

City of Philadelphia – Fairmount Park Commission



REQUEST FOR PROPOSAL
RFP C-103-08

For

**Concession for Management and Operation of Golf Courses and Sports
Center in Fairmount Park**

**MARK A. FOCHT, EXECUTIVE DIRECTOR
FAIRMOUNT PARK COMMISSION**

**JANET HAGAN, ACTING PROCUREMENT COMMISSIONER
PROCUREMENT DEPARTMENT**

RFP Release Date:

RFP Release Date: **August 28, 2007**

Pre-Proposal Meeting:

September 11 2007, 10 a.m.

Fairmount Park Commission Executive Director's Office
One Parkway Building, 1515 Arch Street, 10th Floor
Philadelphia, PA 19102

Deadline for Submitting Proposals:

**PROPOSALS WILL BE RECEIVED UNTIL SEPTEMBER 25, 2007 AT
10:30AM PREVAILING LOCAL TIME ("DEADLINE FOR
SUBMITTING PROPOSALS") IN ROOM 170-A, MUNICIPAL
SERVICES BLDG, 1401 J.F.K. BOULEVARD, PHILADELPHIA, 19102
AND WILL BE OPENED IMMEDIATELY THEREAFTER.**

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SECTION 1 – GENERAL INFORMATION

1.1 Purpose of this Request for Proposals

This Request for Proposals (“**RFP**”) is being issued by the City of Philadelphia (“**City**”) Procurement Department (“**Procurement**”) for the Fairmount Park Commission (“**Commission**”). The Commission is requesting proposals from all persons and firms that would like to manage and operate three golf clubs (which include a total of four 18-hole golf courses) and one sports center that includes a driving range, miniature golf course and baseball batting cages (collectively the “**Facilities**”). The Facilities are more described in more detail in Section 2.1. The Commission is seeking respondents to this RFP who can demonstrate substantial experience in the operation and maintenance of municipal golf courses and sufficient financial capability to operate, maintain, and improve the Facilities at the highest level.

1.2 Respondents to this RFP; the Concession Agreement and Concessionaire

Each firm and individual that submits a proposal in response to this RFP (“**Proposal**”) will be considered a “**Respondent**”. The Commission intends to enter into negotiations for a “**Concession Agreement**” with the Respondent whose Proposal the Commission determines best serves the objectives and meets the criteria set forth in this RFP. Upon execution of the Concession Agreement, that Respondent will become the “**Concessionaire**” under the Concession Agreement. The Concession Agreement will give the Concessionaire a license (“**License**” or “**Concession**”) to operate and manage the Facilities and to exercise the rights and perform the duties described in this RFP and the Concession Agreement.

1.3 Proposed Concession

The Commission wants a Concessionaire to assume full operation, maintenance, and management responsibility for the Facilities. Included in this responsibility is the care of all interior and exterior spaces, buildings and grounds, and all business related opportunities such as golf shop merchandise and services, food and beverage services, and golf instruction and programs. In exchange for the License, the Concessionaire will be required to pay a Concession Fee to the City and make certain capital improvements to the Facilities as explained more fully in this RFP.

1.4 Pre-Proposal Meeting

1.4.1 A “**Pre-Proposal Meeting**” will be held for all interested persons on the date and time stated on the cover page of this RFP. The purpose of the Pre-Proposal Meeting will be to review the requirements contained in this RFP. **All potential Respondents are required to RSVP to the Project**

Manager (defined in Section 1.5.1 below) **regarding their anticipated attendance at the Pre-Proposal Meeting.**

1.5 Project Manager; Questions about this RFP

- 1.5.1 The “**Project Manager**” for the RFP and the Concession is Barry Bessler, Chief of Staff, Fairmount Park. All questions concerning this RFP should be submitted in writing to the Project Manager by any of the following means:

Email: barry.bessler@phila.gov
Fax: 215.683.0205
Mail: One Parkway, 1515 Arch Street, 10th Floor,
Philadelphia, PA 19102

- 1.5.2 Individuals and firms that are considering submitting a Proposal in response to this RFP may ask questions about the proposal process, this RFP, and the Concession Agreement at the Pre-Proposal Meeting. Otherwise, questions must be submitted to the Project Manager in writing, by e-mail, facsimile, or letter, no later than **September 14, 2007 5:00 p.m. prevailing local time, (“Deadline for Questions”)**. The City is not obligated to answer or respond to any questions received after the Deadline for Questions. The City will issue written responses by an addendum to the RFP prior to the Deadline for Submitting Proposals, to any questions, that, in the City’s sole discretion, are material to the RFP.
- 1.5.3 Please clearly state the number of this RFP on all cover letters and facsimile cover sheets. The RFP number is listed on the cover page of this RFP.
- 1.5.4 All questions at the Pre-Proposal Meeting, and all other questions submitted in writing, which concern a material element of the proposal process, the RFP, or the Concession Agreement, will be answered by the City in writing. The City will not be bound by any verbal response by any City employee to any such questions.

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

All potential Respondents are encouraged to carefully read this entire RFP before the Pre-Proposal Meeting and before submitting a Proposal. This RFP will become part of the Concession Agreement. Therefore, potential Respondents are strongly encouraged to pay careful attention to the provisions in this RFP that will become obligations of the Concessionaire under the Concession Agreement.

1.7 No Obligation on City to Execute a Concession Agreement

This RFP does not commit the City to award a Concession Agreement. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. No other party, including any Respondent, is granted any rights by this RFP or by responding to this RFP. Any Proposal by a Respondent to this RFP, including written documents and verbal communication, may be subject to public disclosure by the City or its authorized agents, except as provided in this RFP.

1.8 Modifications; Late Proposals

Until the Deadline for Submitting Proposals, a Respondent may submit a modified Proposal to Procurement to replace all or any portion of a Proposal previously submitted by that Respondent. Procurement will only consider the latest version of a Respondent's Proposal. Procurement will not consider or evaluate late Proposals or late modifications. A Respondent may withdraw its Proposal from consideration at any time before the Deadline for Submitting Proposals. To withdraw a Proposal, the Respondent must provide Procurement with written notification.

SECTION 2 - DESCRIPTION OF FACILITIES

2.1 Facilities

The Facilities include:

2.1.1 Cobbs Creek Golf Club in West Philadelphia, which includes two 18-hole courses:

- a. Olde Course, and
- b. Karakung Course;

2.1.2 FDR Golf Club in FDR Park in South Philadelphia;

2.1.3 John F. Byrne Golf Club in Northeast Philadelphia; and

2.1.4 City Line Sports Center in West Philadelphia.

The Facilities have sidewalks, parking lots, and various appurtenances. Each of the Facilities has unique features and amenities, and the courses are varied in length and terrain. A more comprehensive description of each facility is available at www.golfphilly.com.

2.2 Facility Data.

Data on the number of rounds played and the reported gross receipts for the Philadelphia municipal courses for the 2006 season are set forth in **Appendix 1**.

SECTION 3 - CONCESSION REQUIREMENTS

3.1 Term of the Concession Agreement

The “**Term**” of the Concession Agreement will commence on January 1, 2008, or the date the City executes the Concession Agreement and all the conditions set forth in Section 7.3 have been completely satisfied (in either event, the “**Commencement Date**”). The Term will expire on the 5th anniversary of the Commencement Date. The Commission at its sole option may renew the Concession Agreement for up to one five-year period, or on a year-to-year basis for up to five years (the five-year period or each year, a “**Renewal Term**”). For purposes of the Concession Agreement, the date the Concession Agreement expires or is terminated is called the “**Concession Agreement Ending Date**.”

3.2 Operating Schedule

The Concessionaire shall manage and operate the Facilities year-round, weather permitting. The exact hours of operation are subject to prior approval by the Executive Director of Fairmount Park or the Executive Director’s designee (the “**Executive Director**”).

3.3 Greens Fees

3.3.1 Rates at Fairmount Park golf courses currently range from \$15 to \$46 based on the course, time of day, day of week, and other factors.

3.3.2 The Concessionaire may change the daily fees and membership rates annually, subject to the prior review and written approval of the Executive Director. The Concessionaire must present proposed rate changes to the Executive Director at least 45 days before the Concessionaire desires to implement the rate change. The Concessionaire shall not change daily fees and membership rates unless the Executive Director approves the proposed change in writing.

3.4 Other Rates & Fees

Fairmount Park *does not* own the carts currently in service at the courses. The Concessionaire shall be required to provide golf cart service to patrons of the golf course Facilities. The current golf cart contract will terminate upon

commencement of the Concession Agreement resulting from this RFP. Therefore, the Concessionaire shall arrange to provide all necessary golf carts at the Facilities beginning upon the Commencement Date of the Concession Agreement.

3.5 Food and Beverage Service

There are existing snack bar and food and beverage service facilities at each golf course. The Concessionaire shall provide snack bar and food and beverage service at each of the golf courses. Concessionaire shall have the option to obtain a liquor license and shall be solely responsible for obtaining the license.

3.6 Golf & Merchandise Services

3.6.1 a. The Concessionaire shall offer for sale golf merchandise, supplies, and equipment at each of the golf courses. The Concessionaire may arrange for qualified personnel to provide golf instruction and programming.

b. The Commission will work to have the current operator of the Facilities provide the Concessionaire with a complete inventory of merchandise at the Facilities as of December 31, 2007. The merchandise included in such inventory will pass on to the Concessionaire.

3.6.2 The City may require the Concessionaire to include the Fairmount Park logo prominently on certain merchandise where commercially reasonable, such as, for example, articles of clothing and hats. Use of the Fairmount Park logo on merchandise shall be subject to approval of the Executive Director.

3.7 Community Programming

Concessionaire shall continue the program commitments to youth and junior programs listed in **Appendix 2**. Respondents must describe how they would expand and enhance those programs, including examples of previous successful similar programs and ideas for recruitment of new players.

3.8 Tournaments, Outings and League Play

There are no current requirements related to tournaments, outings and league play. The Concessionaire may arrange for tournaments, outings, and league play at some or all of the Facilities.

3.9 Reservations

The Concessionaire shall operate an advance reservation system.

