approximately 10' X 18' each. All Concession Stands are located at the front entrance of the Dell.

1. Each Concession Stand will operate independently of each other and offer different food choices. No two Concession Stands will sell the same products. A list of suggested products is attached to this RFP as Attachment 4.
2. Storage space is very limited. If Concessionaire needs more storage space than available, Concessionaire shall arrange for off-site storage at Concessionaire's sole cost and expense.

#### **E. General Disclaimer of the City**

This RFP does not commit the City of Philadelphia 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 Applicant, is intended to be granted any rights hereunder. Any response, including written documents and verbal communication, by any Applicant to this RFP, shall become the property of the City and may be subject to public disclosure by the City, or any authorized agent of the City.

## **II. PROPOSAL SPECIFICATIONS**

#### **A. Proposed Concession Summary**

The Concessionaire will have complete responsibility for management and operation of the Concession Stand(s). The responsibilities of the Concessionaire will include, but are not limited to, those set forth in this RFP in Section II, A through P, and those set forth in the Concession Agreement. In consideration of the Concession granted to the Concessionaire under the Concession Agreement, the Concessionaire shall pay the City a Concession Fee as explained below in Section II.F of this RFP. As more fully explained below, each Applicant'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 Concession Stand(s).

1. Each firm or individual that submits a proposal in response to this RFP will be considered an Applicant. The Department intends to select the highest responsive and responsible Applicant; a responsive and responsible Applicant is one who best meets the Department's requirements, objectives and qualifications criteria set forth in this RFP, which may result in an award to a Concessionaire who does not propose the highest Concession Fee. Upon execution of the Concession Agreement by the Department and the successful Applicant, the successful Applicant will become the "Concessionaire" under the Concession Agreement. The Concession Agreement will give the Concessionaire an exclusive right (the "Concession") to operate and manage a Concession Stand and to exercise the rights and perform the duties described in this RFP and the Concession Agreement.
2. All Applicants are encouraged to carefully read this entire RFP and attachments before the Pre-Proposal Meeting and before submitting a Proposal. This RFP will become part of the Concession Agreement.

## **B. Applicant Qualifications**

The City is seeking Applicants who have experience in professional food operations and sufficient financial capacity to provide food vending operations at the Dell at the highest professional level. Applicants must provide satisfactory evidence of the following qualifications and furnish the requested information on the Qualification Form which is Attachment 1 to this RFP. Food Vending operations at the Dell require operators who are prepared to coordinate, cooperate and work with all City of Philadelphia Departments involved in this process, including all health and public safety personnel. The following are the minimum qualifications:

1. Applicant shall have at least three (3) consecutive years of prior recent experience in food vending operations or, as determined solely at the discretion of the City, equivalent experience.
2. Applicant must demonstrate the necessary resources to operate, maintain and re-supply a Concession Stand as stated in this RFP. Applicant must provide evidence of financial capacity and stability; this may include accountant prepared financial statements that are in accordance with generally accepted accounting principles, or a federal tax return for the most recently completed year.
3. Applicant must have the capability to design and furnish the reports required in Section II.E, in a format satisfactory to the City.
4. Applicant must provide a brief history of its organization and an executive summary that describes its company's qualifications. This summary shall include number of employees, number of years in business and a resume of the Applicant

and qualifications of all food handlers that will be involved in the operation of the Concession Stand.

5. Each Applicant must be in good standing in the City of Philadelphia. Good standing means: Applicant is not in arrears or in default to the City of Philadelphia of any debt, including without limitation, tax delinquencies, or in default of a City contract; Applicant has not failed to perform faithfully any previous contract with the City; Applicant has not failed to execute a contract with the City; Applicant has no outstanding Health Code Violations.
6. No proposal will be accepted from, or contract awarded to, any City employee or official who submits a proposal or solicits any contract in which he or she may have any direct or indirect financial interest.
7. Applicant must have sufficient staff for the number of Concession Stands awarded to Concessionaire.

### **C. Licenses, Permits, and Inspections**

Applicant must have, at the time of proposal submission, all necessary permits and licenses for the lawful operation of its business. All vendors who wish to operate a temporary food service operation for more than three (3) events within a year, within the City of Philadelphia, are required by the City of Philadelphia, Public Health Department to obtain a Permanent Special Event Vending License and Permit. Upon completion of all required information, the Health Department will issue a Food Service Eligibility Certificate and a “License Eligibility Report.” The License Eligibility Report is needed to obtain your food (Retail Food – Non Permanent) license. The food license is obtained from the Department of Licenses and Inspections, Municipal Services Building, Concourse Level, 1401 John F. Kennedy Blvd, Philadelphia, PA 19102.

All food and menus submitted by the Applicant must meet the Public Health Department’s codes and regulations. All food handlers are required to have a valid Food Establishment Personnel Food Safety Certification and must be present during vending operations.

For complete instructions and costs associated with the licenses and certifications required for this RFP, please visit <http://www.phila.gov/health/Environment/FoodProtection.html>.

1. Inspectors from the City of Philadelphia Health Department and Licenses & Inspections Department will visit Concession Stands unannounced to inspect operations and ensure proper maintenance and compliance with the Concession Agreement and this RFP. Based on their inspections, the City may issue directives regarding deficiencies the Concessionaire will be obligated to rectify in a timely fashion.

#### **D. Hours and Location of Work**

The Dell Music Center's hours of operation are from 9am until 5pm, Monday through Friday except on event days when hours will vary. The Dell is located at Ridge Avenue and Huntingdon Street, Philadelphia, PA.

1. The Concessionaire is required to operate during all scheduled concert show/event dates. All concerts are rain or shine. Concert cancellation or delay due to inclement weather shall be at the sole discretion of the City. The City is not liable for any losses sustained by Concessionaire for canceled events. A list of scheduled show/events and dates is attached as Attachment 3.
3. The Concessionaires may have the opportunity from time to time to provide vending services at special events occurring at the Dell. Special Events Vending opportunities are not guaranteed; however, the Department shall give Concessionaires the option to vend at certain special events for an additional fee (Special Events Fee). The Special Events Fee shall be based on the size of the Event.

#### **E. Reporting Requirements**

Applicant must have the capability to maintain and furnish management records and reports, as required in Section II.B, in a format satisfactory to the City.

Concessionaire shall use for each Concession Stand, one or more receipt-issuing cash register(s) which, simultaneously with the issuance of a customer's receipt for a sale, shall print on an internal journal tape a duplicate record of each transaction along with a daily total of all sales. Each customer must be given a receipt. Concessionaire shall insure that the journal tape is maintained in the machine and that a supply is always available for replacement. The register that will be used by the Concessionaire shall have the ability to consecutively print or count internally the number of transactions recorded. This counting device shall be non-resettable by Concessionaire. The City will provide all required cash registers and supplies.

Concessionaire shall be required to furnish an end-of-season report to the Dell Concession Manager within 30 days after the end of the Dell season of each year during the Initial Term or any Renewal Term. The report shall detail: the gross sales by month for each location; the gross revenue by month for each product sold; and the gross revenue for the type of product sold at each location.

