



**REQUEST FOR PROPOSALS #C-104-11
For the Operation of Amphibious Vehicle Tours
Using the Schuylkill River**

Issued By:

The City of Philadelphia
Managing Director's Office
Richard Negrin, Managing Director

&

Procurement Department
Hugh Ortman, Commissioner

THE **"DEADLINE FOR SUBMITTING PROPOSALS"** IN RESPONSE TO THIS RFP IS
10:30 A.M., PHILADELPHIA LOCAL TIME, DECEMBER 17, 2010

EACH PROPOSAL MUST BE SUBMITTED IN SEALED ENVELOPES OR PACKAGES TO:
MUNICIPAL SERVICES BUILDING, ROOM 170A, 1401 JOHN F. KENNEDY BOULEVARD, FIRST
FLOOR, PHILADELPHIA, PA 19102

PROPOSALS WILL BE OPENED IMMEDIATELY AFTER
THE DEADLINE FOR SUBMITTING PROPOSALS

Questions regarding this Request for Proposals must be submitted in writing before
December 6, 2010 at 5:00 PM local time ("Deadline for Questions")

and directed to

Brian Abernathy, Chief of Staff
Managing Director's Office

Municipal Services Building, Ste. 1430; Philadelphia, PA 19102
or by e-mail at brian.abernathy@phila.gov or by fax to 215-686-3479

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SECTION 1 – GENERAL INFORMATION

1.1 Purpose of this Request for Proposals

This Request for Proposals (“**RFP**”) is being issued by the City of Philadelphia (“**City**”). The City is requesting Proposals from all individuals and firms that would like to operate amphibious vehicle tours that, as part of a single tour, travel on City streets and in the Schuylkill River. By issuing this RFP and entering into a concession agreement for operation of the tours, the City hopes to provide an amenity for tourists and park users and to generate revenue to reinvest in the Schuylkill Banks Park.

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 amphibious vehicle tours that cross park land to reach the Schuylkill River and to exercise the rights and perform the duties described in this RFP and the Concession Agreement.

1.3 Proposed Concession Summary

- 1.3.1 The City wants an operator of amphibious vehicles to conduct tours of Philadelphia that, as part of the tour route, includes a brief excursion on the Schuylkill River. The Concessionaire will have the right and obligation to construct all necessary drives to reach the river, install all necessary devices to control use of the drives, and to plant trees, shrubs and other vegetation to beautify the area along the drives, control stormwater runoff, and prevent soil erosion. In exchange for the License the City gives to the Concessionaire, the Concessionaire will be obligated to pay a fee to the City.
- 1.3.2 The rights and responsibilities of the Concessionaire will include those set forth in this RFP, including but not limited to those in Section 3 and Section 4 of this RFP, and those set forth in the Concession Agreement.
- 1.3.3 For purposes of this RFP and the Concession Agreement, except as expressly set forth otherwise, the word “**City**” includes all the City’s officials, officers, employees, agents, departments, boards, commissions, successors and assigns.

1.4 Respondent Qualifications

As set forth in greater detail below, each Respondent must demonstrate that it has substantial experience in operating high-quality amphibious vehicle tours in large cities or metropolitan areas. Each Respondent must demonstrate that it has the ability and resources to establish and operate high-quality amphibious vehicle tours as required by this RFP. Finally, each Respondent must also demonstrate that it has the experience, resources, and ability necessary to operate the tours at the highest level of safety for tour patrons, members of the public, and park facilities.

1.5 No Pre-Proposal Meeting

The City will not conduct a pre-proposal meeting for potential Respondents before the Deadline for Submitting Proposals. Potential Respondents who have questions about this RFP or the Concession Agreement, or who wish to learn more about potential routes to access the Schuylkill River, are referred to Section 1.7, Section 1.13, and Section 1.14 below.

1.6 Community Comments

The City encourages each potential Respondent to present its ideas about a route to access the Schuylkill River, as well as other elements of its proposed Tours, to community groups involved with the operation, management, and programming of the City-owned land that the Respondent proposes to use.

1.7 Project Manager; Questions about this RFP

1.7.1 The “**Project Manager**” for this RFP is Brian Abernathy, Chief of Staff, in the office of the City of Philadelphia Managing Director (“**Managing Director**”). The Project Manager can be reached by the following means:

Email: brian.abernathy@phila.gov
Fax: 215-686-3479
Mail: Municipal Services Building, Suite 1430
1401 John F. Kennedy Blvd.
Philadelphia, PA 19102

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

1.7.2. The City will answer all questions which the City in its sole discretion determines concern a material element of the proposal process or

Concession Agreement. The City will provide its answers in writing by an addendum to this RFP prior to the Deadline for Submitting Proposals; and the City will post its answers on the following website: <http://www.phila.gov/bids>. The City is not bound by any oral response made by any City employee to any questions.

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

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

The City advises each Respondent to carefully read this entire RFP and its attachments before submitting a Proposal. This RFP will become part of the Concession Agreement and its provisions will be binding on the Concessionaire.

1.9 No Obligation on City to Execute a Concession Agreement

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

1.10 Modifications; Late Proposals

Until the Deadline for Submitting Proposals, a Respondent may submit a modified Proposal to replace all or any portion of a Proposal the Respondent submitted previously. The City will only consider the latest version of a Respondent's Proposal. The City will not consider or evaluate late Proposals and late modifications. A Respondent may withdraw its Proposal from consideration at any time before the Deadline for Submitting Proposals. To withdraw a Proposal, the Respondent must provide written notification to the Procurement Commissioner by e-mail (Hugh.Ortman@Phila.Gov), fax (215- 686-4728), or by letter at the address provided on the cover page of this proposal.

1.11 Public Disclosure

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

1.12 Information and Data in this RFP Not Warranted

The City may provide information and data in this RFP to help potential Respondents 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 possible tour routes on City streets, possible locations for drive to access the Schuylkill River and a suitable place for its vehicles to enter the river, this RFP, the Concession Agreement, or their Proposal.

1.13 Tour of Potential Access Drive Sites

Any potential Respondent who wishes to tour possible sites to construct a drive for access to the Schuylkill River may contact the Project Manager identified in Section 1.7 to do so. The Project Manager can only arrange access to City-owned land and cannot commit to be available at the times chosen by any potential Respondent. Therefore, potential Respondents who wish to tour possible sites for an access drive are encouraged to contact the Project Manager promptly.

1.14 Access to City Land To Perform Tests Needed To Design Concessionaire's Facilities.

1.14.1. A Respondent that wishes to conduct soil boring tests, surveys, or other studies in order to design a drive for access to the Schuylkill River and other facilities must first obtain a permit to come onto City-owned land. The Respondent may do so by contacting the Executive Director of the Fairmount Park System (“**Executive Director**”) at the following address:

Mark A. Focht, Executive Director
Fairmount Park System
Parks and Recreation Department
One Benjamin Franklin Parkway
1515 Arch Street – 10th Floor
Philadelphia, PA 19102
Phone: 215-683-0202
Fax: 215-683-0205
E-Mail: mark.focht@phila.gov

1.14.2 Each potential Respondent who wishes to conduct soil boring tests, surveys, or other studies is strongly encouraged to contact Mr. Focht as soon as possible in order to ensure there is adequate time to obtain the required permit, schedule the tests, surveys, or other studies, and use the information in its Proposal.

1.14.3. A permit issued to a potential Respondent to come onto City land and perform soil boring tests, surveys, or other studies will require the potential Respondent to obtain insurance, indemnify the City, and release the City from claims arising in connection with the condition of the City's land, and may impose other conditions and requirements.

1.15 Provisions of RFP Become Part of Concession Agreement

Without limiting the effectiveness of Section 1.8 above, the contractual provisions set forth in Section 3 and Section 4 of this RFP and the 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 to execute a Concession Agreement with the City, the provisions of Section 3 and Section 4 of this RFP and their corresponding Appendices will bind the Respondent as the Concessionaire. Therefore, potential Respondents are strongly encouraged to pay careful attention to the provisions of Section 3 and Section 4 of this RFP and their corresponding Appendices because they will become obligations of the Concessionaire under the Concession Agreement.

SECTION 2 – DESCRIPTION OF PHILADELPHIA AND AMPHIBIOUS VEHICLE TOUR OPPORTUNITY; NARRATIVE OF CONCESSION REQUIREMENTS

2.1 Background

- 2.1.1 Philadelphia is perhaps the most historic city in the United States. As the birthplace of American democracy, it was home to the country's founding documents: the Declaration of Independence and the Constitution of the United States. Besides Independence Hall, where the Declaration and Constitution were debated, many Colonial buildings and neighborhoods still exist and are actively used.
- 2.1.2 Philadelphia also was perhaps the leading City in the industrial revolution and was known as the "Workshop of the World." Fundamental industrial production and innovations began in Philadelphia. Many of the City's great buildings from the industrial era, and the neighborhoods that grew to house the people who worked in them, still exist and provide striking architectural images of the City's past.
- 2.1.3 Today, Philadelphia is a thriving City and one of the country's premiere centers for the arts, medical research and treatment, higher education, technology, cuisine, professional sports, and the professional service sector.
- 2.1.4 Benjamin Franklin Parkway is a principal travel artery in Philadelphia that extends from City Hall to the Philadelphia Museum of Art, one of the leading art museums in the world. The Parkway is also home to additional world-class cultural institutions such as the Free Library of Philadelphia, the Academy of Natural Sciences, The Franklin Institute, the Rodin Museum, and the soon-to-be-completed Barnes Museum. During morning and evening rush hours, vehicle travel on Benjamin Franklin Parkway often becomes extremely slowed by traffic congestion.

- 2.1.5 Because of its unmatched history and dynamic present, Philadelphia attracts millions of tourists each year. In addition, the citizens of the City also enjoy the City's sites and resources. Many firms operate tours of the City's various neighborhoods – by foot, by bus, by horse-drawn carriage. The City believes those tours benefit the City by helping draw tourists to the City, by showcasing the City's many enjoyable assets, and by showing tourists and citizens alike that Philadelphia is a great City to live and work in.
- 2.1.6 In recent years, the City created a new, beautiful park along the edge of the Schuylkill River. (“Schuylkill” is most commonly pronounced as “school-kul.”) The park – called “Schuylkill Banks” – runs along the river past peaceful neighborhoods and up to the gardens near the Philadelphia Museum of Art. In addition, the Schuylkill River itself has been greatly cleaned up and supports thriving fish life. As a result, the Schuylkill River attracts people for fishing and pleasure boating.
- 2.1.7 The City wants a tour operator to bring tour patrons to the Schuylkill River to show off the river, Schuylkill Banks, and the cultural institutions on Benjamin Franklin Parkway. Also, the City hopes that amphibious tours of the City and Schuylkill River would generate revenue that the City could use itself, or grant to nonprofit partners, to help maintain and improve Schuylkill Banks.

