



## **REQUEST FOR PROPOSALS #C-102-12R**

### **For the Management and Operation of the Burholme Park Golf Center**

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Issued By:

The City of Philadelphia

Department of Parks and Recreation  
Michael DiBerardinis, Commissioner

&

Procurement Department  
Hugh Ortman, Commissioner

### **Mandatory Pre-Proposal Meeting & Tour of Burholme Park Golf Center:**

**January 6, 2012, 10:00 a.m.  
Ryerss Mansion and Library  
Burholme Park  
7370 Central Avenue  
Philadelphia, PA 19111**

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**SEALED PROPOSALS WILL BE RECEIVED UNTIL FEBRUARY 7, 2012  
AT 10:30 A.M. LOCAL TIME (THE "DEADLINE FOR SUBMITTING PROPOSALS")  
AT  
MUNICIPAL SERVICES BUILDING, 1401 JOHN F. KENNEDY BOULEVARD, ROOM 170A,  
PHILADELPHIA, PA 19102  
AND WILL BE OPENED IMMEDIATELY AFTER THE DEADLINE FOR SUBMITTING  
PROPOSALS**

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Questions regarding this Request for Proposals must be submitted in writing before  
**January 13, 2012 at 5:00 p.m. local time ("Deadline for Questions")**  
and directed to

Marc Wilken, Park Concessions Manager  
Philadelphia Parks & Recreation,  
One Parkway Building – 10<sup>th</sup> Floor, 1515 Arch Street, Philadelphia, PA 19102  
or by e-mail at [Marc.Wilken@phila.gov](mailto:Marc.Wilken@phila.gov) or by fax to 215-683-0205

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## **SECTION 1 – GENERAL INFORMATION**

### **1.1 Purpose of this Request for Proposals**

The City of Philadelphia (the “**City**”) is pleased to issue this Request for Proposals (“**RFP**”) for a firm or individual to manage and operate the Burholme Park Golf Center (the “**Center**”) located in Burholme Park in Greater Northeast Philadelphia.

### **1.2 Respondents to this RFP; the Concession Agreement and Concessionaire**

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

### **1.3 Proposed Concession Summary**

The Concessionaire will have complete responsibility for management and operation of the Center, which includes the driving range, miniature golf course, batting cages and clubhouse. The responsibilities of the Concessionaire will include, but are not limited to, those set forth in this RFP in Section 3 and Section 4 and those set forth in the Concession Agreement. In consideration of the License granted to the Concessionaire under the Concession Agreement, the Concessionaire shall pay the City a concession fee as explained below in Section 3.29 and Section 6.8 of this RFP. As more fully explained below, each Respondent’s Proposal must describe, at a minimum, the management and operating practices, personnel requirements, and reporting procedures that it would employ in managing and operating the Center. The Respondent’s Proposal must also include the Respondent’s plan to invest capital in the Center, market and advertise the Center, and enhance the Center’s revenue opportunities.

### **1.4 Respondent Qualifications**

As more fully detailed below, each Respondent must demonstrate substantial experience in the recreation industry or comparable industries and the financial capacity to operate and manage the Center at the highest level of efficiency, customer satisfaction, and safety.

## **1.5 Mandatory Pre-Proposal Meeting and Tour of the Burholme Park Golf Center**

- 1.5.1 A “**Mandatory Pre-Proposal Meeting and Tour**” will be held on the date and time, and at the location, stated on the cover page of this RFP. The purpose of the Mandatory Pre-Proposal Meeting and Tour is to review the requirements contained in this RFP and receive questions that potential Respondents may have. Potential Respondents are encouraged to RSVP to the Project Manager (identified in Section 1.6 below) regarding their attendance at the Pre-Proposal Meeting.
- 1.5.2 As part of the Mandatory Pre-Proposal Meeting and Tour, City staff will conduct a tour of the Burholme Park Golf Center.
- 1.5.3 The City believes that attendance at the Pre-Proposal Meeting and Tour is essential for successful participation in this RFP process and expects every Respondent to attend. The City reserves the right, in its sole discretion, to reject any Proposal submitted by a Respondent that does not attend the Pre-Proposal Meeting and Tour, but may, in its sole discretion, consider such a Proposal if the Respondent properly submitted an RSVP and the City determines that the Respondent’s failure to attend was caused by circumstances reasonably beyond the Respondent’s control.

## **1.6 Project Manager; Questions about this RFP**

- 1.6.1 The “**Project Manager**” for this RFP is Marc Wilken, Park Concessions Manager, Department of Parks and Recreation. The Project Manager can be reached by the following means:

Email: [marc.wilken@phila.gov](mailto:marc.wilken@phila.gov)  
Fax: 215-683-0232  
Mail: One Parkway Building – 10<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102

- 1.6.2 Questions concerning this RFP, including any questions concerning the Concession Agreement, may be asked at the Pre-Proposal Meeting. Otherwise, questions must be submitted to the Project Manager in writing, by e-mail, fax or letter, no later than the Deadline for Questions stated on the cover page of this RFP. Questions submitted by telephone will not be answered by the City. The City is not obligated to answer or respond to any questions received after the Deadline for Questions.
- 1.6.3 The City will answer all questions asked at the Pre-Proposal Meeting or timely submitted to the City in writing, which the City in its sole discretion determines concern material elements of the proposal process or Concession Agreement. The City will provide its answers in writing by an

addendum to this RFP prior to the Deadline for Submitting Proposals, and the City will post its answers on the following websites: <http://www.phila.gov/bids> and <http://www.phila.gov/rfp/>. The City is not bound by any oral response made by any City employee to any questions.

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

## **1.7 Review Entire RFP Carefully; RFP Will Be Part of Concession Agreement**

All Respondents are encouraged to carefully read this entire RFP and its attachments before the Pre-Proposal Meeting and before submitting a Proposal. This RFP will become part of the Concession Agreement.

## **1.8 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 submitting a Proposal in response to it.

## **1.9 Modifications; Late Proposals**

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

E-mail: [hugh.ortman@phila.gov](mailto:hugh.ortman@phila.gov)

Fax: 215-686-4728

Letter at:

City of Philadelphia  
Procurement Department  
120 Municipal Services Building  
Philadelphia, PA 19102

To withdraw a Proposal, a Respondent must also provide a copy of its withdrawal

notice to the Project Manager by email, fax or letter at the address provided in Section 1.6.1.

### **1.10 Public Disclosure**

This RFP, each Proposal, the Concession Agreement, and the written documents and communication related to them, may be subject to public disclosure under law, except as provided in Section 6.13 of this RFP.

### **1.11 Information and Data in this RFP Not Warranted**

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

### **1.12 Provisions of RFP Become Part of Concession Agreement**

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

## **SECTION 2 – DESCRIPTION OF THE BURHOLME PARK GOLF CENTER**

### **2.1 Background**

#### **2.1.1 Location**

Burholme Park (the “**Park**”) is located in a beautiful, historic section of Greater Northeast Philadelphia and is bordered to the west by Cheltenham Township, Montgomery County. Access to the Park and the Center is at

Cottman Avenue (Route 73), a major thoroughfare that connects to several highways, including Route 232, Route 1, and I-95. The entryway and parking lot of the Center are located on a heavily traveled commercial corridor, Cottman Avenue.

### 2.1.2 History

The Park includes the Robert W. Ryerss Museum and Library. The Park was given to the City by the last descendant of the Ryerss family, a prominent Philadelphia family. The Ryerss Museum collection gives visitors insight into a family that traveled the globe and brought back fascinating objects (particularly from Asia) in order to enlighten Philadelphia citizens about far away cultures. In addition to the museum and library, the Park provides a variety of sports fields, picnic spaces and playgrounds for visitors and sports organizations to enjoy. The Park is situated next to Jeanes Hospital and Fox Chase Cancer Center, which employ approximately 4,400 individuals. One of the more noteworthy features of Burholme Park is its beautiful wooded areas, holding the Park true to its name, which means “house in a woodland setting.”

### 2.1.3 Location, Existing Conditions, Site Plans, and Equipment List

#### 2.1.3.1 Existing Conditions

The Burholme Park Golf Center (the “**Center**”) is located at 401 West Cottman Avenue, Philadelphia, PA 19111. The Center is located on the southwest border of the Park and consists of a 6,000 sq. ft. building constructed in 1996 on a ten-acre landscaped campus. The Center features a driving range with 63 stalls, including both a lower and upper deck. Thirteen of the stalls are heated and covered. The Center also includes an 18-hole miniature golf course with water features, a fully equipped pro shop, six baseball and softball batting cages, a full-service snack bar, a picnic area, and a one-acre parking lot with approximately 115 parking spaces. Please see **Appendix 1** for a map of the Center.

##### 2.1.3.1.1 Driving Range Infrastructure

*General Condition.* There have been no significant capital investments made to the Center in the past ten years other than the recent installation of a 300 foot long, 50 foot high driving range net.

*Irrigation.* The driving range has an irrigation system that was installed in 1996. The well pump for the irrigation system is currently not operating. The current

concessionaire believes that the electrical system for the irrigation system has been damaged due to water infiltration in the electric junction boxes. The City does not have estimates to replace or repair the system.

*Lighting.* There are six light standards for the driving range with up to six lamps on each standard. All of the standards have some functioning lamps, but each standard needs some lamps to be replaced.

*Stalls.* The current concessionaire informed the City that it does not operate the upstairs driving range stalls for security and safety reasons. The City is not aware of any structural problems with the upstairs driving range deck. Please note that in previous years there were nets hanging from the back of the upstairs stalls to prevent people from climbing onto the roof of the clubhouse building.

#### 2.1.3.1.2 Miniature Golf Course

*Pump System.* The pump and motor for the re-circulating water system are not operating and need to be replaced. The City does not have an estimate of the cost to replace the pump and motor.

#### 2.1.3.1.3 Batting Cages

*Pitching Machines.* There are nine pitching machines in the batting cage. Three pitching machines were replaced in 2003. Only two pitching machines work currently. The other seven pitching machines failed at various times over the past two years. Please see **Appendix 2** for an estimate of the cost to replace all nine pitching machines and other related pieces of equipment.

#### 2.1.3.1.4 Clubhouse

*Roof.* The roof of the clubhouse was installed in 1996. The roof is made of asphalt shingles. The shingles appear to be in good condition as they are not curled or cracked; but the roof does leak in spots, such as at the cupola and at some ridge lines. The leaks may be due to a flashing problem, but City officials do not know that for certain. The roof has received minor repairs since 1996, but the City believes that no major work has been done on it since 1996.

*HVAC System.* The clubhouse HVAC system was installed in 1996. The system consists of four units located in the attic space of the facility. The system is powered by electric, forced air. Currently, three of the four units function properly. One unit does not heat or cool, although the blower still works. That unit needs to be repaired or replaced. The City does not have an estimate of the cost to replace the unit.

#### 2.1.3.1.5 Utility Costs of the Center

Electric and gas for the past three years:

2008 – \$23,713

2009 – \$17,844

2010 – \$22,785

Water and sewer for the past three years:

2008 – \$3,976

2009 – \$4,623

2010 – \$6,268

#### 2.1.3.2 Site Plans

Please see **Appendix 3** for the 1996 Center building plans. For additional information about the Burholme Park Golf Center clubhouse, each Respondent may, if it wishes, contact the firm that designed and constructed the clubhouse. The firm's contact information is:

Charles Ang  
Innovative Construction Systems, Inc.  
215-427-8700  
[cclang@comcast.net](mailto:cclang@comcast.net)

#### 2.1.3.3 Equipment List

Please see **Appendix 4** for a list of equipment owned by the current concessionaire and or the concessionaire's suppliers. The list provided in **Appendix 4** was prepared by the current concessionaire. In addition to the equipment described in the **Appendix 4**, the current concessionaire informed the City that there are picnic tables and chairs, scaffolding, and some shop equipment, such as a grinder, also available for sale. The current concessionaire may be a Respondent to this RFP, but the current concessionaire would consider selling the equipment listed in

**Appendix 4** to a new Concessionaire. Therefore, a potential Respondent may want to review **Appendix 4** to determine what equipment might be readily obtainable to operate the Center and what additional equipment the new Concessionaire will need to purchase. For additional information about the equipment listed in **Appendix 4** and any additional equipment at the Center, a Respondent may contact Eddie Lee, current manager of the Burholme Park Golf Center concessionaire at 215-742-2380 or 267-307-9600.

#### 2.1.4 Demographics

Approximately 850,000 people live within a five mile radius of the Center. The Center is bordered by communities with median household incomes of up to \$84,125. **Appendix 5** is a detailed breakdown of the median household incomes surrounding the Center.

#### 2.1.5 Philadelphia Area Driving Ranges

There are five driving ranges and golf or sports centers within a 10-mile radius of the Center. The only golf driving range within a five-mile radius of the Center is Fishers Glen, which has half the practice tees available at the Center. **Appendix 6** contains a map of competing driving ranges and golf or sports centers within a 10-mile radius of the Center.

## 2.2 Financial History

The following chart lists the total gross receipts by service, and fees paid to the City, by the current concessionaire for operating years 2001—2002 through 2010—July 2011.

Operating Year*	Gross Receipts: Driving Range	Gross Receipts: Miniature Golf	Gross Receipts: Batting Cage	Gross Receipts: Snack Bar	Gross Receipts: Pro Shop	Total Gross Receipts	Fees Paid To The City
2001-2002	\$464,544	\$220,118	\$99,737	\$74,010	\$54,054	\$912,463	\$135,000
2002-2003	\$386,833	\$176,096	\$76,531	\$84,733	\$70,532	\$794,725	\$141,200
2003-2004	\$350,827	\$182,407	\$95,783	\$69,423	\$41,387	\$739,827	\$147,436
2004-2005	\$285,385	\$152,165	\$87,208	\$59,640	\$54,511	\$638,909	\$153,709
2005-2006	\$301,553	\$145,367	\$97,614	\$58,441	\$42,943	\$645,918	\$160,020
2006-2007	\$275,902	\$146,755	\$101,310	\$53,612	\$42,152	\$619,731	\$166,370
2007-2008	\$219,969	\$136,633	\$83,509	\$39,172	\$36,908	\$516,191	\$172,767
2008-2009	\$213,425	\$113,414	\$82,351	\$30,996	\$15,687	\$455,873	\$179,194
2009-2010	\$205,175	\$93,902	\$67,182	\$25,404	\$12,866	\$404,529	\$190,670
2010-2011 (Partial Year)**	\$196,418	\$84,977	\$68,846	\$19,613	\$10,042	\$379,896	\$197,190

\* Each operating year is from September 15 to September 14 of the following calendar year.

\*\* The partial year for 2010-2011 reflects activities from September 15, 2010 through July 31, 2011.

The current concessionaire has told the City that it believes its revenues from 2006 to 2009 were negatively affected by the proposed partial use of Burholme Park as part of The Fox Chase Cancer Center's expansion. Since then, Fox Chase Cancer Center has made other plans for expansion. The City has no plans to use Burholme Park land for any purpose other than the activities currently available to park users.

### **2.3 Current Operating Hours and Rates**

The current concessionaire's hours of operation and rates for the 2011 season are provided below.

Hours of Operation:

Open 7 Days a Week  
8:00 am through 10:00 pm

Driving Range Bucket Rates:

Small Bucket	\$6.00
Medium Bucket	\$8.00
Large Bucket	\$10.00

Weekly Specials

Mon. to Fri. 8:00am – 10:00 am, 2 Large Buckets \$10  
Women & Seniors (65+) Weekdays until 6:00 pm, Medium Buckets \$7.00

Miniature Golf Rates:

Adults \$6.00 per round  
Children (under 12) \$5.00 per round

Batting Cage Rates:

\$1 per token for 12 pitches

Respondents are not required to maintain the same hours of operation and price points in their proposals. Please see Sections 3.9.1, 3.19, 6.11.1.1 and 6.11.1.4 of this RFP for more information and requirements regarding operating days and hours and prices.

## **SECTION 3 – CONCESSION AGREEMENT: SPECIFIC PROVISIONS**

### **3.1 Term of the Concession Agreement**

The “**Initial Term**” of the Concession Agreement starts on the date the City

executes the Concession Agreement and all the conditions set forth in Section 7.3 of this RFP have been completely satisfied (the “**Commencement Date**”). The Initial Term expires at 5:00 p.m. the day before the 10<sup>th</sup> anniversary of the Commencement Date. The City, at its sole discretion, may renew the Concession Agreement for up to two five-year periods (each period a “**Renewal Term**”). To renew the Concession Agreement, the City must provide written notice to the Concessionaire of the City’s desire to renew the agreement (a “**Renewal Notice**”) no later than one-year before expiration of the Initial Term or then-current Renewal Term, as the case may be. In the Concession Agreement and this RFP, “**Term**” means the Initial Term and all Renewal Terms, if any. In the Concession Agreement and this RFP, the date the Concession Agreement expires, is terminated, or otherwise ends, is called the “**Concession Agreement Ending Date.**”

### 3.2 Center

The License given by the City to the Concessionaire under the Concession Agreement applies only to the Center identified in **Appendix 1**.