3.10 Community Relations

3.10.1 Respondents must demonstrate awareness of the role of the Facilities as integral parts of the surrounding community. Respondents must set forth in their proposals a plan to cooperate with Facility users and the surrounding community. For example, the Concessionaire might actively seek community input on proposed capital improvements or use of the Facilities for off-season recreational opportunities.

3.10.2 The Concessionaire shall work diligently and in good faith to establish and maintain a good relationship with the residents surrounding the Facilities and to ensure consideration of their concerns about golf course operation and maintenance. As an integral part of the Concessionaire relationship with the neighboring community, the Concessionaire shall thoroughly maintain the perimeter of Facility, including the prompt removal of all litter and debris, tree pruning, snow and ice removal, and sidewalk and fence maintenance and repair.

3.10.3 The Concessionaire shall, diligently and in good faith, work with Commission staff to address maintenance issues and work with area residents to address residents' concerns, including errant golf balls. The Concessionaire shall employ preventative maintenance techniques to prevent golfed balls from traveling outside of the Facilities, such as, without limitation, redirecting tees as needed, providing additional plantings, and installing protective netting.

3.10.4 Concessionaire shall in good faith reach out to the communities surrounding the Facilities regarding employment opportunities.

3.11 Equipment

3.11.1 a. The Concessionaire shall provide and maintain all equipment necessary for the successful operation of the Facilities. All capital improvements, fixtures, and equipment applied towards the Concessionaire's capital investment become the property of the City upon completion or installation, unless otherwise specified by the Executive Director prior to the construction or installation. The Concessionaire shall also supply all additional non-fixed equipment, materials, and supplies necessary to successfully operate the Facilities, including but not limited to tables and chairs, and office furniture.

b. Respondent must differentiate between, on the one hand, all fixtures and equipment it would apply toward the Concessionaire's capital investment and, on the other hand, non-capital items. Non-fixture equipment will not apply toward the Concessionaire's required capital expenditure and will remain the property of the Concessionaire.

3.11.2 Certain equipment at the Facilities is owned by the City and will be made available for use by the Concessionaire. The Commission will try to provide the Concessionaire with a dollar value of that equipment on or after the Commencement Date. Upon expiration or earlier termination of the Concession Agreement, the Concessionaire shall return to the City a similar type, quantity, and value of equipment, adjusted for inflation. Throughout the Term, Concessionaire shall maintain, repair, and replace as needed all other equipment used at the Facilities (for example, without limitation, refrigerators, ice machines, irrigation equipment, ball washers, etc.) at the Concessionaire's expense. Concessionaire's costs for maintenance, repair, and replacement of any equipment described above will not be reimbursed from the annual Capital Escrow Funds.

3.12 Facility Maintenance; Landscaping; Utilities; Waste Removal

3.12.1 a. Throughout the Term, the Concessionaire shall promptly perform all necessary and desirable tree removal, pruning, landscaping, maintenance, snow and ice removal, and all general grounds maintenance on the grounds of the Facilities. The Concessionaire shall provide adequate numbers of annual and seasonal staff in order to maintain the Facilities in accordance with the Concession Agreement.

b. Each Respondent must include in its Proposal detailed plans for maintenance and staffing of the Facilities; anticipated turf care programs such as aerification, fertilization, disease and weed control, fungicide, seeding, sodding, irrigation, etc.; and other year-round Facilities maintenance schedules.

3.12.2 The Concessionaire shall comply with the standards set by the United States Golf Association (USGA) for turf management and golf course maintenance. In addition, some of the Commission's Facilities include important environmental areas, such as wetlands, that host waterfowl, migrating birds, and other important species. The Commission encourages Respondents to submit proposals that are committed to developing and implementing environmentally friendly maintenance practices. For example, without limitation, those practices could include certification in the Audubon Cooperative Sanctuary Program for golf courses.

- 3.12.3 a. The Concessionaire shall, at its sole cost and expense, promptly maintain and operate the Facilities in a good and safe condition and in accordance with industry best practices. Without limiting the Concessionaire's maintenance obligations, the Concessionaire shall maintain and repair each of the Facilities, the interior and exterior of all structures on the Facilities, building systems, utility systems and connections, sewer systems and connections, equipment, fencing, lighting, sidewalks, cart paths, parking lots, vaults, gutters, curbs, and fixtures. The Concessionaire shall permit the Commission and its representatives to enter and inspect the Facilities to determine whether the Concessionaire is meeting its maintenance obligations under the Concession Agreement.
- b. The Concessionaire shall pay all costs for utilities and utility service used in or provided to the Facilities. The Concessionaire shall arrange to be billed directly by utility providers, and the Concessionaire shall pay all utilities bills before delinquency. The Concessionaire shall pay all interest, penalties, and other costs and charges imposed or that accrue in connection with any late payment by Concessionaire.
- 3.12.4 The Concessionaire shall, at its sole cost and expense, promptly clean-up and remove all waste, garbage, refuse, rubbish, organic debris, and litter from the Facilities and the area within fifty (50) feet of the Facilities. The Concessionaire shall provide adequate waste and recycling receptacles throughout the Facilities for use by patrons and shall comply with all Applicable Laws regarding recycling. The Concessionaire shall keep the parking lots and driveways clean, neat, and free of leaves, litter and debris. The Concessionaire shall keep all signs and structures in good condition and free of graffiti at all times.
- 3.12.5 The Concessionaire shall, at its sole cost and expense, thoroughly and promptly maintain the perimeter of each golf course that is part of the Facilities, including weekly grass mowing and prompt removal of all litter, debris and fallen leaves, tree pruning, clearing of invasive plant growth, and sidewalk maintenance and repair. The Concessionaire also shall promptly remove, repair or replace fencing where necessary. The Concessionaire shall promptly remove snow and ice from hard surfaces and put down salt, sand, or other substance to reduce the likelihood of people slipping. Without limiting the Concessionaire's responsibility for maintaining, repairing, and keeping all hard surfaces in the Facilities clean and clear, the Concessionaire shall maintain, repair, and keep clean and clear the, driveways, parking lots, and perimeter sidewalks of the Facilities.

3.13 Horticultural Improvements and Tree Maintenance

- 3.13.1 a. The Commission encourages Respondents to submit Proposals that aim to improve the horticultural amenities at the golf courses.
- b. The Concessionaire shall maintain, enhance, and expand existing planting areas for flowers, flowering shrubs, and trees, at strategic locations throughout the Facilities, such as the entrances to each of the Facilities, around the clubhouses, along the courses' perimeter, and at the tee boxes.
- 3.13.2 Despite Section 3.2 above, the Concessionaire shall not cut down or remove any trees in or from the Facilities without prior written approval of the Executive Director. During all construction, the Concessionaire shall take all reasonable measures to protect trees and tree roots from damage. The Concessionaire shall cause its Subcontractors to provide protection for all trees in and around the construction zone. The Concessionaire shall cause its Subcontractors to take special care to protect roots within drip line of trees in the construction zone or in the area used for construction staging and in laying out, repairing, or moving utility lines and conduits.
- 3.13.3 The Concessionaire shall adhere to all standards established by the International Society of Arboriculture (ISA) concerning infestation control and treatment and general tree trimming and removal practices.

3.14 Signs; Names of Facilities; Marketing the Facilities

- 3.14.1 The Concessionaire shall obtain the prior, written approval of the Executive Director before placing or erecting any sign in, on, or about any of the Facilities. The placement or erection of certain signs may be subject to the jurisdiction of the Philadelphia Art Commission. The Concessionaire shall obtain the approval of the City of Philadelphia Art Commission if and when required by Applicable Laws. The Concessionaire shall comply with all other Applicable Laws governing signs in the Facilities, including but not limited to the Commission's regulations.
- 3.14.2 a. Without limiting Subsection 3.14.1, throughout the Term of the Concession Agreement, the Concessionaire shall maintain prominent, clearly legible signs at the entrances to each of the Facilities that identify the sites and include (a) the Commission logo (in size equal to at least 50% of the size of the Tenant's logo and any other wording on the sign) and (b) the following inscription (the lettering for "Fairmount Park" must be at least 50% of the size of the remaining lettering):

**[Name of the Facility]
in Fairmount Park**

or such other wording and letter size that the Executive Director approves in advance in writing.

b. Throughout the Term of the Concession Agreement, the Concessionaire shall include in its regularly used stationery letterhead and all its print, broadcast, and electronic publicity (including but not limited to subtenant's website homepage), and advertising materials, a prominent, easily legible statement that reads: **“[Name of the Facility] is a Fairmount Park property operated by [Name of the Concessionaire] in cooperation with the Fairmount Park Commission.”**

SECTION 4 – GENERAL CONTRACT PROVISIONS

4.1 City Contract Provisions

Any Respondent selected to enter into final limited negotiations will be expected to enter into a Concession Agreement with the City containing terms acceptable to the City, including, but not limited to, terms substantially similar to the terms set forth in this Section 4.

4.2 Objections

Respondents must provide in their Proposal any objections to the following contract provisions. Any such objection must identify the specific contract provision objected to, the reason for the objection, and propose alternative language or terms. Requirements and terms to which no objection is asserted will be presumed acceptable to the Respondent. The City may, in its sole discretion, evaluate proposals in part according to whether the Respondent so objects, and the number and type of objections asserted.

4.3 Ethics Requirements

4.3.1 To preserve the integrity of City employees and maintain public confidence in the competitive Request For Proposal system, Mayor's Executive Order No 02-04, prohibits City officials and employees from soliciting or accepting anything of value from any person seeking to initiate or maintain a business relationship with City of Philadelphia departments, boards, commissions and agencies. Order 02-04 applies to any person(s) whose business or activities are inspected or regulated by any City agency, engaged as either principal or attorney in proceedings before any City agency or court of law in which the City is an adverse

party, or whose interests may be affected by the performance or nonperformance of any employee's official duties.

