Addendum No. 2

Concession RFP # C-103-16

Deadline for Submitting Proposals: March 31, 2016, at 10:30 am, Local Time

It is the sole responsibility of the Respondent to ensure it has received all addenda to the RFP. The Procurement Commissioner may, in the Commissioner’s sole discretion, reject any Proposal for which not all the addenda have been executed and returned.

NOTICE

REQUEST FOR PROPOSALS #C-103-16

FOR MOBILE FOOD & BEVERAGE GARDEN PROGRAM

RFP # C-103-16

IS AMENDED AS FOLLOWS:

Except as expressly amended by this Addendum No. 2, the RFP is unchanged. Except as otherwise defined in this Addendum No. 2, capitalized words and phrases used in this Addendum No. 2 have the meanings assigned to them in the RFP.

Part 1

1.1 Section 1.1 of the RFP is amended to read as follows:

1.1 Purpose of this Request for Proposals. The City of Philadelphia (the “City”) through its Department of Parks and Recreation (“Department”) is issuing this Request for Proposals (the “RFP”) to select a vendor to operate a Mobile Food and Beverage Garden Program (the “Program”). As further detailed in Section 1.4 of this RFP, the City may contract with the Fairmount Park Conservancy (“FPC”) to manage this Program. The Program will serve food and beverages, both alcoholic and non-alcoholic, for up to five consecutive days during a series of consecutive pop-up residencies (the “Engagement(s)”) at various
park locations throughout the Department’s Parks & Recreation’s system (Please see Appendix 1 “Selected Locations” for the list of sites which may be available for the Program.). The Program will provide seating for 50-200 people, depending on Selected Locations capacity. The Program will be self-contained and provide its own restrooms, power, lighting and sanitation equipment and services.

**Part 2**

2.1 Section 3.4 of the RFP is amended to read as follows:

3.4 **Food Preparation and Standards.** The Concessionaire shall provide an enclosed unit(s) for food and beverage service at each Selected Location the “Vending Unit(s)”). The Vending Unit(s) must be in compliance with the standards and requirements for mobile food and beverage units issued by the City of Philadelphia Department of Licenses and Inspection, the Philadelphia Health Department and other City and State agencies having jurisdiction over similar food and beverage operations. The Concessionaire shall review and incorporate to the extent possible the best practices for concessions provided in Section 6 of the Philadelphia Comprehensive Food Standards, attached as Appendix 5 to this RFP. For more information and to find an electronic copy of the Philadelphia Comprehensive Food Standards, please visit [www.phila.gov/nutritionstandards](http://www.phila.gov/nutritionstandards).

2.2 Section 3.7.1 of the RFP is amended to read as follows:

3.7.1 The Concessionaire shall provide its own electric service from a generator for each Selected Location. The City prefers that the Concessionaire use a quiet battery-powered generator. However, gas or diesel powered generators may be used if they can be located at a distance from the mobile kitchen and area where Patrons will be served.

**Part 3**

3.1 Section 4, Third Paragraph of the RFP is amended to read as follows:

Respondents must complete and submit the Proposal according to the format and directions laid out in the **Form 1 attachment to this RFP**. The City will evaluate each Respondent’s Proposal to select the Concessionaire. The City’s criteria for selecting the Concessionaire include, but are not limited to, the factors listed below. No particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list below.

**Part 4**

4.1 Section 7.5 is added to the RFP to read as follows:
7.5 The City requires that any Respondent who submits a Proposal is the same individual or business entity that, if awarded the Concession Agreement, will enter into and perform the resulting Concession Agreement with the City.

7.5.1 Except in the case of joint ventures, Proposals submitted to the City from Respondents that purport to be submitting a Proposal on behalf of another individual or business entity will not be considered, even if the other business entity is an affiliate of the Respondent.

7.5.2 In the case of multiple business entities that if awarded a Concession Agreement have formed, or intend to form a joint venture to perform the Concession Agreement, a single business entity may submit a Proposal on behalf of all such business entities so long as (i) the filing business entity is or will be a member of the joint venture, (ii) the Proposal is submitted in the name of the existing or proposed joint venture, (iii) documentation is submitted with the Proposal identifying all business entities that comprise, or will comprise, the joint venture, and demonstrating a binding agreement among those business entities to perform the Concession Agreement as the joint venture identified in the Proposal (for a joint venture that has not yet been formed, documentation signed by each identified business entity evidencing a commitment to form the joint venture if awarded the Concession Agreement is sufficient), and (iv) the non-filing business entities are eligible for award of a City contract.

7.5.3 You are advised that any individual who signs and submits a Proposal must be an authorized signatory of the Respondent, authorized to both bind the Respondent to its Proposal.