### 3.3 Capital Investment in the Center: Initial and Additional

3.3.1 The Concessionaire shall make a significant capital investment to update and improve the Center, including some or all of the potential capital improvements listed in Section 6.9.1 of the RFP. The City encourages the Concessionaire to include “green building” design elements and encourages the use of environmentally friendly products for all capital improvements and repairs.

3.3.2 **Final Plans and Specifications due during the Term.** The Concessionaire shall submit to the City a detailed plan for all the Concessionaire’s proposed improvements to the Center during the Term. Before starting the installation or construction of any alterations to the Center, the Concessionaire shall submit to the City, for its review and approval, the final plans and specifications (the “**Final Plans and Specifications**”). The Concessionaire shall cause the Final Plans and Specifications to be detailed to the then-current industry standard for the subject work and prepared by licensed architects or engineers. The Concessionaire shall cause the Final Plans and Specifications to include a detailed and mandatory capital completion schedule and cost estimates.

3.3.3 **Additional Capital Investment Escrow Account.** In addition to the Initial Capital Investment Plan, which is more fully described in Section 6.9.3 of this RFP, the Concessionaire shall make additional capital expenditures (the “**Additional Capital Investment(s)**”) in the Center in amounts sufficient to maintain the Center in good order, condition and repair. The additional capital improvements are referred to in this RFP as

the “**Additional Capital Improvement Item(s).**”

3.3.4 The Concessionaire shall complete each Additional Capital Improvement Item within reasonable time periods specified by the Concessionaire and approved by the Commissioner.

3.3.5 In order to help ensure Concessionaire's performance of each of the Additional Capital Improvement Items, the Concessionaire shall establish, fund and maintain an account for use in payment for the Additional Capital Improvement Items. Therefore, upon completion of the Initial Capital Investment Plan projects, and continuing through the Concession Agreement Ending Date, the Concessionaire shall deposit 5% of each month's Driving Range Gross Revenues into an “**Additional Capital Investments Account.**” The Concessionaire shall establish and maintain the Additional Capital Investment Account in the name of “City of Philadelphia, Parks and Recreation Department” at a local commercial bank (the “**Account Bank**”).

1. Concessionaire may not withdraw any funds from the Additional Capital Investments Account without the Commissioner's advance written approval, addressed to the Account Bank, of the amount of the requested disbursement. With its requests to the Commissioner for disbursements from the Additional Capital Investments Account the Concessionaire shall include sufficient detail for the Commissioner to consider the usefulness of the proposed improvement and the appropriateness of the amount of the proposed disbursement. The Commissioner will endeavor to respond to the Concessionaire's request within 10 business days after receiving the request.

2. The Concessionaire shall pay all costs, expenses and other charges associated with the Additional Capital Investments Account.

3. Upon the Concession Agreement Ending Date, all funds in the Additional Capital Improvements Account become the sole property of the City.

4. Concessionaire's obligation to make the Additional Capital Investments and perform each of the Additional Improvement Items is not limited to the amount of money in the Additional Capital Investments Account.

3.3.6 **Performance Bond.** If required by the City, the Concessionaire, at its sole cost and expense, shall provide the City with a performance bond (in a form and from a surety approved by the City), in a principal amount equal to the cost of completing all the Initial Capital Investment Plan and

all Additional Capital Investment Items. Alternatively, if required by the City, the Concessionaire shall, at its sole cost and expense, provide the City with separate performance bonds (in forms and from sureties approved by the City) for the Initial Capital Investment Plan and the Additional Capital Investment Items in principal amounts equal to the cost of completing those projects respectively.

3.3.7 \$58,832 remains in an account available for capital projects at the Center. The City intends to work with the Concessionaire to determine how to best use the account funds in completing capital projects at the Center.

3.3.8 All the Concessionaire's proposed capital improvements and repairs under this Section 3.3 are subject to provisions of Section 3.15 of this RFP regarding the City's prior approval.

### **3.4 Alcohol Service**

The Concessionaire may serve beer and wine to complement food services at the Center, provided (1) the Concessionaire obtains all licenses and permits required by Applicable Laws, (2) the Concessionaire serves the beer and wine only in the immediate vicinity of the clubhouse, and in a cordoned-off area if the Concessionaire provides exterior dining seating, and (3) the Concessionaire shall use its best faith efforts to ensure that the beer and wine it serves is consumed only as an accompaniment to the food it sells.

### **3.5 Merchandise**

The Concessionaire may sell merchandise at the Center, but the Concessionaire shall not sell tobacco products at the Center. All merchandise the Concessionaire proposes to sell is subject to the City's prior written approval. The City reserves the right to require the Concessionaire to remove any merchandise it considers inappropriate.

### **3.6 Vending Machines**

3.6.1 The Concessionaire may, with the City's prior written approval, provide snack and beverage service to supplement the operations of the snack bar through vending machines at the Center.

3.6.2 During the Term, the City may implement food and beverage standards for vending machines on City property. If the Concessionaire installs vending machines on the Center, the Concessionaire shall comply with the City's new or changed food or beverage standards in the operation of vending machines.

### **3.7 Special Events**

- 3.7.1 The Concessionaire may conduct special events or programs at the Center. However, the Concessionaire shall not close the Center to conduct private activities during public hours unless those activities are approved in advance and in writing by the City. The Concessionaire shall announce any closures to the public at least two weeks in advance of the private activities or events.
- 3.7.2 The City reserves the right to host up to two annual events at the Center. The City will confer with the Concessionaire at least a month before each City event to try and find a mutually agreed upon date for the event.

### **3.8 Public Programming; Community Relations**

The Concessionaire shall conduct public programming and community relations as set forth in its Proposal.

### **3.9 Operating Schedule**

- 3.9.1 Concessionaire shall operate the Center during the days and hours approved by the City (the “**Operating Schedule**”). The Concessionaire shall not change the Operating Schedule without obtaining the City’s prior, written approval of the changes.
- 3.9.2 Despite the Operating Schedule, in the event of inclement weather, Concessionaire may open the Center later or close the Center earlier than the hours set forth in the Operating Schedule.

### **3.10 Personnel**

- 3.10.1 Concessionaire shall employ, provide, and train all personnel necessary and prudent for the safe, efficient, and successful management and operation of the Center.
- 3.10.2 Concessionaire shall cause its employees to conduct themselves at all times in a courteous and professional manner that reflects well upon the City. Concessionaire shall train and supervise its employees and cause them to be well-groomed and neat. Concessionaire shall cause its employees to be outfitted in appropriate attire which clearly identifies them as Concessionaire’s employees. The City may, in its sole reasonable discretion, require that the Concessionaire remove and replace any employee that does not meet the requirements of this Section 3.10.2.

### **3.11 Customer Service**

The Concessionaire shall create and maintain a high-quality amenity for the public. The Concessionaire shall implement customer service mechanisms that will enhance and maintain the satisfaction of its patrons.

### **3.12 Parking Lot**

The Concessionaire shall repair and maintain the parking lot at the Center. The Concessionaire shall ensure that the number, placement and specifications of all accessible spaces for physically disabled persons comply with Applicable Laws.

### **3.13 Lighting**

The Concessionaire shall provide safe lighting throughout the Center. The Concessionaire shall replace each burned out lamp within 24 hours of its reported outage.

### **3.14 Utilities**

3.14.1 The City does not represent or warrant the adequacy of the utilities and utility service available at the Center. The Concessionaire shall, at its sole cost and expense, connect to or upgrade any existing utility service, or create a new utility system, as needed for Concessionaire's management and operations of the Center, including but not limited to supplying and installing any necessary feeder cables, meters, wiring, gas lines, water, sewer lines, pumps, etc. Before making any new utility connection, upgrading utility service, or creating any new utility system, the Concessionaire shall obtain all permits and approvals required by Applicable Laws and shall obtain the prior, written approval of the City.

3.14.2 The Concessionaire shall promptly pay all charges and fees when and as they become due for all public utilities and utility service used at the Center, including but not limited to: gas, steam, heat, electricity, telephone, sewer rents, water meter and water charges. In addition, the Concessionaire shall, at its sole cost and expense, promptly pay all charges and fees when and as they become due for new conduits, cables, or other means of providing or improving utility services to the Center. Without limiting the requirements set forth above in this Section 3.14, the Concessionaire shall pay all late charges, interest, penalties, and fees arising from the Concessionaire's failure to promptly pay all charges and fees imposed by any provider of utility service to the Center, or any installer of utility equipment at the Center.

3.14.3 The City is not required to provide or pay for utilities or utility service to the Center. The City is not liable for any interruption in utilities or utility service to the Center.

**3.15 Equipment; Capital Improvements; Maintenance and Repair; Condition of Center on Concession Agreement Ending Date**

3.15.1 The Concessionaire shall, at its sole cost and expense, install and provide at the Center all equipment, material, and supplies necessary for the safe, efficient and successful management and operation of the Center.

3.15.2 Concessionaire shall not make capital improvements or alterations to or on the Center, or install fixtures in or on the Center, without the prior, written approval of the City. Subject to the preceding sentence, not later than the Concession Agreement Ending Date, the Concessionaire shall remove all non-permanent fixtures, equipment and supplies that the Concessionaire has installed or placed in or on the Center. The Concessionaire shall promptly repair all damage to the Center caused by its removal of its non-permanent fixtures and equipment. If the Concessionaire does not remove all its non-permanent fixtures, equipment, and supplies by the Concession Agreement Ending Date, then, in the City's sole discretion,

1. the City may remove the non-permanent fixtures, equipment, and supplies, and within five days after the City's notice of the removal the Concessionaire shall pay all the City's costs related to the removal, and if the Concessionaire fails to timely pay those costs the City may retain as much of the Security Deposit as necessary to offset the City's costs related to the removal, or
2. the non-permanent fixtures, equipment, and supplies will be deemed the property of the City and the City may take possession of them and use them, sell them, rent them, or otherwise dispose of them in the City's sole discretion without any obligation to compensate Concessionaire for the value of the non-permanent fixtures, equipment or supplies, and
3. Concessionaire's obligations under this Section 3.15.2 survive the Concession Agreement Ending Date.

3.15.3 Concessionaire shall, at its sole cost and expense, maintain and operate the Center in good and safe condition and in accordance with industry standards, including, but not limited to performing all the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, building systems, utility systems and connections, sewer systems and

connections, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures. In addition, Concessionaire shall keep all signs and structures on the Center in good condition and free of graffiti.

Concessionaire's construction of any new or ancillary structures at the Center is subject to the City's prior, written approval.

- 3.15.4 The Concessionaire, at its sole cost and expense, shall promptly repair all damage to the Center caused by the Concessionaire or its employees, agents, contractors, invitees, or clients and their guests, or otherwise arising from Concessionaire's exercise of its License under the Concession Agreement.
- 3.15.5 The City is not obligated to provide any services, materials or equipment related to the Center.
- 3.15.6 On the Concession Agreement Ending Date, Concessionaire shall leave the Center in the same condition in which it was found immediately prior to the Commencement Date, except for reasonable wear and tear, casualty covered by the Concessionaire's insurance (with the City as loss payee), and any capital improvements and alterations that Concessionaire made and which were approved in writing in advance by the City.
- 3.15.7 All maintenance and repair of a capital nature required of the Concessionaire by this Section 3.15 is subject to the prior, written approval of the City. Concessionaire shall promptly complete all maintenance and repairs approved by the City.

### **3.16 Landscape Maintenance**

- 3.16.1 The Concessionaire shall maintain and improve the landscaping at the Center, including, but not limited to, performing mulching, seeding, trimming, pruning, planting, fertilization, and soil improvements. In addition, the Concessionaire shall prune trees at the Center as needed to keep them safe and attractive. The Concessionaire shall also submit plans to the City of all proposed changes to the landscape. Except for routine landscape maintenance, Concessionaire's landscape maintenance plans are subject to City's prior, written approval.
- 3.16.2 The Concessionaire shall not cut down, prune or remove any trees at the Center without prior, written approval from the City. The Concessionaire shall not permit any attachments to the trees at the Center, such as lighting or signs.
- 3.16.3 If the Concessionaire applies herbicides, fungicides and insecticides at the Center, the Concessionaire shall comply with all Applicable Laws regarding use of the herbicides, fungicides and insecticides.

### **3.17 Pest Controls**

The Concessionaire shall perform regular pest control inspections and extermination at the Center, as needed. The Concessionaire shall implement integrated pest management practices at the Center. If the Concessionaire applies pesticides at the Center, the Concessionaire shall comply with all Applicable Laws regarding use of the pesticides.

### **3.18 Storage**

The City does not represent or warrant that there is adequate storage space at the Center. The Concessionaire shall, at its sole cost and expense, obtain any additional storage space required for its operation of the Concession. The Concessionaire shall not permit any equipment or supplies to be stored in the interior or exterior of the Center within public view. The Concessionaire shall store its outdoor equipment on a nightly basis and anytime the Center is closed.

### **3.19 Pricing Points**

Concessionaire shall provide competitive pricing points for all sales at the Center. Concessionaire's fee schedules for the driving range, batting cages and miniature golf are subject to the City's prior, written approval.

### **3.20 Marketing**

3.20.1 Concessionaire shall use its best efforts to increase the numbers of patrons using the Center. Concessionaire shall use all commercially reasonable marketing and publicity, including but not limited to sales promotions, a website, the internet, newspaper ads, radio and television ads, magazines, flyers, posters, and other means of communication. Concessionaire shall create and actively distribute printed materials that highlight the Center (collectively with Concessionaire's other marketing and publicity activities, the "**Promotional Activities**").

3.20.2 At all times during the Term, the Concessionaire shall include on its stationery letterhead and in all print, broadcast, and electronic publicity (including but not limited to the Concessionaire's website homepage), and advertising materials related to the Center, a prominent, easily legible statement that clearly indicates the Center is "**operated in partnership with the City of Philadelphia Department of Parks and Recreation.**"

3.20.3 Concessionaire's Promotional Activities are subject to the City's prior, written approval. Concessionaire may propose a plan for Promotional Activities and, if Concessionaire obtains the City's approval of the plan, then as long as Concessionaire strictly complies with the approved plan

Concessionaire does not need to obtain additional approval of its Promotional Activities from the City.

3.20.4 The Concessionaire must obtain the prior, written approval of the City prior to entering into any marketing or sponsorship agreements. If the Concessionaire violates this Section 3.20.4, the Concessionaire shall take any action that the City may deem necessary to protect the City's interests. If the Concessionaire does not implement the necessary action requested by the City, the City may immediately terminate the Concession Agreement and, as an administrative fee, retain Concessionaire's Security Deposit (the Security Deposit is described below in Section 3.34 of this RFP).

### **3.21 Signs; Department of Parks and Recreation's Mark**

3.21.1 The Concessionaire shall not at any time erect, hang, paint or otherwise create any sign or advertisement on the exterior of the Center (other than routine way finding signs or signs informing patrons of the Center's activities) without the prior, written approval of the Commissioner of the Department of Parks and Recreation or his or her designee (the "**Commissioner**"). In addition, the Concessionaire shall not, without the prior, written approval of the City, erect, hang, place, or display in, on or about the Center any utilitarian items, including but not limited to trash receptacles, that promote and advertise any product or product brand other than the Center. The Concessionaire shall not advertise alcoholic beverages, except only as required to inform patrons of any alcoholic beverages that Concessionaire is licensed to sell at the Center in conjunction with its food service under Section 3.4 of this RFP.

3.21.2 The City intends to work with the Concessionaire to design signs that attract customers to the Center but that are also sensitive to the park setting in which the Center is situated.

3.21.3 Concessionaire shall obtain all advance approvals required under Applicable Laws before Concessionaire erects, hangs, paints, or otherwise creates any sign in, on or about the Center. Concessionaire shall cause each sign to meet all specifications required by the Department of Parks and Recreation and include the Department of Parks and Recreation's mark or logo.

### **3.22 Safety Measures**

Concessionaire shall, at its sole cost and expense, employ all necessary and prudent measures for the safe exercise of the Concession and to prevent any injury or damage to any person or property in, on or about the Center, or resulting from the Concessionaire's exercise of the License or its management and

operation of the Center. Concessionaire shall comply with all appropriate national safety guidelines and with all Applicable Laws regarding the operation and maintenance of the Center.

### **3.23 Security**

3.23.1 Concessionaire shall, at its sole cost and expense, maintain security at the Center year round. Concessionaire shall prepare a security plan for the Center and, upon the City's written approval of the plan, Concessionaire shall implement and maintain security in accordance with the plan.

3.23.2 Concessionaire shall secure the Center and its equipment and supplies every evening.

### **3.24 Snow; Cleaning; Trash Collection; Recycling**

3.24.1 Concessionaire shall, at its sole cost and expense, promptly clean-up and remove all snow, waste, garbage, refuse, rubbish, organic debris and litter at the Center.

3.24.2 Concessionaire shall provide proper, easily identified, and easily accessible waste and recycling receptacles at the Center. Concessionaire shall have all trash and recycling receptacles emptied on a daily basis.