Within forty-eight (48) hours after each show/event, including any special events, Concessionaire shall provide the Dell Concession Manager with weekly reports that detail all sales activity of the reporting week, including an account summary showing sales period, current week gross sales, current week Concession Fee paid, year-to-date gross sales, and year-to-date Concession Fees paid, and any narrative appropriate to be reported to the Dell Concession Manager.

Two (2) copies of both reports shall be submitted to the City with each payment of Concession Fees. These reports shall be certified by the Concessionaire to be true and correct and shall be compiled in accordance with generally accepted accounting principles. Such reports shall be accompanied by all of the cash registers internal journal tapes for each show/event or miscellaneous event.

#### **F. Concession Fee; Reporting and Payment Schedule**

1. Proposals will be received in the form of an offer to pay a flat-fee per show/event, as the concession fee to operate a Concession Stand (“Concession Fee”). The minimum flat-fee for each of the two (2) vacant Concession Stands is \$250.00 per show/event.
2. Concessionaire will make payment of the Concession Fee no later than forty-eight (48) hours of the conclusion of each show/event. Payment shall be made by certified check payable to the “City of Philadelphia” and should be submitted to The City of Philadelphia, Philadelphia Parks & Recreation, Fiscal Officer, 1515 Arch Street, 10<sup>th</sup> Floor, Philadelphia, PA 19102. In the event the Concessionaire fails to make the payments as required herein and fails to cure same after five (5) days’ written notice from the City informing Concessionaire of such default, then the City may terminate the Contract immediately without any liability on its’ part. In such event, Concessionaire shall continue to be subject to any and all liabilities of the Concessionaire, actual or contingent, which may have arisen on or before such termination date, and City reserves to itself all of the remedies available in law or equity or contained in this RFP or in the Concession Agreement.

#### **G. Concessions Personnel Requirements**

1. Concessionaire shall employ and provide all personnel necessary and prudent for the safe, efficient, and successful management and operation of the Concession Stand.
2. Concessionaire shall cause its employees to conduct themselves at all times in a courteous and professional manner that reflects well upon The Dell Music Center, 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. Concessionaire is responsible for the strict adherence to all pertinent health rules and regulations regarding food safety by food handlers as stated in the City of Philadelphia Health Code.

#### **H. Menu and Pricing Points**

1. The primary function of the Concession is to provide quality food and beverage service to Dell patrons at an affordable price. Concessionaire shall provide menus that demonstrate

quality, variety, and price points that reflect the casual, recreational atmosphere at the Dell. A suggested list of food choices is attached as Attachment 4.

2. All products sold or kept for sale, shall be of the highest quality, wholesome and pure and shall conform to all applicable Federal, State, and Local laws, acts, ordinances and regulations. No substitutes for advertised product, fillers, dilutants or reduction in size of standard manufactured or processed food products shall be sold. All meats shall be U. S. Government inspected. All items available for sale must be of nationally distributed brand names. No adulterated or misbranded article shall be sold or kept for sale, and all merchandise kept on hand shall be stored and handled with due regard for spoilage and sanitation. The City shall have the right at all times during the term of the Contract, and whether the Concession is in operation or not, to inspect products to be sold by Concessionaire.
3. A list identifying brand name, size and/or weight, and suggested selling price of all items offered for sale must be submitted to the City for approval at least two (2) weeks prior to the start of operations and a copy of the approved list must be posted in a conspicuous spot on the outside of the concession location(s). Changes in prices may not be made unless first approved in writing by the City. Changes will be limited to those prices agreed to by City and no changes shall be made in excess of that amount. The City reserves the right to terminate the Contract in the event that Concessionaire is found to be charging prices in excess of those approved by the City.
4. For the sale of soft drinks (e.g. soda, bottled water, fruit juices, fountain sodas, etc.) the City will designate exclusive pouring rights to a brand entity and Concessionaire is permitted to dispense and sell only those soft drink products so designated by the City.
5. Unless expressly approved in writing by the Department, as more fully described below, Concessionaire shall not sell, distribute or permit any liquor or malt or brewed beverages in or on the Dell premises. For purposes of this RFP, 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.

**I. Cleaning; Trash Collection; Recycling**

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 Concession Stand and its operations. It shall be the responsibility of the Concessionaire to insure that the concession area, and the grounds immediately adjacent (within twenty-five feet), are kept in a clean, trim fashion. All such debris and refuse is to be removed from the premises by the Concessionaire. Trash, recycling, and waste receptacles are provided by the Dell.
2. The Concessionaire shall, at its sole cost and expense, remove any and all used cooking oils and/or fluid mixtures from the premises in accordance with the City of Philadelphia

Health Department Codes. Pouring any of the above mentioned fluid mixtures into drain pipes is strictly prohibited.

#### **J. 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 Concession.

If the Concessionaire intends to use any disposable products at the Concession, 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.greenseal.org/findaproduct/index.cfm>. The City also encourages the serving of sustainable food products and the training of staff on environmentally-friendly food practices.

#### **K. Utilities**

All utilities will be provided by the City. Each Concession Stand is equipped with 120/240 amp electrical service. The two (2) vacant Concession Stands will share a three compartment sink. Gas lines are not provided.

#### **L. Equipment, Maintenance, Repair, and Removal**

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 Concession Stand. Any equipment failure which occurs during the Dell Season, must be repaired by the Concessionaire, at its sole expense.
2. The City will also provide cash registers to be used for the sole purpose of the Concessions. Concessionaires will be responsible for the upkeep and care of the cash registers installed in their perspective concession areas. All such equipment is supplied by the City in good working order at the commencement of the Concession. Any equipment failure which occurs during the Dell Season, must be repaired by the Concessionaire, at its sole expense, and serviced by repair personnel authorized by the City.
3. At all times during the Term, the City is not required or obligated to provide any services, materials or equipment related to the Concession.
4. On the Concession Agreement Ending Date, Concessionaire shall leave the Concession Stand 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 Recreation Commissioner.

5. Concessionaire is responsible for providing, installing, maintaining and removing at its own expense, all appropriate fixtures and equipment, subject to the approval of the City. In the event Concessionaire does not, within forty-eight (48) hours following the termination of the contract, remove all equipment and personal property owned by Concessionaire, the City shall have the right to remove all such equipment and personal property at the expense of Concessionaire, or in its sole discretion, to regard such equipment and personal property as its own. Failure of Concessionaire to remove Concessionaire's equipment and personal property shall be deemed a breach of the Contract.
6. Any stand, construction, or other equipment which may be supplied by the City shall be returned to the City in good working order, condition, and repair upon expiration or earlier termination of the Contract.

**M. Use of Concession: Uses Required, Uses Permitted, and Uses Prohibited**

The Concessionaire in good faith shall cooperate and communicate regularly with the Department Concession Manager to ensure the successful management and operation of the Concession Stand during concert hours. The Concessionaire shall be considerate of the day-to-day operations and work of the Department staff at The Dell Music Center.