- 4.3.2 All City employees have been instructed, when presented with gifts or gratuities as contemplated by Order 02-04, to report those actions to the appropriate authorities, who will in turn act to the fullest extent of City policies and regulations governing those practices. All Respondents, their employees, agents or intermediaries, who are solicited for gifts or gratuities by City employees, are urged to report those incidents to the Inspector General's Office at (215) 686-1770, or to forward documented incidents to the attention of the Inspector General, ARA Tower -- Fourth Floor, 1101 Market Street, Philadelphia, PA 19107. A complete copy of Executive Order 02-04 is available for inspection in the Procurement Information Office, Room 170, Municipal Services Building, 1401 John F. Kennedy Boulevard, Philadelphia, PA, between the hours of 9:00 A.M. and 4 P.M.

4.4 Tax Requirements

- 4.4.1 Any contractor, vendor of goods, or provider of services, who bids on and is awarded a contract by the City is subject to Philadelphia's business tax ordinances and regulations. The City Solicitor has ruled that anyone who is awarded a contract by the City pursuant to a bid or request for proposals has entered into a contract within the City, and the subsequent delivery of goods into the City or performance of service within the City constitutes "doing business" in the City, and subjects the successful bidder to City tax requirements, including without limitation one or more of the following taxes:
- a. Business Privilege Taxes
 - b. Net Profits Tax
 - c. City Wage Tax
- 4.4.2 Promptly following the Commencement Date, the Concessionaire, if not already paying the taxes listed above, shall apply to the City of Philadelphia Department of Revenue for a tax account number and to file appropriate business tax returns as required by Applicable Law. Applications may be submitted to the Department of Revenue at: Municipal Services Building, Public Service Concourse, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102. Questions about the application and the taxes should be directed to the Taxpayer Service Unit at: (215) 686-6600.
- 4.4.3 In addition to the City's tax requirements, the Concessionaire shall timely pay all federal, state, and local taxes, assessments, and levies, however

characterized, that apply to the Concession, the Concession Agreement, and the Concessionaire's activities under this RFP and the Concession Agreement.

- 4.4.4. Any failure by the Concessionaire to comply with the requirements set forth in this RFP or the Concession Agreement regarding payment of taxes, or Concessionaire's failure to otherwise pay taxes as required by Applicable Laws, is a default of the Concession Agreement.

4.5 Confidential and Proprietary Information of the City

The Concessionaire shall treat all information it obtains from the City that is not generally available to the public as confidential and proprietary to the City. The Concessionaire shall exercise all reasonable precautions to prevent any confidential and propriety information it obtains from the City from being disclosed to any other person. The Concessionaire shall promptly indemnify, defend, and hold harmless the City from and against all liabilities, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from or related to any use or disclosure of confidential information by the Concessionaire or its employees, or by any person acquiring confidential information, directly or indirectly, from the Concessionaire or its employees. The Concessionaire's obligations under this Section 4.5 survive the Concession Agreement Ending Date.

4.6 Performance Bond and Bond Preparation Fee

- 4.6.1 The Concessionaire shall provide an individual performance bond, on a form prepared by the City and acceptable to the City Solicitor, provided by a bonding company acceptable to the City, in an amount equal to \$100,000.00. The bond must be from a reputable surety approved by the City.
- 4.6.2 The Concessionaire must pay a bond preparation fee to the City of Philadelphia Law Department as determined by City Council Ordinance. A schedule of the bond preparation fees may be obtained from the Procurement Department Information Office by calling: 215-686-4720.

4.7 Participation of Minority, Women, and Disabled-Owned Business Enterprises

The Concession Agreement is subject to the Mayor's Executive Order 02- 05 regarding the "Participation of Minority, Women and Disabled-Owned Business Enterprises" and the requirements that apply to this RFP, which are set forth in **Appendix 3** to this RFP. Respondents must submit the "Solicitation for

Participation and Commitment Form,” provided in **Form D** of this RFP, or request a reduction of participation, that is responsive to the ranges established for this Concession.

4.8 Indemnification, Release and Insurance

The Concessionaire shall promptly indemnify, defend, and release the City and Fairmount Park Commission, as set forth in **Appendix 4** to this RFP. In addition, the Concessionaire on or before the Commencement Date shall obtain and, throughout the Term, shall maintain the types and minimum amounts of insurance set forth in Appendix 4. It is a condition precedent to the Concessionaire’s right to exercise the License that Concessionaire provide the City of Philadelphia Risk Manager with a certificate of insurance evidencing that the Concessionaire has obtained the types and required amounts of insurance. The address for the Risk Manager is: One Benjamin Franklin Parkway – 14th Floor, 1515 Arch Street, Philadelphia, PA 19102, Attention: Nella Goodwin; or fax number 215-683-1718.

4.9 Records and Reports

4.9.1 Maintenance. The Concessionaire shall maintain accurate and complete daily, weekly, and monthly records that show its Gross Revenue from operation of the Facilities. If Concessionaire charges different rates for adults, children, students, seniors, etc., then Concessionaire’s records must show the number of rentals or payments in each such category, the total dollar amount of Gross Revenue from each such category, and the total amount of all revenue combined. The Concessionaire shall provide its records for inspection by the City during normal business hours promptly following written request of the Executive Director.

4.9.2 Availability. The Concessionaire shall keep and make available, within the City at reasonable times during the Term and for a period of two years after the Concession Agreement Ending Date, all the Concessionaire’s records and financial information pertaining to the Concession (collectively, “**Concessionaire’s Records**”). The Concessionaire shall permit the City, Commission, Commonwealth of Pennsylvania, and United States government, or any of their respective officials or representatives, to inspect, audit, or copy Concessionaire’s Records. If any litigation, claim, audit or investigation of any nature, is commenced in connection with the Concession Agreement prior to expiration of the two year period after the Concession Agreement Ending Date, then the Concessionaire must retain Concessionaire’s Records until all litigation, claims, audits, and investigations have been completed, terminated, or finally resolved, without any further right of appeal.

4.10 Default

- 4.10.1 The Concessionaire shall commit an “**Event of Default**” under the Concession Agreement if
1. Concessionaire fails to timely pay the Concession Fee in full; or
 2. Concessionaire fails to timely perform, observe, fulfill, or comply with any other obligation, requirement, or prohibition imposed on or applicable to Concessionaire under the Concession Agreement.
- 4.10.2 If the Concessionaire commits an Event of Default under Section 4.10.1 above, and,
- a. in the case of an Event of Default under Section 4.10.1.1, Concessionaire fails to cure the default within five days after receiving written notice from the City of the Event of Default,
 - b. in the case of an Event of Default under Section 4.10.1.2, Concessionaire fails to cure the default within 30 days after receiving written notice from the City of the Event of Default, or
 - c. in the case of an Event of Default under Section 4.10.2 that poses a threat of imminent harm to persons or property, without notice, then the City may, in its absolute discretion, immediately suspend or terminate the Concession Agreement without liability to Concessionaire.
- 4.10.3 In addition to the City’s rights and remedies under Section 4.10.2 above, Concessionaire shall be liable for all damages, costs, and expenses suffered or incurred by the City arising from or related to the Event of Default. Also, if Concessionaire commits an Event of Default and fails to cure the Event of Default within the applicable cure period after receiving written notice from the City of the Event of Default, then the City may exercise all rights and remedies available at law or in equity, in addition to the remedies available to the City under the Concession Agreement. The City may exercise its remedies under the Concession Agreement, at law, and in equity, separately, cumulative, and or successively, in the City’s absolute discretion.
- 4.10.4 The City’s failure or delay in providing written notice of an Event of Default to Concessionaire does not relieve or excuse the Concessionaire from any liability arising from or related to the Event of Default and does not waive any of the City’s rights or remedies upon delivering written notice to the Concessionaire of the Event of Default and Concessionaire’s failure to cure the Event of Default in the applicable cure period provided under Section 4.10.2, or in the case of an Event of Default that poses a threat of imminent harm to person or property, immediately and without notice.

4.11. Non-Indebtedness

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

4.11.2 The Concessionaire shall cause its Subcontractors (if any) to make a certification to the City similar to that made by the Concessionaire in Section 4.11.1 above. The Concessionaire shall include the provisions in Section 4.11.1 in each subcontract under the Concession Agreement, with appropriate adjustment for the name of the subcontractor.

4.12 Compliance with Applicable Laws

In the Concession Agreement, “**Applicable Law**” and “**Applicable Laws**” mean all present and future state, federal, and municipal laws, ordinances, regulations, orders, rules, official opinions and interpretations, and requirements, that apply to any of the following: the Concession Agreement, the License, the Concessionaire, and operation of the Facilities. The Concessionaire shall promptly comply with all Applicable Laws, including but not limited to:

- 4.12.1 The Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, among other things, discrimination against persons with AIDS in employment and services;
- 4.12.2 All federal, state, and local licenses, approvals, certificates and permits required for operation of the Concession;

4.12.3 The tax requirements of all governmental authorities having jurisdiction over the Concession Agreement and Concessionaire; and

4.12.4 The regulations of the Commission.

4.13 Entire Agreement; No Amendment

4.13.1 The Concession Agreement is the complete and final expression of the City's and Concessionaire's agreement about the Concession. All prior negotiations and agreements, if any, between the City and Concessionaire relating to the Concession are superseded by and merged into the Concession Agreement.

4.13.2 The Concession Agreement may not be amended or modified except in writing approved by the Commission by resolution and signed by the Executive Director, the Procurement Commissioner, and the Concessionaire.

4.14 No Joint Venture

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

4.15 Severability

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

4.16 No Third Party Beneficiary

Nothing contained in the Concession Agreement gives a third party beneficiary right to any person, firm or corporation whatsoever.

4.17 Waiver of Jury Trial

THE CONCESSIONAIRE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING UNDER OR RELATED TO THE CONCESSION AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY CLAIM SOUNDING IN TORT, OR OTHERWISE). THIS PROVISION IS A

MATERIAL INDUCEMENT FOR THE CITY TO ENTER INTO THE CONCESSION AGREEMENT. THE CONCESSIONAIRE SHALL INCLUDE A PROVISION IN ALL ITS SUBCONTRACTS UNDER THE CONCESSION AGREEMENT, REQUIRING ITS CONTRACTORS TO ALSO WAIVE TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING UNDER OR RELATED TO THE CONCESSION AGREEMENT.