### **3.25 Environmentally-Friendly ("Green") Products & Practices**

3.25.1 The City of Philadelphia is implementing ecologically-friendly initiatives to benefit the environment and the health of Philadelphia's visitors and residents. Therefore, the City strongly encourages the Concessionaire to employ ecologically-friendly practices and products in the management and operation of the Center, which may include the installation of Energy Star compliant appliances, the use of energy efficient, non-polluting, low noise generators, the employment of energy and water conservation measures, the use of low toxicity chemicals, preservation of natural areas, and the use of environmentally-friendly products.

3.25.2 The City favors the installation of Energy Star approved appliances and equipment, such as vending machines and commercial refrigerators at the Center. Energy Star products and environmentally friendly practices can be found at: <http://www.energystar.gov>.

The City also favors plans to use "Green Seal" eco-friendly products such as soaps, cleaners, light bulbs, paper towels, toilet paper and paint. A list of "Green Seal" certified products can be found at <http://www.greenseal.org/findaproduct/index.cfm>, and a list of environmentally-friendly products/materials is also available at [http://www.nyc.gov/html/mocs/html/programs/other\\_epp.shtml](http://www.nyc.gov/html/mocs/html/programs/other_epp.shtml).

The City encourages the Concessionaire to use chlorine free, biodegradable products such as paper towels, napkins, utensils and plates, if the Concessionaire intends to utilize any disposable products for food service at the Center. Additionally, the City encourages the use of environmentally friendly cleaners and the sale of sustainable food products. Respondents may consult the website of the Green Restaurant Association (“GRA”) to locate GRA-endorsed products. Please visit <http://www.dinegreen.com> for more information. In addition to the use of environmentally friendly products, the City encourages the Concessionaire to train staff on environmentally friendly food service practices and to utilize a composting service to dispose of food waste.

### **3.26 Drought and Water Conservation Issues**

The Concessionaire shall comply with all City directives and restrictions regarding drought and water conservation.

### **3.27 Subcontracting**

3.27.1 Subject to the requirements of Section 6.5 of this RFP, Concessionaire may have some of its services and supplies provided by a subcontractor. The Concessionaire shall obtain the prior, written approval of the Commissioner before entering into any subcontract under the Concession Agreement.

3.27.2 Concessionaire shall cause all its subcontracts to specify that the City is designated as third party beneficiary of the subcontract. Concessionaire shall also cause its subcontracts to specify that the subcontractor is bound by the same requirements as the Concessionaire under the Concession Agreement including, without limitation, indemnification of the City, insurance, maintenance and preservation of records, and audit by the City.

3.27.3 No subcontract relieves Concessionaire of any of its obligations under the Concession Agreement. Concessionaire is liable for the acts and omissions of its subcontractors, or the persons either directly or indirectly employed by them.

3.27.4 Any purported subcontract(s) that Concessionaire enters into in violation of this Section 3.27 or of any other Section in this RFP or the Concession Agreement is void.

### **3.28 Internal Controls**

Throughout the Term, the Concessionaire shall maintain a bookkeeping system that keeps an accurate and complete recording of all the Concessionaire’s revenues under the Concession Agreement, in a form and manner acceptable to

the City. The Concessionaire must cause the bookkeeping system to be designed and maintained to provide detailed sales information from each sales transaction. Specifically, the Concessionaire shall cause the sales information to be recorded electronically, via a point-of-sale system, including but not be limited to the item(s) sold, time, date of sale, and price of the item(s) sold. The Concessionaire shall also establish and maintain a dedicated bank account for deposits of all concession-related revenue. The Concessionaire shall keep all its books and records (including but not limited to its detailed sales information) available for City review for at least three years from the Concession Agreement Ending Date.

### **3.29 Concession Fee; Reporting and Payment Schedule**

- 3.29.1 1. In the Concession Agreement, “**Concession Fee**” means the combined **Minimum Annual Guaranteed Amount (“MAG”)** and **Gross Revenue Percentage Fee**, each of which is explained more fully in Section 6.8 of this RFP.
2. During the Term of the Concession, the Concessionaire shall pay the MAG and Gross Revenue Percentage Fee (A) in 12 monthly installments or alternatively, (B) in monthly installments during the prime operating months of the Center (April through October).
3. Subject to Section 3.29.1.2. above, throughout the Term the Concessionaire shall pay the MAG and the Gross Revenue Percentage Fee to the City without deduction, setoff, or counterclaim no later than the 30<sup>th</sup> day of each month for the preceding month. Concessionaire shall pay the Concession Fee by check made payable to “**City of Philadelphia**” and shall deliver the payment to the Project Manager at the mail address provided in Section 1.6.1.
- 3.29.2 Concessionaire shall prepare a monthly “**Accounting Report**” providing a daily count of patrons and Gross Revenues from all categories of its income under the Concession Agreement, including, but not limited to income associated with sublicensed services and special events at the Center. Concessionaire shall submit the Accounting Report to the City no later than the 30<sup>th</sup> day of each month for the preceding month’s activities, together with Concessionaire’s Concession Fee payment as described above in Section 3.29.1.3.
- 3.29.3 Throughout the Term, within 120 days following the end of each of Concessionaire’s fiscal year end, Concessionaire shall submit to the City a report that includes (1) an annual summary description of the Concessionaire’s programs and activities at the Licensed Space and plans for programs and new initiatives in the upcoming year, (2) the Concessionaire’s annual audited financial statement for the most recent fiscal year end, prepared by a Certified Public Accountant in accordance

with Generally Accepted Accounting Principles (GAAP), consistently applied, and (3) the Concessionaire's tax return for the most recent calendar year. Concessionaire shall also promptly submit to the City all supplemental reports, documents, records, and other information that the City may reasonably require.

3.29.4 The requirements of RFP Sections 3.29 survive the Concession Agreement Ending Date until Concessionaire has made the final and full Concession Fee Payment and submitted to the City the final Accounting Report and annual documents as required under that Section.

### **3.30 Alterations to the Center**

The Concessionaire shall not make, cause, or permit any alterations to the Center without the prior review and written approval of the City. The Concessionaire shall submit Final Plans and Specifications for the proposed alterations to the City together with all additional information the City may reasonably request. The City's approval of any proposed alterations may be conditioned upon a requirement that the Concessionaire provides the City with a performance and payment bond satisfactory to the City in all respects and upon other requirements the City deems necessary or prudent to protect the interests of the City.

### **3.31 Smoking Policy**

Smoking in or on the Center is strictly prohibited. The Concessionaire shall not permit smoking at the Center.

### **3.32 ADA Compliance**

Without limiting the general applicability of RFP Section 4.9, in connection with operation and management of the Center the Concessionaire shall comply with the Americans With Disabilities Act ("ADA"). The Concessionaire is encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level of required accessibility.

### **3.33 Licenses and Permits**

Without limiting the general applicability of RFP Section 4.9, the Concessionaire shall, at its sole cost and expense, obtain and maintain during the Term all licenses and permits required under all Applicable Laws with respect to management and operation of the Center or otherwise related to the Concession. The Concessionaire shall cause each of its contractors and subcontractors to procure and maintain all licenses and permits required by Applicable Laws with respect its respective management and operation of the Center or otherwise related to the Concession.

### 3.34 Security Deposit

3.34.1 The Concessionaire shall submit to the City a Security Deposit equal to 25% of the highest year's MAG offered in the Concessionaire's Proposal. The Concessionaire shall pay the Security Deposit to the City, in the form of a certified check, contemporaneously with signing the Concession Agreement. The City will deposit the certified check in a deposit account at a bank in the name of the City of Philadelphia (the "**Security Deposit Account**"). The Security Deposit Account shall be available to the City to retain as security for:

3.34.1.1 The Concessionaire's faithful performance of, and compliance with, all the terms and conditions of the Concession Agreement, including but not limited to all the City's costs and expenses to hire persons or firms to complete performance of, and compliance with, the Concession Agreement if Concessionaire defaults in any of its obligations;

3.34.1.2 Compensation for any damages, costs, or expenses suffered or incurred by the City related to Concessionaire's Event of Default; and

3.34.1.3 Compensation for any damage to the Center arising in connection with any activities at the Licensed Premises under the Concession Agreement and not otherwise covered by Concessionaire's insurance (that names the City as payee).

3.34.2 The City's retention of some or all of the Security Deposit under RFP Section 3.34.1 does not relieve Concessionaire of liability for any costs or damages in excess of the full amount of the Security Deposit.

3.34.3 If at any time during the Term the City applies some or all of the Security Deposit to pay for repair of any damaged property or for any damages the City suffers arising from or otherwise related to Concessionaire's breach of the Concession Agreement, the City may send written notice of the City's retention. Promptly following Concessionaire's receipt of the City's notice, Concessionaire shall promptly deposit money into the Security Deposit Account to restore it to the full amount required.

3.34.4 Within 45 days following the Concession Agreement Ending Date, the City will return the Security Deposit to Concessionaire, less any amounts the City retains under RFP Section 3.34.1 or otherwise to pay the City's cost to repair any damage or pay other costs related to Concessionaire's removal of Concessionaire's fixtures, equipment, supplies and other

property from the Center, restoration of the Center, and ending the Concession.

### **3.35 Reports Regarding Participation in the Concession of Disadvantaged Firms**

The Concessionaire shall submit to the City quarterly reports that summarize the Concessionaire's activities related to their contracts with minority-owned, women-owned, and disabled-owned firms. The reports will serve as a mechanism to ensure the Concessionaire is in compliance with the participation commitments the Concessionaire made in its S & C Form (described in Section 6.5.2 below and set forth as **Form A** to this RFP). Please see **Appendix 9** for a sample reporting form.

### **3.36 No City Obligation**

**Despite any other provision of the RFP and the Concession Agreement, the Concession Agreement does not obligate the City to appropriate or spend money at any time or for any reason.**

### **3.37 Ownership of the Center**

At all times during the Term of the Concession Agreement, the Center identified in **Appendix 1** of this RFP is and will remain owned by the City of Philadelphia. No provision in the Concession Agreement creates, grants, or gives to the Concessionaire any legal title, easement, leasehold, or other interest in the Center identified in **Appendix 1** of this RFP other than a mere license.

## **SECTION 4 – GENERAL CONTRACT PROVISIONS**

### **4.1 Ethics Requirements**

4.1.1 The Concessionaire and its sub-licensees, contractors, and subcontractors must not offer or give, directly or indirectly, anything of value to any City official, officer or employee, including any gift, gratuity, favor, entertainment or loan, the receipt of which would violate Executive Order No. 3-11 issued by the Mayor of Philadelphia on January 25, 2011.

4.1.2 Any person who offers or gives anything of value to any City official, officer, or employee, the receipt of which violates Executive Order No. 3-11, is subject to sanctions with respect to City contracts. The sanctions may range from disqualification from participation in particular City contract(s), to debarment, depending on the nature of the particular violation. The terms and duration of the sanctions will be determined (after consultation with the City's Chief Integrity Officer) by the Procurement Commissioner with respect to contracts subject to

competitive bidding or by the Director of Finance with respect to non-competitively bid contracts.

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

## 4.2 Tax Requirements

- 4.2.1 Any contractor, vendor of goods, or provider of services, who bids on and is awarded a contract by the City is subject to Philadelphia's business tax ordinances and regulations. The Concession Agreement is entered into in the City of Philadelphia, and the Concessionaire's delivery, sale, or rental of goods in the City, or performance of services in the City, is "doing business" in the City and subjects the Concessionaire to the City's tax requirements, including without limitation one or more of the following taxes:
- a. Business Privilege Taxes
  - b. Net Profits Tax
  - c. City Wage Tax
- 4.2.2 Promptly following the Commencement Date, the Concessionaire, if not already paying the taxes listed above, shall apply to the City of Philadelphia Department of Revenue for a tax account number and to file appropriate business tax returns as required by Applicable Law. Applications may be submitted through the Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> or to the Department of Revenue at: Municipal Services Building, Public Service Concourse, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102. Questions about the application and the taxes should be directed to the Taxpayer Service Unit at: (215) 686-6600.
- 4.2.3 In addition to the City's tax requirements, the Concessionaire shall timely pay all federal, state, and local taxes, assessments, and levies, however characterized (collectively, "**Assessments**") that apply to the Concession, the Concession Agreement, and the Concessionaire's activities under the Concession Agreement. The Concessionaire is solely liable for all late charges, interest, penalties, and fees arising from the Concessionaire's failure to timely pay all Assessments.
- 4.2.4 The City is not obligated at any time during the Term to pay any Assessments related to the Concession, the Concession Agreement, or the

Concessionaire's activities under the Concession Agreement.

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

#### **4.3 Confidential and Proprietary Information of the City**

The Concessionaire shall treat all information it obtains from the City that is not generally available to the public as confidential and proprietary to the City. The Concessionaire shall exercise all reasonable precautions to prevent any confidential and propriety information it obtains from the City from being disclosed to any other person or entity. The Concessionaire shall promptly indemnify, defend, and hold harmless the City from and against all liabilities, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from or related to any use or disclosure of any City confidential or proprietary information by the Concessionaire or its employees, or by any person acquiring that information, directly or indirectly, from the Concessionaire or its employees. The Concessionaire's obligations under this Section 4.3 survive the Concession Agreement Ending Date.

#### **4.4 Indemnification, Release and Insurance**

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

#### **4.5 City's Right to Inspect**

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

- 4.5.2 The City may inspect and audit all of the Concessionaire's Books and

Records and Concessionaire's affairs at all reasonable times at the Department of Parks and Recreation's offices, or other place the City may reasonably require.

- 4.5.3 Concessionaire's compliance with Section 4.5.1 above may be done in conjunction with Concessionaire's compliance with Section 3.29.2 above.

#### **4.6 Default**

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

- a. Concessionaire fails to timely pay to the City in full the Concession Fee; or
- b. Concessionaire fails to timely comply with any other obligation applicable to Concessionaire under the Concession Agreement.

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

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

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

- 4.6.3 In addition to the City's rights and remedies under Section 4.6.2 above, Concessionaire shall pay all damages, costs, and expenses suffered or incurred by the City arising from or related to the Event of Default. Also,

if Concessionaire commits an Event of Default and fails to cure the Event of Default within the applicable cure period (if any), then the City may exercise all rights and remedies available to it at law or in equity, in addition to the remedies available to the City under the Concession Agreement. The City may exercise its remedies under the Concession Agreement, at law, or in equity, separately, cumulatively, successively, and repeatedly, in the City's absolute discretion.

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

#### **4.7 Non-Indebtedness**

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

#### **4.8 Condition of the Center**

The City makes no representation or warranty regarding the condition of the Center, including its suitability for the Concession. Concessionaire accepts the License given by the Concession Agreement and agrees to use the Center in its “AS IS” condition for the purposes set forth in the Concession Agreement. Concessionaire submitted its Proposal and enters into the Concession Agreement solely based on Concessionaire’s own investigation of the condition of the Center.

#### **4.9 Compliance with Applicable Laws**

In the RFP and Concession Agreement, “**Applicable Law**” and “**Applicable Laws**” mean all present and future Commonwealth of Pennsylvania, federal, and municipal laws, ordinances, regulations, orders, rules, official opinions and interpretations, and requirements, that apply to any of the following: the Concession Agreement, the License, the Concessionaire, the Center, and Concessionaire’s exercise of the License and management and operations of the Center. Throughout the Term, the Concessionaire shall promptly comply with all Applicable Laws, including but not limited to:

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

#### **4.10 Entire Agreement; No Amendment**

- 4.10.1 The Concession Agreement is the complete, final, and exclusive expression of the City’s and Concessionaire’s agreement about the Concession. All prior negotiations and agreements, if any, between the City and Concessionaire relating to the Concession are superseded by and merged into the Concession Agreement.
- 4.10.2 The Concession Agreement may not be amended or modified except in writing signed by the City officials who signed the original Concession Agreement and also signed by Concessionaire’s duly authorized officers.

Any proposed or purported amendment of the Concession Agreement made without strictly complying with this Section 4.10.2 is void. No course of conduct between the City and Concessionaire, and no industry custom, is effective to amend the Concession Agreement or waive any of the Concessionaire's obligations under the Concession Agreement.

#### **4.11 No Joint Venture or Partnership**

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

#### **4.12 Severability**

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

#### **4.13 Waiver of Jury Trial**

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

#### **4.14 Place of Contract; Governing Law**

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

#### **4.15 Counterparts**

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

the same document.

#### **4.16 Assignment Prohibited**

Except for subcontracts permitted under Section 3.27 above, Concessionaire shall not assign the Concession Agreement or any of its rights or obligations under the Concession Agreement. Any attempted assignment by Concessionaire in violation of this provision is void and is deemed an offer by Concessionaire to the City to immediately terminate the Concession Agreement, which the City may accept or decline in the City's sole discretion.

#### **4.17 Venue**

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

#### **4.18 Validity of City Approvals**

4.18.1 Unless expressly specified otherwise in the Concession Agreement, any review, approval, permission, or consent that the Concessionaire is required to obtain from the City under the Concession Agreement will not be valid or effective unless obtained from the Commissioner.