1. The Concessionaire shall manage and operate all aspects of the Concession Stand, including but not limited to: food preparation and service, staffing, and general care of the spaces and equipment.
2. This concession privilege is exclusively for the sale of soft drinks and other appropriate food items as approved by the City. No other product or items are permitted, including, but not limited to ancillary products, which may not be sold without the express written approval of the Recreation Commissioner or authorized representative of the Dell.
3. During all hours of operation, a full and complete store of all approved items shall be on sale.
4. The Concessionaire is prohibited from selling or dispensing any beverage in glass bottles.
6. The Concessionaire is prohibited from subcontracting, leasing, renting, or transferring responsibility for the Concession Stand and area around the stand to any other person or entity.
7. By submission of a Proposal in response to this RFP, the Applicant agrees

that it will comply with all contract monitoring and evaluation activities, policies and requirements of the City of Philadelphia.

**N. Alterations to Concession Stand**

Concessionaire shall not make any repairs, alterations or improvements to any stand or structure without first obtaining the written approval of the City. Further, any equipment supplied by the City shall not be repaired, altered or improved without the written consent of the City. All repairs, alterations or improvements herein mentioned shall become the absolute property of the City at the termination of the Contract, without reimbursement to the Concessionaire.

**O. Safety Measures**

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

**P. Prohibited Uses: Signs**

The Concessionaire shall not use the Concession Stand 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 the Concession Stand without the prior express approval of the Recreation Commissioner. Nor shall the Concessionaire, without the express approval of the Recreation Commissioner, place, erect or display on or about the interior or exterior of the Concession Stand or any portion of the Dell, any items that promote and advertise any product.

**III. PROPOSAL FORMAT, CONTENT, AND SUBMISSION REQUIREMENTS;  
SELECTION PROCESS**

**A. Objections**

In its Proposal, an Applicant 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 Applicant 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, an Applicant 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 Applicant to the provisions of this RFP. In no event will the City's selection of a Applicant for further negotiations leading to

a Concession Agreement constitute acceptance by the City of any objection or proposed alternative provision set forth in that Applicant's Proposal.

## **B. PROPOSAL SUBMISSION REQUIREMENTS**

### **1. Responsiveness**

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

### **2. Statement of Qualifications**

Applicant Qualifications are an integral part of the basis of award. Only the proposals of those Applicants who meet the qualification requirements stated in Section II.B will be considered for award. The Applicant who offers the highest Concession Fee and who best meets the qualification requirements will be awarded the Concession stand; the City may not necessarily award the Concession stand to the Applicant offering the highest Concession Fee.

### **3. Form of Proposal**

Each Applicant may apply for more than one Concession stand and Applicant may be awarded more than one Concession stand.

- 3.1 Each Applicant's Proposal must follow the format of this RFP. It must be typed on 8-1/2" x 11" paper and marked clearly on the cover page with Applicant's name and clearly refer to this RFP. Pages should be numbered clearly. Applicant 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 8 1/2" x 11" sectionals or reduced to 8 1/2" x 11".

**Each Applicant 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.**

- 3.2 Wherever an Applicant is providing information required by this RFP, the Applicant must identify the information by using the corresponding Section number, Attachment or Form of this RFP that requires the information.
- 3.3 Each Applicant's Proposal must include the following (please see other provisions of this RFP for a fuller explanation of several of the matters listed):
- Proposal Signature Page (Section VI)
  - Identify which Concession Stand you are proposing on (i.e., Side Concession Stand 2, and/or Side Concession Stand 4); if proposing on

multiple Concession Stands, each proposal must clearly and separately identify Menu and Concession Fee for each Concession Stand

- Signed cover letter
- Description of company profile, organization, and personnel
- Management Experience and Qualifications, and at least three references
- Objections to any RFP requirements, if any
- Completed Solicitation for Participation and Commitment Form
- Financial Information
- Statement of Understanding of the Purpose of this RFP which includes proposed Menus
- Completed Concession Fee Proposal Form
- Completed Qualifications Form
- Completed Tax and Regulatory Status and Clearance Statement Form

3.4 Each Applicant must print the following information on the outside of the envelope, packet, or box in which it submits its Proposal:

- Applicant's name and Address
- Identification as "Proposal for Dell Music Center Concessions" and identify which Concession Stands proposed (i.e., Main Concession Stand, Side Concession Stand 2, Side Concession Stand 3, and/or Side Concession Stand 4)

#### **4. Submission of Proposal**

Each Applicant must submit its Proposal to the City no later than the Deadline for Submitting Proposals. Each Applicant 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.

#### **C. Tax Requirements**

1. Any contractor, vendor of goods, or provider of services, who proposes 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:
  - Business Income and Receipt Taxes
  - Net Profits Tax
  - City Wage Tax
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.

#### **D. Office of Economic Opportunity – Participation Commitment**

This RFP is subject to the Antidiscrimination Policy under Mayoral Executive Order 03-12 for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. While there are no numerical participation ranges established for this RFP, all Applicants should exercise "Best and Good Faith Efforts" to include M/W/DSBEs in their proposals. "Best and Good Faith Efforts" are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs in the contract. M/W/DSBEs, submitting as prime concessionaires, are strongly encouraged to apply for this opportunity. Participation by M/W/DSBEs in this concession opportunity should be indicated on the form entitled, "Solicitation for Participation and Commitment Form," found in Attachment 5 to this RFP.

#### **E. The Philadelphia Tax and Regulatory Status and Clearance Statement**

It is the policy of the City of Philadelphia to ensure that each Concessionaire has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation of other regulatory provisions contained in The Philadelphia Code. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Applicant is required to submit with its proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as Attachment 7).

If the Applicant is not in compliance with the City's tax and regulatory codes, an opportunity will be provided to enter into satisfactory arrangements with the City. If satisfactory arrangements cannot be made, Applicants may not be eligible for award of the contract contemplated by this RFP.

The selected Applicant will also be required to assist the City in obtaining the above information from its proposed subcontractors (if any). If a proposed subcontractor is not in compliance with City Codes and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to participate in the contract contemplated by this RFP and the selected applicant may find it necessary to replace the non-compliant subcontractor with a compliant subcontractor. Applicants are advised to take these City policies into consideration when entering into their contractual relationships with proposed subcontractors.

If an Applicant or a proposed subcontractor is not currently in compliance with the City's tax and regulatory codes, please contact the Revenue Department to make arrangements to come into compliance at 215-686-6600 or [revenue@phila.gov](mailto:revenue@phila.gov).

Applicants need not have a City of Philadelphia Business Income and Receipts Tax Account Number (formerly Business Privilege Tax Account Number) and Commercial Activity License Number (formerly Business Privilege License Number) to respond to this RFP, but will, in most circumstances, be required to obtain one or both if selected for award of the contract contemplated by the RFP.<sup>1</sup> Applications for a Business Income and Receipts Tax Account Number or a Commercial Activity License<sup>2</sup> may be made on line by visiting the City of Philadelphia Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> and clicking on "Register Now." If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Income and Receipts Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Commercial Activity License.

## **F. Concession Agreement**

The awarded Concessionaire will be expected to enter into a Concession Agreement with the City of Philadelphia in substantially the form set forth in Attachment 6 to this RFP. This Concession Agreement requires, among other things, insurance, indemnification of the City and a fidelity bond.