4.18 Place of Contract; Governing Law

The Concession Agreement is made in Philadelphia, Pennsylvania and is governed by Pennsylvania law. Concessionaire agrees that in any proceeding arising under or related to the Concession Agreement, the Concession Agreement will be interpreted in accordance with Pennsylvania law, without reference to choice of law provisions.

4.19 Counterparts

The Concession Agreement may be executed in any number of counterparts, each of which when executed will be an original and all of which when taken together constitute one agreement.

4.20 Assignment Prohibited

Concessionaire shall not assign the Concession Agreement or any of its rights under the Concession Agreement. Any attempted assignment by Concessionaire in violation of this provision will be void and will be deemed an offer to City to immediately terminate the Concession Agreement, which the City may accept or decline in the City's sole discretion.

4.21 Subcontracts

Despite Section 4.20, the Concessionaire may enter into subcontracts ("**Subcontracts**") to provide or obtain services, equipment, materials, and supplies to fulfill Concessionaire's obligations under the Concession Agreement. All Subcontracts shall be made available for review by the Commission upon request of the Executive Director.

4.22 Venue

Concessionaire agrees that all claims arising under or related to the Concession Agreement must be filed in the Court of Common Pleas of Philadelphia County. Concessionaire consents to the jurisdiction of the Court of Common Pleas of Philadelphia County and Pennsylvania courts of appeal, and Concessionaire shall not file any motion to remove venue for any proceeding to another jurisdiction or to any federal court.

SECTION 5 – ELIGIBILITY TO SUBMIT A PROPOSAL

5.1 General

To be eligible for award of the Concession Agreement and the License, a Respondent must demonstrate that it can manage and operate the Facilities.

5.2 Management Experience Qualifications

In order to receive consideration for award of the Concession Agreement, a Respondent must demonstrate that it has the experience and financial resources that the City deems are sufficient to meet the requirements set forth in the RFP (“**Management Experience Qualifications**”).

5.3 Respondents Restricted

The City will not accept any Proposal from, nor award the Concession Agreement to, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest.

5.4 Respondents May Submit Only One Proposal

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

SECTION 6 - PROPOSAL SUBMISSION REQUIREMENTS

6.1 Responsiveness

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

6.2 Form of Proposal

6.2.1 Each Respondent must submit one original signed cover letter and Proposal and eight copies of the cover letter and Proposal. The original letter must be signed by a person with authority to bind the Respondent to all of the provisions of its Proposal.

6.2.2 Each Respondent’s Proposal must follow the form of this RFP. It must be neatly typed on 8-1/2” x 11” paper and marked clearly on the cover page

with Respondent's name and the number of this RFP. Pages should be numbered clearly. Respondents should not submit Proposals in plastic sleeves or spiral binders. Illustrations may be included. Oversized drawings may be submitted, but they must be accompanied by 8½" x 11" sectionals or reductions to 8 ½" x 11". **Each Respondent must seal its Proposal in envelopes, packets, or boxes, as the case may be, to ensure confidentiality of the information prior to the Deadline for Submitting Proposals. The City will only accept Proposals in hard copy and will not accept Proposals by facsimile or by e-mail.**

6.2.3 Wherever a Respondent is providing information required by this RFP, the Respondent must identify the information by using the corresponding Section number of this RFP that requires the information.

6.2.4 Each Respondent's Proposal must include the following:

1. Cover letter and Proposal Security;
2. Company Profile, Organization, and Personnel;
3. Management Experience Qualifications, and References;
4. Financial Information;
5. Statement of Understanding of the Purpose of this RFP;
6. Concession Fee Proposal;
7. Completed Forms A, B, C, and D.

6.2.5 Each Respondent must print the following information on the outside of the envelope, packet, or box in which is submits its Proposal:

1. Respondent's name and address
2. Identification as "Golf Facilities Proposal", and RFP # C-103-08
3. Deadline for Submitting Proposals, as stated on the cover page of this RFP

6.3 Submission of Proposal by "Deadline for Submitting Proposals"

Each Respondent must submit its Proposal to the City no later than the Deadline for Submitting Proposals. Each Respondent is solely responsible for delivery of its Proposal on time and to the proper location. The location and "Deadline for Submitting Proposals" are set forth on the cover page of this RFP. Immediately following the Deadline for Submitting Proposals, the City will announce only the names of Respondents. No other details of the Proposals will be read or announced.

6.4 Proposal Security

- 6.4.1 Each Respondent must submit with its Proposal a refundable Certified Treasurer's or Cashier's Check, U.S. Postal Money Order, or Bank Money Order, made payable to the "City of Philadelphia" in the amount of \$1,000 ("**Proposal Security**"). Any Proposal that is not accompanied by the required Proposal Security may be rejected.
- 6.4.2 A Respondent's Proposal Security may be retained in full by the City if the Respondent (a) executes the Concession Agreement but fails to furnish the required bond(s) and insurance documents within fifteen (15) days after the Concession Agreement is executed or (2) fails to execute a Concession Agreement in accordance with the terms of its proposal, unless the City has permitted the Respondent to withdraw its Proposal. Proposal Security deposits will be returned to unsuccessful Respondents after the Concession Agreement is signed.

6.5 Company Profile

Each Respondent must:

- 6.5.1 Provide a brief history of its organization and an executive summary that describes its company's qualifications. The summary must include the number of Respondent's employees and number of years Respondent has been in business.
- 6.5.2 Identify all parent, subsidiary, affiliate, and partnership relationships of its company with other businesses (collectively, "**Related Companies**").
- 6.5.3 Explain its corporate organizational structure and ownership.
- 6.5.4. If Respondent is a partnership or a joint venture, give the date of the partnership or joint venture agreement, the county and state where the agreement was filed, and list the name and address of each partner or joint venturer. If Respondent is a corporation or limited liability company, give the date and state of the company's organization and list the names and addresses of the company's board of directors and officers, or members, as the case may be.

6.6 Operating Experience

- 6.6.1 Each Respondent must submit a resume or detailed description of the Respondent's professional qualifications, demonstrating extensive experience in the industry, including any work with municipal agencies, or access to individuals and firms, or either of them, with such expertise. The

City encourages each Respondent to explain its experience managing multiple facilities in a geographic area, including experience in managing and operating municipal golf facilities in the mid-Atlantic region of the United States. Each Respondent must include the names and addresses of all corporate officers of the entity submitting the Proposal.

- 6.6.2 Each Respondent must attach a list of at least three (3) recent relevant references with whom the Respondent has previously worked and who can describe such matters as the Respondent's financial, operational and construction capability. The Respondent must include the name of the reference entity, a description of the nature of the listed reference's experience with the Respondent, and the name, title, address, email address, and telephone number of a contact person at the reference entity.
- 6.6.3 Each Respondent must list all contracts it and all its Related Companies have had with the City in the last five years.

6.7 Financial Information

Each Respondent must include information about its financial resources that demonstrates clearly Respondent's ability to satisfy the obligations of the Concessionaire under the terms of the RFP and Concession Agreement. As one example, Respondents are encouraged to provide their most recently audited financial statements and interim statements prepared in accordance with generally accepted accounting principles.

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

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

6.9 Financial Proposal

- 6.9.1 Concession Fee. Using **Form A**, each Respondent must propose a minimum annual guaranteed fee ("MAG") payment to the City of not less than \$350,000 per year in total for the Facilities. In addition to the MAG, also using **Form A**, each Respondent must propose an annual guaranteed

payment to the City of not less than 10% of Gross Revenues in excess of \$3 million in the aggregate for all the Facilities (“**Percentage Fee**”).

a. In this RFP, and for purposes of the Concession Agreement, “**Gross Revenues**” means all revenue received by the Concessionaire from operation of the Facilities or exercise of the License, from all sources and however characterized. Without limiting the definition of Gross Revenues immediately above, Gross Revenues include but are not limited to the following: revenue from the sale of permits; rental of golf carts; sale of golf merchandize and clothing; food and beverage sales; fees for use of driving ranges, playing miniature golf and use of batting cages; private events, special events and other special uses of the Facilities; and all other fees, sales, rentals, charges, or costs imposed by the Concessionaire, however characterized, for use of any of the Facilities or for goods or services provided at the Facilities.

b. In this RFP, and for purposes of the Concession Agreement, “**Concession Fee**” means the MAG plus the Percentage Fee.

6.9.2 Capital Escrow Payments and Account; Annual Capital Improvement Plan.

6.9.2.1 The Concessionaire shall pay an amount each year of the Term into an escrow account in the name of the Commission to help pay for capital repairs, replacements, and improvements to the Facilities (“**Capital Escrow Account**”). In order to use funds from the Capital Escrow Account, the Concessionaire must obtain the prior written approval of the Executive Director of a capital repair, replacement or improvement that the Concessionaire proposes to make. If the Executive Director approves the proposed work, the Executive Director will then authorize the escrow agent to release money from the Capital Escrow Account to pay for the work.

6.9.2.2 Using **Form B**, each Respondent must propose an annual amount that, as Concessionaire, it would pay into the Capital Escrow Account (“**Annual Capital Payment**”). The minimum Annual Capital Payment shall be \$150,000 or 5% of Concessionaire’s Gross Revenues, whichever is greater. An annual capital improvement plan to utilize these funds must be presented to and approved by the FPC Executive Director prior to implementation.

6.9.2.3 Each year during the Term, the Concessionaire shall submit a plan to make capital repairs, replacements, and improvements using funds in the Capital Escrow Account (“**Annual Capital**”).

Improvement Plan”). The Concessionaire shall submit its Annual Capital Improvement Plan not later than March 1 each year.

6.9.3 Initial Capital Improvements.

6.9.3.1 The Concessionaire must make substantial capital repairs, replacements, and improvements to the Facilities during the first year of the Term (“**Initial Capital Improvements**”). The Initial Capital Improvements are in addition to the Concessionaire’s Annual Capital Payment and Annual Capital Improvement Plan. Initial Capital Improvements may not be paid for out of funds in the Capital Escrow Account. The cost of the Initial Capital Improvements may not be applied to or set off against the required Annual Capital Payment. The Concessionaire is not entitled to reimbursement of any unamortized costs of the Initial Capital Improvements as of the Concession Agreement Ending Date.