2.2 Setting and Basic Requirements

- 2.2.1 Each Respondent may propose a route for its amphibious buses to travel from a public street across City-owned land to the Schuylkill River, either on the east side or west side of the river. The Concessionaire will be obligated to make all improvements and to install all fixtures and equipment needed to get to and from the river. Each Respondent must show that it has sufficient experience constructing drives and ramps used to operate its Tours or has sufficient experience supervising contractors who constructed drives and ramps for Respondent's use.
1. In this RFP and the Concession Agreement, the route the Concessionaire uses to reach the Schuylkill River from a public street is called the “**Access Drive.**”
 2. In this RFP and the Concession Agreement, the Concessionaire's entry point to the river is called the “**Entry Point.**” Despite separate mention of the Access Drive and Entry Point, the Entry Point is part of the Access Drive.

- 2.2.2 The Entry Point must be below the Fairmount Dam; that is, downriver from the dam. The Schuylkill River below Fairmount Dam is affected by the Atlantic tide and rises and falls with the tide.
- 2.2.3 Schuylkill Banks is a park that currently extends from Locust Street to the South Garden of the Water Works below the Philadelphia Museum of Art. Schuylkill Banks is administered by the Philadelphia Department of Parks and Recreation (the “**Department**”). A Respondent may propose to reach the Schuylkill River across Schuylkill Banks.
- 2.2.4 A recreation path (“**Recreation Path**”) runs the length of Schuylkill Banks park and connects to the recreation paths that run the length of King Drive and Kelly Drive. The Recreation Path is used each day by thousands of walkers, joggers, rollerbladers, and cyclists.
- 2.2.5 [Intentionally omitted.]
- 2.2.6 The Philadelphia Water Department has a variety of water, wastewater, and stormwater infrastructure along the Schuylkill River between Fairmount Dam and Market Street. **Appendix 1** contains additional information about the Water Department’s infrastructure. To confirm the presence of infrastructure and obtain detailed information on size, specific location, depth, construction material, age, etc., a potential Respondent may contact:
- Philadelphia Water Department
Water Main Records/Drainage Information Unit
1101 Market Street; 2nd Floor
Philadelphia, PA 19107
Phone: 215-685-6270
- 2.2.7 Each Respondent must, as part of its Proposal, include a plan that shows the route of the Access Drive the Respondent would construct if it becomes the Concessionaire. Each Respondent must show in its plan all additional shoulder and buffer areas it needs along the Access Drive for safe operation of its vehicle tours.
- 2.2.8 The Concessionaire will also be required, at its sole cost, to install gates or other devices to ensure that the Access Drive is not used by any person or firm other than the Concessionaire and that the Access Drive does not pose a danger to the public or Concessionaire’s patrons and does not become an attractive nuisance.
- 2.2.9 Because of the probable descending grade of the Access Drive wherever it is located, the Concessionaire will have to plant trees, shrubs, and other

vegetation to decorate the area along the Access Drive, keep it sightly, control stormwater runoff, and prevent soil erosion.

2.2.10 In this RFP and the Concession Agreement, the Access Drive includes the shoulder and buffer areas on either side of the paved drive surface. In this RFP and the Concession Agreement, the Access Drive, the gates or other devices installed by Concessionaire to control use of the Access Drive, the trees, shrubs, and other vegetation planted by Concessionaire, and all other improvements, fixtures, and equipment that Concessionaire installs in the Access Drive, are referred to collectively as “**Concessionaire’s Facilities.**”

2.2.11 The Concessionaire will be required, at its sole cost, to maintain, repair, and replace the Concessionaire’s Facilities throughout the term of the Concession Agreement. The Concessionaire will be required to remove Concessionaire’s Facilities at the end of the Concession Agreement, except for any improvements or equipment the City elects to retain and own in accordance with Section 3.5.6.2 below.

2.3 Concession Fee.

In consideration of the City’s giving the License to the Concessionaire under the Concession Agreement, the Concessionaire will be obligated to pay the City a Concession Fee, as explained below in Section 3.21 and Section 6.8 of this RFP.

SECTION 3 – CONCESSION AGREEMENT: SPECIFIC PROVISIONS

3.1 Term of the Concession Agreement; Initial Term; Renewal; Ending

3.1.1 The “**Initial Term**” of the Concession Agreement will start on the date that (1) the City executes the Concession Agreement and (2) 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 fifth anniversary of the Commencement Date.

3.1.2 The City, at its sole discretion, may renew the Concession Agreement for one five-year period. To renew the Concession Agreement, the City must provide written notice to the Concessionaire of the City’s desire to renew the agreement (“**Renewal Notice**”) at least 60 days before expiration of the Initial Term.

3.1.3 In this RFP and in the Concession Agreement, the word “**Term**” means the Initial Term and the Renewal Term, if any.

3.1.4 In this RFP and in the Concession Agreement, the date the Concession

Agreement expires, terminates, or otherwise ends, regardless of the reason, is called the “**Concession Agreement Ending Date.**”

3.2 Scope of License; Operations Required, Operations Permitted, and Operations Prohibited

- 3.2.1 License. Subject to the provisions of this RFP and the Concession Agreement, the City gives the Concessionaire an exclusive license (“**License**”), for the Term, to do the following:
1. Construct an independent Access Drive to the Schuylkill River across City-owned land and construct an Entry Point into the river.
 2. Install gates or other devices to control access to and use of the Access Drive and prevent the Access Drive from becoming an attractive nuisance.
 3. Plant trees, shrubs, and vegetation along the Access Drive.
 4. Install necessary fixtures and equipment in the Drive so Concessionaire may operate the Tours safely.
 5. Maintain and repair all of Concessionaire’s Facilities.
 6. As part of Concessionaire’s Tours, drive its amphibious vehicles on the Access Drive to and from the Entry Point into the Schuylkill River; provided, however, that Concessionaire shall not use any park entrance existing on the date the RFP is issued and which is used by pedestrians for entry into any park or City-owned land..
- 3.2.2 Effectiveness of License. The License is effective only after the Concessionaire satisfies all the conditions precedent to effectiveness of the License set forth in this RFP and the Concession Agreement.
- 3.2.3 Land Subject to License. The License applies only to use of the Access Drive.
- 3.2.4 Uses Prohibited. The Concessionaire shall not use any City-owned land or facilities other than the Access Drive. The Concessionaire shall not use the Access Drive for any purpose not expressly required or authorized by this RFP or the Concession Agreement.
- 3.2.5 Railroad Controlled Property. In connection with its Tours, the Concessionaire shall not use any land owned or controlled by any railroad company without first providing written evidence to the Executive Director and the Managing Director that Concessionaire has obtained the written approval of the railroad company. The City is not obligated in any

way to assist Concessionaire in obtaining approval from any railroad company.

3.3 Tour Operation; Use of Access Drive.

- 3.3.1 Concessionaire, at its sole cost, shall conduct amphibious vehicle tours of the City that cross City-owned land and include trips on the Schuylkill River (“**Tours**”; individually, a “**Tour**”). Concessionaire shall manage all aspects of operating the Tours.
- 3.3.2 In connection with its Tours, Concessionaire may use streets in the public-right-of way, subject to Applicable Laws.
- 3.3.3 The Concessionaire in good faith shall cooperate and communicate regularly with the Executive Director and Managing Director to ensure the successful operation of the Concession and the successful management and operation of the Tours.
- 3.3.4 The Concessionaire shall be considerate of the day-to-day operations and work of the Department and, if the Access Drive crosses Schuylkill Banks, of the public’s use of Schuylkill Banks.
- 3.3.5 During the time Concessionaire’s vehicles cross City-owned land, Concessionaire shall minimize noise generated by or emanating from its vehicles and Tour operations, including without limitation not revving engines, not using any loudspeaker system or bullhorn, not honking horns or ringing bells, and prohibiting its patrons from using any noise-making devises.

3.4 Approvals Required Under Applicable Laws.

It is a strict condition precedent to effectiveness of the License that Concessionaire must have obtained all prior approvals required by Applicable Laws to operate its Tours and for its Plans and Specifications.

- 3.4.1. Under Applicable Laws, Concessionaire may be obligated to obtain the prior approval of the agencies listed below, but the City does not represent or warrant that the agencies listed are the accurate or complete list of agencies whose prior approval the Concessionaire must obtain. It is Concessionaire’ sole responsibility to ensure that it obtains all prior approvals required under Applicable Laws.
 - A. City of Philadelphia Art Commission;
 - B. Pennsylvania Department of Environmental Protection;
 - C. Pennsylvania Fish and Boat Commission;
 - D. United States Army Corps of Engineers; and

E. United States Coast Guard.

- 3.4.2 Before coming onto the Access Drive to begin construction or any other work, (A) Concessionaire must have provided a representation and warranty to the Executive Director and Managing Director that Concessionaire has obtained all prior approvals required by Applicable Laws, and (B) Concessionaire must have provided written evidence acceptable to the Executive Director and Managing Director that the Concessionaire has obtained each of those approvals.
- 3.4.3 Concessionaire shall not come onto the Access Drive until Concessionaire has obtained all prior approvals required under Applicable Laws.

3.5. Access Drive and Entry Point: Construction; Plans and Specifications; Limitations on Location; Maintenance and Repair; Removal.

The Concessionaire, at its sole cost, shall design and construct an Access Drive and Entry Point in strict accordance with Concessionaire's Proposal.

- 3.5.1 Plans and Specifications. Concessionaire shall submit detailed plans and specifications (“**Plans and Specifications**”) to the Executive Director and to the City of Philadelphia Streets Department that show the precise location where Concessionaire proposes to construct and install Concessionaire's Facilities, including but not limited to the Access Drive and Entry Point. Concessionaire shall cause its Plans and Specifications to show how Concessionaire's Facilities would affect all existing infrastructure in, on, or near the Access Drive, including but not limited to curbs, sidewalks, landscaped areas, and utility conduits and poles. Concessionaire shall cause its Plans and Specifications to show that the paved portion of the Access Drive will support police cars, ambulances, fire trucks, and other emergency vehicles.
- 3.5.2 No Entry Until Plans and Specifications Approved. Concessionaire shall not come onto the Access Drive or exercise the License until Concessionaire has obtained the prior written approval of its Plans and Specifications from (A) the Department of Parks and Recreation, and (B) City of Philadelphia Streets Department.
- 3.5.3 No Capital Improvements Except As Expressly Permitted; Contractors.
1. Concessionaire shall not make capital improvements or alterations to Schuylkill Banks or any other City-owned land except as expressly permitted under this RFP and the Concession Agreement.
 2. Concessionaire, at its sole cost, shall hire contractors and

subcontractors with demonstrated experience constructing drives and river entry ramps similar to the Access Drive and Entry point in Concessionaire's approved Plans and Specifications; except, it Concessionaire has the experience and resources to perform the capital improvements set forth in its Plans and Specifications itself and does perform those improvements itself.