## **G. EVALUATION OF PROPOSALS**

### **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.

### **2. Proposal Evaluation Criteria**

The Selection Committee may ask one or more Applicants 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. 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.

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<sup>1</sup> Applicants that have a Business Privilege Tax Number should use that number, as it is automatically their Commercial Activity License Number, and need not apply for a new Commercial Activity License Number. Similarly, Applicants with a Business Privilege Tax Account Number should use that number as their Business Income and Receipts Tax Account Number.

<sup>2</sup> Commercial Activity Licenses are not typically required for non-profit organizations; however, Business Income and Receipts Tax Account Numbers typically are required.

- 2.1 Demonstrated experience at operating facilities that are similar in size and nature to the Dell Music Center.
- 2.2 Proposed Concession Fee.
- 2.3 Financial capacity to perform the services required by the RFP and presented in the Applicant's Proposal.
- 2.4 Menu quality, variety and range of pricing points.
- 2.5 Any other factors the Selection Committee considers relevant to the evaluation to the Proposal.

### **3. Award of Concession Agreement**

The City will award the Concession Agreement to the Applicant 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 Applicant offering the highest Concession Fee.

### **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.

## **IV PROPOSAL ADMINISTRATION**

### **A. Mandatory Pre-Proposal Meeting and Tour of The Dell Music Center**

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 Applicants may have. All potential Applicants are required to RSVP to the Project Manager (defined in Section IV.B below) regarding their attendance at the Pre-Proposal Meeting.
2. As part of the Mandatory Pre-Proposal Meeting and Tour, City staff will conduct a tour of the concession areas and all of The Dell Music Center.
3. The City will not consider the Proposal of any Applicant that did not attend the Mandatory Pre-Proposal Meeting and Tour.

### **B. Questions Relating to the RFP**

The “Project Manager” for this RFP is Sylvia Kennedy, Concessions Manager, Philadelphia Parks & Recreation. The Project Manager can be reached by the following means:

Email: Sylvia.Kennedy@Phila.Gov

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, 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.

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/bids>. The City is not bound by any oral response made by any City employee to any questions.

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

### **C. Term of the Concession Agreement**

The “**Initial Term**” of the Concession Agreement will commence June 1, 2013 (the Commencement Date). The Initial Term will expire on May 31, 2014. The City may, at its sole discretion, 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 sixty (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.**” Under no circumstances shall any food vending operations awarded through this RFP and any Concession Agreement continue past May 31, 2014 without a notice of renewal.

## **V. GENERAL RULES GOVERNING RFP/PROPOSALS; RESERVATION OF RIGHTS, CONFIDENTIALTY AND PUBLIC DISCLOSURE**

### **A. Ethics Requirements**

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.

## **B. City's Right to Inspect**

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 Concession Stand. The Concessionaire shall maintain its Books and Records in accordance with generally accepted accounting principles consistently applied.
2. The City may inspect and audit all of the Concessionaire's Books and Records and Concessionaire's affairs at all reasonable times at the Dell, the City's offices, or other place the City may reasonably require.

## **C. Conditions Regarding Proposals**

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

1. The Applicant 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 Applicant as a result of the issuance of this RFP, the preparation or submission of a Proposal by applicant, the City's evaluation of Proposals, or the City's selection of Applicant for further negotiations;
2. It is Applicant'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;
3. Upon submission, Applicant's Proposal becomes the property of the City and will not be returned to the Applicant;
4. Applicant will promptly permit the City to inspect projects and facilities referred to in Applicant's statement of its Management Experience Qualifications and References;

5. Applicant will promptly provide additional information or more detailed information upon request by the City, including information inadvertently omitted by an Applicant;
6. Applicant will promptly send representatives for interviews with City officials when requested by the City;
7. Applicant'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;
8. Applicant may not issue news releases (including, but not limited to, commercial advertising) pertaining to this RFP without prior written approval of the City;
9. Applicant 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 Applicant's initial Proposal, to the address specified on the cover page of this RFP for submitting Proposals.

#### **D. 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:

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 Applicant does not meet the qualifications set forth in the RFP, or it is otherwise in the City's best interest to do so;
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;
3. To supplement, amend, or otherwise modify any section of this RFP at any time prior to selection of one or more Applicants for negotiation;
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;
5. To request that some or all of the Applicant clarify, modify or supplement their respective Proposals, including information inadvertently omitted;
6. To request interviews or oral presentations from one or more Applicant;

7. To request recent financial statements from an Applicant as a means of verifying its capability to meet all the obligations of the Concessionaire;
8. To conduct investigations with respect to the qualifications of each Applicant and call an Applicant's references;
9. To enter into negotiations and discussions with any one or more Applicants regarding any aspect or provision of their Proposals; and
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 Applicants or permitting other Applicants to modify their respective Proposals, unless the City, in its sole discretion, determines that permitting other Applicants to modify their Proposals is in the City's best interest.

**E. Concession Agreement Effectiveness**

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

1. The Concession Agreement has been signed by the Applicant and approved by the City's legal counsel;
2. The Concession Agreement has been executed by the City; and
3. The Applicant has submitted certificates of insurance in accordance with Attachment 6.

**F. Acceptance of the Provisions of this RFP**

Subject to Section III.A, by submitting a Proposal in response to this RFP, the Applicant expressly acknowledges and agrees to all the provisions contained in this RFP, including but not limited to the rights reserved by the City.

**VI. SIGNING OF PROPOSALS**

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

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

This \_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
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 Applicant is a CORPORATION or LIMITED LIABILITY COMPANY, the Applicant must sign and date the RFP here:**

This \_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
**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**

**ATTACHMENT 1**

**QUALIFICATION FORM**

**(APPLICANTS MUST FURNISH THE FOLLOWING INFORMATION)**

**1. BUSINESS STRUCTURE**

Name: \_\_\_\_\_  
(Corporation – Partnership – Individual – Trade Name)

Address of Principal Office: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Fed EIN or Social Security Number: \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

**1.1 If the applicant is a partnership, joint venture, please provide the following information:**

Date of Organization: \_\_\_\_\_

Partnership/Joint Venture Recorded? Yes ( ) No ( )

Date: \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_

Name, address and ownership share of each partner/joint venturer:

**Name, Address, %**

_____	_____	_____
_____	_____	_____
_____	_____	_____

**a. If Corporation, are you authorized to do business in Pennsylvania?**

Yes ( ) No ( )

**b. If so, insert brief summary of previous experience:**

_____
_____
_____
_____

**2. FINANCIAL INFORMATION**

2.1 Applicant must attach evidence of financial capability and stability, this should include; financial statements, or business tax returns for the past year, and letters of credit.