6.9.3.2 a. Using **Form C**, each Respondent should propose the types and costs of Initial Capital Improvements that as Concessionaire it would make to the Facilities. The Initial Capital Improvements must be not less than \$100,000 and should be reasonably distributed among the Facilities.

b. If a Respondent is selected to execute the Concession Agreement with the City, then the Commission will review the Respondent’s proposed Initial Capital Improvements within 90 days following execution of the Concession Agreement. No proposed Initial Capital Improvement will be deemed approved unless approved by the Commission by resolution.

c. Following the later of the Commencement Date and the Commission’s approval, the Concessionaire shall promptly commence and diligently make all Initial Capital Improvements approved by the Commission, but in no event shall Concessionaire fail to complete the approved Initial Capital Improvements within 180 days following the later of the Commencement Date and the Commission’s approval. The Concessionaire shall not make any proposed Initial Capital Improvements not approved by the Commission.

6.9.4 Pro-forma. Each Respondent must include in its Proposal a detailed pro-forma income and expense projection for the first year of operation for each of the Facilities. The pro-forma projection must include explanations for all the assumptions used in its formulation.

6.10 Operational Plan

- 6.10.1 All Proposals must include a detailed operational plan for the Facilities.
- 6.10.2 Each Respondent must propose a strategy for assuming control of operations of the Facilities from the current operator, with detailed plans to address staffing issues, inventoried equipment and merchandise, website continuity, etc.
- 6.10.3 Commission hopes to improve customer satisfaction with the services provided at the Facilities. Therefore, Commission encourages each Respondent to consider the mechanisms it would use as Concessionaire to measure customer satisfaction with the Concessionaire's services. The mechanisms might include, for example only, customer evaluations or survey forms. Further, the Commission encourages each Respondents to explain in its Proposal how it would improve the quality of services offered if the suggested mechanisms indicate a need to do so.

6.11 Solicitation for Participation and Commitment Form

Each Respondent must complete and include with its Proposal the forms regarding participation in the Concession by disadvantaged business enterprises. See, **Appendix 3** and **Form D**.

6.12 Confidential Information

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

NOTICE

The information on pages _____ of this Proposal, identified by the words "**Confidential Proprietary Information**" in boldface type of at least 12 points in the top right-hand corner

of each page, contain proprietary information that the Respondent desires not be disclosed. The Respondent requests that such information be used only for evaluation of Respondent's Proposal, and not be disclosed to the public except as may be required by applicable law.

6.13 Objections

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

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

7.1 Conditions Regarding Proposals

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

- 7.1.1 The Respondent is fully responsible for all its costs associated with the development, preparation, and submission of its Proposal and all other materials it submits in response to this RFP. The City assumes no contractual or other obligations toward Respondent as a result of the issuance of this RFP, the preparation or submission of a Proposal by Respondent, the City's evaluation of Proposals, or the City's selection of Respondent for further negotiations;
- 7.1.2 It is Respondent's responsibility to ensure that its Proposal is complete, accurate, and submitted by the Deadline for Submitting Proposals set forth on the cover page of this RFP;
- 7.1.3 Upon submission, Respondent's Proposal becomes the property of the City and will not be returned to the Respondent;

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

7.2 Reservation of Rights

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

- 7.2.1 To reject any proposals if, in the City's sole discretion, the proposal is incomplete, the proposal is not responsive to the requirements of this RFP, the Respondent does not meet the qualifications set forth in the RFP, or it is otherwise in the City's best interest to do so;
- 7.2.2 To reject all proposals, or to postpone, cancel and reissue the RFP or not reissue the RFP if, in the City's sole judgment, it is in the City's best interest to do so;
- 7.2.3 To supplement, amend, or otherwise modify this RFP at any time prior to selection of one or more Respondents for negotiation;

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

7.3 Concession Agreement Effectiveness

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

- 7.3.1 The Respondent posts a sufficient performance bond in a form satisfactory to the City Solicitor;
- 7.3.2 City of Philadelphia Council has passed an ordinance authorizing the Commission to enter into the Concession Agreement, and the ordinance has become law;
- 7.3.2 The Concession Agreement has been signed by the Respondent and "approved as to form" by the City's Law Department; and
- 7.3.4 The Concession Agreement has been executed by the Fairmount Park Commission and the Procurement Department.

7.4. Information and Data in this RFP Not Warranted

The City believes that the information and data that it has provided in this RFP, in appendices to this RFP, or otherwise in connection with this RFP, is reliable. Nevertheless, the City does not warrant the accuracy of any information or data set forth in this RFP.

7.5. Acceptance of the Provisions of this RFP

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

SECTION 8 – EVALUATION OF PROPOSALS

8.1 Selection Committee

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

8.2 Proposal Evaluation Criteria

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

8.2.1.1 Concession Financial Proposals – Concession Fee Amount, Capital Escrow Payment Amount, and amount of Initial Capital Improvement.

8.2.1.2 Demonstrated operating experience in the business, including experience as a municipal concessionaire, if applicable.

8.2.1.3 Financial capability to perform the work required by the RFP and as presented in the Proposal.

8.2.1.4 The proposed operational plan and transition strategy.

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

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

8.3 Award of Concession Agreement

The City will award the Concession Agreement to the Respondent whose proposal the City, in its sole discretion, determines best meets the goals of the City in issuing this RFP and that in otherwise is in the best interest of the City. For that reason, the City may not necessarily award a Concession Agreement to the Respondent offering the highest annual concession fee to the City. The final Concession Agreement is subject to the approval of the Commission.

SECTION 9 – CITY COUNCIL APPROVAL

- 9.1** The City of Philadelphia Home Rule Charter, Section 8-201, provides that proposed concession agreements with terms greater than one year cannot be granted without City Council authorization by ordinance
- 9.2** Upon completing negotiations with a selected Respondent, the City will present the proposed Concession Agreement for approval by Philadelphia City Council.

SECTION 10 – SIGNING OF PROPOSALS

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

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

This ____ day of _____, 2007

Name of Respondent

Signature of Owner, Partner, or Joint Venturer

Typed or Printed Name and Title

Phone Number

Address, Including Zip Code

If Respondent is a CORPORATION, this RFP must be dated and signed here by Respondent's President or Vice President and Secretary or Treasurer, or by another officer of the Corporation authorized to bind the corporation. If this RFP is signed by an officer other than Respondent's President or Vice President, then Respondent's Proposal must include a current "Certificate of Corporate Resolution," signed by Respondent's corporate Secretary. The certificate must state that Respondent's Board of Directors has passed a resolution that authorizes the person who signed the Proposal to sign and submit the Proposal on behalf of the corporation, and that the resolution has not been amended and remains in force. If you have any questions about submitting a Certificate of Corporate Resolution, you may call Lawrence K. Copeland, Senior Attorney, City of Philadelphia Law Department, at: (215) 683-5039.

This ____ day of _____, 2007

Corporate or Business Name

Address Including Zip Code

Phone Number

President or Vice President (circle one)

Typed or Printed Name

Secretary or Treasurer (circle one)

Typed or Printed Name

If Respondent is a limited liability company, then the manager or a member of Respondent or Respondent's Manager must date and sign the RFP here:

This ____ day of _____, 2007

Corporate or Business Name

Address Including Zip Code

Phone Number

Member or Manager (circle one)

Typed or Printed Name

APPENDIX 1

2006 DATA FOR PHILADELPHIA MUNICIPAL COURSES

(see separate attachment labeled as Appendix 1)