3.5.4 Maintenance and Repair. Concessionaire, at its sole cost, shall promptly maintain, repair and replace Concessionaire's Facilities to keep them at all times safe, attractive, and in suitable condition for Concessionaire's safe operation of the Tours.

3.5.5 Limitations If Access Drive Crosses Schuylkill Banks. The following provisions apply if Concessionaire constructs the Access Drive across Schuylkill Banks park:

1. The Concessionaire's shall not use the entrances to Schuylkill Banks that are used by pedestrian park users.
2. The Concessionaire's Facilities, including but not limited to the Access Drive, shall not reroute, cross on, disrupt, interrupt, or otherwise negatively affect the Recreation Path.
3. The Concessionaire, at its sole cost, shall excavate the Access Drive on a descending plane that goes underneath the Recreation Path.
4. If made necessary by the route of the Access Drive, the Concessionaire, at its sole cost, shall construct a bridge ("**Bridge**") for the Recreation Path to pass over the Access Drive. The Concessionaire shall construct the Bridge to be strong enough to support police cars, ambulances, fire trucks, and other emergency vehicles. The Concessionaire, at its sole cost, shall install lights along the Bridge that are the same style as the other lights along the Recreation Path, and shall install lighting under the Bridge to discourage squatting or camping out under the Bridge at night. During the Term, Concessionaire, at its sole cost, shall perform all necessary and prudent maintenance, repair, and replacements on and to the Bridge, including but not limited to repairs or replacements needed because of any failure in the design, materials, or construction of the Bridge or vandalism to the Bridge. Concessionaire's maintenance, repair, and replacement of the Bridge is subject to the other provision of this Section 3.5 and to Section 3.6 of this RFP.

5. Concessionaire shall ensure that Concessionaire's Facilities, including but not limited to the Bridge, do not change the grade of the Recreation path, except that the Bridge may alter the grade of the Recreation Path minimally if necessary for construction of the Bridge and if approved in writing, in advance, by the Executive Director as part of Concessionaire's Plans and Specifications.

6. Concessionaire, at its sole cost, shall install gates or other devices to ensure that the Access Drive is not used by any person or firm other than the Concessionaire and that the Access Drive does not pose a danger to the public or Concessionaire's patrons and does not become an attractive nuisance.

7. Concessionaire, at its sole cost, shall plant trees, shrubs, and other vegetation to decorate the area on both sides of the paved drive, keep it sightly, control stormwater runoff, and prevent soil erosion.

3.5.6 Removal Of Concessionaire's Facilities. On or before the Concession Agreement Ending Date, Concessionaire shall remove all of Concessionaire's Facilities and restore the Access Drive to its condition immediately prior to the Commencement Date, except as set forth below. If the Concessionaire fails to timely remove Concessionaire's Facilities, then the City may remove some or all of Concessionaire's Facilities and Concessionaire shall promptly pay all the City's costs related to the removal plus a 20% administrative fee, and Concessionaire's obligation to pay the City's costs and fee survives the Concession Agreement Ending Date.

1. As part of the City's prior approval of the Plans and Specifications, the Executive Director may designate any or all of Concessionaire's Facilities for the City to retain after the Concession Agreement Ending Date ("**Designated Improvements**"). Concessionaire shall not remove the Designated Improvements but shall remove all other of Concessionaire's Facilities and otherwise restore the Access Drive to its condition immediately before the Commencement Date. Upon the Concession Agreement Ending Date, the Designated Improvements automatically become the property of the City without the need for City or Concessionaire to execute any document, but Concessionaire shall execute any documents the City may reasonably require to confirm that title to the Designated Improvements has vested in the City. Concessionaire's obligations under this Section 3.5.6.1 survive the Concession Agreement Ending Date.

2. If Concessionaire wants to propose leaving in place after the Concession Agreement Ending Date any of Concessionaire's Facilities that are not Designated Improvements, then not less than 180 days before the Concession Agreement Ending Date Concessionaire must propose in writing to the Executive Director those of Concessionaire's Facilities it wishes to leave in place. If the Executive Director agrees, in writing, with some or all of the Concessionaire's proposal, then the Concessionaire may leave in place those Concessionaire's Facilities agreed to by the Executive Director. If the Executive Director does not respond to Concessionaire within 30 days of receipt of Concessionaire's written proposal, then the Executive Director will be deemed to have rejected all of Concessionaire's proposal.

3.6 Safety; City's Use Of Access Drive For Emergencies; No Attractive Nuisance

- 3.6.1 Operating amphibious vehicle Tours on a river poses inherent risks to Tour patrons and to other boats and persons on the river. Throughout the Term, Concessionaire, at its sole cost, shall take all necessary and prudent measures, and all measures required by Applicable Laws, to ensure the safety of its Tour patrons and ensure that its vehicles do not pose any danger to other boats or boaters on the Schuylkill River or to any other persons.
- 3.6.2 As of the issue date of this RFP, other users of the Schuylkill River in the area of Schuylkill Banks include a river tour boat operator, kayakers, jet skiers, and pleasure boaters. Concessionaire shall not permit its Tours to interfere with the use and enjoyment of the Schuylkill River by those other users.
- 3.6.3 The Concessionaire shall at all times permit the City to use the Access Drive and Entry Point for emergency purposes. Concessionaire shall ensure that the Executive Director, Managing Director, and City of Philadelphia Police Commissioner, each have the necessary keys, access codes, and other means necessary to open any gates or other devices installed by Concessionaire that control use of the Access Drive and Entry Point.
- 3.6.4 Subject to Section 3.5 above, Concessionaire, at its sole cost, shall construct all improvements and install all fixtures and equipment necessary or prudent to keep Concessionaire's Facilities from becoming an attractive nuisance. Concessionaire, at its sole cost, shall promptly maintain, repair and replace Concessionaire's Facilities to keep them from becoming an attractive nuisance.

3.7 Operating Schedule

3.7.1 Concessionaire may operate its Tours according to a schedule that Concessionaire determines in its reasonable discretion best suits Concessionaire's patrons and business, except

1. Concessionaire shall not operate its Tours during those times that the City has closed the road that connect to the Access Drive. The City may close that road for public events, special events, emergencies or other municipal needs, or any other purpose in the City's exercise of its municipal functions. A list of recurring special events for which the City may close King Drive are attached to this RFP as **Appendix 2**. Concessionaire may present alternatives to reach the Access Drive but permission to use any alternative route is subject to the absolute discretion of the Executive Director and Managing Director; and

2. Concessionaire shall not operate its Tours during inclement weather such as, without limitation, thunderstorms, high winds, or snow.

3.8 Personnel; Employees' Conduct

3.8.1 Concessionaire shall employ and provide all personnel necessary and prudent for the safe, efficient, and successful management and operation of the Tours.

3.8.2 Concessionaire shall cause its employees to conduct themselves at all times in a courteous and professional manner that reflects well upon Schuylkill Banks, the Fairmount Park system, the Department and the City. Concessionaire shall train and supervise its employees and cause them to be well-groomed and neat. Concessionaire shall cause its employees to be outfitted in appropriate attire which clearly identifies them as Concessionaire's employees. The City may, in its sole reasonable discretion, require that the Concessionaire remove and replace any employee that does not meet the requirements of this Section 3.4.2.

3.9 Vehicles and Equipment for Tours; Maintenance and Repair

3.9.1 Concessionaire, at its sole expense, shall obtain all the amphibious vehicles and equipment, material, and supplies necessary for the safe, efficient and successful operation of the Tours.

3.9.2 Concessionaire, at its sole cost, shall promptly maintain and repair all its vehicles, equipment, material, and supplies to the highest industry standards and as necessary and prudent for the safe, efficient and successful operation of the Tours.

3.10 Storage

Except for Concessionaire's Facilities located on or in the Access Drive, Concessionaire, at its sole cost, shall store its vehicles, equipment, and supplies at or in private facilities.

3.11 Marketing

3.11.1 Concessionaire, at its sole cost, shall use its best efforts to market and publicize the Tours, including but not limited to publishing advertisements, issuing press releases, maintaining an internet site and links on other sites to its own site, and other means of communication ("**Promotional Activities**").

3.11.2 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 Tours, a prominent, easily legible statement that reads: "**The Schuylkill River Tours are provided with the use of Schuylkill Banks, a property of the Philadelphia Department of Parks and Recreation,**" or similar statement approved by the Executive Director.



[Intentionally omitted.]

3.13 Trash Collection; Recycling

Concessionaire shall, at its sole cost and expense, collect and remove all trash, litter, and debris generated by or related to the Tours, or that Concessionaire's patrons may drop from Concessionaire's vehicles. If Concessionaire places any trash receptacles on or in the Access Drive, then Concessionaire, at its sole cost, shall provide separate receptacles for recyclable materials in accordance with Applicable Laws.

3.14 Environmentally-Friendly Products & Practices; Environmental Concerns

3.14.1 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 Tours.

3.14.2 Concessionaire, at its sole cost, shall take all necessary and prudent measures to ensure that no hazardous substance (including but not limited to fuel and oil) spills, leaks, or comes onto the Access Drive or

the Schuylkill River in connection with the Tours. Concessionaire shall promptly report to the Executive Director each spill, leak, or other release of hazardous substances on or into the Access Drive or the Schuylkill River. Concessionaire, at its sole cost, shall promptly clean up and remove all the hazardous substances that spilled, leaked, or that otherwise came on or into the Access Drive or the Schuylkill River in connection with the Tours.

3.15 Subcontracting

3.15.1 Subject to the requirements of Section 6.5 of the RFP, Concessionaire may elect to have some services and supplies provided by a subcontractor. Despite the immediately preceding sentence, the City reserves the right to approve any of Concessionaire's subcontracts. Despite any subcontracts that Concessionaire may enter into, Concessionaire is not relieved of any of its obligations under the Concession Agreement.

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

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

3.15.5 Any purported subcontract(s) in violation of this Section 3.13 or of any other Section in the Concession Agreement is void.

3.16 Utilities.

Concessionaire, at its sole cost, shall cause a separate electric meter to be installed to measure the electricity used to operate the lights that Concessionaire installs under the Bridge (if Concessionaire constructs a Bridge). Concessionaire, at its sole cost, shall arrange to be billed directly by provider of electricity for the lights under the Bridge and shall pay all those electricity usage and service costs. Concessionaire is not responsible for electricity usage or service costs with respect to the lights along the Recreation Path across the Bridge.