4.18.2 Unless expressly specified otherwise in the Concession Agreement, all reports, notices, plans, specifications, certificates, requests for approval, and submissions required of the Concessionaire that must be delivered to or approved by the City must be submitted by the Concessionaire to the Commissioner.

#### **4.19 Interpretation**

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

#### **4.20 Time of the Essence**

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

#### **4.21 Force Majeure Event**

4.21.1 Concessionaire is excused from compliance with any obligation or

limitation under the Concession Agreement where (1) compliance with the obligation or limitation is rendered impossible by any unexpected event in the nature of a hurricane, tornado, earthquake, war, terrorism, riot, embargo, or labor strike (except a strike by Concessionaire's own employees), and (2) Concessionaire cannot reasonably make alternative arrangements to comply with the obligation or limitation despite the unexpected event ((1) and (2) together, a "**Force Majeure Event**").

4.21.2 Concessionaire is excused from compliance with any obligation or limitation under the Concession Agreement because of a Force Majeure Event only for the duration of the Force Majeure Event or until Concessionaire can sooner reasonably make alternative arrangements to enable its compliance. If the Force Majeure Event renders impossible Concessionaire's compliance with a material obligation or limitation under the Concession Agreement, and if the Force Majeure Event continues for 60 days or longer, then the City may terminate the Concession Agreement in the City's sole discretion without liability to the Concessionaire.

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

#### **4.22 Philadelphia 21st Century Minimum Wage and Benefits Standard.**

4.22.1 If the Concessionaire is an employer subject to Chapter 17-1300 of the Philadelphia Code regarding the Philadelphia 21<sup>st</sup> Century Minimum Wage Standard, as provided in Philadelphia Code Section 17-1303, then Concessionaire shall (1) comply with the requirements of Chapter 17-1300 in effect on the Commencement Date, (2) promptly provide to the City documents and information verifying its compliance with the requirements of Chapter 17-1300, and (3) notify each of its affected employees with regard to the wages that are required to be paid pursuant to Chapter 17-1300.

4.22.2 Under Chapter 17-1300, Section 17-1305(1), requires employers subject to that Chapter to pay each of their employees an hourly wage at least 150% of the federal minimum wage, excluding benefits. Section 17-1305(2) requires that to the extent an employer subject to Chapter 17-1300 provides health benefits to any of its employees, the employer shall provide each full-time, non-temporary, non-seasonal covered employee with health benefits that are at least as valuable as the least valuable health benefits the employer provides to any of its other full-time employees.

4.22.3 If the Concessionaire is an employer subject to Chapter 17-1300, then by signing the Concession Agreement the Concessionaire certifies that its employees are paid the minimum wage standard required by Chapter 17-1300.

4.22.4 The Office of Labor Standards may grant a partial or total waiver from the requirements of Chapter 17-1300 based on specific stipulated reasons, as set forth in Section 17-1304 of the Philadelphia Code.

## **SECTION 5 – ELIGIBILITY TO SUBMIT A PROPOSAL**

### **5.1 General**

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

### **5.2 Management Experience and Qualifications**

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

### **5.3 Records and Reports**

Respondents must have the capability to maintain and furnish management records and reports, as required in Section 3.29 and Section 4.5, in a format satisfactory to the City.

### **5.4 Respondents Restricted**

5.4.1 The City will not accept any Proposal from, nor award the Concession Agreement to, any Respondent that (1) is in arrears or is in default of (A) any debt to the City (including without limitation tax delinquencies), (B) any contract obligation to the City, or (C) any surety obligations to the City, or (2) has failed to comply with any existing or previous contract with the City, or (3) has failed to execute a contract that the person, firm, or corporation negotiated with the City.

5.4.2 The City will not accept any Proposal from, nor award the Concession Agreement to, any official, officer, director, or employee of the City. The City will not accept any Proposal from, nor award the Concession

Agreement to, any Respondent in which any official, officer, director, or employee of the City has a direct or indirect financial interest, including but not limited to a Respondent in which a City official's, officer's, director's, or employee's parent, grandparent, spouse, sibling, child, or relative in-law is an officer, director, or employee.

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

## **5.5 Respondents May Submit Only One Proposal**

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

## **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, this RFP, and the Concession Agreement.
- 6.2.2 Each Respondent's Proposal must follow the form of this RFP. It must be typed on 8-1/2" x 11" paper and marked clearly on the cover page with Respondent's name and refer to this RFP clearly. Pages must be numbered clearly. Respondents must not submit Proposals in plastic sleeves or spiral binders. Illustrations may be included. Oversized drawings may be submitted, but they must be accompanied by 8½" x 11" sectionals or reduced to 8 ½" x 11". **Each Respondent must seal its Proposal in envelopes, packets, or boxes, as the case may be, to ensure confidentiality of the information prior to the Deadline for Submitting Proposals. The City will only accept Proposals in hard copy and will not accept Proposals by facsimile or by e-mail.**

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

6.2.4 Each Respondent's Proposal must include the following (please see the referenced sections of this RFP for an explanation of the items listed below):

1. Signed cover letter;
2. Description of company, organization, and personnel (see Section 6.4);
3. Management Experience and Qualifications, and at least three references (see Section 6.4);
4. Completed Solicitation for Participation and Commitment Form (see Section 6.5);
5. Financial Information (see Section 6.6);
6. Statement of Understanding of the Purpose of this RFP (see Section 6.7);
7. Completed Concession Fee Proposal Form (see Section 6.8);
8. Initial Capital Investment Plan (See Section 6.9);
9. Pro-Forma (see Section 6.10);
10. Operating Plan (see Section 6.11).
11. Completed and signed signature page (see Section 9).

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

1. Respondent's name and address;
2. Identification as "Proposal for the Management and Operation of the Burholme Park Golf Center"; and,
3. The Deadline for Submitting Proposals, as stated on the cover page of this RFP.

### **6.3 Submission of Proposal by "Deadline for Submitting Proposals"; Oral Presentations**

6.3.1 Each Respondent must submit its Proposal to the City no later than the Deadline for Submitting Proposals. Each Respondent is solely responsible for delivery of its Proposal on time and to the proper location. The "Deadline for Submitting Proposals" and the location for submitting Proposals are set forth on the cover page of this RFP. The City recommends that each Respondent plan to submit its proposal sufficiently in advance of the Deadline for Submitting Proposals to resolve any unexpected problems the Respondent might encounter with completing, copying, or delivering the proposal.

- 6.3.2 The City may request one or more Respondents to make a supplemental oral presentation to City officials after the Deadline for Submitting Proposals. The date and time of the oral presentations will be determined by the City.

#### **6.4 Company Profile; Operating Experience**

Each Respondent must, if available:

- 6.4.1 Submit a resume or detailed description of the Respondent's professional qualifications, demonstrating extensive experience in the industry, or affiliation with individuals and firms, or either of them, with that expertise. The resume or detailed description must include the number of Respondent's employees and number of years Respondent has been in business.
- 6.4.2 Submit personal and or company safety records for operations related to this type of operation or similar operations and at similar facilities.
- 6.4.3 Provide a description, with photographs, of similar sports or recreation facilities, including locations Respondent has operated or is currently operating.
- 6.4.4 Explain its corporate structure and ownership.
- 6.4.5 Provide the names and addresses of all owners and corporate officers of the entity submitting the Proposal.
- 6.4.6 Provide its federal Employer Identification Number.
- 6.4.7 Identify all parent, subsidiary, affiliate, and partnership relationships with other businesses (collectively, "**Related Companies**").
- 6.4.8 If Respondent is a partnership or a joint venture, give the date of the partnership or joint venture agreement, the county and state where the agreement was filed, and list the name and address of each partner or joint venture entity and the percentage of ownership of each partner or joint venture entity. If Respondent is a corporation or limited liability company, the Respondent must provide a copy of its articles of incorporation, give the date and state of the company's organization and incorporation, and list the names and addresses of the company's board of directors and officers, or managers or members, as the case may be.
- 6.4.9 Provide at least three recent references with whom the Respondent has worked and who can describe such matters as the Respondent's financial and operational capability (e.g., operating quality driving ranges). The

Respondent must include the name of the reference entity, a description of the nature of the listed reference's experience with the Respondent, and the name, title, address, email address, and telephone number of a contact person at the reference entity.

- 6.4.10 List all contracts the Respondent and all its Related Companies have had with the City in the last five years.
- 6.4.11 If Respondent or any of its Related Companies has filed for bankruptcy protection in the last five years (or had a bankruptcy petition filed against it), Respondent must provide a brief explanation of the circumstances and outcome of the filing.
- 6.4.12 List all surety companies that have previously issued performance bonds on behalf of Respondent or any of Respondent's Related Companies, the addresses of each surety company, the amount of each bond, and the term of each bond. List any performance bonds that were called in the last five years due to unsuccessful completion of the contract.

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

- 6.5.1 The Concession Agreement is subject to Mayor's Executive Order, No.02-05 and No. 14-08 relating to the participation of minority-owned, women-owned, and disabled-owned businesses (collectively, "M/W/DSBEs") in City contracts.
- 6.5.2 Respondents must respond to the requirements specified in **Appendix 8** of this RFP and must submit the "**Solicitation for Participation and Commitment Form**" (the "**S & C Form**") attached to this RFP as **Form A** to identify its solicitations and any commitments made with M/W/DSBEs to participate in the Concession Agreement. Respondents must indicate on the S & C Form the work being performed and the dollar amount and percentage of work being performed by each M/W/DSBE firm. Respondents must also submit documentation of their "Good Faith Efforts" (as more fully described in **Appendix 8**), whether or not they have achieved any commitments with M/W/DSBEs. For a listing of firms certified as M/W/DSBEs, please visit <http://oeo.phila.gov/directory.asp>.
- 6.5.3 The City may, in its sole discretion, reject any Proposal that does not include a completed S & C Form.

## **6.6 Financial Information**

- 6.6.1 Each Respondent must provide evidence of its financial capacity and stability; an accountant-prepared financial statement for the most recent

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

6.6.2 Each Respondent shall identify the intended source of all funds proposed to be invested in the Center.

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

Sections 3, 4 and 6 of this RFP set forth the minimum requirements that the Concessionaire must fulfill. Each Respondent must provide a brief narrative that demonstrates its understanding of this RFP's goals and objectives, the nature and scope of the work involved, and how Respondent's expertise will enable Respondent to fulfill the goals and objectives of this RFP and maximize the potential of the Center. Also, each Respondent must describe its approach to the proposed Concession, including Respondent's work plan and strategy.

## **6.8 Concession Fee Proposal: MAG and Gross Revenue Percentage Fee**

6.8.1 A. Using **Form B**, each Respondent must propose a **MAG** payment to the City for the right to manage and operate the Center. The City urges each Respondent to include an escalation each year (compounded annually) in the MAG over the Term of the Concession Agreement.

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

C. In this RFP and the Concession Agreement, "**Gross Revenue**" and "**Gross Revenues**" means all revenue, however characterized, the Concessionaire receives in connection with its management and operation of the Center or exercise of the License, from all sources. Without limiting the definitions immediately above, "Gross Revenue" and "Gross Revenues" include, but are not limited to, the following:

1. Revenue from the sports and recreation activities at the Center.
2. Revenue from food and beverage service operations, including restaurants, snack bars or vending machines.
3. Revenue from special events, including rental fees and food and beverage sales.
4. Revenue from merchandise sales.

5. Revenue from sublicensed operations, including food and beverage services.
6. All other fees, sales, rentals, charges, or costs imposed by the Concessionaire, however characterized, for use of any of the Center, or for goods or services Concessionaire provides at or from the Center.

6.8.2 Each Respondent may, in addition to completing and submitting **Form B**, submit on a separate schedule, an alternative Concession Fee proposal for the right to operate and manage the Center. The City may, however, in its sole discretion, reject any alternative Concession Fee proposal.

## 6.9 Capital Investments

6.9.1 Each Respondent must provide a capital investment plan with its Proposal. The City asks that Respondents consider the following possible capital improvements in the preparation of their capital investment plan submissions:

1. Renovate the driving range.
2. Replace the batting cages, or remove the batting cages and replace them with a new sports or recreation activity.
3. Renovate the miniature golf course, or replace the miniature golf course with a sports or recreation activity.
4. Renovate the indoor facility services, which include the pro shop and snack bar, or replace the indoor facility services with another service, such as a virtual golf center, restaurant, or special events space.
5. Repair the parking lot.
6. Address all drainage issues.
7. Improve the landscaping throughout the Center.
8. Repair and paint the interior and exterior of the building.

6.9.2 **Available Capital Funding.** As stated previously in Section 3.3.7 of this RFP, \$58,832 remains in a capital escrow account available for capital projects at Burholme Park Golf Center. The City intends to work with the Concessionaire to determine how to best use the capital escrow funds at the Center.

6.9.3 **Initial Capital Investment Plan.** Each Respondent must submit in its Proposal a plan that documents its proposed capital investment at the Center starting on the Commencement Date and during the Initial Term of the Concession Agreement (“**Initial Capital Investment Plan**”). The Initial Capital Investment Plan must include the following:

1. A description of the capital investment projects to be undertaken

and projected costs of those projects. Please see Section 6.9.1 for a list of projects the City encourages each Respondent to consider including in its Initial Capital Investment Plan.

2. A projected timetable for all capital investment projects. The timetable may provide approximate completion dates such as “first quarter 2012” for individual projects, or list or group projects in phases such as “Phase I Projects” and provide anticipated project phase completion dates. The City is particularly interested in knowing the capital investment projects that the Respondent will complete within the first six months of commencing operations. Those should be clearly identified on the Respondent’s schedule of Initial Capital Investment Plan projects.
3. Description of the sustainable and green practices that will be incorporated in the proposed capital improvement projects.
4. Description of the Respondent’s ideas to design aesthetically pleasing structures that blend with the surrounding park landscape.

6.9.4 Respondents should differentiate in their Proposals between equipment to be purchased as part of the Initial Capital Investment Plan versus personal expendable items. Personal expendable items, such as kitchen equipment and golf ball dispensing machines, are not considered capital items. Capital investment projects cannot include routine maintenance and repairs required to be performed in the normal course of management and operation of the Concession. For example, painting and repair of minor wear and tear is considered routine maintenance and would not be accepted by the City as capital investment. The City reserves the right to determine whether certain repairs, equipment and material purchases can be accepted as capital improvements. Personal expendable items not considered part of the Initial Capital Investment Plan remain the property of the Concessionaire. Each Respondent must list personal expendable items on a separate schedule in the Respondent’s Proposal under the category of “**Additional Investment.**”

## **6.10 Pro-Forma Projection**

Each Respondent must include in its Proposal a ten-year pro-forma projection of its Gross Revenues by activities and the Concession Fees it will pay to the City under the Concession Agreement. The pro-forma projection must include explanations of the assumptions used in its formulation.

## **6.11 Operating Plan**

6.11 All Proposals must include a detailed operating plan for management and

operation of the Center (“**Operating Plan**”). The Operating Plan is subject to the City’s written approval before the Concessionaire may implement it. At a minimum, the following must be included in a Respondent’s proposed Operating Plan:

- 6.11.1 A detailed description of how the Respondent, as Concessionaire, would manage and operate the Center, including, but not limited to: intended use of the Center, Operating Schedule, services to be provided, landscaping plans, maintenance, plans for deliveries and rubbish removal, cleaning schedules, staffing requirements, equipment needs, any plans to install energy efficient appliances that have the Energy Star seal of approval and or water conserving appliances, and any plans to use the “Green Seal” or other environmentally friendly products, methods or devices.
- 6.11.2 Food and beverage menu items and whether healthy food choices will be provided.
- 6.11.3 Merchandise to be sold.
- 6.11.4 Detailed list of all proposed prices and rates.
- 6.11.5 Business development and marketing plan for maximizing the number of patrons of the Center.
- 6.11.6 Scheduling and programs dedicated for youth sports and recreational programs.
- 6.11.7 Plans that demonstrate an awareness of the role of the Concession as an integral part of the surrounding community, and a commitment to cooperate with and support park administrators, park users, and the community. Each Respondent is encouraged to propose how it would incorporate community programming at the Center (e.g., youth outreach programs, discounted or free concession services, special programs and accommodations for senior citizens and persons with disabilities, and scholarships for youth in need). The City also encourages each Respondent to explain how it would cooperate with local school golf coaches and athletic directors to establish a schedule to accommodate school golf programs and other youth sports programs.
- 6.11.8 Identification of Respondent’s on-site management team and description of the team’s background and experience.