APPENDIX 1
RFP C-103-08

FAIRMOUNT PARK GOLF COURSES
Budget 2006
SUMMARY

	JAN	FEB	MAR	APR	MAY	JUN	JULY	AUG	SEP	OCT	NOV	DEC	2006 TOTAL
ROUNDS													
Paid	1,051	1,020	3,899	10,091	14,891	16,404	14,793	14,309	12,784	9,223	4,732	1,530	104,727
Member	454	514	1,384	2,138	2,890	3,467	3,280	3,184	2,700	2,125	1,416	650	24,202
TOTAL ROUNDS	1,505	1,534	5,283	12,229	17,781	19,871	18,073	17,493	15,484	11,348	6,148	2,180	128,929
REVENUE													
Member Fees	\$ 5,467	\$ 7,891	\$ 14,779	\$ 19,176	\$ 20,001	\$ 20,455	\$ 20,755	\$ 20,922	\$ 20,922	\$ 20,922	\$ 20,922	\$ 20,922	\$ 213,134
Greens Fees	15,985	15,960	78,520	178,590	270,540	284,885	268,050	242,790	216,425	158,915	62,770	22,990	1,816,420
Cart Fees	6,875	6,794	30,086	77,920	109,800	121,751	112,465	102,314	86,978	61,310	29,723	10,351	756,367
Merchandise Sales	2,406	2,396	10,022	21,493	30,676	33,136	29,843	25,631	25,128	18,353	9,710	5,067	213,862
Pro Shop Income	3,681	4,743	21,966	63,770	73,337	73,793	71,302	61,789	44,959	20,972	9,774	5,381	455,467
F & B Income	2,840	2,724	10,951	32,029	43,831	54,383	51,542	43,377	37,349	21,078	9,356	3,299	312,759
TOTAL REVENUE	\$ 37,254	\$ 40,507	\$ 166,324	\$ 392,978	\$ 548,186	\$ 588,402	\$ 553,957	\$ 496,822	\$ 431,761	\$ 301,551	\$ 142,255	\$ 68,010	\$ 3,768,008
COGS													
MERCHANDISE COGS	\$ 1,564	\$ 1,557	\$ 6,514	\$ 13,971	\$ 19,940	\$ 21,538	\$ 19,398	\$ 16,660	\$ 16,333	\$ 11,930	\$ 6,312	\$ 3,294	\$ 139,010
% COGS	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%
F & B COGS	\$ 903	\$ 866	\$ 3,476	\$ 10,159	\$ 13,900	\$ 17,266	\$ 16,363	\$ 13,788	\$ 11,850	\$ 6,687	\$ 2,961	\$ 1,044	\$ 99,264
% COGS	32%	32%	32%	32%	32%	32%	32%	32%	32%	32%	32%	32%	32%
TOTAL COGS	\$ 2,467	\$ 2,423	\$ 9,990	\$ 24,130	\$ 33,840	\$ 38,804	\$ 35,761	\$ 30,448	\$ 28,184	\$ 18,616	\$ 9,273	\$ 4,338	\$ 238,274
GROSS PROFIT	\$ 34,787	\$ 38,084	\$ 156,334	\$ 368,848	\$ 514,346	\$ 549,598	\$ 518,196	\$ 466,374	\$ 403,578	\$ 282,934	\$ 132,982	\$ 63,672	\$ 3,529,733
LABOR													
Pro Shop Labor	\$ 21,137	\$ 18,377	\$ 27,381	\$ 38,288	\$ 45,855	\$ 45,648	\$ 46,710	\$ 46,271	\$ 42,054	\$ 36,122	\$ 26,409	\$ 22,483	\$ 416,734
Food & Beverage Labor	-	-	1,579	5,065	6,494	6,331	6,553	6,613	6,331	4,671	1,057	365	45,059
Course Maintenance Labor	47,919	43,431	54,027	60,680	71,257	68,229	70,239	70,159	67,696	63,698	50,120	45,729	713,183
Administrative Labor	25,644	23,525	25,645	25,425	26,195	25,449	26,195	26,195	25,447	26,193	25,447	26,193	307,555
Payroll Pool	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL LABOR	\$ 94,701	\$ 85,333	\$ 108,632	\$ 129,458	\$ 149,801	\$ 145,658	\$ 149,697	\$ 149,238	\$ 141,527	\$ 130,684	\$ 103,032	\$ 94,769	\$ 1,482,531
EXPENSES													
Pro Shop Expense	\$ 3,785	\$ 4,179	\$ 28,898	\$ 27,177	\$ 20,994	\$ 19,876	\$ 17,686	\$ 14,433	\$ 14,324	\$ 8,631	\$ 6,120	\$ 4,352	\$ 170,456
Food & Beverage Expense	201	557	2,267	2,397	2,312	2,159	2,422	1,835	2,212	1,551	481	381	18,776
Course Maintenance Expense	17,310	26,080	40,170	86,105	53,615	53,935	53,230	66,705	72,405	24,555	22,565	28,215	544,890
Marketing Expense	7,974	11,803	11,904	13,777	13,110	13,079	4,529	976	5,228	200	1,000	1,000	84,032
Administrative Expense	45,420	44,976	45,401	50,678	51,783	53,753	58,242	56,278	55,479	53,736	44,650	44,378	604,774
Other Expense	12,823	11,554	14,709	17,529	20,283	19,722	20,269	20,207	19,163	17,695	13,951	12,832	200,735
TOTAL OTHER EXPENSES	\$ 87,512	\$ 99,150	\$ 143,348	\$ 197,664	\$ 162,098	\$ 162,525	\$ 156,378	\$ 164,685	\$ 164,559	\$ 106,619	\$ 87,967	\$ 91,158	\$ 1,623,663
TOTAL EXPENSES	\$ 182,213	\$ 184,483	\$ 251,980	\$ 327,122	\$ 311,898	\$ 308,183	\$ 306,075	\$ 313,923	\$ 306,087	\$ 237,303	\$ 190,999	\$ 185,927	\$ 3,106,194
COI	\$ (147,427)	\$ (146,399)	\$ (95,646)	\$ 41,727	\$ 202,447	\$ 241,416	\$ 212,121	\$ 152,451	\$ 97,491	\$ 45,631	\$ (58,017)	\$ (122,255)	\$ 423,539
Operating Margin	-3.9%	-3.6%	-0.58%	0.11%	0.37%	0.41%	0.38%	0.31%	0.23%	0.15%	-0.41%	-1.80%	0.11%
Cart Lease	\$ -	\$ -	\$ -	\$ 33,750	\$ 33,750	\$ 33,750	\$ 33,750	\$ 33,750	\$ 33,750	\$ -	\$ -	\$ -	\$ 202,500
NET OPERATING INCOME	\$ (147,427)	\$ (146,399)	\$ (95,646)	\$ 7,977	\$ 168,697	\$ 207,666	\$ 178,371	\$ 118,701	\$ 63,741	\$ 45,631	\$ (58,017)	\$ (122,255)	\$ 221,039

APPENDIX 1A
RFP C-103-08
Greens Fees - 2007

Walking / Riding

COBB'S CREEK (The Olde Course)

Weekdays

Regular	\$31 / \$41
Twilight	\$26 / \$36
Early Bird/Super Twilight	\$21 / \$31
Junior & Senior	\$21 / \$31

Weekends /Holidays

Saturday & Sunday	\$36 / \$46
Twilight	\$31 / \$41
Early Bird/Super Twilight	\$26 / \$36

F.D.R. & JOHN F. BYRNE

Weekdays

Regular	\$26 / \$36
Twilight	\$21 / \$31
Early Bird/Super Twilight	\$16 / \$26
Junior & Senior	\$16 / \$26

Weekends /Holidays

Saturday & Sunday	\$31 / \$41
Twilight	\$26 / \$36
Early Bird/Super Twilight	\$21 / \$31

9 HOLE RATES

Weekdays

Monday thru Friday	\$15 / \$20
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Weekends /Holidays

Saturday & Sunday	\$20 / \$25
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COBB'S CREEK (The Karakung Course)

Weekdays

Monday thru Friday	\$21 / \$31
Twilight	\$16 / \$26
Early Bird/Super Twilight	\$16 / \$21
Junior & Senior	\$16 / \$21

APPENDIX 1A
RFP C-103-08
Greens Fees - 2007

Weekends /Holidays	
Saturaday & Sunday	\$26 / \$31
Twilight	\$21 / \$31
Early Bird/Super Twilight	\$16 / \$26

APPENDIX 2

YOUTH AND JUNIOR PROGRAMS AT THE FACILITIES

Cobb's Creek Golf Club

High Schools

All play the front nine on Karakung.

- Upper Darby (purchase of equipment)
- Friends Central JV
- Bonner JV (Once or twice a year.)
- City of Philadelphia (two schools)

Youth Activities

Charlie Hicks (Church related):

Mondays - Thursdays in July, 20 kids each week.
Driving range then Karakung on Thursdays.

Dept of Recreation

August 6-10, 30 kids.
Driving Range and Karakung at the end of the week.

First Tee

2007 date not yet established.

Parochial League

Wednesdays and Thursdays, spring 2007, 30 kids.
Driving Range and Karakung on opposite days.

Junior Camps

July 9-12
July 30-August 2
August 13-16
Monday-Thursday each week, 20 kids in each session.
Both beginner and advanced sessions.

Franklin D. Roosevelt Golf Club

High Schools

Schools that use FDR are: Neumann-Goretti and Furness. Both schools have their matches in the fall. Teams consist of 10 players.

Youth Activities

First Tee has many sessions each day during the summer.

Junior Camps

Junior Camps will be July 16-19 and August 6-9 at 9am-12noon. 20 children in each camp.

John F. Byrne Golf Club

High Schools

Father Judge, St. Hubert's, Nazareth Academy, Northeast and Lincoln

Youth Activities

The Department of Recreation uses the course on July 12-13th, the 19th-20th, and the 26th-27th. 30 children per session.

Junior Camps

Junior camp runs every Tuesday, Wednesday, and Thursday from June 19th-20th-21st through July 24th, 25th, and 26th. Averages 75-100 children over the course of the entire program.

APPENDIX 3

PARTICIPATION OF MINORITY, WOMEN AND DISABLED-OWNED BUSINESS ENTERPRISES (M/W/DSBE)



City of Philadelphia
Minority Business Enterprise Council (MBEC)

Mayor's Executive Order 02-05

INSTRUCTIONS, FORMS AND CONTRACT PROVISIONS FOR RFP'S TO BE AWARDED BY THE CITY OF PHILADELPHIA PROCUREMENT DEPARTMENT

BUSINESS ENTERPRISES (M/W/DSBE)

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

Respondent (or as referred to in this Appendix 3, "Respondent") is subject to the provisions of Mayoral Executive Order 02-05 and is required to respond to the ranges specified in this RFP for participation by Minority Business Enterprises ("MBE"), Women Business Enterprises ("WBE") and Disabled-owned Business Enterprises DSBEs (collectively, ("M/W/DSBE") as those terms are defined in Executive Order 02-05.

Respondent must submit a "**Solicitation for Participation and Commitment Form**" (**S & C Form**) identifying its solicitations and certifying that Respondent has met the ranges specified in this RFP for M/W/DSBE participation in the contract; in the event that Respondent has not achieved the ranges, Respondent must respond to and submit, in addition to the **S & C Form**, a **brief narrative explaining its reasons for not submitting a proposal within the projected range(s)** (more fully discussed herein).

The S & C Form (and, in the event Respondent has not achieved the ranges, the brief narrative), must be submitted with the proposal, although the MBEC reserves the right to request these documents as well as any additional or clarifying information at any time prior to contract award. The submission of a S & C Form and a narrative, if required, is an element of responsiveness to this RFP and the failure to submit a S & C Form and narrative may result in the rejection of the proposal. Respondent hereby verifies that all forms, information and documentation submitted to the MBEC are true and correct and is notified that the submission of false information by Respondent is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

PARTICIPATION RANGES

Under the authority of the Mayor's Executive Order 02-05, the MBEC has established the following MBE, WBE and DSBE participation range(s) for this Request for Proposal:

Architectural and Engineering Services (A/E):

MBE Ranges 15% - 20%

WBE Ranges 10% - 15%

DSBE Ranges Encouraged

Construction and Renovation Improvements:

MBE Ranges 20% - 25%

WBE Ranges 10% - 15%

DSBE Ranges Encouraged

Operations and Maintenance (including food court and related supplies):

MBE Ranges 10% - 15%

WBE Ranges 10% - 15%

DSBE Ranges Encouraged

These participation ranges serve exclusively as a guide in determining Respondent responsibility. These ranges represent the percentage of MBE, WBE and DSBEs participation that should be attained from business opportunities available in this RFP absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract.