3.17 Prohibited Uses; Signs

The Concessionaire shall not at any time erect, hang, or paint any sign on or about the Access Drive without the prior approval of the Executive Director. The Concessionaire shall not place, erect or display on or about the Access Drive any utilitarian items that promote or advertise the Tours or any product.

3.18 Alterations to Access Drive

The Concessionaire shall not make, cause, or permit any alterations to the Access Drive, Schuylkill Banks, or any other City-owned land, without the prior review and written approval of the Executive Director. All maintenance and repair that this Concession Agreement requires Concessionaire to perform and that is of a capital nature is subject to the prior written approval of the Commissioner. The Concessionaire shall submit to the Executive Director plans and specifications for the proposed alterations and all additional information the Executive Director may reasonably request. The Executive Director's approval of any of Concessionaire's proposed alterations may be given subject to any conditions the Executive Director may choose, including in the Executive Director's discretion a requirement that the Concessionaire provide the City with a performance and payment bond satisfactory to the City in all respects.

3.19 Persons with Disabilities

The Concessionaire shall comply with all Applicable Laws to provide safe access to its Tours for everyone, including persons with disabilities. The Concessionaire is encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level required.

3.20 Licenses and Permits

Without limiting the effectiveness of Section 3.4 above, the Concessionaire, at its sole cost, shall obtain and maintain during the Term all licenses and permits required under Applicable Laws to operate the Tours.

3.21 Concession Fee; Reporting and Payment Schedule

3.21.1 In the Concession Agreement, the "**Concession Fee**" means the combined **Minimum Annual Guaranteed Amount ("MAG")** and **Gross Revenue Percentage Fee**, explained more fully in Section 6.8 of this RFP. The Concessionaire shall pay the MAG in equal monthly installments during the Term. Concessionaire shall pay the Concession Fee monthly to the City without deduction, setoff, or counterclaim no later than the 15th day of the month following the month in which the Concessionaire receives gross revenue upon which the Gross Revenue Percentage Fee portion of the Concession Fee is based. Concessionaire shall pay the Concession Fee by check made payable to "**City of Philadelphia**," or as otherwise directed by the Executive Director in writing, and shall deliver the

payment to the Executive Director at the address provided in Section 1.14.1.

- 3.21.2 Together with its Concession Fee payment, Concessionaire shall prepare and submit to the Conservancy a monthly “**Accounting Report**”. Concessionaire shall list in the Accounting Report the Concessionaire’s daily Gross Revenues from all categories of income associated with management and operation of the Tours. Concessionaire shall also include in the Accounting Report a description of the activities undertaken by the Concessionaire on or with respect to Tours, including but not limited to marketing the Tours. Concessionaire shall submit the Accounting Report to the Executive Director no later than the 15th day of each month for the preceding month’s activities, together with the Concession Fee.
- 3.21.3 Within 120 days following the end of Concessionaire’s fiscal year, Concessionaire shall submit to the Executive Director a report that includes (1) an annual summary description of the Concessionaire’s activities related to the Tours, including a detailed income and expense statement, (2) the Concessionaire’s annual financial statement prepared by a Certified Public Accountant according to Generally Accepted Accounting Principles (GAAP), consistently applied, and (3) the Concessionaire’s tax return for the most recent calendar year. Concessionaire shall also promptly submit to the City all supplemental reports, documents, records, and other information that the City may reasonably require.
- 3.21.4 The requirements of Sections 3.21.1—3 survive the Concession Agreement Ending Date until Concessionaire has made the final, accurate Concession Fee Payment and submitted to the City the final Accounting Report and annual documents that those Sections require.

3.22 Ownership of Land On Which Access Road and Entry Point Are Located

No provision in this RFP or the Concession Agreement creates, grants, or gives to the Concessionaire any legal title, easement, leasehold, or other interest in the Access Drive and Entry Point other than a mere license.

3.23 No Obligation on City

- 3.23.1 With respect to Concessionaire’s Tours, the City is not required to provide any vehicles, equipment or supplies, or to maintain, repair, or replace any vehicles, equipment, or supplies, or provide any services.
- 3.23.2 With respect to Concessionaire’s Facilities, the City is not required to construct, maintain, repair or replace any of Concessionaire’s Facilities.

- 3.23.3 **Despite any other provision of this RFP, this RFP does not obligate the City to appropriate or spend money at any time or for any reason.**

SECTION 4 – GENERAL CONTRACT PROVISIONS

4.1 Ethics Requirements

- 4.1.1 The Concessionaire and its sub-licensees, contractors, and subcontractors must not offer or give, directly or indirectly, anything of value to any City official, officer or employee, including any gift, gratuity, favor, entertainment or loan, the receipt of which would violate Executive Order No. 002-04 issued by the Mayor of Philadelphia on August 12, 2004. Similarly, the Concessionaire and its sub-licensees, contractors, and subcontractors must not offer or give, directly or indirectly, anything of value to any City officer, director, or employee which if received by any City official, officer, or employee would violate Executive Order No. 002-04.
- 4.1.2 Any person who offers or gives anything of value to any City official, officer, or employee, the receipt of which violates Executive Order No. 002-04, is subject to sanctions with respect to City contracts. The sanctions may range from disqualification from participation in particular City contract(s), to debarment, depending on the nature of the particular violation. The terms and duration of the sanctions will be pursuant to any rules the Procurement Commissioner promulgates with respect to contracts subject to competitive bidding, or as the Director of Finance promulgates with respect to all other contracts.
- 4.1.3 If the Concessionaire or its sub-licensees, contractors, and subcontractors offer or give, directly or indirectly, anything of value to any City officer, director, or employee in violation of Section 4.1.1 above, the Concessionaire will commit an Event of Default under the Concession Agreement. In addition, the City shall return or discard the item given to the City officer, director, or employee.

4.2 Tax Requirements

- 4.2.1 Any contractor, vendor of goods, or provider of services, who bids on and is awarded a contract by the City is subject to Philadelphia's business tax ordinances and regulations. The Concession Agreement is entered into in the City of Philadelphia, and the Concessionaire's delivery of goods into the City, or performance of services in the City, is "doing business" in the City and subjects the Concessionaire to the City's tax requirements, including without limitation one or more of the following taxes:

- a. Business Privilege Taxes
 - b. Net Profits Tax
 - c. City Wage Tax
- 4.2.2 Promptly following the Commencement Date, the Concessionaire, if not already paying the taxes listed above, shall apply to the City of Philadelphia Department of Revenue for a tax account number and to file appropriate business tax returns as required by Applicable Law. Applications may be submitted to the Department of Revenue at: Municipal Services Building, Public Service Concourse, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102. Questions about the application and the taxes should be directed to the Taxpayer Service Unit at: (215) 686-6600.
- 4.2.3. In addition to the City's tax requirements, the Concessionaire shall timely pay all federal, state, and local taxes, assessments, and levies, however characterized (collectively, "**Assessments**") that apply to the Concession, the Concession Agreement, and the Concessionaire's activities under the Concession Agreement. The Concessionaire is solely liable for all late charges, interest, penalties, and fees arising from the Concessionaire's failure to timely pay all Assessments.
- 4.2.4 The City is not obligated at any time during the Term to pay any Assessments related to the Concession, the Concession Agreement, or the Concessionaire's activities under the Concession Agreement.
- 4.2.5 The Concessionaire's failure to comply with the requirements of the Concession Agreement regarding payment of Assessments, or Concessionaire's failure to otherwise pay an Assessment as required by Applicable Laws, is an Event of Default of the Concession Agreement.

4.3 Confidential and Proprietary Information of the City

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

4.4 Indemnification, Release and Insurance

The Concessionaire shall promptly indemnify, defend, and release the City, as set forth in **Appendix 3** 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 3**. 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 3**.

4.5 City's Right to Inspect

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

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

4.6 Default

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

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

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

- a. in the case of an Event of Default under Section 4.6.1.(a), Concessionaire fails to cure the Event of Default within 5 days after receiving written notice from the City of the Event of Default,

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

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

- 4.6.3 In addition to the City's rights and remedies under Section 4.6.2 above, Concessionaire is liable for all damages, costs, and expenses suffered or incurred by the City arising from or related to the Event of Default. Also, if Concessionaire commits an Event of Default and fails to cure the Event of Default within the applicable cure period (if any), then the City may exercise all rights and remedies available to it at law or in equity, in addition to the remedies available to the City under the Concession Agreement. The City may exercise its remedies under the Concession Agreement, at law, or in equity, separately, cumulatively, successively, and repeatedly, in the City's absolute discretion.
- 4.6.4 The City's failure or delay in providing written notice of an Event of Default to Concessionaire does not relieve or excuse the Concessionaire from any liability arising from or related to the Event of Default and does not waive any of the City's rights or remedies upon delivering written notice to the Concessionaire of the Event of Default and Concessionaire's failure to cure the Event of Default in the applicable cure period provided under Section 4.6.2, or in the case of an Event of Default that poses a threat of imminent harm to person or property, immediately and without notice.

4.7 Non-Indebtedness

- 4.7.1 The Concessionaire represents and warrants that Concessionaire, and all entities under common control with the Concessionaire or controlled by it are not as of the Commencement Date indebted to the City, and Concessionaire shall not at any time during the Term of the Concession Agreement be indebted to the City, for or on account of any delinquent

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

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

4.8 Condition of City Land

The City makes no representation or warranty regarding the condition of the City-owned land the Concessionaire may use as part of the Access Drive. including its suitability for the Concession. Concessionaire accepts the License given by the Concession Agreement and agrees to use the Access Drive in its "AS IS" condition for the purposes set forth in the Concession Agreement. Concessionaire submitted its Proposal and has entered into the Concession Agreement solely based on Concessionaire's own investigation of the condition of the City-owned land that, as Respondent, Concessionaire identified in its Proposal as the land Concessionaire wanted to use as the Access Drive.

4.9 Safety Measures

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

4.10 Compliance with Applicable Laws

"Applicable Law" and **"Applicable Laws"** mean all present and future state, federal, and municipal laws, ordinances, regulations, orders, rules, official opinions and interpretations, and requirements, that apply to any of the following:

the Concession Agreement, the License, the Concessionaire, the Tours, and Concessionaire's exercise of the License and operations of the Tours. The Concessionaire shall promptly comply with all Applicable Laws, including but not limited to:

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

4.11 Entire Agreement; No Amendment

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

4.12 No Joint Venture or Partnership

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

4.13 Severability

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

4.14 Waiver of Jury Trial

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

4.15 Place of Contract; Governing Law

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

4.16 Counterparts

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

4.17 Assignment Prohibited

Except as set forth in Section 3.15 above, Concessionaire shall not assign the Concession Agreement or any of its rights or obligations under the Concession Agreement. Any attempted assignment by Concessionaire in violation of this provision is void and is deemed an offer by Concessionaire to the City to immediately terminate the Concession Agreement, which the City may accept or decline in the City's sole discretion.