2.2 The applicant will provide herewith the following list of at least three (3) persons or companies with whom the applicant has conducted significant financial transactions during the past two (2) years or more and who may be contacted by the City:

**Reference Number 1**

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Company: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ E Mail: \_\_\_\_\_

**Reference Number 2**

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Company: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ E Mail: \_\_\_\_\_

**Reference Number 3**

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Company: \_\_\_\_\_ Fax: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_  
Telephone: \_\_\_\_\_ E Mail: \_\_\_\_\_

2.3 The Applicant's Bank References:

**Name, Address:**

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

**ATTACHMENT 2**

**CONCESSION FEE PROPOSAL FORM**

**Concession Fee for operation, management and maintenance of the concession stands for the initial term:**

**Side Concession Stand (Concession #2)**

**2013: \$ \_\_\_\_\_**

**Min Fee \$250.00 per Event**

**Side Concession Stand (Concession #4)**

**2013: \$ \_\_\_\_\_**

**Min Fee \$250.00 per Event**

**ATTACHMENT 3**

**SHOW/EVENT DATES**

**Projected 2013 Dell Music Center Season**

	Number of Performances/Events
Essence of Entertainment Concert Series	8
Concerts are held every Thursday for 8 weeks starting July 11, 2013 and ending August 29, 2013.	
<ul style="list-style-type: none"><li>○ Gospel</li><li>○ Jazz</li><li>○ Classic R&amp;B</li><li>○ R&amp;B</li><li>○ Funk</li></ul>	
*Outside Promoted Concerts (Rentals)	3-8
*Community Events (Non Profit)	3
<ul style="list-style-type: none"><li>○ Recovery Idol</li><li>○ Philadanco</li><li>○ Kids Fest</li></ul>	
*Graduations	4
<b>Total Proposed Events for 2013 Summer Season</b>	<b>20-23</b>

\*The dates of other events at the Dell Music Center vary and subject to change.

## **ATTACHMENT 4**

### **(SUGGESTED) CONCESSION STAND FOOD LIST**

The list below represents a suggested menu to give the Applicant an idea of the types of foods to be sold. There is already an existing Main Concession Stand that sells hot food and an existing Side Concession Stand #3 that sells water ice. No two stands shall sell the same items. Food choices are not limited to the following list.

#### **Side Concession Stand (Concession #2 and #4):**

1. Popcorn
2. Gourmet Popcorn
3. Chips – Potato and Corn
4. Individual packages of dried fruit trail mix
5. Hot Roasted Peanuts
6. Nachos and Cheese
7. Pretzel and Cheese

**ATTACHMENT 5**

**OFFICE OF ECONOMIC OPPORTUNITY SOLICITATION FOR PARTICIPATION  
AND COMMITMENT FORM**

*\*This form is attached as a separate document.*

## ATTACHMENT 6

### CONCESSION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by and between THE CITY OF PHILADELPHIA, a municipal corporation, ("City") and \_\_\_\_\_ ("Concessionaire").

1. Recital.

The Concessionaire is a successful proposer to the City's Request For Proposals C-102-13 ("RFP") in connection with the management and operation of concession stand(s) at the Dell Music Center, located at 33rd Street and Ridge Avenue, Philadelphia Pennsylvania ("Concession Premises"), as described in the RFP and any of its exhibits, attachments or addenda, all as attached hereto and which are all incorporated and made a part hereof of this concession agreement ("Contract").

2. Grant of Concession.

The City hereby grants to Concessionaire the privilege to operate a concession stand for the sale of food and beverages at the Concession Premises in strict and exact accordance with the terms and conditions of this Contract. In addition to the fixed counter space at the Concession Premises, the Concessionaire, with the prior approval of the City, may also carry sales items through the aisles and audience seating area during the intermission(s), before and after the events, all at the discretion of the City. The grant of these privileges by the City to Concessionaire may be referred to in this Contract as the "Concession." In the operation of the Concession it is acknowledged and understood that Concessionaire is an independent contractor and not an agent of City.

3. Term.

The term ("Term") of the Agreement shall be for a period of one (1) year, June 1, 2013 through May 31, 2014, unless sooner terminated as provided in this Contract, and commencing on the date a Notice to Proceed has been issued by the City. This Contract may be amended, in the City's sole discretion, for up to three (3) additional one (1) year terms (June 1, 2014 through May 31, 2015, June 1, 2015 through May 31, 2016, and June 1, 2016 through May 31, 2017).

4. Concession Fees.

(a) Concessionaire, in consideration for the privileges and facilities granted hereunder, agrees to pay to City concession fees (the "Concession Fees") for each event and any miscellaneous event. The Concession Fees shall be the amounts set forth in the Concession Fee Proposal Form and shall be made payable in accordance with the RFP.

(b) In addition to payment of the Concession Fees, Concessionaire, subject to the prior written approval of City, may provide vending services at special events occurring at the Dell. Concessionaire shall pay to the City a Special Events Fee for that privilege, which fee shall be determined by the City and based on the size of the event.

(c) Checks are to be made payable to the "City of Philadelphia" and submitted to the Department of Recreation, Attention: Janice Chen, Administrative Services Director, 10th Floor, 1515 Arch Street, Philadelphia, Pa. 19102. In the event Concessionaire fails to make payments as required herein on the due date, the City will notify the Concessionaire in writing that Concessionaire

is in default. The City may impose an interest charge of one hundred and twenty-five percent (125%) per annum of the prime rate of Wells Fargo, (or its equivalent in the event there shall be no prime rate) on all amounts due from the due date until paid. If the default is not rectified within five (5) days from receipt of notice, this Contract may be terminated by the City and the City may exercise all of the rights and remedies set forth in this Contract or available at law or in equity.

5. City Right of Entry and Inspection of Concession Premises and Products.

City may enter the Concession Premises at any time for any purpose necessary, incidental to or connected with the performance of its obligations hereunder, in the exercise of its governmental functions, in making any repairs to the Concession Premises or as may be required in the operation, maintenance, or development of the Concession, or to determine whether Concessionaire has complied or its complying with the terms and conditions of this Contract. City shall also have the right, but not the obligation, at all times during the term of this Contract and whether the Concession granted hereunder is in operation or not, to inspect products to be sold by the Concessionaire or by Concessionaire's vendors or subcontractors and to approve such products or reject them if they do not conform with the provisions of this Contract or are in nonconformity with any law, ordinance or regulation. In the event the City shall notify Concessionaire of its rejection of nonconforming products, the Concessionaire shall immediately cause such nonconforming products to be removed from the Concession Premises and shall not permit them to be sold at the Concession Premises. Any sale of such nonconforming products by the Concessionaire after the receipt of such notice shall constitute a material breach of this Contract.

6. Affirmative Covenants of Concessionaire.

(a) Concessionaire shall observe and comply with all present and future laws, ordinances (including, but not limited to, the Fair Practices Ordinance, The Philadelphia Code, Chapter 9-1100), statutes, orders, rules, regulations, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, or any other body exercising functions similar to those of any of the foregoing, which may be applicable to the Concessionaire, including, but not limited to health and sanitation standards ("Applicable Laws"). Concessionaire must, at its own cost and expense, procure and keep in force during the entire period of the Agreement all permits and licenses required by such laws and regulations, including but not limited to a Food Preparing and Serving License as issued by the City's Department of Licenses and Inspections. In the event Concessionaire is cited by City or any other regulatory agency for violation of any health codes or regulations, Concessionaire shall, within twenty-four (24) hours of receipt of notice of violation, provide notification and submit a plan listing steps to correct the violation(s) to the Department of Recreation's Operations Manager.