A. Solicitation for Participation and Commitment.

1. Respondent must submit an S & C Form responsive to each of the range(s) established for this Request for Proposal. If Respondent does not make commitments within each of the established ranges, Respondent must request a reduction of participation by providing a brief narrative statement for not achieving the participation range(s) on its firm's *letterhead* and signed by its *Chief Executive Officer (CEO)* or their designee.

(a) **S & C Form.** Respondent must demonstrate that its firm did not discriminate in the subcontracting of work for the contract. To do so, Respondent must complete the S & C Form. The S & C Form shall contain:

- The company name, address, contact name, telephone number, fax number and MBEC certification number of each MBE, WBE and Ds-BE solicited for participation in the contract, regardless of whether commitments resulted from this solicitation. If Respondent receives unsolicited quotations from a MBE(s), WBE(s) or DSBE(s) or if Respondent makes solicitations of MBE(s), WBE(s) or DSBE(s) but receives no quotations, these MBE(s), WBE(s) or DSBE(s) must also be identified on the S & C Form if you do not achieve the ranges for participation.

WBE and/or DSBE partner, Respondent must complete and submit with the proposal, in addition to the S & C Form, the Joint Venture Eligibility Information Form available at the Office of the MBEC.

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

Upon completion of the **S & C Form(s)**, Respondent should indicate at the bottom of each form the total percentage commitment made to the type of business. If the total percentage commitment is less than that established for this RFP, Respondent must request a reduction of participation by providing a brief narrative of Respondent's reasons for not achieving the participation range(s).

B. Request for Reduction of Participation.

1. If Respondent does not fully meet each of the range(s) for participation established for this RFP, Respondent must request a reduction of participation by submitting a brief narrative, on its company's letterhead, documenting Respondent's reasons for not making commitments commensurate with the participation ranges. The narrative shall contain and discuss, at a minimum, the following:

(a) If no MBE/WBE/DSBEs were solicited for the type of services or materials to be contracted, please give reason(s) why no such solicitation was made.

(b) Indicate whether any non-MBE/WBE/DSBEs were solicited for the type of services to be contracted for, whether quotes were received and whether any commitments resulted therefrom;

(c) Provide reasons for not committing with MBE/WBE/DSBEs that have submitted a quote, regardless of whether the quote was solicited by Respondent.

(d) Provide any additional evidence pertinent to Respondent's conduct relating to this RFP including sufficient evidence which demonstrates to the MBEC that Respondent has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing Respondent's affirmative actions, Respondent may submit any corroborating documentation (e.g., copies of advertisements for participation).

2. The Respondent's narrative will be reviewed to ascertain whether discrimination has occurred in the solicitation or selection of contract participants. The approval/disapproval review will include consideration of the following:

(a) Whether the Respondent's actions were motivated by considerations of race or gender or disability. For example, the MBEC may investigate the Respondent's contracting activities and business practices on similar public and private sector contracts;

(b) Whether MBE/WBE/DSBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the MBEC will investigate whether MBE/WBE/DSBEs are given the same information, access to the RFP and amount of time to prepare a quote as others who were solicited. The MBEC will also investigate whether MBE/WBE/DSBEs were accorded the same level of outreach as non-MBE/WBE/DSBEs, for example whether Respondent short listed MBE/WBE/DSBEs for participation in the contractor negotiated subcontract opportunities;

(c) Whether the Respondent's solicitation and commitment decisions were based upon policies which disparately affect MBE/WBE/DSBEs.

C. Proposal Evaluation.

If Respondent has submitted a Proposal within each of the projected range(s) for MBE, WBE and DSBEs participation, we will rebuttably presume that the Respondent has not discriminated in its selections and will be considered responsive and responsible. If Respondent has not submitted a Proposal within the projected range(s), the MBEC will evaluate whether discrimination has occurred. After review of Respondent's submission and any other evidence MBEC deems relevant to its evaluation, the MBEC will make a recommendation to the Department Head or his/her designee. If the Department head, after review of the MBEC's recommendation and supporting documentation concurs that discrimination has occurred, Respondent will be deemed not responsible and its proposal rejected.

A Proposal so rejected (due to a determination of discrimination) may result in the suspension of the Respondent from submitting future Proposal and/or participating in any future City contracts for a period of up to three (3) years.

GENERAL PROVISIONS

1. Any M/W/DSBEs that is listed on the S & C Form or the Joint Venture Eligibility Information Form must be certified by the MBEC in accordance with Executive Order 02-05 in order to be credited towards the participation range(s) to the RFP or in the case of a **Joint Venture Agreement**, prior to the contract award.

2. No Respondent that seeks to meet the participation range(s) by entering into subcontracts with any M/W/Ds-BE subcontractor shall be considered to meet the participation range(s) if the M/W/DSBEs subcontractor does not perform a commercially acceptable function (“CAF”). A M/W/DSBE is considered to perform a CAF when it engages in meaningful work that provides for a distinct element of the subcontract (as required by the services to be performed in accordance with this RFP). The distinct element is worthy of the dollar amount of the subcontract value and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The MBEC may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF. If it is determined during the review of the **S & C Form** that the work described on the form does not constitute a CAF, the proposal may be rejected.

3. Listing of a M/W/DSBEs as a subcontractor on the **S & C Form**, constitutes a representation by Respondent, that such M/W/DSBEs is capable of completing the subcontract with its own workforce, and that the Respondent has made a **BINDING COMMITMENT** with the firm prior to the submission of the **S & C Form**. This listing is also a representation by Respondent that if awarded the contract, Respondent will subcontract with the listed firm(s) for the work described and dollar/percentage amount(s) set forth on the **S & C Form**, unless the City alters the scope of services prior to the commencement of the contract. M/W/DSBEs percentage commitments are to be maintained throughout the term of the contract and shall apply to the total dollar amount of the contract and any additional increases.

4. If a joint venture arrangement has been entered into with a MBE, WBE or DSBE, the following criteria must be met in order to receive credit toward the participation range:

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

- If Respondent has entered into a joint venture arrangement, the joint venture partners must complete and submit a "Joint Venture Eligibility Information Form" (available at the MBEC Office). This form should be submitted with the proposal and the form will be reviewed by the MBEC or approval or disapproval of the joint venture arrangement. If the joint venture arrangement is not approved by the MBEC, Respondent will not receive credit toward the applicable participation range(s) and the proposal may be rejected.

5. In calculating the percentage of participation by a M/W/DSBE, Respondent shall apply the standard mathematical rules in rounding off numbers. For example, if the stated MBE participation range is 15% - 25%, the MBE participation must equal 14.5% or greater to fall within the range. In the event of an inconsistency between the dollar and percentage amounts listed on the S & C Form, the percentage will govern.

6. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE, MBE and DSBE or WBE and DSBE), will only be credited in **one** category i.e., either as a MBE, WBE or DSBE; Respondents will designate on the **S & C Form** which category, MBE, WBE or DSBE, is submitted for credit.

7. Certification of a business by the MBEC shall not be a representation of the firm's financial or technical ability to perform specified work. The City reserves the right to evaluate a firm's ability to satisfy financial, technical or other criteria separate and apart from certification before or after selection of the successful Respondent or award of the contract.

8. If Respondent is a certified M/W/DSBE submitting a proposal as a prime Respondent, Respondent must still respond to the participation range(s) specified in this RFP unless Respondent requests and receives a reduction in participation; a certified M/W/DSBE submitting a proposal as the prime Respondent **will** receive credit toward the ranges for its own work on this RFP, and must seek to fulfill the other applicable ranges. The participation of an MBE, WBE or DSBEs who is a part of a joint venture created for this contract, may be credited towards the applicable participation range to the extent of the partner's ownership interest in the joint venture provided that the joint venture arrangement is acceptable to the MBEC.

9. Except as otherwise provided herein, no changes or modifications to the participation arrangements specified on the **S & C Form** or Joint Venture Eligibility Information Form, including but not limited to substitutions for the listed firms, changes or reductions in described work and/or listed dollar/percentage amounts, shall be permitted.

- (a) Following contract award, the successful Respondent may, under appropriate circumstances and with the prior written approval of the MBEC, make changes or modifications to the participation arrangements contained in its original submission. Requests for such changes or modifications must be submitted to the MBEC in writing with appropriate justification.
- (b) The MBEC may from time to time request revised form(s) or other documentation from the successful Respondent to ensure

- (c) compliance with the change order/amendment provision set forth in Paragraph 11.

10. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all Proposals as deemed in the best interest of the City.

11. In the event the successful Respondent's contract is increased by change order (sometimes referred to as a modification) and/or amendment, it shall be the responsibility of the successful Respondent to apply the participation range(s) to the amended amount in order to maintain the participation range(s) committed to on the total dollar amount of the contract at the time of contract completion.

12. The successful Respondent agrees to cooperate with the MBEC in its compliance monitoring efforts and to submit, within the time limits prescribed by the MBEC, all documentation which may be requested by the MBEC, including but not limited to, copies of subcontracts with the M/W/DSBEs, invoices, telephone logs and correspondence with the M/W/DSBEs, canceled checks, etc. These documents shall be maintained by the successful Respondent for a period of three (3) years following acceptance of final payment under the contract. The successful Respondent also agrees to submit reports and other documentation to the MBEC as deemed necessary by the MBEC to ascertain the successful Respondent's fulfillment of its M/W/DSBE participation commitments.

13. It is understood and agreed that the successful Respondent's compliance with the requirements for participation is material to the contract. Any failure to comply with these requirements shall constitute a substantial breach of the contract. It is understood and agreed that if the Director of Finance determines that the successful Respondent hereunder has failed to comply with the requirements for M/W/DSBE participation, the City may, in addition to any other rights and remedies the City may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

- (a) Withhold payment(s) or any part thereof until corrective action is taken.
- (b) Terminate the contract, in whole or in part.

(c) Suspend the successful Respondent from proposing on and/or participating in any future City contracts for a period of up to three (3) years.

(d) Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the shortfall toward the applicable M/W/DSBEs commitment.