4.18 Venue

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

4.19 Validity of City Approvals

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

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

4.20 Interpretation

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

4.21 No Third Party Beneficiaries. There are no third party beneficiaries of the Concession Agreement.

4.22 Time of the Essence

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

4.23 Force Majeure Event

4.23.1 Concessionaire is excused from compliance with any obligation or limitation under the Concession Agreement where (1) compliance with the obligation or limitation is rendered impossible by any unexpected event in the nature of a hurricane, tornado, earthquake, war, terrorism, riot, embargo, or labor strike (except a strike by Concessionaire's own employees), (2) the breakdown or failure of any apparatus, equipment or

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

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

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

SECTION 5 – ELIGIBILITY TO SUBMIT A PROPOSAL

5.1 General

To be eligible for award of the Concession Agreement and the License, a Respondent must demonstrate that it has the skills and capacity to construct and maintain an Access Drive, or to supervise construction and maintenance of an Access Drive, and to successfully manage and operate the Tours.

5.2 Management Experience and Qualifications

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

5.3 Records and Reports

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

5.4 Respondents Restricted

- 5.4.1 No Proposal will be accepted from, and the Concession Agreement will not be awarded to, any person, firm, or corporation that is in arrears or is in default of any debt to the City (including without limitation tax delinquencies), any contract obligation, or any surety obligations to the City, or has failed to comply with any existing or previous contract with the City, or has failed to execute a contract that the person, firm, or corporation negotiated with the City.
- 5.4.2 The City will not accept any Proposal from, nor award the Concession Agreement to, any official, officer, director, official, or employee of the City or Conservancy. The City will not accept any Proposal from, nor award the Concession Agreement to, any person, firm, or corporation in which any official, officer, director, or employee of the City or Conservancy has a direct or indirect financial interest, including but not limited to a firm in which a City or Conservancy official's, officer's, director's, or employee's parent, grandparent, spouse, sibling, child, or relative in-law is an officer, director, or employee.
- 5.4.3 The City will not accept any Proposal from, nor award the Concession Agreement to, any Respondent that is involved in litigation against the City, including but not limited to negotiation to settle a claim against the City.

5.5 Respondents May Submit Only One Proposal

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

SECTION 6 – PROPOSAL SUBMISSION REQUIREMENTS

6.1 Responsiveness

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

6.2 Form of Proposal

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

RFP

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

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

6.4 Company Profile; Operating Experience

Each Respondent must:

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

- 6.4.7 Provide at least three (3) recent references with whom the Respondent has worked and who can describe such matters as the Respondent's financial and operational capability (e.g. operating quality amphibious vehicle tours with a portion on a river or lake). The Respondent must include the name of the reference entity, a description of the nature of the listed reference's experience with the Respondent, and the name, title, address, email address, and telephone number of a contact person at the reference entity.
- 6.4.8 List all contracts the Respondent and all its Related Companies have had with the City, or with the City, in the last five (5) years.
- 6.4.9 If Respondent or any of its Related Companies has filed for bankruptcy protection in the last five years (or had a bankruptcy petition filed against it), Respondent must provide a brief explanation of the circumstances and outcome of the filing.
- 6.4.10 List all surety companies that have previously issued performance bonds on behalf of Respondent or any of Respondent's Related Companies, the addresses of each surety company, the amount of each bond, and the term of each bond. List any performance bonds that were called in the last five years due to unsuccessful completion of the contract.
- 6.4.11 If Respondent is a subsidiary formed to submit a Proposal and, if selected, act as the Concessionaire, or if a Respondent intends to form a subsidiary to sign the Concession Agreement and be the Concessionaire, the City may require the Concessionaire's parent company to sign a surety agreement in favor of the City to guarantee all of the Concessionaire's obligations under the Concession Agreement.
- 6.4.12 List up to three projects for which the Respondent has either performed or supervised the construction of drives and ramps, or either of them, for its use in connection with amphibious vehicle tours.

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

The Concession Agreement is subject to Chapter 17-1600, "Economic Opportunity Plans" relating to the participation of minority-owned, women-owned, and disabled-owned businesses (collectively, "M/W/DSBEs") and employment of minority and female tradespersons in City contracts. Respondents are required to respond to the Economic Opportunity Plan ("EOP") specified in **Appendix 4** of this RFP. For a listing of firms certified as M/W/DSBEs, please visit <http://oeo.phila.gov/home/directory.asp>. The City may, in its sole discretion, reject any Proposal that does not include an EOP.

6.6 Financial Information

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

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

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

6.8 Concession Fee Proposal: MAG and Gross Revenue Percentage Fee

6.8.1 Using **Form B**, each Respondent must propose a **MAG** payment to the City of not less than \$50,000 per year for the right to manage and operate the Tours.

6.8.2 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 Tours.

1. In this RFP and the Concession Agreement, "**Gross Revenues**" means all revenue received by the Concessionaire from management and operation of the Tours or exercise of the License, from all sources and however characterized. Without limiting the definition of Gross Revenues immediately above, Gross Revenues include, but are not limited to, the following: sales of Tour tickets, sales of each private Tour or special Tour, sales of Tour-related merchandise, and all other sources of revenue related to the Tours.

6.9 [Intentionally omitted.]

6.10 Access Drive Improvement Plan

Each Respondent must submit a plan that documents all fixed equipment, non-fixed equipment and/or improvements the Respondent plans to make on or in the Access Drive (“**Improvement Plan**”). The Improvement Plan must include a description of the costs of the fixed equipment, non-fixed equipment and improvements the Respondent plans to construct or install.

- 6.10.1 If a Respondent is selected to execute the Concession Agreement with the City, then the City shall endeavor to review the Respondent’s Improvement Plan not later than 30 days following execution of the Concession Agreement. The Improvement Plan is not approved unless the Executive Director and Managing Director (or their respective designees) approve it in writing. The Executive Director and Managing Director each may, however, review the Improvement Plan prior to the City’s and Concessionaire’s execution of the Concession Agreement.
 - 6.10.1.1 Following the later of (A) the Commencement Date or (B) the Executive Director’s and Managing Director’s approval of the Improvement Plan, the Concessionaire shall promptly commence and diligently implement the Improvement Plan, but in no event shall Concessionaire fail to complete the Improvement Plan within 180 days following the later of the Commencement Date or the Executive Director’s and Managing Director’s approval. The Concessionaire shall make any improvements or install any equipment or fixtures not part of the approved Improvement Plan
- 6.10.2 Equipment the Concessionaire installs that is not a fixture remains the property of the Concessionaire.
- 6.10.3 All capital improvements and fixtures are subject to the provisions of Section 3.5 of the RFP.
- 6.10.4 The City will not consider Proposals that request or require reimbursement to the Concessionaire of any portion of Concessionaire’s capital improvement cost if the Concession Agreement is terminated following an Event of Default or a Force Majeure Event before the end of the Term.

6.11 Pro-Forma

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

6.12 Operating Plan

- 6.12.1 All Proposals must include a detailed operating plan for management and operation of the Tours (“**Operating Plan**”). At a minimum, the following must be included in the Operating Plan:
- 6.12.1.1 A detailed description of how the Respondent would manage and operate the Tours, including but not limited to: an Operating Schedule, staffing requirements, starting point, stops and streets traveled on tour and equipment needs. Each Respondent may submit a proposed Operating Schedule that the Respondent believes is appropriate for the Tours.
 - 6.12.1.2 Identification of Respondent’s on-site management team and description of the team’s background and experience.
 - 6.12.1.3 An estimated number of employees and the positions the employees will fill in Concessionaire’s management and operation of the Tours.
 - 6.12.1.4 The customer service standards Respondent deems necessary to manage and operate the Tours.
 - 6.12.1.5 Description of any other requirements not mentioned in Section 3 of this RFP that are required to ensure the safe, legal management and operation of the Tours.
- 6.12.2 If the City renews the Concession Agreement for a Renewal Term in accordance with Section 3.1 above, then the Concessionaire shall submit to the Executive Director an updated Operating Plan (“**Annual Operating Plan**”) for managing and operating the Tours during the Renewal Term. The Concessionaire shall submit its Annual Operating Plan reasonably promptly following the Concessionaire’s receipt of the City’s Renewal Notice, but not later than 10 business days before the start of the Renewal Term. The Concessionaire’s Annual Operating Plan is subject to the Executive Director’s approval, which may be subject to conditions and changes the Executive Director reasonably requires.

6.13 Confidential Information

- 6.13.1 If a Respondent chooses to include material of a confidential nature, then the Respondent must mark the confidential material as noted below and explain why it is confidential. The City will exercise reasonable care to honor confidentiality requests, subject to Applicable Laws.
- 6.13.2 Each Respondent must identify the pages of its Proposal that contain confidential information by prominently marking those pages as explained

below. Respondents are reminded that the mere designation of information as confidential does not necessarily make it so under Applicable Law. Respondents should include the following notice in the front of each copy of their Proposal:

NOTICE

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

6.14 Objections

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

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

7.1 Conditions Regarding Proposals

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

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

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

7.2 Reservation of Rights

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

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

to do so;

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

7.3 Concession Agreement Effectiveness

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

- 7.3.1 The Concession Agreement has been signed by the Respondent and approved by the City's legal counsel;
- 7.3.2 The Concession Agreement has been executed by the City; and
- 7.3.3 The Respondent has submitted certificates of insurance in accordance with Section 4.4 of this RFP and **Appendix 3**.

7.4 Acceptance of the Provisions of this RFP

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

SECTION 8 – EVALUATION OF PROPOSALS

8.1 Selection Committee

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

8.2 Proposal Evaluation Criteria

- 8.2.1 The Selection Committee will evaluate Proposals by considering the criteria listed below. No particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list.
 - 8.2.1.1 Demonstrated experience at operating amphibious vehicle tours.
 - 8.2.1.2 Proposed Concession Fee and Improvement Plan for Concessionaire’s Facilities.
 - 8.2.1.3 Financial capacity to perform the services required by the RFP and presented in the Respondent’s Proposal.
 - 8.2.1.4 The proposed Operating Plan.
 - 8.2.1.5 Demonstrated experience either performing or supervising the performance of construction of drives and ramps, or either of them, in connection with operating amphibious vehicle tours.
 - 8.2.1.6 M/W/DSBE participation percentages.
 - 8.2.1.7 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 _____, 2010

Name of Respondent

Signature of Individual or Authorized Signer

Printed Name and Title of Signer

Additional Authorized Signer (if applicable)

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

Federal Employer Identification Number

Phone Number

E-mail Address

Street Address

City, State, Zip Code

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

This ____ day of _____, 2010

Corporate Name

Signature of Authorized Official

Printed Name and Title of Signer

Additional Authorized Signer (if applicable)

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

Federal Employer Identification Number

Phone Number

E-mail Address

Street Address

City, State, Zip Code

Appendix 1
To RFP for the Operation of Amphibious Vehicle Tours
Using the Schuylkill River
City of Philadelphia Water Department Infrastructure
Water, Wastewater, and Stormwater Infrastructure along
Schuylkill River between Fairmount Dam and Market Street (“Subject Area”)

The Philadelphia Water Department has a variety of water, wastewater, and stormwater infrastructure along the Schuylkill River within the Subject Area.