**Part 5**

5.1 Section 3 of the Appendix 2, Standard Provisions for the City of Philadelphia is amended to read as follows:

**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 proprietary 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 3 survive the Concession Agreement Ending Date.

5.2 Section 7 of the Appendix 2, Standard Provisions for the City of Philadelphia is amended to read as follows:

**7. Condition of the Selected Location(s)**

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

5.3 The first paragraph of Section 8 of the Appendix 2, Standard Provisions for the City of Philadelphia is amended to read as follows:

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

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**Part 6**

6.1 Form 1 Section 4, third paragraph is amended to read as follows:

Concession Fee (Daily Concession Fee and Gross Revenue Percentage Fee) for the operation of the Program. For the years 2020 through 2025, the City requests that Concessionaire propose Concession Fees for an extended Term and the Renewal Term, in case both the City and the Concessionaire agree to seek City Council authorization to extend the Term. Proposing Concession Fees for these years does not commit the Concessionaire to seeking City Council’s authority for an extended Term. But if Concessionaire fails to propose Concession Fees for these years, then Concessionaire’s Proposal may be deemed incomplete.

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**Part 7**

The City of Philadelphia, Department of Parks and Recreation, conducted a Mandatory Pre-Proposal Meeting on February 18, 2016 at 10:00 A.M. on the 18th Floor of the One
Parkway Building. Meeting attendees were provided index cards on which to write their questions about the RFP during the presentation. At the conclusion of the presentation, the index cards were collected and the questions were numbered from 1 to 30. The answers to questions 1 to 30 were provided at the Pre-Proposal Meeting and are also repeated below.

In addition to the index card questions, the City received 8 verbal questions (questions 31 to 38) from meeting attendees after the index card questions were answered. These questions were also answered at the Pre-Proposal Meeting and the answers are repeated below.

The Project Manager received questions via email prior to the Pre-Proposal Meeting. The answers to those questions numbered 39 to 54 are provided below. Finally, the Project Manager received one question after the Pre-Proposal Meeting and before the Deadline for Questions. The answer to question number 55 is provided below. All references are to the RFP unless specifically noted otherwise.

**Index Card Questions (Questions 1-30)**

1. **Question:** A PLCB special event permit allows 50 events per calendar year. You are proposing more than the amount allowed. Are we supposed to subcontract the additional needed?

   **Answer:** The RFP describes the maximum number of Engagements available in 2016. However, the City may consider Proposals for 50 days of operation or less per year. The minimum number of days of operation is 36. Each Respondent must determine how they will manage the number of Engagements based on its own legal, financial and operational capacity. The City strongly advises that applicants seek appropriate counsel with regard to the PLCB permitting process and other aspects of the Program.

   Respondents must propose the operating hours as well as the number of days per week (minimum of 3 days, see Section 3.3.4.1 of the RFP) and the number of weeks (minimum of 12 weeks, see Section 3.3.2) that it proposes to operate the Program. Respondents must also indicate whether they can operate Additional Engagements in the same twelve month period.

2. **Question:** Is Powers Park still a location?

   **Answer:** Yes, it is listed as a Selected Location in Appendix 1 of the RFP.

3. **Question:** What role does the Historical Society play in this plan? Are they aligned with the proposal?

   **Answer:** The Historical Society is not involved with this Program. Fairmount
Park Conservancy (“FPC”) is a non-profit organization that works with Philadelphia Parks & Recreation (PPR) on a variety of initiatives including concession opportunities, facility improvements, programming and park stewardship. The City intends to execute a professional services agreement with FPC that will document its role in overseeing the Program for PPR. See Section 1.4 of the RFP. The Concession Agreement will be between PPR and the Selected Concessionaire.

4. **Question:** Will the concessionaire be responsible for any medical services (EMS, EMT)?

**Answer:** The Concessionaire must comply with all Applicable Laws regarding medical services for special events.

5. **Question:** Is the length of stay at each venue a maximum of five days or can the vendor be in a location more than one week?

**Answer:** The maximum Engagement at each location is five days as stated in Section 3.3.4.1 of the RFP. It is possible that a location could be visited multiple times during the year.

6. **Question:** Can you explain the City’s role regarding the relationship between Concessionaire and sub-contractor?

**Answer:** The City will execute a Concession Agreement with the Concessionaire and provide permits for the Concessionaire to operate The Food & Beverage Garden Program at the Selected Locations. See Section 1.3.3 of the RFP. Please refer to Section 3.29 of the RFP for the requirements of subcontracts under the Concession Agreement.

7. **Question:** Are there any provisions/incentives for vendors to buy beer from the city’s many self-distributing breweries.