(NOTE): The "total dollar amount of the contract" shall include approved change orders and amendments.)

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Should you have any questions related to the Contract Provisions, please email econtractphilly@phila.gov.

APPENDIX 4

INDEMNIFICATION AND INSURANCE

I. Indemnification

A. Concessionaire shall promptly indemnify, defend and hold harmless the City, its officials, officers, employees, agents, successors and assigns, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liabilities and expenses, occasioned wholly or in part by Concessionaire's act or omission or negligence or fault, or the act or omission or negligence or fault of Concessionaire's agent, Subcontractors, suppliers, employees or servants, arising under or related to the Concession Agreement, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay Subcontractors or suppliers, any breach of the Concession Agreement, and any infringement or violation of any proprietary right (including, but no limited to patent, copyright, trademark, service mark and trade secret).

B. If any action or proceeding is brought against the City relating to any matter for which the Concessionaire has indemnified the City, then, upon written notice from the City to the Concessionaire, the Concessionaire shall, at its sole cost and expense, promptly resist or defend the action or proceeding by counsel approved by the City in writing. The Concessionaire is not obligated to obtain the City's approval in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend the claim.

C. Concessionaire's obligations under this Appendix 4, Part 1, shall survive the Concession Agreement Ending Date.

2. Release

In consideration of the License given to Concessionaire by the City, Concessionaire, for itself and its officers, employees, representatives, agents, Subcontractors, successors and assigns, and any person claiming by, through, or under them or any of them (collectively, the "**Releasors**"), remises, quitclaims, releases and forever discharges the City and the Commission, and their respective officials, officers, employees, 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 (collectively, "**Claims**") which the Concessionaire or any of the Releasors may have against the City or any of the Releasees, relating in any way to (1) any condition of the Facilities or any other part of the Fairmount Park system during the exercise of the License under Concession Agreement and (2) the entry onto the Facilities pursuant to the Concession Agreement by

the Concessionaire, its Subcontractors, and any of the Releasors, or (3) relating in any way to Concessionaire's or its Subcontractors' exercise of any rights or performance of any obligations under the Concession Agreement. The release given by the Releasors to the Releasees under this Section 4.4 shall survive the Concession Agreement Ending Date.

3. Insurance

A. On or before the Commencement Date, the Concessionaire shall promptly procure and throughout the Term must maintain, at its sole cost and expense, the types and minimum limits of insurance coverage specified below. Concessionaire shall procure all the required insurance from reputable insurers who are acceptable to the City and 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 in this Appendix 4 must be written on an "occurrence" basis and not a "claims-made" basis, unless otherwise noted below.

1. Workers' Compensation and Employers' Liability
 - a. Workers Compensation – Statutory Limits;
 - b. Employers Liability:
 - \$500,000 Each Accident - Bodily Injury by Accident;
 - \$500,000 Each Employee - Bodily Injury by Disease;
 - \$500,000 Policy limit - Bodily Injury by Disease;
 - c. Other states endorsement including Pennsylvania.
2. General Liability Insurance
 - a. Limits of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; and \$1,000,000 products and completed operations.
 - b. Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability and broad form property damage (including completed operations).
3. Automobile Liability
 - a. Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage.
 - b. Coverage: owned, non-owned and hired vehicles.

4. Umbrella Liability
Limits totaling \$5,000,000 per occurrence when combined with insurance required under the Employers Liability, General Liability and Automobile Liability coverage noted in A. through C. above.
5. Liquor Liability
Limit of Liability: \$2,000,000 per occurrence combined single limit for liability arising out of the manufacture, distribution, sale or service of alcoholic beverages, if applicable.
6. Builders Risk
During any period of construction, including but not limited to the Initial Capital Improvements, Concessionaire (or Concessionaire's general contractor or other Subcontractors) shall maintain "all risk" builder's risk insurance in an amount equal to the anticipated completion value of the project under construction. The coverage shall remain in full force and effect during any period of construction or improvements.
7. All Risk" Property Insurance
Covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Concessionaire's care, custody and control in an amount equal to the full replacement cost with no penalty for coinsurance, and with an endorsement naming the City as "loss payee."
8. Boiler and Machinery Insurance
Against loss or damage from explosion, erupting, collapsing, exploding or mechanical breakdown of boilers or pressure vessels and all equipment parts thereof and appurtenances attached hereto the extent applicable to the premises.
9. Business Interruption Insurance
Covering loss of profits, annual concession fee (in an amount equal to annual concession fee for one year) and necessary continuing expenses for interruptions caused by any one occurrence covered by the insurance referred to in subsections II(G) and II(H).
10. Professional Liability Insurance
For any architectural and/or engineering services at a limit of \$1,000,000 with a deductible not to exceed \$50,000 covering error and omissions, if applicable. This coverage may be written on a "claims-made" basis provided that coverage for occurrences happening during the performance of services required under the contract shall be maintained in full force

and effect under the policy or “tail” coverage for a period of at least two (2) years after the completion of the services.

11. Concessionaire shall cause the City, its officials, officers, employees and agents, to be named additional insureds on all policies required under this Appendix 4 except the Workers Compensation and Employers’ Liability and Professional Liability insurance. Concessionaire shall cause such policies to include an endorsement stating that the coverage afforded the additional insureds is primary to any other coverage available to them.
12. Concessionaire shall cause original certificates of insurance to be delivered to the City’s Risk Manager at: City of Philadelphia, Division of Risk Management, One Benjamin Franklin Parkway – 14th Floor, 1515 Arch Street, Philadelphia, PA 19102, within ten (10) days after the execution date of the Concession Agreement and at least ten (10) days before each Renewal Term, if any. Concessionaire shall cause the actual endorsement adding the City as an additional insured to be also submitted to the City’s Risk Manager at the above address.
13. The insurance requirements set forth in this Appendix 4 do not modify, limit or reduce Concessionaire’s indemnifications of the City under this Appendix 4, the RFP, and the Concession Agreement.

B. Self-Insurance

The Concessionaire may not self-insure any of the coverages required under this Appendix 4, the RFP, or the Concession Agreement, without the prior written approval of the City’s Risk Manager. In the event that the Concessionaire wants to self-insure any of the coverages listed above, it shall submit to the City’s Risk Manager, prior to the Commencement Date, a certified copy of Concessionaire’s most recent audited financial statement, and 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’s Risk Manager approves the Concessionaire’s proposed self-insurance, Concessionaire acknowledges and agrees that the City, its officials, officers, employees, agents, successors and assigns shall be entitled to receive the same coverages and benefits under Concessionaire’s self-insurance program that they would have received had the insurance requirements been satisfied by a reputable carrier authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City of Philadelphia. If at the time of the Commencement Date Concessionaire self-insures its workers’ compensation and employer’s liability coverage, Concessionaire may, in lieu of the foregoing, furnish the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner’s letter of approval, whichever is appropriate.

C. Insurance Not a Limit of Liability. The insurance (including self-insurance) requirements set forth in this Appendix 4, the RFP, and the Concession Agreement, do not modify, limit or reduce Concessionaire's obligations to indemnify, defend, and hold harmless the City under this Appendix 4, the RFP, or the Concession Agreement, and do not limit Concessionaire's liability under the Concession Agreement to the limits of the policies of insurance (or self-insurance) required to be maintained by Concessionaire.

D. No Blanket Insurance. Concessionaire shall not take out insurance of the kind and in the amounts provided for in this Appendix 4 under any blanket insurance policy that covers other properties owned or operated by Tenant or its Related Companies.

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

F. Waiver of Subrogation. Concessionaire shall cause each policy of insurance required under this Appendix 4, excepting Worker's Compensation policies, to include a provision for a waiver of subrogation in favor of City and Concessionaire.

G. 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 \$500,000, 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 (a) \$500,000. The fidelity bond or crime insurance, whichever is obtained by Concessionaire, shall name the Commission 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.

H. Increase In Insurance Amounts. 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 Appendix 4, Part 3.

FORM A

CONCESSION FEE
PROPOSAL FORM

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

2008: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2009: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2010: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2011: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2012: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

Renewal Term (if applicable)

2013: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2014: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2015: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2016: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

2017: \$ _____ plus _____% of Gross Revenues above \$3 million.
MAG at least \$350,000 min. 10% (Percentage Fee)

FORM B

ANNUAL CAPITAL PAYMENT
PROPOSAL FORM

Annual Capital Payment (Fixed Capital Payment or Percentage Capital Payment) into Capital Escrow Account for repairs, replacements, and improvements at the Facilities.

2008: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2009: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2010: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2011: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2012: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

Renewal Term (if applicable)

2013: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2014: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2015: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2016: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

2017: \$ _____ or _____ % of Gross Revenues.
 minimum \$150,000 min. 5%
 (Fixed Capital Payment) (Percentage Capital Payment)

FORM C

**INITIAL CAPITAL IMPROVEMENT
PROPOSAL FORM**

for the Fairmount Park Commission

Initial Capital Improvements for the Facilities. [Respondents may attach additional sheets if necessary to fully describe proposed projects.]

1. *Cobbs Creek Golf Club (Olde Course and Karakung Course)*

Initial Capital Improvement: \$ _____

Proposed projects:

2. *FDR Golf Club*

Initial Capital Improvement: \$ _____

Proposed projects:

3. *John F. Byrne Golf Club*

Initial Capital Improvement: \$ _____

Proposed projects:

4. *City Line Sports Center*

Initial Capital Improvement: \$ _____

Proposed projects:

FORM D

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM (PROPOSAL) <i>Disadvantaged Minority (M-DBE), Women (W-DBE), and Disabled (DS-DBE) Owned Business Enterprises</i>				DEPARTMENT OF FINANCE MINORITY BUSINESS ENTERPRISE COUNCIL (MBEC)				
Project Title		Name of Proposer		Proposal Submission Date				
List below ALL M-DBE/W-DBE/DS-DBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.								
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		

7/1401 (Rev. 7/99)

¹ M-DBE/W-DBE/DS-DBES listed above must be certified by the MBEC prior to proposal submission date.

² Failure to give reason may result in rejection of your proposal. Use additional pages if necessary.