- 6.11.9 An estimated number of full-time and seasonal employees and positions the employees will fill in Concessionaire's management and operation of the Center.
- 6.11.10 The customer service standards Respondent deems necessary to enhance and maintain the satisfaction of patrons and the mechanisms the Respondent will employ to meet those standards. Respondent must also describe tools to be used to measure customer service satisfaction with the services Concessionaire offers under this Concession. The tools may include customer evaluations or survey forms. Further, each Respondent must explain how it would improve the quality of services offered if the above tools indicate a need to do so.
- 6.11.11 Safety procedures and precautions required for the operation of the Concession and safety of patrons. Safety procedures must include, but not be limited to, a detailed outline of maintenance schedules as well as applicable staff qualifications and certifications.
- 6.11.12 Security plan for the Center.
- 6.11.13 Plans to upgrade or test the performance of the irrigation equipment in order to maximize efficiency, eliminate uncontrolled releases of water from water retention structures, regularly check for and remedy leaks in a timely fashion, eliminate non-target watering, install part-circle irrigation heads where possible, recycle gray water and runoff, and schedule watering around peak evaporation times. Respondents are encouraged to describe any plans to employ water conservation methods in their proposals.
- 6.11.14 Description of any other requirements not mentioned in Section 3 of this RFP that are required to ensure the safe, sanitary and legal management and operation of the Center.
- 6.11.15 Respondents' Proposals must contain proposed days and hours of operation.

## **6.12 Support of Burholme Park**

Each Respondent is encouraged to proposed how it would support Burholme Park and the Ryerss Museum and Library, whether by financial contributions or otherwise.

## 6.13 Confidential Information

- 6.13.1 If a Respondent chooses to include in its Proposal material of a confidential nature, then the Respondent must mark the confidential material as noted below and explain why it is confidential. The City will exercise reasonable care to honor confidentiality requests, subject to Applicable Laws.
- 6.13.2 Each Respondent must identify the pages of its Proposal that contain confidential information by prominently marking those pages as explained below. Respondents are reminded that the mere designation of information as confidential does not necessarily make it so under Applicable Laws. The Pennsylvania Right to Know Act may require the City to disclose certain information regardless of whether the Respondent has designated it as confidential. The City recommends that each Respondent confer with legal counsel regarding the disclosure requirements of the Right to Know Act. 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, contains proprietary information that the Respondent desires not be disclosed. The Respondent requests that the confidential information be used only for evaluation of Respondent’s Proposal and not be disclosed to the public, except as may be required by Applicable Law.

## 6.14 Objections

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

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

**7.1 Conditions Regarding Proposals**

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

- 7.1.1 The Respondent is fully responsible for all its costs associated with the development, preparation, and submission of its Proposal and all other materials it submits in response to this RFP. The City assumes no contractual or other obligations toward Respondent as a result of the issuance of this RFP, the preparation or submission of a Proposal by Respondent, the City's evaluation of Proposals, or the City's selection of a Respondent for further negotiations.
- 7.1.2 It is Respondent's responsibility to ensure that its Proposal is complete, accurate, and submitted by the Deadline for Submitting Proposals set forth on the cover page of this RFP.
- 7.1.3 Upon submission, Respondent's Proposal becomes the property of the City and will not be returned to the Respondent.
- 7.1.4 Respondent will promptly permit the City to inspect projects and facilities referred to in Respondent's statement of its Management Experience Qualifications and References.
- 7.1.5 Respondent will promptly provide additional information or more detailed information upon request by the City, including information inadvertently omitted by a Respondent.
- 7.1.6 Respondent will promptly send representatives for interviews with City officials when requested by the City.
- 7.1.7 Respondent's Proposal shall remain open for acceptance by the City and in full effect for at least 120 calendar days from the Deadline for Submitting Proposals set forth on the cover page of this RFP.
- 7.1.8 Respondent may not issue news releases (including, but not limited to, commercial advertising) pertaining to this RFP without prior, written approval of the City.
- 7.1.9 Respondent may withdraw or modify its Proposal at any time prior to the Deadline for Submitting Proposals by sending the City a written notice of withdrawal or by submitting the modification in writing, signed in the same manner and by the same person(s) who signed Respondent's initial

Proposal, to the address specified on the cover page of this RFP for submitting Proposals.

## **7.2 Reservation of Rights**

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

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

### **7.3 Concession Agreement Effectiveness**

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

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

### **7.4 Acceptance of the Provisions of this RFP**

By submitting a Proposal in response to this RFP, the Respondent expressly acknowledges and agrees to all the provisions contained in this RFP, including but not limited to the rights reserved by the City, but except as provided in Section 6.14 of this RFP.

## **SECTION 8 – EVALUATION OF PROPOSALS**

### **8.1 Selection Committee**

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

### **8.2 Proposal Evaluation Criteria**

- 8.2.1 The Selection Committee will evaluate Proposals by considering the criteria listed below. No particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list.
  - 8.2.1.1 Demonstrated experience in the industry or managing operations that are similar in size and nature to the Center.
  - 8.2.1.2 Proposed Concession Fee and Initial Capital Investment Plan.
  - 8.2.1.3 Financial capacity to perform the services required by this RFP and presented in the Respondent's Proposal.
  - 8.2.1.4 The proposed Operating Plan, including intended use of the Center and maintenance, quality and affordability of the

Concession to members of the public.

8.2.1.5 M/W/DSBE participating percentages.

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

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

### **8.3 Award of Concession Agreement**

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

### **8.4 Amendments of Concession Agreement**

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

## **SECTION 9 – SIGNING OF PROPOSALS**

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

*[The remainder of this page left blank intentionally; signature pages follow.]*

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

This \_\_\_\_ day of \_\_\_\_\_, 2012

---

**Name of Respondent**

---

**Signature of Individual or Authorized Signer**

---

**Printed Name and Title of Signer**

---

**Additional Authorized Signer (if applicable)**

---

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

---

**Federal Employer Identification Number**

---

**Phone Number**

---

**E-mail Address**

---

**Street Address**

---

**City, State, Zip Code**

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

This \_\_\_\_ day of \_\_\_\_\_, 2012

---

**Corporate Name**

---

**Signature of Authorized Official**

---

**Printed Name and Title of Signer**

---

**Additional Authorized Signer (if applicable)**

---

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

---

**Federal Employer Identification Number**

---

**Phone Number**

---

**E-mail Address**

---

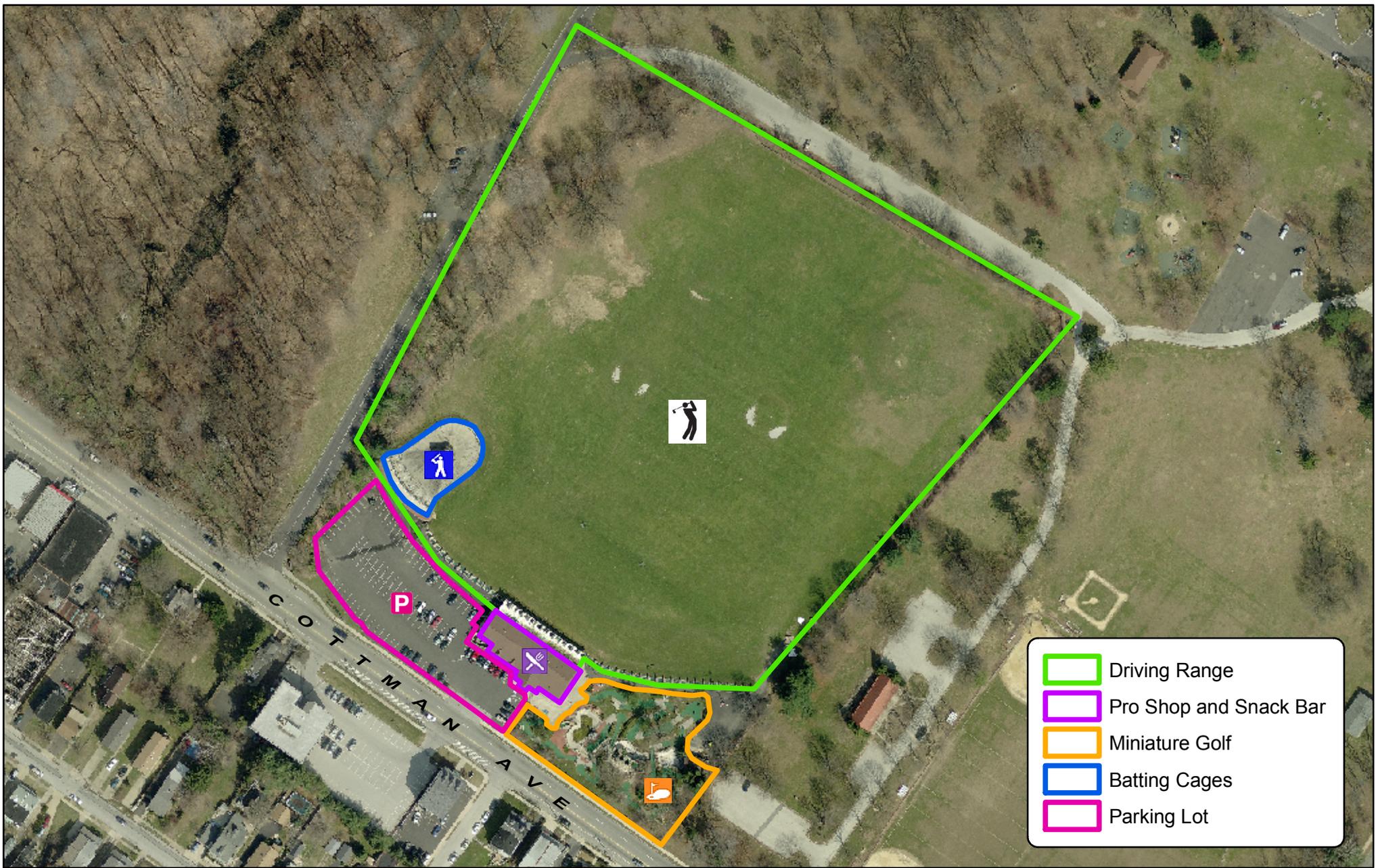
**Street Address**

---

**City, State, Zip Code**

**APPENDIX 1**

**PARCEL MAP OF THE BURHOLME PARK GOLF CENTER**



- Driving Range
- Pro Shop and Snack Bar
- Miniature Golf
- Batting Cages
- Parking Lot

PHILADELPHIA  
**PARKS & RECREATION**

# Burholme Park Golf Center



0 125 250 500 Feet

1 inch = 171 feet

"Burholme Golf Center." 1:2,048. City of Philadelphia GIS Data. Philadelphia, PA: Philadelphia Parks & Recreation, 2011. Using: ArcInfo v. 9.3.1. Redlands, CA: ESRI, Inc. 1999 - 2009.

The City of Philadelphia shall not be responsible for any decisions based upon the use of this data. This information was created for internal use, and while we make every attempt to keep it updated, we make no claim as to its accuracy or completeness. This data is not designed to be used as a primary tool in permitting, siting, or in other decisions based solely on this information.

**APPENDIX 2**

**ESTIMATE TO REPLACE THE BATTING CAGE EQUIPMENT**

# Order Number B74737-A



**AUTOMATED BATTING CAGES CORP.**  
 8811 HUFF AVENUE NE  
 SALEM, OR 97303

Telephone: 503/390-5714

Customer 0683

**Bill To:**

BURHOLME GOLF INC.  
 401 W. COTTMAN STREET  
 PHILADELPHIA, PA 19111-2121

**Ship To:**

BURHOLME GOLF INC.  
 401 W. COTTMAN STREET  
 PHILADELPHIA, PA 19111-2121

**THIS IS A BID/ESTIMATE**

Date		Ship Via		F.O.B.		Terms	
07/14/10		RDWAY PP&ADD		OREGON		50% DEPOSIT DUE/BALANCE UPON SHIPMENT	
Purchase Order Number				Order Date	Salesperson	Our Order Number	
Verbal-Eddie				07/14/10	DOUG	None	
Req.	Quantity	Item Number	Description	Tax	Unit Price	Amount	
	Ship	B.O.					
6	0	1500	PITCHING MACHINE, (PASTIME-BASEBALL)	N	2195.00	13170.00	
2	0	1501	PITCHING MACHINE, (PASTIME-SOFTBALL SLOWPITCH)	N	2195.00	4390.00	
1	0	1502	PITCHING MACHINE, (PASTIME-SOFTBALL FASTPITCH)	N	2195.00	2195.00	
2	0	330	MOTOR, HOPPER (1LPP5)	N	330.00	660.00	
1	0	315	MOTOR, CONVEYOR (6K352)	N	525.00	525.00	
1	0	340	SHROUD, FIBERGLASS	N	245.00	245.00	
9	0	183	PINCH ROLLER ASSEMBLY (BB) (SB)	N	127.00	1143.00	
9	0	411	MOTOR, VIBRATOR	N	50.00	450.00	
9	0	412	BRACKET, VIBRATOR MOTOR MOUNT	N	12.00	108.00	
3	0	5075	LIGHTBOX ASSEMBLY, WARNING PT-7 (SINGLE CAGE)	N	795.00	2385.00	
3	0	5076	LIGHTBOX ASSEMBLY, WARNING PT-7D (DUAL CAGE)	N	895.00	2685.00	
6	0	1020	COIN BOX ASSEMBLY, 1.125 (CB1000)	N	365.00	2190.00	
1	0	5000	DISPLAY PANEL, PT-5 & ABOVE (NEW PGM 10/01/06)	N	2800.00	2800.00	
7	0	MISC	#96 Twine 2pc Stall Divider Net	N	345.00	2415.00	

# Order Number B74737-A



**AUTOMATED BATTING CAGES CORP.**  
 8811 HUFF AVENUE NE  
 SALEM, OR 97303

Telephone: 503/390-5714

Customer 0683

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 PHILADELPHIA, PA 19111-2121

**Ship To:**

BURHOLME GOLF INC.  
 401 W. COTTMAN STREET  
 PHILADELPHIA, PA 19111-2121

**THIS IS A BID/ESTIMATE**

Date		Ship Via		F.O.B.		Terms	
07/14/10		RDWAY PP&ADD		OREGON		50% DEPOSIT DUE/BALANCE UPON SHIPMENT	
Purchase Order Number				Order Date	Salesperson	Our Order Number	
Verbal-Eddie				07/14/10	DOUG	None	
Reg.	Quantity	B.O.	Item Number	Description	Tax	Unit Price	Amount
	Ship						
1	0		MISC	Over Hitting Stalls Net - Complete	N	750.00	750.00
1	0		MISC	Machine Protector Net	N	575.00	575.00
6	0		MISC	Backstop Net #96 Twine	N	215.00	1290.00
12	0		508	TWINE, NETTING (475 FT)	N	12.00	144.00
1200	0		499	ROPE, BLACK 1/4"	N	0.20	240.00
6	0		502	BACKSTOP, W/ROPE 3' X 4' (RUBBER)	N	90.00	540.00
1	0		5003A	SPLICE BOARD, PT-7	N	115.00	115.00
1	0		MISC	WARNING SIGN SET W/MOUNT BRACKETS	N	1020.00	1020.00
1	0		755	SIGN, 24"X 36" MAIN WARNING (1Per Range)	N	0.00	0.00
6	0		818	SIGN, 24"x36" PLAIN WARNING (1Per Stall)	N	0.00	0.00
6	0		760	SIGN, "BASEBALL"	N	0.00	0.00
3	0		765	SIGN, "SOFTBALL"	N	0.00	0.00
4	0		771	SIGN, SLOW "RED"	N	0.00	0.00
2	0		776	SIGN, MEDIUM "RED"	N	0.00	0.00
3	0		781	SIGN, FAST "RED"	N	0.00	0.00
1	0		786	SIGN, VERY FAST "RED"	N	0.00	0.00
1	0		790	SIGN, "1"	N	0.00	0.00

# Order Number B74737-A



**AUTOMATED BATTING CAGES CORP.**  
 8811 HUFF AVENUE NE  
 SALEM, OR 97303

Telephone: 503/390-5714

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**THIS IS A BID/ESTIMATE**

Date		Ship Via		F.O.B.		Terms	
07/14/10		RDWAY PP&ADD		OREGON		50% DEPOSIT DUE/BALANCE UPON SHIPMENT	
Purchase Order Number				Order Date	Salesperson	Our Order Number	
Verbal-Eddie				07/14/10	DOUG	None	
Req.	Quantity	B.O.	Item Number	Description	Tax	Unit Price	Amount
	Ship						
1	0		792	SIGN, "2"	N	0.00	0.00
1	0		793	SIGN, "3"	N	0.00	0.00
1	0		794	SIGN, "4"	N	0.00	0.00
1	0		795	SIGN, "5"	N	0.00	0.00
1	0		796	SIGN, "6"	N	0.00	0.00
1	0		811	SIGN, NO ONE UNDER 6	N	0.00	0.00
1	0		812	SIGN, NO ONE UNDER 16	N	0.00	0.00
2	0		815	SIGN, "OUT OF ORDER"	N	0.00	0.00
1	0		853	DECAL, 8"X 11' "HELMET WARNING" (3 DECALS)	N	0.00	0.00
7	0		817	SIGN, MOUNT BRACKET ASSY(24"X36")	N	0.00	0.00
6	0		808	SIGN, "FACE GUARD WARNING"	N	0.00	0.00
1	0		MISC	3 DAY EQUIP/NET INSTALL-PRO INSTALL	N	3200.00	3200.00

THESE PRICES DO NOT INCLUDE YOUR STATE, LOCAL OR OTHER APPLICABLE SALES TAXES OR ANY OTHER TAXES THAT MAY BE REQUIRED. PURCHASER IS RESPONSIBLE FOR ALL TAXES ASSOCIATED WITH THIS INVOICE AND MUST TAKE ALL STEPS REQUIRED TO PAY DIRECTLY ALL TAXES DUE.