(b) Concessionaire shall pay before delinquency, all taxes, of any and all governmental authorities, that may be levied, assessed, or charged against the Concessionaire's interest in this Contract, against the personal property of the Concessionaire within the Concession Premises, or upon the rights of Concessionaire to occupy the Concession Premises as provided in this Contract or upon the Concessionaire's income from the operation of the Concession.

(c) Concessionaire shall use at the Concession Premises, one or more receipt-issuing cash register(s) which, simultaneously with the issuance of a customer's receipt for a sale, shall print on an internal journal tape a duplicate record of each transaction along with a daily total of all sales. Each customer must be given a receipt. Concessionaire shall insure that the journal tape is maintained in the machine and that a supply is always available for replacement. The register supplied and used by the Concessionaire shall have the ability to consecutively print or count

internally the number of transactions recorded; and the ability to accept debit and card transactions. This counting device shall be non-resettable by Concessionaire.

(d) On or before the commencement of Concession operations, the Concessionaire shall promptly procure and maintain throughout the Initial Term and any Renewal Term(s), at its sole cost and expense, the types and minimum limits of insurance coverage specified below. From time to time, but not more than once each year, 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 Concession Agreement. Concessionaire shall procure all insurance required below from reputable insurers who are acceptable to 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 City in the event coverage is materially changed, cancelled, non-renewed, or scheduled to lapse. All insurance required hereunder must be written on an "occurrence" basis and not a "claim-made" basis, unless otherwise noted below:

(i) Workers' Compensation and Employers' Liability.

(1) Workers' Compensation: Statutory Limits

(2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.

(3) Other states insurance including Pennsylvania.

(ii) General Liability Insurance.

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$300,000 per occurrence for damage to rented premises; \$1,000,000 personal and advertising injury; and \$2,000,000 products and completed operations aggregate.

(2) 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) Automobile Liability Insurance.

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owned, non-owned, hired, rented or leased vehicles.

(v) 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.

(vi) 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.

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. Concessionaire and its contractors and subcontractors shall not permit any lapse in or termination or cancellation of the insurance coverage required under this Concession Agreement. Concessionaire must ensure that replacement coverage meeting these requirements are in effect prior to the expiration of the policy period. If Concessionaire fails to procure and maintain such insurance, the City is not limited in the proof of any damages which 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 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.

(vii) Self-Insurance

Concessionaire may not self-insure any of the coverages required under this Concession Agreement, without the prior written approval of the City's Risk Manager. In the event that Concessionaire wants to self-insure any of the coverages listed above, it shall submit to the City's Risk Management Division, prior to the commencement date, a certified copy of Concessionaire's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the City's Risk Manager. In the event the City grants such approval, Concessionaire understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Concessionaires' self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of this Contract, Concessionaire self-insures its workers' compensation and employers' liability coverage, Concessionaire may, in lieu of the foregoing, furnish to 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. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Concessionaire to the City, or to limit Concessionaire's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Concessionaire hereunder.

(viii) Insurance Not a Limit of Liability

The insurance requirements set forth in this Concession Agreement do not modify, limit or reduce the Concessionaires' and its contractors and subcontractors indemnifications of the City under the Concession Agreement, or limit any of their respective liability under the Concession Agreement to the limits of the policy(ies) or required insurance.

(vii) Proceeds for Property Damage

Concessionaire shall cause all proceeds of the Property Damage Risk policy to be payable to the City to use for the restoration or repair of the Concession Premises.

(x) Waiver of Subrogation

Concessionaire shall cause each policy of insurance required under this Concession Agreement, excepting Worker's Compensation policies, to include a provision or a waiver of subrogation in favor of the City.

(xi) Evidence of Insurance Coverage.

Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia  
Finance Department  
Division of Risk Management  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102-1579  
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to Provider.

(e) 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 \$50,000, 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 \$50,000. The fidelity bond or crime insurance, whichever is obtained by Concessionaire, shall name the City as a beneficiary. The Concessionaire shall submit evidence of the existence of the fidelity bond or crime insurance to the City prior to the commencement Date.

(f) Indemnification and Release Concessionaire shall promptly indemnify, defend, hold harmless 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 material men'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, 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 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 city. Notwithstanding the foregoing, the City has the right, but not the obligation, to defend itself with respect to a Claim and appoint its own counsel to defend the Claim. These provisions shall survive the expiration or sooner termination of this Concession Agreement. In consideration of the Concession given to the Concessionaire by the City, 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 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 City or any of the Releasees, relating in any way to any condition in, on, or about the Concession Premises during the exercise of the Concession, the entry onto or use of the Concession Premises pursuant to the Concession Agreement, or relating in any way to the exercise of any rights or performance of any obligations under the Concession Agreement.

(g) Concessionaire shall pay the Concession Fee and any other fee(s) or charges arising under this Contract, without demand or setoff, no later than forty-eight (48) hours of the conclusion of each show/event.

(h) Concessionaire shall remove any and all liens of any nature arising out of or because of any construction performed by Concessionaire or its contractors or subcontractors at the Concession Premises, or arising out of or because of any performance of any labor by or for it or them, or the furnishing of any materials to it or them for use at said Concession Premises, reserving to Concessionaire, however, the right to contest the validity of such liens. Concessionaire further agrees that prior to the performance of any work at the Concession Premises, it will file of record a waiver of mechanics' liens in form satisfactory to City. Concessionaire agrees to completely indemnify and hold City harmless from any and all claims for labor and/or material that may be incurred during the performance of any work on the said improvements. Prior to making final payment to any contractor, subcontractor or material men with respect to any work done or materials furnished in, on or about the Concession Premises, Concessionaire shall obtain and furnish to City written release of mechanics' liens with respect to all such work and/or materials.

(i) Concessionaire shall use every reasonable precaution against fire.

(j) Concessionaire shall furnish good, prompt, and efficient service adequate to meet all the demands for its service at the Concession Premises, furnish said service on a fair, equal and nondiscriminatory basis to all users thereof, and charge reasonable and non-discriminatory street prices that are comparable to off-site locations operating under the same trade name or operating comparable businesses in Greater Philadelphia, for each unit of sale or service. Concessionaire is responsible for maintaining personnel in sufficient numbers as to provide adequate service. All pertinent sanitary and health rules and regulations are to be strictly adhered to in the hiring and maintaining of such personnel. Concessionaire must ensure that all personnel are supplied with clean uniforms. Concessionaire shall not employ any person who shall use improper language or act in a loud and boisterous manner and shall remove any employee who acts in an inappropriate manner. The Concessionaire must limit the movements of its employees to those areas of the Concession Premises designated by the City.

(k) Concessionaire shall peaceably deliver up and surrender possession of the Concession Premises to the City at the expiration or earlier termination of this Contract in as good order and condition as the same now are or may hereafter be improved by Concessionaire or City, reasonable wear and use thereof excepted. In the event that Concessionaire does not, within forty-eight (48) hours following expiration or termination of this Contract, remove, at its sole cost and expense, all trade fixtures, equipment and other personal property owned by Concessionaire, City shall have the right to remove all such property at the expense of Concessionaire or, in City's sole discretion, to regard such property as property of the City.

(l) Concessionaire shall procure and maintain quality food and beverages in sufficient supply to meet the reasonable needs and requests of its clientele and maintain the highest degree and standards of service.