**Answer:** See Section 4, Factor 17 of the RFP. Concessionaire’s inclusion of local products is a factor to be weighed in the selection of the Concessionaire.

8. **Question:** Will I be penalized for not being a Minority, Woman or Disabled Business Enterprise (M/W/DBE)?

**Answer:** The City requires that Respondents use their Best and Good Faith Efforts to contract with M/W/DBE’s vendors in accordance with the requirements of Appendix 3 of the RFP. Respondents’ commitments to M/W/DBE firms must be documented on the Solicitation for Participation and Commitment Form 2 of the RFP. Respondents may also provide additional information about their M/W/DBE contracting efforts as an attachment to Form 2. Respondents’ efforts to include M/W/DBE vendors is included in Section 4, Factor 17 of the Selection
9. **Question:** Employees are to be paid 150% of minimum wage, is that correct?

**Answer:** PPR believes the question is about Section 21 of the RFP regarding the Philadelphia 21st Century Minimum Wage Standard. The City recommends that Respondents consult their legal and financial advisors to make a determination as to whether their employees who will operate the Program would be subject to the Philadelphia 21st Century Minimum Wage Standard. If the Respondent’s employees are subject to the 21st Century Wage Standard, but meet the definition of tipped employees under Pennsylvania’s Minimum Wage Act of 1968, then the Respondent must pay such tipped employees a sufficient hourly wage such that, when combined with the employees’ average tip income, the employees earn, on a daily basis, at least the current 21st Century Minimum Wage Standard per hour.

10. **Question:** Who is the contracting entity, the City of Philadelphia or Fairmount Park Conservancy?

**Answer:** The contracting entity is the City of Philadelphia through the Department of Parks and Recreation (PPR).

11. **Question:** Isn’t there a four year limit on contracts with the City?

**Answer:** City Council approval is required for City contracts for more than one year. The City may enter into a contract with subsequent one-year renewals, so long as the renewals are given at the City’s sole discretion. PPR may seek approval at City Council (and subsequent Mayoral approval) of an ordinance providing an Extended Term as described in Section 2.2 of the RFP.

12. **Question:** Can you make the slide presentation available to attendees?

**Answer:** The City prefers not to post slide presentation on the City’s website as an Addendum to the RFP. It encourages Respondents to work directly with the RFP because it is a more complete description of the terms and requirements of the Program and Proposal submission requirements.

13. **Question:** What is the timetable for the selection process after submission?

**Answer:** Parks & Recreation staff and department partners will be asked to participate in a Selection Committee process. The review period may take as little as two days or as long as two weeks.

14. **Question:** If I am an individual food truck, how and when will I know who the Concessionaire is?
Answer: The City recommends that you use the Pre-Proposal Meeting Attendance and Contact Information lists, posted as an Addendum No. 1 to the RFP, to network with other businesses that attended the Pre-Proposal Meeting if you are interested in being a subcontractor.

15. Question: Was this RFP for food trucks or larger organizations?

Answer: The Program requires an organization holding a PLCB Off-Premises Catering Permit. The City believes there may be opportunities for food trucks to operate as subcontractors to the Concessionaire.

16. Question: Can “one vendor” be a new entity formed by two existing vendors?

Answer: Yes. Section 7.5 of the RFP is amended to include the following City requirements regarding joint ventures. See Addendum No. 2, Part 4, Section 4.1.

17. Question: Does the Concessionaire have to provide sanitation services?

Answer: Yes. The Concessionaire must provide trash and recycling receptacles and remove waste every day at the close of business at each Engagement as further detailed in Section 3.9 of the RFP.

18. Question: Why were food trucks invited at this early stage?

Answer: Food trucks are valued PPR concessionaires and the department saw potential for them to subcontract with the Selected Concessionaire.

19. Question: How many contracts will be awarded for the ten year commitment?

Answer: There will be one Concession Agreement awarded for the Concession Term. (see Section 2 of the RFP).

20. Question: Will there be opportunities for new companies to be awarded a contract within the (potentially) ten-year term?

Answer: That is not PPR’s intent at this time. Please refer to Section 3.2.1 of the RFP for information about possible Additional Engagements.

21. Question: Will the contracts be for day or evening work and will it be five days a week or seven?

Answer: The Concession Agreement will allow the Concessionaire to operate the Program during day and/or evening hours within the Hours of Operation described in Section 3.3.4.1 of the RFP. The Concessionaire may operate at each Selected Location for a minimum of three days and a maximum of five days per...
Engagement.

22. Question: Is the 10k security deposit firm?

Answer: Yes, $10,000 is a firm amount. The Security Deposit will be required upon the execution of the Concession Agreement. The Security Deposit may also be provided in the form of a bank standby letter of credit as described in Section 3.12 of the RFP.