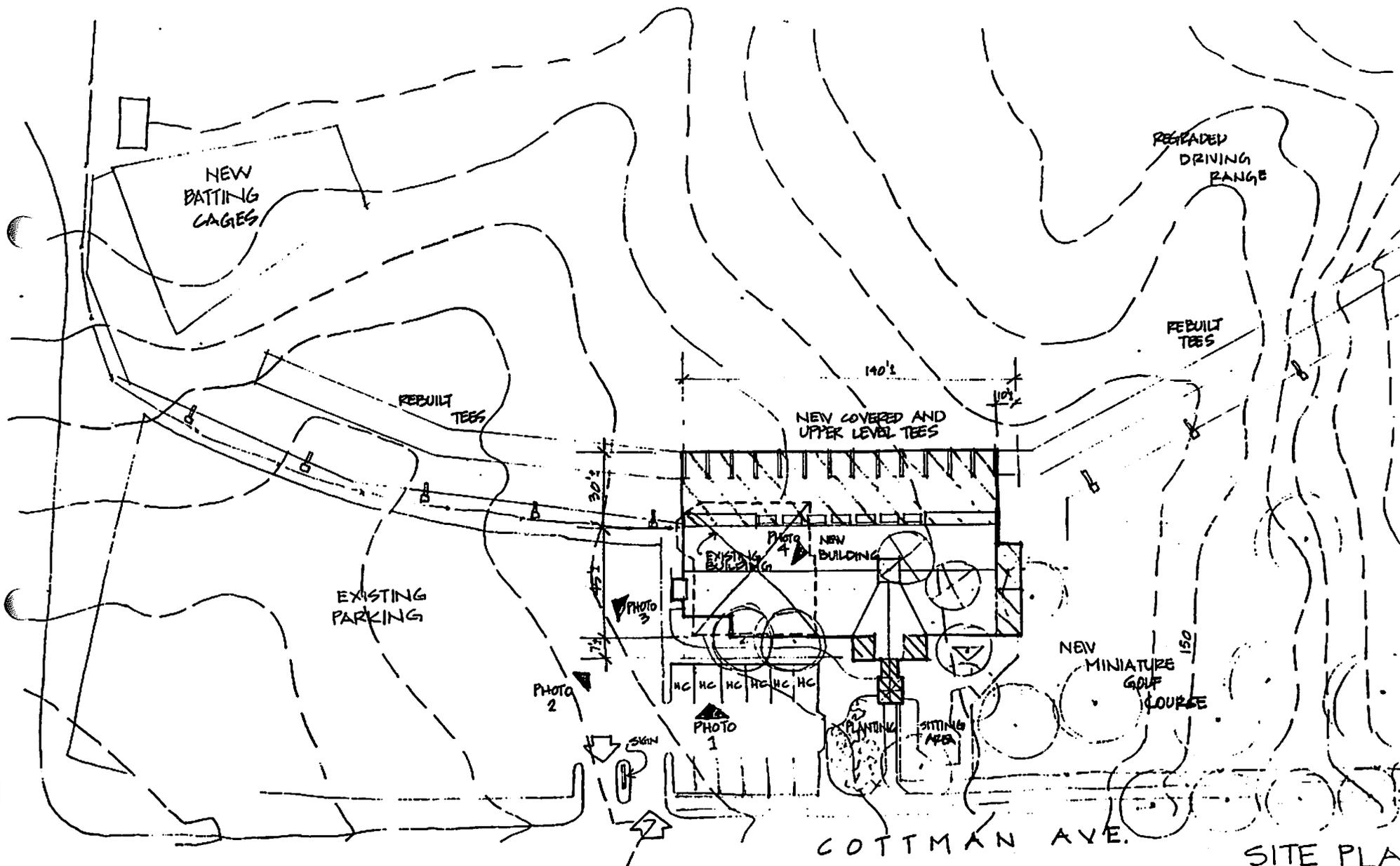
Shipping Subtotal	2200.00
Nontaxable Subtotal	43235.00
Taxable Subtotal	0.00
Tax	0.00
<b>Total Order</b>	<b>45435.00</b>

Customer Original

*+3,180.45 tax?*

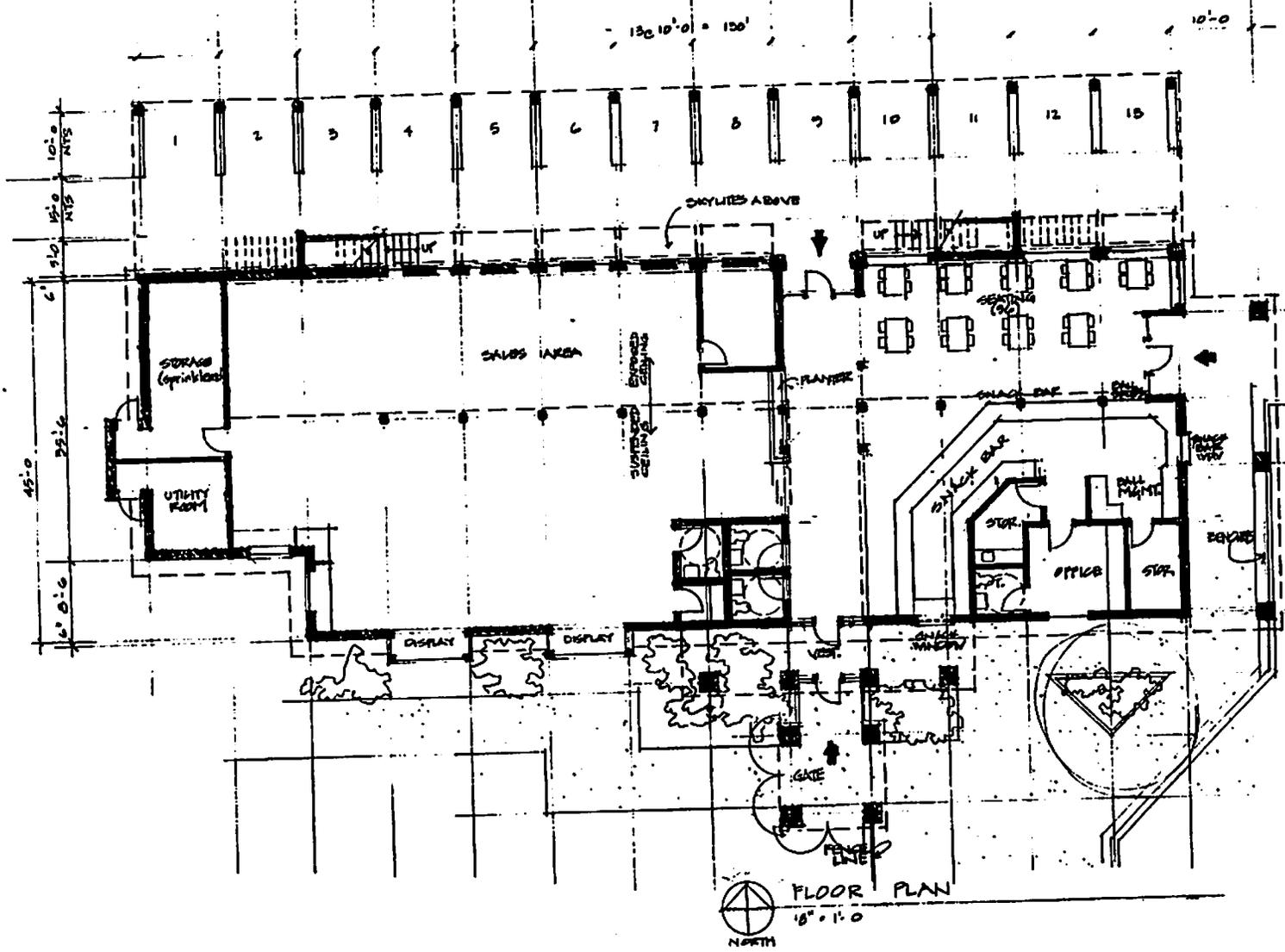
**APPENDIX 3**

**1996 BUILDING PLANS OF THE BURHOLME PARK GOLF CENTER**



 BUILDING FOOTPRINT  
 COVERED AND OPEN

SITE PLA  
 1:250  
 0500009 50

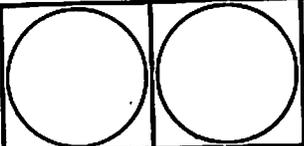


GROSS AREAS	
GOLF SALES	5991 GSF
SALES/OFFICE	3151
STORAGE	284
GOLF CENTER	2707 GSF
<b>TOTAL AREA</b>	<b>12339 GSF</b>

WALL + FENCE (Grade change)

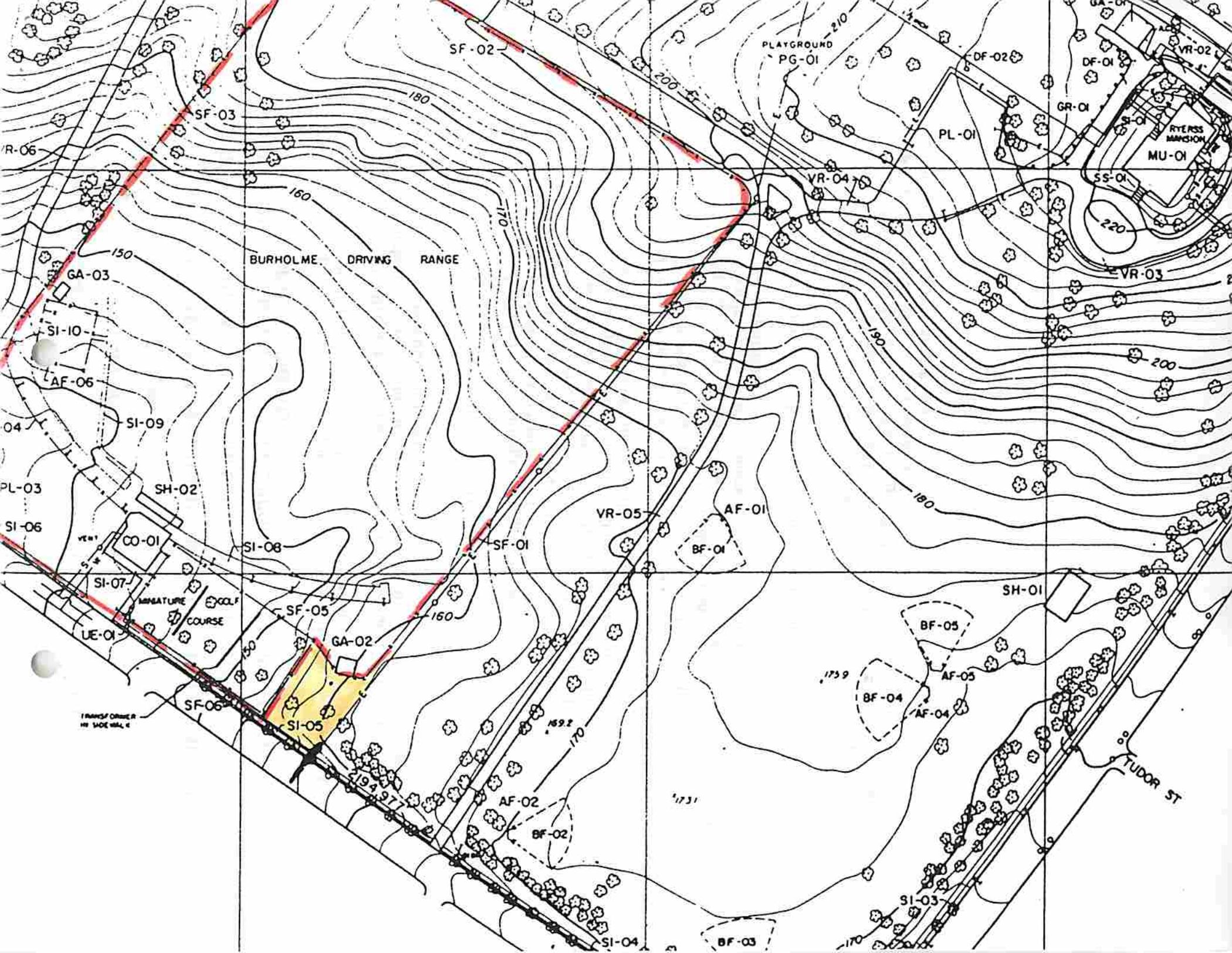
FLOOR PLAN  
1/8" = 1'-0"  
NORTH

**BURHOLME GOLF CENTER**  
Philadelphia, PA.



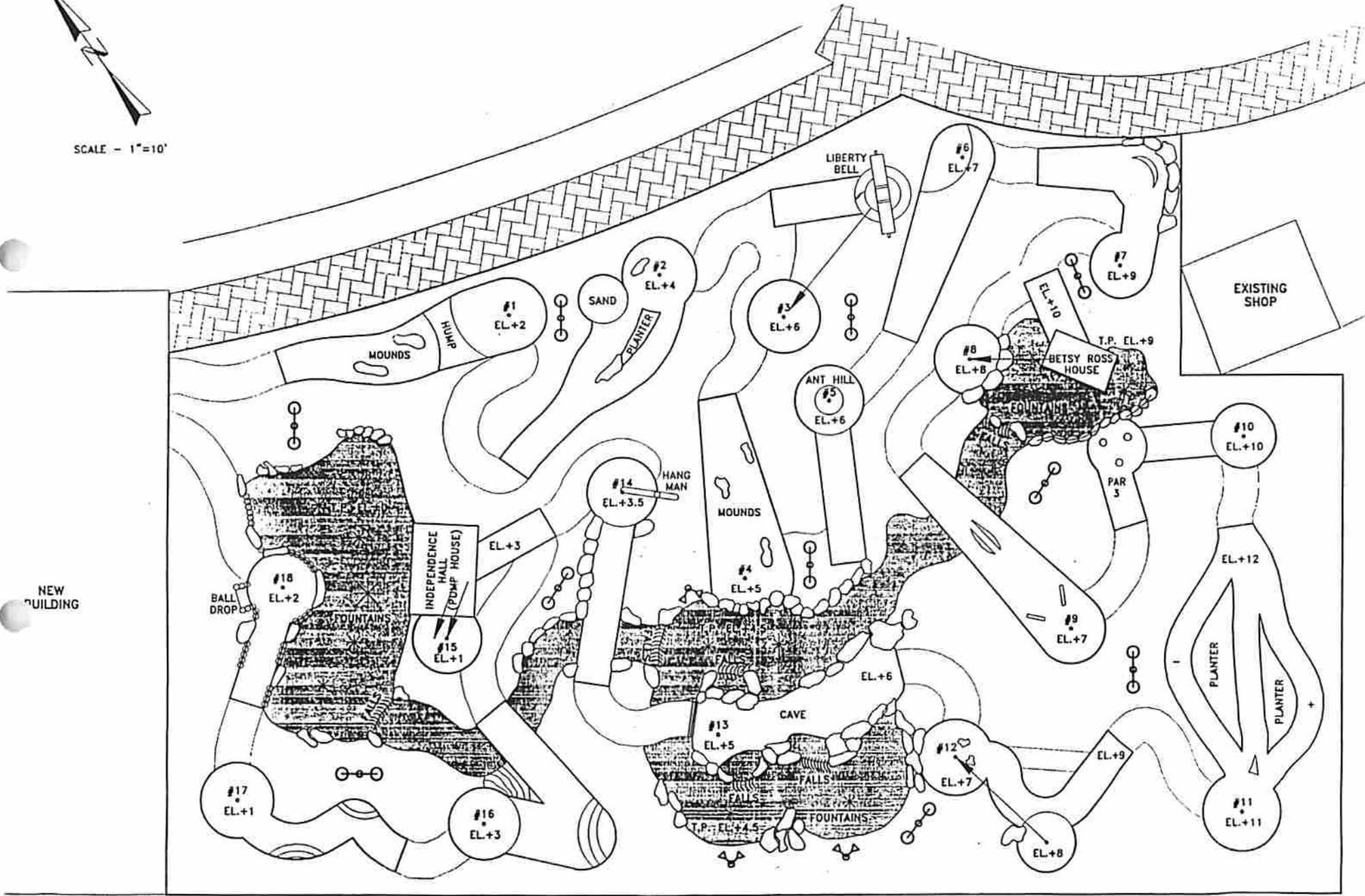
LESTER HOODSWELL ARCHITECT  
312 Walnut Road  
Philadelphia, PA. 19119  
215-261-5712