(m) Concessionaire shall give to the Operations Manager within twenty-four (24) hours of such occurrence, notice of to any accident, fire or damage occurring on or to the Concession Premises.

(n) Concessionaire must ensure that the refreshment stand, bathroom, any portable refreshment cart sites and the grounds immediately adjacent to such areas (i.e., within twenty-five (25) feet) are kept in a clean, trim fashion, free of all waste, rubbish, garbage, papers and other debris. Concessionaire shall provide a complete and proper arrangement for the frequent and adequate sanitary handling and disposal and recycling as appropriate, of all trash, garbage and other refuse caused as a result of the operation of its business. Concessionaire must provide and use suitable covered metal receptacles for all such garbage, trash and other refuse including, but not limited to cooking oils. All such material, including discarded cooking oil, must be removed from the premises by Concessionaire, at its sole cost and expense, within three (3) hours of the close of each day of operation. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the Facility, is forbidden. Concessionaire shall be responsible for keeping the refreshment stand free from vermin, insects and rodents. To that end Concessionaire, at its sole cost and expense, may be requested by City to retain the services of a licensed exterminator, to be approved by the City, to provide regular exterminating services; copies of tickets from the approved exterminator will be provided monthly to the Dell Manager showing that the refreshment stand has been treated. City or its authorized agents may, at any reasonable time, without notice, enter the

Concession Premises to determine if reasonable satisfactory maintenance for a facility of this type is being performed. If it is determined that said maintenance is not satisfactory, City shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire within five (5) days of written notice by the City, in addition to any other rights or remedies which the City may have under this Contract or in law or at equity, City, or its agents, shall have the right, but not the obligation, to enter the Concession Premises and perform the maintenance therefore. The cost for the performance of such maintenance by City shall be borne by Concessionaire.

7. Quality of Products; Right to Inspect Products.

All products sold by the Concessionaire at the Concession Premises shall be of the highest quality and shall conform with the RFP and all applicable federal, state, local laws, acts, ordinances and regulations. The City shall have the right, but not the obligation, at all times during the term and whether the Concession granted hereunder is in operation or not, to inspect products to be sold by the Concessionaire and to approve them or reject them if they do not conform with the provisions of this Contract. In the event that City shall notify the Concessionaire of its rejection of nonconforming products, the Concessionaire shall immediately cause such nonconforming products to be removed from the Concession Premises and shall not permit them to be sold on the Concession Premises. Any sale of such nonconforming products by the Concessionaire after the receipt of such notice shall constitute a material breach of this Contract.

8. Destruction of Concession Premises.

(a) If all or any part of the Concession Premises is destroyed by fire or other casualty, so that the Concessionaire is unable to provide the services required by this Contract, the City may, in its sole discretion, either (i) terminate this Contract without liability on the part of the City, or (ii) repair damage after the occurrence of the casualty. The City shall notify the Concessionaire of its election in a reasonable period of time after the occurrence of the casualty.

(b) If the City elects to terminate this Contract, the Concessionaire shall be liable to the City for any outstanding Concession Fees and Special Events Fees.

(c) The Concessionaire hereby releases the City from any and all claims for damage, loss, or compensation, including, but not limited to claims for interruption of business or loss of profits, arising from the destruction of or damage to the Concession Premises by fire, flood, or other casualty, whether or not such casualty was insured or insurable.

9. Reports; Records; Inspection of Records.

(a) Reports. The Concessionaire shall provide the City with all reports as specified in the RFP.

(b) Maintenance of Records. The Concessionaire shall keep and preserve at its office during the term of this Contract and for at least three years after the termination or expiration of this Contract, balance sheets, statements of earnings, general ledger, receipts and disbursement journals, sales records, cleaning, extermination and service records, information relating to any commitments with minority, woman or disabled business enterprises (e.g., copies of subcontracts,) and other supporting documentation which shall disclose in detail all information required to permit City to verify contract performance and payment of all amounts due or required to be paid under this Contract. All financial records maintained by Concessionaire shall be in accordance with generally accepted accounting principles.

(c) Inspection of Records. The City shall have the right to inspect and audit the Concessionaire's books of account, and other records maintained as required by this Contract, at all reasonable times and at such place as the City may prescribe.

10. Surrender of Concession Premises.

The Concessionaire shall on the last day of the Term or upon any earlier termination of this Contract, immediately vacate the Concession Premises without delay, leaving said Concession Premises in good order, condition and repair and free and clear of all lettings, occupancies, liens, and encumbrances other than those, if any, created by the City. No further notice to vacate the Concession Premises shall be required. The Concessionaire shall remove, at its sole cost and expense, any and all equipment installed by the Concessionaire. The Concessionaire shall cooperate with the succeeding concessionaire prior to the last day of the Term in order to effectuate a smooth, orderly, and uninterrupted transition in the operation of the Concession.

11. Default and Termination of the Contract; Termination For Convenience.

(a) Any failure by Concessionaire to comply with any provision of the Contract may, in the sole discretion of the City, constitute an event of default. In the event of a default by Concessionaire, City shall give Concessionaire written notice of such default and permit Concessionaire, within a period of five (5) days thereafter, or such additional cure period as City may authorize, to correct the default; provided, however, that no such notice from City shall be required nor shall City permit any period for cure if the event of default creates an emergency which requires, in City's sole discretion, immediate exercise of City's rights or remedies. After providing such notice and grace, the City may terminate the Contract if Concessionaire, in the City's sole judgment, has failed to satisfactorily cure such default. No extension or indulgence granted to Concessionaire shall operate as a waiver of any of City's rights in connection with the Contract. The right to terminate the Contract shall not be exclusive and is in addition to any other rights or remedies available to City under this Contract, at law or in equity.

(b) This Contract may be terminated by City for the convenience of City at any time prior to its expiration, by giving to Concessionaire notice of its intention to terminate the Agreement at least thirty (30) days in advance. The exercise of any such right of termination on the part of the City, shall be without liability against the City for any damage or loss of profit which Concessionaire may suffer by reason of the termination.

(c) If the Contract is terminated for any reason, any outstanding Concession Fees and/or Special Events Fees, as well as all other charges, payments, costs, and expenses herein agreed to be paid by the Concessionaire shall be immediately due and payable to City.

12. Covenants of Concessionaire.

Concessionaire covenants that it will not:

(i) Occupy the Concession Premises in any way, or for any purpose, other than as herein provided.

(ii) Mortgage, pledge, encumber, underlet, or sublet the Concession Premises or any part thereof or assign this Contract unless it receives the prior written approval of City.

(iii) Vacate the Concession Premises or remove there from any goods or property otherwise than in the ordinary and usual course of the Concessionaire's operation, service, and maintenance of the equipment without having first paid and satisfied the City in full for all Concession Fees and other charges then due or thereafter becoming due until the expiration of the then current Term.

(iv) Furnish, maintain, store, or cause or permit to be furnished, maintained or stored, gasoline, fuels, lubricants, or other flammable materials at the Concession Premises without the prior written consent of the City.