Following is a list of infrastructure in the Subject Area that provides general information to acquaint potential Respondents to the RFP to the presence of Water Department infrastructure. Each potential Respondent is urged to verify this information at the address set forth in Section 2.2.6 if the potential Respondent intends to use the information for design or planning decisions. This list below is not meant to be exhaustive. The Department of Parks and Recreation may also have stormwater drainage infrastructure in the Subject Area, and potential Respondents are urged to contact the Executive Director at the address in Section 1.14.1 to learn more about Parks and Recreation’s infrastructure.

Water Mains

The Water Department has a 6-inch water main running parallel to the river on the east side from the Fairmount Dam to the Spring Garden Street Bridge. The Water Department has no other water mains crossing or adjacent to the Schuylkill River within that area. Any other water mains in the Subject Area are in the adjacent street grid system.

Wastewater

The Water Department has intercepting sewers parallel to the Schuylkill River along both the east and west sides of the river. On the west side of the river, the sewer varies in size from 30 inches to 42 inches in diameter. On the east side, the sewer varies from 5 feet 6 inches to 6 feet 9 inches in diameter. The east side sewer runs under 23rd Street from Vine St. to Market St.; north of that, the sewer is located in the green space along the river. The other sewers in the Subject Area are in the City’s street grid system. There are no sewer crossings of the river in the Subject Area.

Stormwater/Combined Sewer Overflow (CSO) Outfalls

There are numerous stormwater/CSO outfalls in the Subject Area.

On the east side of the river there are stormwater/CSO outfalls at Market St., Arch St., and Race St.; four outfalls between Vine St. and the Spring Garden Street Bridge; and three outfalls between the Spring Garden Street Bridge and the Fairmount Dam. There are also stormwater conduits in Martin Luther King Drive, Spring Garden Street, and the Benjamin Franklin Parkway east of the Spring Garden Street Bridge.

On the west side of the river there are stormwater/CSO outfalls at Market St., Arch St., and south of Vine Street. There is one outfall between Vine Street and the Spring Garden Street Bridge along with about 1000 feet of stormwater conduit parallel to the river. There are three outfalls between the Spring Garden Street Bridge and the Fairmount Dam on the west side of the river. There are no stormwater conduits that cross the river within the Subject Area.

Appendix 2
To RFP for the Operation of Amphibious Vehicle Tours
Using the Schuylkill River

Special Event Road Closures Near Eakins Oval and King Drive

2010 Martin Luther King Drive Event Closures:

NOTE: Shaded areas are events that occur outside the times and/or dates of regular closures.

Date, Time and Event

Saturday 3/13/2010 Leprechaun Run 6 AM to 11 AM
Saturday 3/20/2010 Walk for Water 6 AM to 11 AM
Saturday 3/20/2010 Upenn/Drexel Cycling Tour De Philadelphia 6 AM to 2 PM
Sunday 3/21/2010 Get Your Rear in Gear 6 AM to 11 AM
Saturday 4/3/2010 MLK Drive Seasonal Weekend Closure Begins 6 AM to 5 PM

Saturday 4/10/2010 Walk Against Hunger 6 AM to 11 AM
Saturday 4/17/2010 Run for Clean Air 6 AM to 11 AM
Sunday 4/18/2010 Dash For Organ Donor Awareness 6 AM to 11 AM
Sunday 4/18/2010 Penn Relays Distance Classic 20K & 5K 6 AM to 11 AM
Saturday 4/24/2010 Miles For Myeloma Walk 6 AM to 11 AM

Sunday 4/25/2010 March For Babies 6 AM to 11 AM
Saturday 5/1/2010 University City 5K Run 6 AM to 11 AM
Sunday 5/2/2010 MS Walk 6 AM to 11 AM
Sunday 5/9/2010 Race for the Cure 6 AM to 11 AM
Saturday 5/16/2010 RAPCS Bike & Hike @Black Road 6 AM to 11 AM

Sunday 5/16/2010 Bar Assoc. 5 K Run/Walk 6 AM to 11 AM
Saturday 5/22/2010 CCFA Taking Steps 6 PM to 8 PM
Saturday 5/29/2010 Oddysey Half Marathon 6 AM to 12 PM
Saturday 6/5/2010 US Pro Bike Race Time Trail 6 AM to 12 PM
Sunday 6/6/2010 US Pro Bike Race 6 AM to 3 PM

Sunday 6/13/2010 Strides for Stroke Walk-a-thon 6 AM to 12 PM
Saturday 6/19/2010 Easter Seal Walk 6 AM to 12 PM
Sunday 6/20/2010 Run For Your Life 6 AM to 12 PM
Saturday 6/26/2010 Philadelphia Triathlon - Sprint 7 AM to 2 PM
Sunday 6/27/2010 Philadelphia Triathlon 7 AM to 2 PM

Sunday 7/4/2010 July 4th Celebration 6 AM to 12 Midnight
Sunday 7/11/2010 Philadelphia Women's Triathlon 6 AM to 12 PM
Saturday 8/7/2010 Lymphomathon Walk 6 AM to 12 PM
Sunday 8/1/2010 Philadelphia She Rox Triathlon 6 AM to 12 PM
Sunday 8/8/2010 Grand Fondo Bike Ride 6 AM to 12 PM

Appendix 2
To RFP for the Operation of Amphibious Vehicle Tours
Using the Schuylkill River

Saturday 9/4/2010 Race for Jobs Walk 6 AM to 12 PM

Saturday 9/11/2010 Undy 5000 6 AM to 12 PM

Sunday 9/12/2010 Bike Philly 8 AM to 1 PM

Sunday 9/19/2010 Phila. Distance Run 6 AM to 12 PM

Saturday 9/25/2010 Run on the River 6 AM to 12 PM

Sunday 9/26/2010 The Parkway Run 6 AM to 12 PM

Saturday 10/2/2010 Step out for Diabetes 6 AM to 12 PM

Sunday 10/3/2010 Suicide Prevention Walk 6 AM to 12 PM

Saturday 10/9/2010 MADD Walk 6 AM to 12 PM

Sunday 10/10/2010 Making Strides Against Breast Cancer 6 AM to 12 PM

Sunday 10/17/2010 AIDS Walk 6 AM to 3 PM

Saturday 10/23/2010 Domestic Violence Awareness Walk 6 AM to 12 PM

Saturday 10/23/2010 Light the Night 4:30 PM to 8:30 PM

Sunday 10/24/2010 JDF Walk To Cure Diabetes 6 AM to 12 PM

Saturday 10/30/2010 Biblio Dash 6 AM to 12 PM

Sunday 11/7/2010 Race For Hope 5K Run/Walk 9 AM to 12 PM

Saturday 11/13/2010 Y12 K Walk/Run 9 AM to 12 PM

Sunday 11/14/2010 Desmoid Tumor Run 9 AM to 12 PM

Saturday 11/20/2010 Philadelphia Marathon 8K & Kids Run 9 AM to 12 PM

Sunday 11/21/2010 Philadelphia Marathon 9 AM to 2 PM

Thursday 11/25/2010 Thanksgiving Day Parade 9 AM to 2 PM

The above special events are held on M.L. King Drive **in addition to** the Drive's normal closures for recreation activities on Saturdays and Sundays from April 1 through October 31, 6 AM to 5 PM. The lower portion of M.L. King Dr. from Eakins Oval to Sweetbriar Dr. reopens to traffic at 12 Noon. Most events occur within the normal closure hours. Events that occur outside normal closure hours are indicated by shading.

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2010 Benjamin Franklin Parkway Event Closures:

Day, Time and Event

Sunday 3/14/2010 St. Patrick's Day Parade 10 AM to 4 PM
Sunday 3/21/2010 Greek Independence Day Parade 10 AM to 4 PM
Tuesday 4/13/2010 Red Bull Ball Park Crank 10 AM to 3 PM
Saturday 5/1/2010 Philadelphia Turkist Parade 10 AM to 4 PM
Sunday 5/9/2010 Susan Komen Foundation Race for the Cure 6 AM to 12 Noon

Sunday 6/6/2010 Pro Bike Championship Race 7 AM to 3 PM
Saturday 7/4/2010 July 4th Parade, Concert & Fireworks 11 AM to 11 PM
Sunday 8/29/2010 Unity Day on the Parkway 6 AM to 12 Midnight
Sunday 9/11/2010 Bike Philly 8 AM to 10 AM
Sunday 9/19/2010 Philadelphia Distance Run 8 AM to 10 AM

Saturday 9/25/2010 Ratha-Yatra Parade 10 AM to 4 PM
Sunday 9/26/2010 Puerto Rican Day Parade/Parkway Run 8 AM to 4 PM
Sunday 10/3/2010 Pulaski Day Parade 10 AM to 4 PM
Sunday 10/17/2010 AIDS Walk 8 AM to 1 PM
Saturday 11/20/2010 Philadelphia Marathon 8K Run 6 AM to 4 PM

Sunday 11/21/2010 Philadelphia Marathon & Half 6 AM to 4 PM
Thursday 11/25/2010 Thanksgiving Day Parade 7 AM to 1 PM

Vehicular traffic to some or all of Benjamin Franklin Parkway, Eakins Oval, and Logan Circle will be closed during these events. Intermittent through-traffic may be established and regulated by the Philadelphia Police Department.

Some events listed in connection with closures of Benjamin Franklin Parkway, Eakins Oval, and Logan Circle may also be listed in connection with closures of Martin Luther King Drive.

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Indemnification, Release, and Insurance

NOTE: Except as otherwise defined in this Appendix, capitalized words and phrases used in this Appendix have the meaning assigned to them in the RFP.

1. Indemnification

Concessionaire shall promptly indemnify, defend, and hold harmless the City of Philadelphia from and against all claims, liabilities, litigation, damages, costs (including reasonable attorney's fees and costs), judgments, and liens (individually, a "**Claim**" and, collectively, the "**Claims**"), arising in whole or in part, directly or indirectly, from the Concessionaire's act or omission or any of its contractors' or subcontractors' act or omission, including but not limited to property damage and personal injury (including death). In the event of any Claim, Concessionaire shall defend the Claim on behalf of the City, and Concessionaire shall pay, perform and discharge each judgment, order or decree entered, or agreed to, on account of any Claims. Concessionaire may not, however, settle any Claim without the prior written approval of the Executive Director. Despite Concessionaire's obligations under this indemnification provision, the City may, in its sole discretion, defend any Claim with counsel of the City's own choosing. Concessionaire's obligations under this indemnification provision survive the Concession Agreement Ending Date.