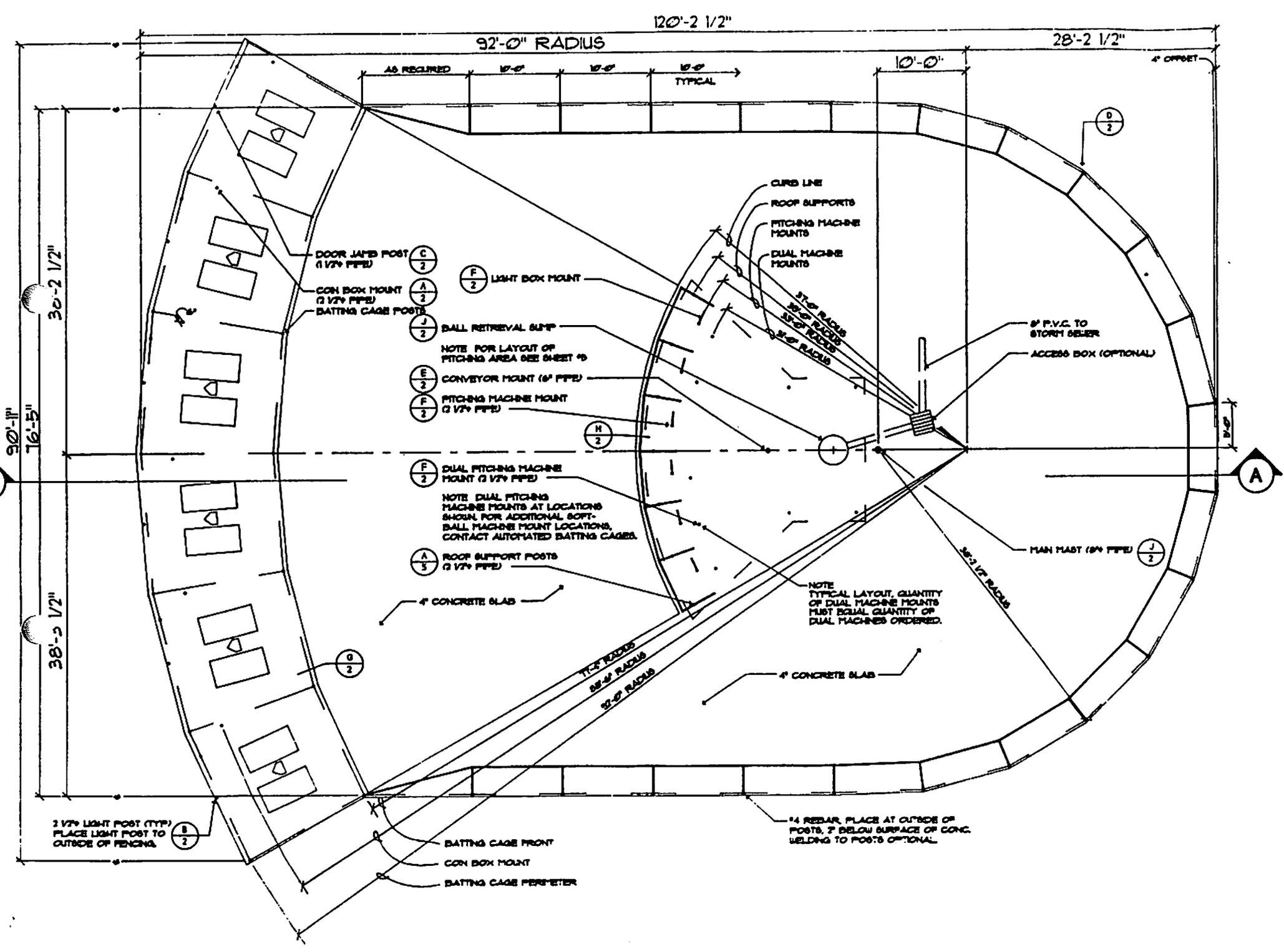

DATE 6-27-76 SCALE  
DRAWN BY:      REVISED:      APPROVED BY OWNER:





SCALE - 1"=10'





DOOR JAMB POST (1 1/2" PIPE) (C/2)  
 CON BOX MOUNT (2 1/2" PIPE) (A/2)  
 BATTING CAGE POSTS (J/2)

LIGHT BOX MOUNT (F/2)

BALL RETRIEVAL SUMP (J/2)

NOTE FOR LAYOUT OF PITCHING AREA SEE SHEET 15

CONVEYOR MOUNT (6" PIPE) (E/2)

PITCHING MACHINE MOUNT (2 1/2" PIPE) (F/2)

DUAL PITCHING MACHINE MOUNT (2 1/2" PIPE) (F/2)

NOTE DUAL PITCHING MACHINE MOUNTS AT LOCATIONS SHOWN FOR ADDITIONAL SOFT-BALL MACHINE MOUNT LOCATIONS, CONTACT AUTOMATED BATTING CAGES.

ROOF SUPPORT POSTS (2 1/2" PIPE) (A/5)

CURB LINE  
 ROOF SUPPORTS  
 PITCHING MACHINE MOUNTS  
 DUAL MACHINE MOUNTS

31'-0" RADIUS  
 30'-0" RADIUS  
 29'-0" RADIUS  
 28'-0" RADIUS

6" P.V.C. TO STORAGE BELIEF  
 ACCESS BOX (OPTIONAL)

MAIN MAST (6" PIPE) (J/2)

NOTE TYPICAL LAYOUT, QUANTITY OF DUAL MACHINE MOUNTS MUST EQUAL QUANTITY OF DUAL MACHINES ORDERED.

2 1/2" LIGHT POST (TYP) PLACE LIGHT POST TO OUTSIDE OF FENCING (B/2)

BATTING CAGE FRONT  
 CON BOX MOUNT  
 BATTING CAGE PERIMETER

A

**APPENDIX 4**

**EQUIPMENT OWNED BY THE CURRENT CONCESSIONAIRE**

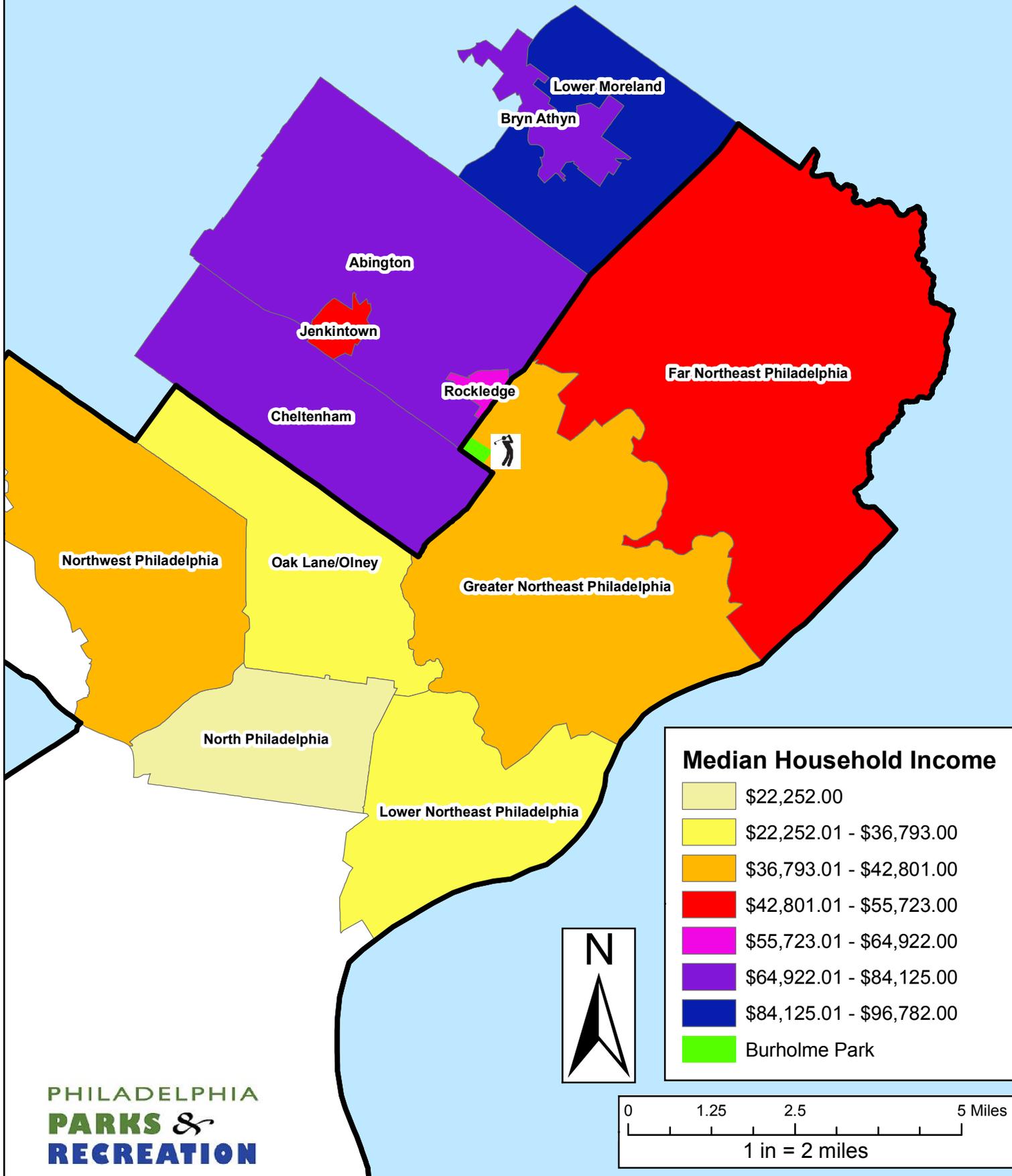
Item No.	Equipment Description	Manufacturer's Name	Model No.	Comment
1	John Deere Gator 6x4	John Deere	jd-tx	\$9,000.00 (651 hrs)
2	John Deere Gator 6x4	John Deere		\$2,000.00 (2,821 hrs) with snowplow
3	Exmark Triton	Exmark	Triton 66	\$7,000.00 (295 hrs)
4	Ball Dispenser (17,000)	Ezpicker		\$1,700.00
5	Ball Dispenser (17,000)	Ezpicker		\$1,700.00
6	Ball Dispenser (15,000)	Ezpicker		\$1,500.00
7	Mower	Yard Machine	11A-A44E000	\$100.00
8	Hedge trimmer	Weed Eater	Excalibur 22	
9	Hedge trimmer	Stihl		\$100.00
10	Weed Trimmer	Echo	srm210	\$100.00
11	Weed Trimmer	Stihl	fs85	\$100.00
12	Power Washer	Honda	exhp2630	\$100.00
13	Snow Blower	Toro	PowerThrow 724	\$300.00
14	Blower	RedMax	eb6200-1	\$100.00
15	Blower	Stihl		\$100.00
16	Cash Register	Sanyo	ECR-338	\$200.00
17	Cash Register	Sanyo	ECR-338	\$200.00
18	Cash Register	Sharp	XE-A401	\$200.00
19	Cash Register	Sharp	ER-A320	\$200.00
20	Cash Register	Sharp	ER-A320	\$200.00
21	Soft Serve Ice Cream	Taylor Crown	8756P-27	\$9,000.00
22	Two Door Refrigerator	True MFG.	TS-49	\$1,500.00
23	Cappuccino Machine	Cecilware	NB17A	\$500.00
24	Stainless Prep Table 2 x 2-1/2			\$100.00
25	Stainless Prep Table 5 x 2			\$150.00
26	Stainless Prep Table 3 x 2-1/2			\$100.00

Item No.	Equipment Description	Manufacturer's Name	Model No.	Sold To
27	Stainless Table 5 x 2-1/2			\$150.00
28	Ice Maker	Manitowoc	S400	\$900.00
29	Freezer	Kenmore	253 16582	\$300.00
30	Coffee Maker	Bunn	VP17-2	N/A
31	Pizza Warmer	Doyon	DRP3R	N/A
32	Hot Dog Grill	Star MFG. International Inc.	45	N/A
33	Freezer	Frigidaire	MFC 15M4FWI	N/A
34	Oven	Comstock-Castle	PO18N	N/A
35	Pretzel Display Case	J&J Snack Foods	2000	Property of Jack & Jill
36	Water ice Case	Jack & Jill		Property of Jack & Jill
37	Novelty Ice Cream Case	Jack & Jill		Property of Jack & Jill
38	Fountain Soda Dispenser	Pepsi		Property of Pepsi
39	Range Balls (60,000)	with "BURHOLME" logo		\$21,000.00 (@ \$0.35/ea)
40	Club Sets (35)	Apache R-Flex		\$14,000.00 (@ \$400/set)
41	Club Sets (56)	Samos R-Flex		\$11,200.00 (@ \$200/set)
42	Iron Sets (48)	ProTec R-Flex		\$9,600.00 (@ \$200/set)
43				
44				
45				
46				
47				
48				
49				
50				
51				
52				

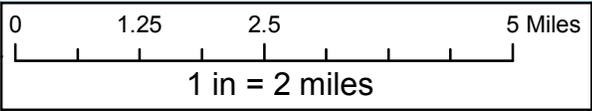
**APPENDIX 5**

**MEDIAN HOUSEHOLD INCOME OF 5-MILE RADIUS SURROUNDING THE  
BURHOLME PARK GOLF CENTER**

# Median Household Income of 5 Mile Radius Surrounding Burholme Park, 2009



Median Household Income	
	\$22,252.00
	\$22,252.01 - \$36,793.00
	\$36,793.01 - \$42,801.00
	\$42,801.01 - \$55,723.00
	\$55,723.01 - \$64,922.00
	\$64,922.01 - \$84,125.00
	\$84,125.01 - \$96,782.00
	Burholme Park

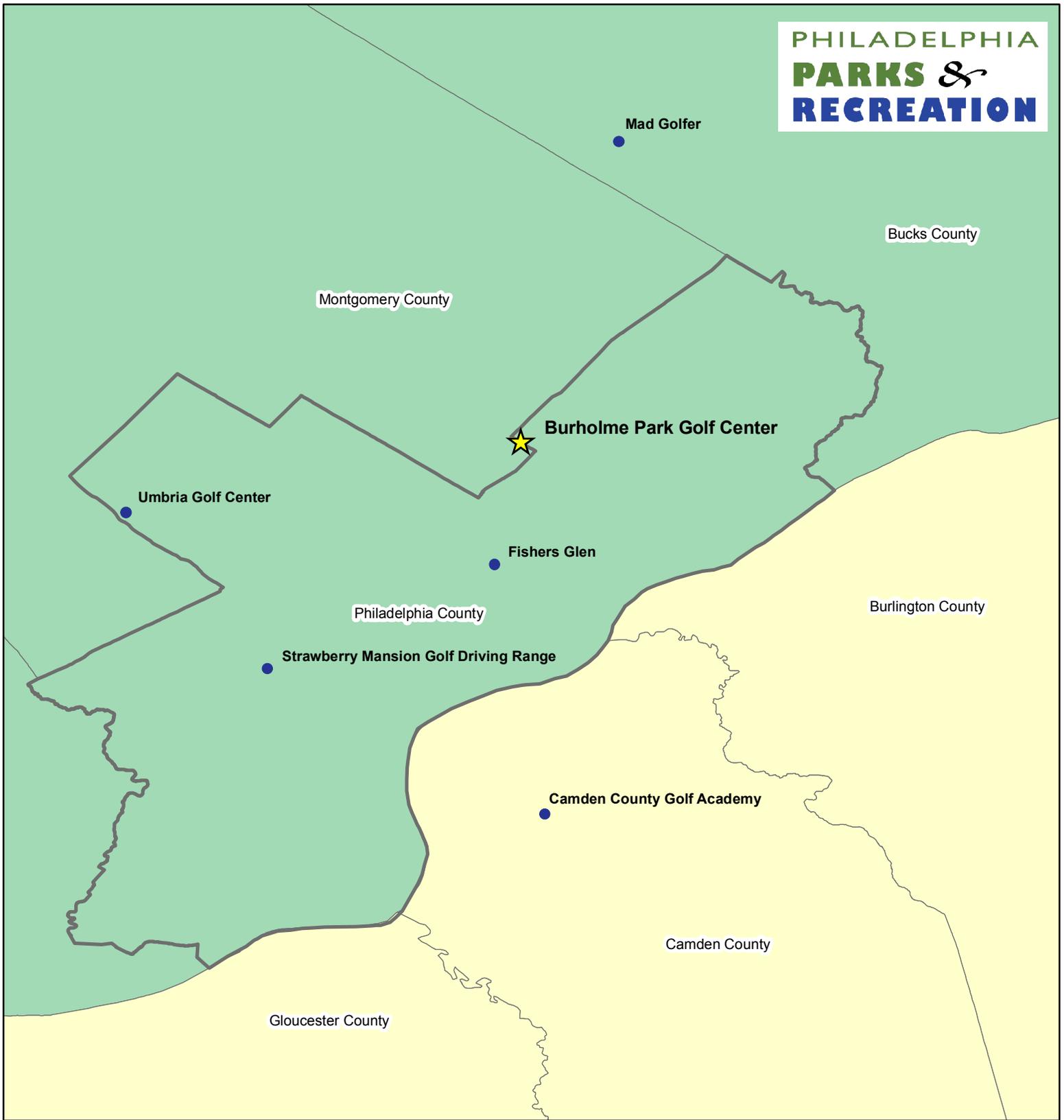


**PHILADELPHIA**  
**PARKS & RECREATION**

"Median Household Income of 5 Mile Radius Surrounding Burholme Park." 1:124,870. City of Philadelphia GIS Data. Philadelphia, PA: Philadelphia Parks & Recreation, 2011. Using: ArcInfo v. 9.3.1. Redlands, CA: ESRI, Inc. 1999 - 2009. The City of Philadelphia shall not be responsible for any decisions based upon the use of this data. This information was created for internal use, and while we make every attempt to keep it updated, we make no claim as to its accuracy or completeness. This data is not designed to be used as a primary tool in permitting, siting, or in other decisions based solely on this information.