(v) Install, maintain, or operate any coin-operated device or any machine for the vending of food, beverages, tobacco or merchandise of any kind unless expressly authorized so to do by City.

(vi) Sell, dispense, store or consume at the Concession Premises, any malt, vinous or spirituous beverages

13. Special Events.

Notwithstanding the grant of Concession, the City reserves the right to permit entities, including non-profit organizations, holding events or otherwise conducting authorized activities within the Concession Premises to sell food, beverages, novelties, etc., either directly or through concessionaires of their own choosing, as an incident to and in the course of such special events or activities. The granting of such permission (which shall be in the sole and absolute discretion of the Recreation Commissioner) shall not constitute a violation of this Contract with Concessionaire or give rise to any claims for loss of profits or damages against the City.

14. Force Majeure.

Anything in this Contract to the contrary notwithstanding, the City shall not be responsible or liable for failure to fulfill any of its obligations set forth in this Contract occasioned by acts of God, inclement weather, 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.

15. Assignment and Transfer.

(a) The Concessionaire

The Concessionaire may not transfer or assign this Contract, either in whole or in part, without the prior written consent of the City. If the City approves any transfer or assignment of this Contract, the Concessionaire will, nevertheless, remain liable for the performance of all the obligations of the Concessionaire under this Contract. The Concessionaire will require any transferee or assignee to execute and deliver to the City an assumption of liability agreement, in form satisfactory to the City, including without limitation, the assignee's ratification of and agreement to be bound by all of the provisions of this Contract. The consent of the City to one or more assignments or transfers of this Contract shall not be construed as a consent to any other assignment or transfer of this Contract.

(b) The City

The City may assign, transfer, or encumber the City's interest in this Contract at any time without notice to the Concessionaire. The Concessionaire waives any requirements under the laws of the Commonwealth of Pennsylvania regarding the witnessing or execution of assignments.

16. Participation of Minority, Woman and Disabled Business Enterprises

This Contract is subject to the Antidiscrimination Policy under Mayoral Executive Order 03-12 for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. While there are no numerical participation ranges established for this RFP, all Applicants should exercise "Best and Good Faith Efforts" to include M/W/DSBEs in their proposals. "Best and Good Faith Efforts" are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs in the contract. M/W/DSBEs, submitting as prime concessionaires, are strongly encouraged to apply for this opportunity. Participation by M/W/DSBEs in this concession opportunity should be indicated on the form entitled, "Solicitation for Participation and Commitment Form," found in Attachment 5 to the RFP for the Concession Agreement.

17. Concession not Lease.

This Contract creates a personal contractual obligation of Concessionaire. Nothing in this Contract shall be construed as granting a leasehold interest in the Concession Premises to the Concessionaire. Concessionaire is an independent contractor and not an agent, partner, or employee of the City.

18. Condemnation.

If the Concession Premises or any part of the Concession Premises, are taken under condemnation proceedings by any government authority, the City may, at the City's option, terminate this Contract as of the date of the taking. All damages awarded for such taking shall belong to and become the property of the City. The Concessionaire shall have no claim against the City by reason of such taking or termination and shall not have any claim or right to any portion of the amount that may be awarded or paid to the City as a result of any such taking.

19. Complete Agreement; Governing Law.

This Contract sets forth all the promises, agreements, conditions, and understandings between the City and the Concessionaire relating to the subject matter thereof. There are no promises, agreements, conditions, or understandings, either oral or written, between the City and the Concessionaire other than those set forth in this Contract. This Contract may only be amended, modified, or supplemented by agreement in writing signed by both the City and the Concessionaire. This Contract is governed by the laws of the Commonwealth of Pennsylvania.

20. Contract Binding.

This Contract is binding upon the parties, their heirs, executors, administrators, successors, and assigns, subject to the provisions relating to assignment.

21. Notices; Approvals.

All notices, requests, and other communications under this

Contract shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If intended for the City:

Janice Chen  
Administrative Services Director  
1515 Arch Street  
10<sup>th</sup> Floor – Recreation Department  
Philadelphia, PA 19102

If intended for the Concessionaire:

22. Captions and Section Numbers.

The captions, article numbers, and paragraph numbers appearing in this Contract are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Contract nor in any way affecting this Contract.

23. Partial Invalidity.

If any term, covenant, or condition of this Contract or the application thereof to any party or circumstance shall, to any extent, be held invalid, or unenforceable, the remainder of this Contract or the application of such term, covenant or condition to parties or circumstances other than those to which the Contract was held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

24. No Third Party Beneficiary.

Nothing contained in this Contract is intended to or shall be deemed to confer a third party beneficiary right upon any person, firm, or corporation.

25. Nondiscrimination.

(a) This Contract is entered into under the terms of the Philadelphia Home Rule Charter and, in its performance, the Concessionaire shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, gender identity, religion, national origin, or ancestry. In the event of such discrimination, the City may terminate this Contract forthwith.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, the Concessionaire agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in a exclusionary private organization, insofar as such participation confers a employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges, or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin, or ancestry constitutes a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law or equity.

(c) The Concessionaire agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for supplies or work to be performed pursuant to this Contract. The Concessionaire further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

IN WITNESS WHEREOF, the City and the Concessionaire have executed this Agreement as of the date first above written and intend to be legally bound thereby.

THE CITY OF PHILADELPHIA

By: \_\_\_\_\_  
Procurement Commissioner

CONCESSIONAIRE

By: \_\_\_\_\_  
President/Vice President

Attest: \_\_\_\_\_  
Secretary/ Treasurer

Approved as to legal form:

\_\_\_\_\_  
Senior Attorney

**ATTACHMENT 7**

**CITY OF PHILADELPHIA TAX AND REGULATORY  
STATUS AND CLEARANCE STATEMENT  
FOR APPLICANTS**

**THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE**

This form must be completed and returned with Applicant’s proposal in order for Applicant to be eligible for award of a contract with the City. Failure to return this form will disqualify Applicant’s proposal from further consideration by the contracting department. Please provide the information requested in the table, check the appropriate certification option and sign below:

Applicant Name	
Contact Name and Title	
Street Address	
City, State, Zip Code	
Phone Number	
Federal Employer Identification Number or Social Security Number:	
Philadelphia Business Income and Receipts Tax Account Number (f/k/a Business Privilege Tax) (if none, state “none”)*	
Commercial Activity License Number (f/k/a Business Privilege License) (if none, state “none”)*	

\_\_\_\_ I certify that the Applicant named above has all required licenses and permits and is current, or has made satisfactory arrangements with the City to become current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation, or has made satisfactory arrangements to cure any violation, or other regulatory provisions applicable to Applicant contained in The Philadelphia Code.

\_\_\_\_ I certify that the Applicant named above does not currently do business, or otherwise have an economic presence in Philadelphia. If Applicant is awarded a contract with the City, it promptly will take all steps necessary to bring it into compliance with the City’s tax and other regulatory requirements.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
\* You can apply for a City of Philadelphia Business Income and Receipts Tax Account Number or a Commercial Activity License on line after you have registered your business on the City’s Business Services website located at <http://business.phila.gov/Pages/Home.aspx>. Click on “Register” or “Register Now” to register your business.