2. Release

In consideration of the License the City gives to the Concessionaire under the Concession Agreement, upon executing the Concession Agreement Concessionaire, for itself and its officers, directors, employees, agents, sub licensees, contractors and subcontractors, successors and assigns, and any person claiming by, through, or under them, or any of them (collectively, the "**Releasors**"), forever releases the City (acting officially or otherwise) (the "**Releasee**"), from any and all, and all manner of, actions and causes of action, suits, claims, liabilities and demands whatsoever in law or in equity which the Concessionaire or any of the Releasors may have against the Releasees, relating in any way to any condition in, on, or about any City-owned land, including but not limited to the Access Drive during the exercise of the License, or any of the Releasors entry onto or use of the Access Drive, or relating in any way to the exercise of any rights or performance of any obligations under the RFP or the Concession Agreement.

3. Insurance

Throughout the Term, Concessionaire shall at its sole cost and expense obtain and maintain, and shall cause its contractors and subcontractors to obtain and maintain, the types and minimum limits of coverage specified below.

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3.1 Concessionaire shall obtain and maintain the required insurance from reputable insurers authorized to do business in the Commonwealth of Pennsylvania.

3.2 Concessionaire shall cause all the required insurance listed below to be written on an “occurrence” basis and not a “claims-made” basis.

3.3 Concessionaire shall not come onto any City-owned land, including but not limited to the Access Drive, and shall not perform any work in or on the Access Drive, until Concessionaire has caused the required evidence of insurance to be furnished to the City, as specified below.

3.4 If Concessionaire fails to obtain or maintain the required insurance, the City may treat the failure as a material breach of the Concession Agreement and exercise all available rights and remedies.

3.5 Concessionaire shall cause its insurers to provide, and its insurance policies to provide for, at least 30 days prior notice be given to the City in the event coverage is materially changed, cancelled, or non-renewed.

i. Worker’s Compensation and Employers’ Liability

a. Workers Compensation – Statutory Limits;

b. Employers Liability:
\$100,000 Each Accident – Bodily Injury by Accident;
\$500,000 Each Employee – Bodily Injury by Disease;
\$100,000 Policy Limit – Bodily Injury by Disease;

c. Other states endorsement including Pennsylvania and United States Longshoremen and Harbor coverage.

ii. General Liability Insurance

a. Limits of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$100,000 per occurrence for damage to rented or licensed premises; \$1,000,000 personal and advertising injury; and \$2,000,000 products and completed operations aggregate.

b. Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional

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insureds; cross liability and broad form property damage
(including completed operations) liability.

- iii. Auto Liability Insurance
 - a. Limits of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
 - b. Coverage: Owned, non-owned, hired or leased vehicles, including coverage for the amphibious vehicles.

- iv. Professional Liability Insurance (only applicable for Concessionaire's architectural and engineering consultants):
 - a. Limit of Liability: \$1,000,000 per occurrence, with a deductible not to exceed \$50,000.
 - b. Coverage: Architectural and engineering services errors and omissions including liability assumed under contract.
 - c. This coverage may be written on a "claims-made" basis provided that coverage for occurrences happening during the performance of the services must be maintained in full force and effect under the policy or "tail" coverage for a period of at least two years after the completion of the services.

- v. Umbrella Liability Insurance with minimum limits of \$10,000,000 per occurrence for Concessionaire and \$5,000,000 per occurrence for the Concessionaire's contractors and subcontractors, when combined with insurance required under i. through iii. above.

- vi. Marine Hull and Protection and Indemnity Liability Insurance is required of the Concessionaire as follows:
 - a. Marine Hull coverage for physical loss of or damage to the Concessionaire's amphibious watercraft used to complete services pursuant to the RFP and the Concession Agreement for the full replacement value of the vessel.
 - b. Protection and Indemnity coverage, including but not limited to Collision, Crew Liability and Passenger Liability with a limit of liability of \$10,000,000 each occurrence.

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- c. Insurance shall include coverage for the “Splash Period”, covering all amphibious watercraft while in the process of launching into, riding in, or coming out of a navigable waterway, covering any gap in coverage between the auto liability and marine protection and indemnity insurance.

- vii. Property/Installation Floater

“All Risk” Property/Installation Floater insurance for the life of the project covering the interests of Concessionaire, its contractors and subcontractors, as their interest may appear, which shall insure against physical loss or damage to all property incorporated or to be incorporated in the project, including temporary buildings used for storage of property, property stored off site and in transit. Such insurance shall cover reasonable expenses of Concessionaire’s contractors’ services or expenses required as a result of such insured loss. Such insurance shall be equal to the value of the project, or a replacement cost basis.

3.6 Concessionaire shall cause the City to be named as additional insured on all policies required above except the Workers Compensation and Employers’ Liability. All the required policies must include an endorsement stating that the coverage afforded the City as an additional insured is to be primary to any other coverage available to the City and all policies must waive all subrogation rights in favor of the City of Philadelphia.

3.7 Despite being named as additional insured or loss payee (or both) under any of the required insurance, the City is not liable for the payment of any premium or for any assessment or other charge under any of the required insurance policies. The City has no liability for the payment of any policy deductibles.

3.8 Concessionaire shall cause original certificates of insurance evidencing the required coverage to be delivered to the

City of Philadelphia
Risk Manager
One Parkway Building – 14th Floor
1515 Arch Street
Philadelphia, Pa 19102
Attention: Nella Goodwin

with a copy sent to the Executive Director at the address set forth in Section 1.14.1 of the RFP, at least five business days before Concessionaire starts any work or services under the Concession Agreement. Concessionaire shall furnish copies of the original policies of all insurance required under this RFP and the Concession Agreement at any time within 10 days after written request by the City.

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3.9 Concessionaire and its contractors and subcontractors shall not permit any lapse in or termination or cancellation of the insurance coverage required under this RFP and the Concession Agreement. Concessionaire must ensure that replacement coverage meeting the requirements of this RFP and Concession Agreement are in effect prior to the expiration of the policy period.

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

3.11 The insurance requirements set forth above do not modify, limit or reduce the Concessionaire's and its contractors and subcontractors indemnifications of the City under this Appendix and otherwise under the RFP and the Concession Agreement, and do not limit Concessionaire's and its contractors and subcontractors respective liability under the Concession Agreement to the limits of the policy(ies) of required insurance.

3.12 Concessionaire shall not take out insurance of the kind and in the amounts provided for under the Concession Agreement under any blanket insurance policy that covers other properties owned or operated by Concessionaire or its related companies.

3.13 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 the types and limits of insurance specified above.

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City of Philadelphia
Economic Opportunity Plan

I. Introduction, Definitions and Goals

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of “Economic Opportunity Plan(s)” for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan (“**Plan**”) memorializes the successful Respondent’s best and good faith efforts to provide meaningful and representative opportunities for Minority Business Enterprises (“**MBEs**”), Woman Business Enterprises (“**WBEs**”) and Disabled Business Enterprises (“**DSBEs**”), Disadvantaged Business Enterprises¹ (“**DBEs**”) (collectively, “**M/W/DSBEs**”) and an appropriately diverse building trades workforce in connection with the contract or covered project.

This Request For Proposals (“**RFP**”) and any resulting contract are subject to the Plan requirements as described in Section 17-1603 (2). Accordingly, by submission of its Proposal, a responsive and responsible Respondent makes a legally binding commitment to abide by the provisions of this Plan which include Respondent’s commitment to exercise its best and good faith efforts throughout the contract term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce of tradespeople including minority and female persons in all phases of any contract awarded under this RFP.

Respondent hereby verifies that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, 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. Respondent also acknowledges that if it is awarded a contract resulting from this RFP, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of this contract, it fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity (“**OEO**”). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency² at the time of Proposal submission will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at

¹Disadvantaged Business Enterprises (“**DBEs**”) are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26. If Respondent makes solicitation(s) and commitment(s) with a DBE, Respondent shall indicate which category, MBE or WBE, is submitted for credit.

²A list of “**OEO approved certifying agencies**” can be found at www.phila.gov/oeo

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www.phila.gov/oeo/directory. If Respondent or Respondent’s subcontractor(s) is certified by an approved certifying agency, a copy of that certification should be furnished with the Proposal.

C. For this Plan, the term “**Best and Good Faith Efforts,**” the sufficiency of which shall be in the sole determination of the City, means: a Respondent’s efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives of Chapter 17-1600. Best and Good Faith Efforts are rebuttably presumed met, when a Respondent makes commitments within the M/W/DSBE Participation Ranges established for this RFP and commits to employ a diverse workforce as enumerated herein.

D. Goals

1. M/W/DSBE Participation Ranges for Improvements and Operations

As a benchmark for the Respondent’s expression of its Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this contract through the exercise of Respondent’s Best and Good Faith Efforts. Participation opportunities for M/W/DSBEs in Improvements include, but are not limited to, the design, engineering, construction, signage and landscaping of the Access Drive and Entry Point. Participation opportunities in Operations of the Concession include, but are not limited to, vehicle maintenance and repair, maintenance of the improvements, ticketing, promotional materials, souvenirs. 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) 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. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

RFP	MBE	WBE
Improvements	15%	10%
Operations	10%	10%

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2. Employment Goals

Respondent agrees to exhaust its Best and Good Faith Efforts to employ minority persons and females in its construction workforce of apprentices and journeymen at the following levels³:

- Minority Apprentices – 50% of all hours worked by all apprentices
- Minority Journeymen – 32% of all journey hours worked across all trades
- Female Apprentices – 7% of all hours worked by all apprentices
- Female Journeypersons - 7% of all hours worked across all trades

II. Respondent Responsiveness and Responsibility

A. Respondent shall identify all its M/W/DSBE commitments and evidence its agreement to employ minority persons and females at the levels stated herein on the form entitled, “**M/W/DSBE Participation and Workforce Commitments.**” The Respondent’s identified commitment to use an M/W/DSBE on this form constitutes a representation by Respondent, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Respondent has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Respondent further represents that if Respondent is awarded the contract, Respondent will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Respondent shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Respondent is to maintain the M/W/DSBE percentage commitments throughout the term of the Concession or until completion of the M/W/DSBE’s scope of committed work; these percentages shall apply to the total value of the improvements and the Concession Fee.

1. Commercially Acceptable Function

A Respondent that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function (“CAF”). An 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 RFP), 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; 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.