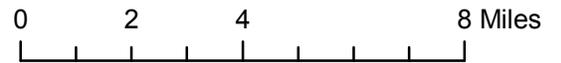
**APPENDIX 6**

**PHILADELPHIA AREA DRIVING RANGES**



-  Burholme Park Golf Center
-  Area Driving Ranges
-  New Jersey Counties
-  Pennsylvania Counties

## Philadelphia Area Driving Ranges



1 in = 3 miles

## APPENDIX 7

### INDEMNIFICATION, RELEASE AND 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 RFP and the Concession Agreement 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 aggregate for 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); and explosion, collapse and underground hazards.
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 Insurance at limits totaling \$5,000,000 per occurrence when combined with insurance required under (1), (2) and (3) 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. Professional Liability Insurance (for all architects and engineers)  
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. 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.
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 to the extent applicable to the premises.
9. Builder’s Risk  
During any period of construction, including but not limited to any 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.

B. Concessionaire shall cause the City, its officials, officers, employees and agents, to be named additional insureds on all policies required under this RFP and the Concession Agreement except the Workers Compensation and Employer’s 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.

C. 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 – 14<sup>th</sup> 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.

D. The insurance requirements set forth in this Agreement do not modify, limit or reduce Concessionaire's indemnifications of the City under this RFP and the Concession Agreement and do not limit Concessionaire's liability under the Concession Agreement to the limits of the policies of insurance required to be maintained by Concessionaire.

E. Concessionaire shall not take out insurance of the kind and in the amounts provided for in this RFP and the Concession Agreement under any blanket insurance policy that covers other properties owned or operated by Concessionaire or its Related Companies.

F. 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.

G. Concessionaire shall cause each policy of insurance required under this RFP and the Concession Agreement, except the Workers Compensation policy, to include a provision for a waiver of subrogation in favor of City.

H. 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 \$500,000. The fidelity bond or crime insurance, whichever is obtained by Concessionaire, shall name the City as a beneficiary. The Concessionaire shall submit evidence of the existence of the fidelity bond or crime insurance to the City prior to the Commencement Date.

I. 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 RFP and the Concession Agreement.

## APPENDIX 8

**City of Philadelphia  
Office of Economic Opportunity  
Antidiscrimination Policy – Minority, Woman and Disabled Owned Business Enterprises  
Forms, Instructions, and Special Contract Provisions**

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The Concession Agreement is subject to the **Mayor’s Executive Orders 02-05 and 14-08**. The following instructions, forms and contract provisions, as well as Executive Orders 02-05 and 14-08 (copies of which may be obtained at the Office of Economic Opportunity) are hereby incorporated in and made a part of any contract resulting from the RFP.

Respondent is subject to the provisions of Mayoral Executive Orders 02-05 and 14-08 and is required to respond to the requirements specified in the RFP for participation by Minority Business Enterprises, Woman Business Enterprises and Disabled Business Enterprises as those terms are defined in Executive Orders 02-05 and 14-08.

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Under the authority of Executive Orders No. 02-05 and 14-08, the City of Philadelphia has established an antidiscrimination policy (“**Policy**”) relating to the participation of Minority (“**MBE**”), Woman (“**WBE**”) and Disabled (“**DSBE**”) Owned Business Enterprises in City contracts. Executive Order 14-08 disestablished the Minority Business Enterprise Council and transferred its administrative functions under Executive Order 02-05 to the Office of Economic Opportunity (“**OEO**”).

The purpose of the Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City’s antidiscrimination policy is applicable to this Notice of Contracting Opportunity (hereinafter, “**NOCO**”).<sup>1</sup>

The Office of Economic Opportunity has approved the following projected ranges of participation for this NOCO which serve as a guide in determining each Respondent’s responsibility:

<b>MBE Ranges</b>	-	<u><b>5% - 10%</b></u>
		And/Or
<b>WBE Ranges</b>	-	<u><b>5% - 10%</b></u>
<b>DSBE Ranges</b>	-	<u><b>0%</b></u>

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<sup>1</sup> The term “Notice of Contracting Opportunity,” shortened to the acronym “NOCO,” refers to the City’s contract solicitation documents and information posted on eContract Philly. Generally, these documents take the form of a Request for Proposals (RFP), Request for Qualifications (RFQ) or Request for Expression of Interest (RFI) and include any other document or information (for example, exhibits, appendices) related to the posting of the new contract opportunity.

These ranges represent the percentage of MBE, WBE and/or DSBE (collectively, “**M/W/DSBE**”) participation that should be attained by M/W/DSBEs from business opportunities existing in the available market 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 certified M/W/DSBEs to perform various elements of the contract. The submission of a S & C Form (the “**S & C Form**”) and any supporting documentation (more fully discussed below) is an element of responsiveness to the NOCO and failure to submit the required information will result in rejection of the Respondent’s proposal.

Respondent hereby verifies that all forms, information and documentation submitted to the OEO are true and correct and is notified that the submission of false information by Respondent is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

#### **A. M/W/DSBE PARTICIPATION**

1. Only firms that are certified by an approved certifying agency<sup>2</sup> or identified in the OEO Certification Registry at the time of contract award will be credited toward the participation ranges on City contracts. An OEO Certification Registry is maintained by the OEO and is available online at [www.phila.gov/OEO/directory](http://www.phila.gov/OEO/directory). Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry. If Respondent or Respondent’s subcontractor(s) is certified by an approved certifying agency, a copy of that certification should be included with the Respondent’s proposal.

2. No Respondent that seeks to meet the participation range(s) for participation by entering into subcontracts with any M/W/DSBE subcontractor shall be considered to meet the range(s) if the M/W/DSBE 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 or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the NOCO), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The OEO may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF. If it is determined during the review of a Respondent’s S & C Form that the work described on the S & C Form does not constitute a CAF, the Respondent’s proposal may be rejected.

3. 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 and DSBE or WBE and DSBE)

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<sup>2</sup> Approved certifying agencies are identified on the OEO webpage found at [www.phila.gov/OEO](http://www.phila.gov/OEO).

will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Respondents will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

4. An MBE/WBE/DSBE submitting as the prime Respondent is required, like all other Respondents, to submit a proposal that is responsive to the Policy and will only receive credit toward the relevant participation ranges (e.g., MBE range or WBE range or DSBE range) for the amount of its own work or supply effort on this NOCO. In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for the contract, may be credited towards the participation ranges only to the extent of the M/W/DSBE partner's ownership interest in the joint venture in accordance with the following criteria:

- The MBE, WBE or DSBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/W/DSBE partner(s) must derive substantial benefit from the arrangement;
- The M/W/DSBE partner(s) must be substantially involved in all phases of the contract including 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 interest, contributes working capital and other resources, etc).

5. M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

6. In listing participation commitments on the S & C Form, Respondents are required to list a detailed description of the work or supply effort, the dollar amount of the quotation, and percentage of the contract the participation represents. In calculating the percentage amount, Respondents may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information from Respondents in the event of an inconsistency or ambiguity in the S & C Form.

## **B. RESPONSIVENESS**

1. A Respondent's proposal responsive to the Policy is one which contains documentary evidence of the M/W/DSBEs that have been solicited and that will be used by the Respondent on the contract, if awarded; where the Respondent's proposal satisfies the M/W/DSBE participation ranges for that contract, the Respondent is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Respondents must submit documentary evidence of MBE, WBE and DSBEs who have been solicited and with whom commitments have been made in response to the participation ranges included in this NOCO. Failure to submit the S & C Form will result in the rejection of the Respondent's proposal as nonresponsive, although the City, at its

sole discretion, may allow Respondents to submit or amend the S & C Form at any time prior to award. The S & C Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled “Solicitation for Participation and Commitment Form”. Respondents should only make actual solicitations of M/W/DSBEs whose work or materials are within the scope of this NOCO. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The Respondent’s listing of a commitment with an M/W/DSBE constitutes a representation that the Respondent has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City.
- If the Respondent has entered into a joint venture with an MBE, WBE and/or DSBE partner, the Respondent is also required to submit along with the S & C Form, a document entitled “Joint Venture Eligibility Information Form,” available at OEO, for the City’s review and approval of the joint venture arrangement.

3. If Respondent does not fully meet each of the range(s) for participation established for this NOCO, Respondent must explain what efforts the Respondent made to achieve the M/W/DSBE participation ranges. Respondent must demonstrate, through the submission of documentary evidence, that it took all necessary steps and made reasonable efforts to achieve the M/W/DSBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/W/DSBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive, although the City, at its sole discretion, may allow Respondents to submit or amend their evidentiary submission at any time prior to award. The submission shall contain and discuss, at a minimum, the following:

- Provide reasons for not committing with any MBE/WBE/DSBEs that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by Respondent.
- Provide any additional evidence pertinent to Respondent's conduct relating to this NOCO including sufficient evidence which demonstrates to the OEO that Respondent has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing Respondent's efforts to achieve participation within the ranges, Respondent may submit any corroborating documentation (e.g., copies of advertisements for participation).

The Respondent's documentary evidence will be reviewed by the OEO to ascertain whether discrimination has occurred in the solicitation or selection of contract participants. The review will include consideration of the following:

- Whether the Respondent's actions were motivated by considerations of race or gender or disability. The OEO may investigate the Respondent's contracting activities and business practices on similar public and private sector contracts. For example, if Respondent rejects any M/W/DSBE based on price, Respondent must fully document its reasons for the rejection and also demonstrate that Respondent subjects non-M/W/DSBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.
- Whether M/W/DSBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/W/DSBEs are given the same information, access to the plans and requirements of the contract and given adequate amount of time to prepare a quote/subproposal as others who were solicited by Respondent. The OEO will also investigate whether M/W/DSBEs were accorded the same level of outreach as non-M/W/DSBEs, for example whether Respondent short listed M/W/DSBEs for participation or solicited M/W/DSBEs at any pre-proposal meetings.
- Whether the Respondent's contracting decisions were based upon policies which disparately affect M/W/DSBEs. OEO will ascertain whether Respondent selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. OEO will consider whether Respondent employed policies which facilitate the participation of M/W/DSBEs on City contracts such as segmentation of the contract or prompt payment practices.

4. After review of the Respondent's submission and other information the OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to the awarding City Department.

- If the proposal is determined nonresponsive by the OEO, the Respondent will be notified and may file a written appeal with the OEO within forty-eight (48) hours of the date of notification. The decision of the OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his/her designee whose decision shall be final.

### **C. RESPONSIBILITY**

1. Upon award, the completed S & C Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any

change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

2. The successful Respondent shall within twenty (20) business days of work performed by its M/W/DSBE subcontractors under the contract, deliver payment to its M/W/DSBE subcontractors for the work performed (including the supply of materials).

3. No privity of contract exists between the City and any M/W/DSBE subcontractor identified in any contract resulting from this NOCO. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with the subcontracted services under Executive Orders 2-05 and 14-08 or by reason of any contract resulting from the NOCO except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

4. If the OEO determines that the Respondent has discriminated against a M/W/DSBE at any time during the term of the contract, the OEO may recommend to the Director of Finance the imposition of sanctions on the Respondent including debarment of the Respondent from submitting and/or participating in future City contracts for a period of up to three (3) years.

#### **D. ACCESS TO INFORMATION**

1. The OEO shall have the right to make site visits to the Respondent's place of business and/or job site and obtain documents and information from any Respondent, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain Respondent's responsiveness and responsibility.

2. Failure to cooperate with the OEO in its review may result in a recommendation to terminate the contract.

#### **E. RECORDS AND REPORTS**

1. The successful Respondent shall maintain all books and records relating to its M/W/DSBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment. These records shall be made available for inspection by the OEO and/or other appropriate City officials. The successful Respondent agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful Respondent's fulfillment of its M/W/DSBE commitments.

## **F. REMEDIES**

1. The successful Respondent's compliance with the requirements of Executive Orders 2-05 and 14-08, including the fulfillment of any M/W/DSBE commitments, is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event the City determines that the successful Respondent hereunder has failed to comply with these requirements 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, as deemed applicable, 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/bidding 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 commitment shortfall. (NOTE: The "total dollar amount of the contract" shall mean the Concession Fee paid to the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this NOCO nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors.

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***Should you have any questions related to the Contract Provisions, please contact Rashid Henry, OEO at (215) 683-2079 or fax (215) 683-2085.***

***Please See Form A: Solicitation for Participation and Commitment Form***

**APPENDIX 9**

**SAMPLE REPORTING FORM FOR ACTIVITY RELATING TO  
PARTICIPATION OF MINORITY, WOMAN AND DISABLED OWNED  
BUSINESS ENTERPRISES**

**QUARTERLY M/W/DSBE REPORT  
POST AWARD COMPLIANCE REVIEW**

QUARTERLY PERIOD: \_\_\_\_\_ to \_\_\_\_\_

CONTRACT NO.: \_\_\_\_\_

NAME OF  
CONCESSIONAIRE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

NAME OF SUBCONTRACTOR	SERVICE PROVIDED	OEO CERT #	ORIGINAL CONTRACT AMOUNT	PAYMENTS THIS QUARTER	TOTAL PAYMENTS TO DATE

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**FORM A**

**SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM**

**ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM**  
**Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises<sup>1</sup>**

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)							
<b>Bid Number or Proposal Title:</b>		<b>Name of Bidder/Proposer:</b>			<b>Bid/RFP Opening Date:</b>		
<i>Burholme Park Golf Center RFP</i>							
List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.							
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		<b>Work or Supply Effort to be Performed</b>	<b>Date Solicited</b>		<b>Commitment Made</b>		<b>Give Reason(s) If No Commitment</b>
<b>Company Name</b>			<b>By Phone</b>	<b>By Mail</b>	<b>Yes (If Yes, give date)</b>	<b>NO</b>	
<b>Address</b>							
<b>Contact Person</b>			<b>Quote Received</b>		<b>Amount Committed To</b>		
<b>Telephone Number</b> <b>Fax Number</b>			<b>YES<sup>2</sup></b>	<b>NO</b>	<b>Dollar Amount</b>		
<b>Email Address</b>					<b>\$</b>		
<b>OEO REGISTRY #</b>	<b>CERTIFYING AGENCY</b>				<b>Percent of Total Bid/RFP</b>		
					<b>%</b>		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		<b>Work or Supply Effort to be Performed</b>	<b>Date Solicited</b>		<b>Commitment Made</b>		<b>Give Reason(s) If No Commitment</b>
<b>Company Name</b>			<b>By Phone</b>	<b>By Mail</b>	<b>Yes (If Yes, give date)</b>	<b>NO</b>	
<b>Address</b>							
<b>Contact Person</b>			<b>Quote Received</b>		<b>Amount Committed To</b>		
<b>Telephone Number</b> <b>Fax Number</b>			<b>YES<sup>2</sup></b>	<b>NO</b>	<b>Dollar Amount</b>		
<b>Email Address</b>					<b>\$</b>		
<b>OEO REGISTRY #</b>	<b>CERTIFYING AGENCY</b>				<b>Percent of Total Bid/RFP</b>		
					<b>%</b>		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE <input type="checkbox"/> W-DBE		<b>Work or Supply Effort to be Performed</b>	<b>Date Solicited</b>		<b>Commitment Made</b>		<b>Give Reason(s) If No Commitment</b>
<b>Company Name</b>			<b>By Phone</b>	<b>By Mail</b>	<b>Yes (If Yes, give date)</b>	<b>NO</b>	
<b>Address</b>							
<b>Contact Person</b>			<b>Quote Received</b>		<b>Amount Committed To</b>		
<b>Telephone Number</b> <b>Fax Number</b>			<b>YES<sup>2</sup></b>	<b>NO</b>	<b>Dollar Amount</b>		
<b>Email Address</b>					<b>\$</b>		
<b>OEO REGISTRY #</b>	<b>CERTIFYING AGENCY</b>				<b>Percent of Total Bid/RFP</b>		
					<b>%</b>		

1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.  
 2. Attach all quotations to this form.

**FORM B**

**CONCESSION FEE PROPOSAL FORM**

Concession Fee (MAG and % of Gross Revenues) for operation, management and maintenance of the Center:

2012: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2013: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2014: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2015: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2016: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2017: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2018: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2019: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2020: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG

2021: \$ \_\_\_\_\_ plus \_\_\_\_\_% of Gross Revenues.  
MAG