The City 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 and in determining the amount of credit the Respondent receives towards the participation ranges. For example, a

³ These goals, which have been adopted by the Economic Opportunity Cabinet, are the recommendations of the Mayor’s Commission on Construction Industry Diversity.

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Respondent using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the RFP and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the Concession Agreement and shall apply to the total value of the improvements and Concession Fee. Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, Respondent is required to continue its Best and Good Faith Efforts.

C. In the event Respondent does not identify on the M/W/DSBE Participation and Workforce Commitments Form that it has made M/W/DSBE commitments within the participation ranges established for this RFP and/or does not agree to the employment goals described herein, Respondent must complete and submit a *Documentation of Best and Good Faith Efforts Form* (“**BGFE Form**”), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract and to employ a diverse workforce. The submission of the BGFE Form is an element of RFP responsiveness and failure to include this form may result in the rejection of the RFP. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Respondent must provide a list of all certification directories used for soliciting participation for this RFP. Respondent must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Respondent provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the project in a timely manner to assist them in responding to a solicitation; and

3. Respondent negotiated in good faith with interested M/W/DSBEs. A Respondent using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm’s price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

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i. Any commitments to use M/W/DSBEs in its RFP for subcontracted services and materials supply even when Respondent would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the Respondent and any M/W/DSBE(s) related to this RFP; and

iii. Attendance logs and/or records of any scheduled pre-proposal submission meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

i. Any arms length business assistance provided to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls; and

ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and

iii. Telephone logs of communications related to this RFP; and

iv. Notification of and access to RFP documents at the Respondent's office or other office locations for open and timely review; and

v. Respondent sought assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employment outreach; and

vi. Respondent published its policy of nondiscrimination in the hiring, retention and promotion of employees; and

vii. Any agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.

III. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Respondent's Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Respondent's amendment of its M/W/DSBE Participation and Workforce Commitments Form or BGFE Form.

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B. Administrative Reconsideration

1. If the OEO determines that the apparent highest Respondent has not made sufficient Best and Good Faith Efforts, the Respondent will be notified and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of OEO's decision to Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the apparent highest Respondent did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

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

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. The Successful Respondent agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Successful Respondent must provide as required and maintain the following contract documentation for the duration of the Concession term:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments.

B. The Successful Respondent shall ensure that all its on-site contractors submit, to the extent required by law, certified payrolls to the City's Labor Standards Unit in the format prescribed by that agency which includes hours worked by minority and female apprentices and journeypersons.

C. Prompt Payment of M/W/DSBEs

1. The Successful Respondent shall promptly pay its M/W/DSBE subcontractors for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Successful Respondent agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

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2. On at least a quarterly basis during the Concession term, the Successful Respondent shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

D. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Respondent's company, representatives of the building trades, the construction manager, and the City which may include the Project site's District Councilperson, OEO, and appropriate community organizations ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.
2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

V. Remedies and Penalties for Non-Compliance

A. The Successful Respondent agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the Concession agreement. It is further agreed and understood 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 remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

- a. Terminate the Concession agreement in whole or in part.
- b. Suspend/Debar the successful Respondent from proposing and/or participating in any future City contracts for a period of up to three (3) years.
- c. Recover as liquidated damages the amount of the commitment shortfall.

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 RFP nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in any contract resulting from this RFP. 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

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subcontracted services under any law or Executive Order or by any reason of any contract resulting from the RFP 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.

[See Forms on following pages; these Forms, as completed by Respondent, must be submitted with the RFP as a matter of Responsiveness and Responsibility]

DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

DEPARTMENT OF COMMERCE
OFFICE OF ECONOMIC OPPORTUNITY (OEO)

Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises¹

BID TITLE -	NAME OF BIDDER -	BID SUBMISSION DATE -

List below ALL MBE/WBE/DSBE/DBEs³ 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 ³ <input type="checkbox"/> W-DBE ³	Please Specify Work to be Performed and/or Type of Supply Effort	Date Solicited	Commitment Made			
Company Name		By Phone	By Mail	By Advertisement	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Address					(If Yes, give date solicited) (If No, provide reasons on Page 2)	
Contact Person		Date Solicited			Dollar Amount	
Telephone Number Fax #		YES ²	NO			
<input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier					Percent of Total Proposal	
OEO CERTIFICATION #				%		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ³ <input type="checkbox"/> W-DBE ³	Please Specify Work to be Performed and/or Type of Supply Effort	Date Solicited			Commitment Made	
Company Name		By Phone	By Mail	By Advertisement	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Address					(If Yes, give date solicited) (If No, provide reasons on Page 2)	
Contact Person		Date Solicited			Dollar Amount	
Telephone Number Fax #		YES ²	NO			
<input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier					Percent of Total Proposal	
OEO CERTIFICATION #				%		
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ³ <input type="checkbox"/> W-DBE ³	Please Specify Work to be Performed and/or Type of Supply Effort	Date Solicited			Commitment Made	
Company Name		By Phone	By Mail	By Advertisement	YES <input type="checkbox"/>	NO <input type="checkbox"/>
Address					(If Yes, give date solicited) (If No, provide reasons on Page 2)	
Contact Person		Date Solicited			Dollar Amount	
Telephone Number Fax #		YES ²	NO			
<input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier					Percent of Total Proposal	
OEO CERTIFICATION #				%		

¹MBE/WBE/DSBE/DBEs Listed above must be certified prior to bid submission date.

²Bidder should attach quotation with this form, but the City reserves the right to request this information which shall be submitted by bidder within 48 hours of the City's request.

³If Bidder makes solicitation(s) and commitments with a DBE, Bidder shall indicate which class type, M-DBE or W-DBE, is submitted for credit.

DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

DEPARTMENT OF COMMERCE
OFFICE OF ECONOMIC OPPORTUNITY (OEO)

BID NUMBER & TITLE -	NAME OF BIDDER -	BID SUBMISSION DATE -

Photocopy this form as necessary; you must respond for each solicited M/W/DSBE for which there is no commitment. Failure to do so may result in rejection of your bid.

Name of M/W/DSBE solicited for which no commitment was made:

No commitment resulted from your solicitation of the above identified M/W/DSBE; please explain why:

Did you attempt, in good faith, to negotiate price and scope (please be specific, attaching any dated price quotations and correspondence):

Did you offer this M/W/DSBE any arms length business assistance (e.g., introduction to manufacturer, helped provide access to line of credit, access to union hall, etc.):

Did you provide this M/W/DSBE with timely information about the scope of work required; be specific and attach dated documentary evidence of the foregoing:

DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)		
BID TITLE -	NAME OF BIDDER -	BID SUBMISSION DATE -
<i>Photocopy this form as necessary</i>		
<u>Do you operate or provide funding to any on-the-job training or apprenticeship programs? If so please describe and provide the number of trainees and breakout of minority, female and/or disabled participants:</u>		
<u>Did you seek assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employee outreach? Provide your list of minority, female, and/or disabled recruitment agencies or other community based organizations that your firm uses for employment placement:</u>		
<u>Describe any specific outreach activities through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs:</u>		
<u>Identify the unions with which you have a collective bargaining agreement. Describe any hiring practices, or involvement in Commonwealth approved apprenticeship programs that specifically encourage the training and employment of minority, women and/or disabled persons:</u>		
<u>List all directories of certified M/W/DSBEs (e.g., OEO Registry, Pennsylvania Unified Certification Program, Department of General Services) that you consulted in preparing your bid:</u>		
<u>Attach your company's Equal Employment Opportunity Statement and any published nondiscrimination policies.</u>		

**M/W/DSBE Participation and Workforce Commitments
EOPs FOR BIDS ESTIMATED AT MORE THAN \$250,000**

**DEPARTMENT OF COMMERCE
OFFICE OF ECONOMIC OPPORTUNITY (OEO)**

Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (M-DBE and W-DBE) Business Enterprises¹

BID NUMBER - _____ **NAME OF BIDDER -** _____ **BID OPENING DATE -** _____

List below all MBE/WBE/DSBE/DBEs² that you have a commitment to use for a Commercially Acceptable Function On this Bid - Photocopy this form as necessary.

<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ²		<input type="checkbox"/> Subcontractor	<input type="checkbox"/> Supplier	Quote Received		Amount Committed To	
Company Name		Work or Supply Effort to be Performed		YES ³	NO	Dollar Amount	
Address						\$	
Contact Person						Percent of Total Proposal	
Telephone Number	Fax #						%
E-mail Address							
OEO Registry #	Certifying Agency						
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ²		<input type="checkbox"/> Subcontractor	<input type="checkbox"/> Supplier	Quote Received		Amount Committed To	
Company Name		Work or Supply Effort to be Performed		YES ³	NO	Dollar Amount	
Address						\$	
Contact Person						Percent of Total Proposal	
Telephone Number	Fax #						%
E-mail Address							
OEO Registry #	Certifying Agency						
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ²		<input type="checkbox"/> Subcontractor	<input type="checkbox"/> Supplier	Quote Received		Amount Committed To	
Company Name		Work or Supply Effort to be Performed		YES ³	NO	Dollar Amount	
Address						\$	
Contact Person						Percent of Total Proposal	
Telephone Number	Fax #						%
E-mail Address							
OEO Registry #	Certifying Agency						

¹MBE/WBE/DSBEs Listed above must be certified prior to bid submission date.

²If Bidder makes commitments with DBEs, Bidder shall indicate which class type M-DBE or W-DBE is submitted for credit.

³Bidder should attach quotation with this form, but the City reserves the right to request this information which shall be submitted by bidder within 48 hours of the City's Request.

**DEPARTMENT OF COMMERCE
OFFICE OF ECONOMIC OPPORTUNITY (OEO)**

Bidder, by submission of this M/W/DSBE Participation and Workforce Commitments Form, certifies that it will use, for the duration of the project, its Best and Good Faith Efforts, as that term is defined in Chapter 17-1600 of The Philadelphia Code, to employ a diverse workforce for this project and achieve the following goals:

- Minority Apprentices – 50% of all hours worked by all apprentices
- Minority Journeymen – 32% of all journey hours worked across all trades
- Female Apprentices – 7% of all hours worked by all apprentices
- Female Journeypersons - 7% of all journey hours worked across all trades

List any and all collective bargaining agreements that Bidder is a signatory to:

Form A
To RFP for the Operation of Amphibious Vehicle Tours
Using the Schuylkill River

Concession Fee Proposal Form

Concession Fee (MAG and Gross Revenue Percentage Fee) for the right to manage and operate the Tours:

2011: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2012: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2013: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2014: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2015: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

Renewal Term (if applicable)

2016: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2017: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2018: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2019: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000

2020: \$ _____ plus _____% of Gross Revenues.
MAG at least \$50,000