23. Question: The vendor secures fencing, tables, lights, security? Who oversees this? Which departments?

Answer: Yes, the Concessionaire is obligated to secure fencing, tables, lights, and security from its own vendors. The Program will be managed by PPR, with day to day oversight of the Program potentially provided by FPC under the terms of a professional services agreement. (see Sections 1.10, 3.3, 3.10, and 3.17 of the RFP)

24. Question: What are suggested fees to provide? Each location gets a certain amount of traffic with or without advertising.

Answer: The City does not have suggested fees. The Respondent must propose a flat Daily Concession Fee plus Gross Revenue Percentage Fee that permit the Respondent to achieve its return on investment goal. The Daily Concession Fee and Gross Revenue Percentage Fee must be the same for each Engagement. Respondents should consider the range of Selected Locations and projected attendance to create a Concession Fee proposal that works on average for all Engagements. See Section 3.1 and Form 1, Section 4 of the RFP.

25. Question: What are peak months of use for these locations? Some are jogging areas, some are areas used by kids.

Answer: The months of June through October are the peak months. The month of May could be available in future Program years and is also considered a peak month.

26. Question: I am interested in being the events coordinator for this program. I understand that this meeting is for food vendors, but will events coordinators be needed?

Answer: Each Respondent must make its own determination as to whether it requires an events coordinator. The City recommends that you use the Pre-Proposal Meeting Attendance and Contact Information lists, posted as an Addendum No. 1 to the RFP, to network with other organizations to inquire about the possibility of becoming an events coordinator.
27. **Question:** Can you provide ADA compliance status of each site currently and list any exceptions already granted by the City for each of the proposed sites?

**Answer:** No. The City cannot make a determination of the compliance status of each site. Respondents are urged to visit each Selected Location and make their own evaluations for set-up and accessibility.

28. **Question:** Can fees be charged by the Concessionaire for entry/access to the proposed events/sites to the public?

**Answer:** No, the City will not permit the Concessionaire to charge for entry. The Selected Locations are public parks and the City’s wants them to remain open to the general public.

29. **Question:** How will performance of selected Concessionaires be evaluated during the contract period? What remedies will be employed to address grievances?

**Answer:** The City will select one Concessionaire. It will evaluate the quality of food and beverages, security and the operation overall, the training and customer service skills of the Concessionaire’s personnel and customer counts and sales among other performance factors. The City will provide notification to the Concessionaire of grievances, if any, in accordance with the requirements of the Concession Agreement. Section 22 of Appendix 2 to the RFP details defaults and remedies for the Concession Agreement.

30. **Question:** What are the liabilities and indemnification issues?

**Answer:** The indemnification and insurance requirements are detailed in Appendix 4 of the RFP. The City urges Respondents to consult their legal and insurance advisors for advice.

**Questions Received Verbally at the Pre–Proposal Meeting (Questions 31 to 39)**

31. **Question:** If a Selected Location is not working will the City permit the Concessionaire to cancel the additional days of the Engagement?

**Answer:** The City will work with the Concessionaire to make a determination as to how to best manage the situation.

32. **Question:** How much say do the Friends of the park have to take locations off the list of Selected Locations?

**Answer:** PPR works closely with park friends groups and community associations. Their input is valued and carries weight in PPR’s decision making process. The Selected Locations listed in Appendix 1 of the RFP were vetted by
parks friends groups in a community engagement program managed by FPC.

33. **Question:** *Is the City asking Respondents to provide a percentage of revenue that will remain the same for the Term?*

**Answer:** The City wants Respondents to propose a Gross Revenue Percentage Fee and Daily Concession Fee that increase each year. Respondents must provide their Concession Fee Proposal (Daily Concession Fee and Gross Revenue Percentage Fee) on the revenue Concession Fee Proposal Form section of Form 1 of the RFP.

34. **Question:** *Is it possible that a location could drop off the list?*

**Answer:** Yes; because the Selected Locations are public spaces, it is possible that a Selected Location could be removed from the list in Appendix 1 of the RFP due to unforeseen circumstances. See Section 3.2.4 of the RFP.

35. **Question:** *How soon will list of attendees be available?*

**Answer:** The list of Pre Proposal Meeting Attendees and Contact Information is available on the City’s website (http://www.phila.gov/bids) as Addendum No. 1 to the RFP.

36. **Question:** *What is the acceptable timeline for the City to cancel an event? 6 weeks notice?*

**Answer:** The City does not anticipate that it will have to cancel any Engagements. However, as mentioned in answers to previous questions, the Selected Locations are public spaces and emergencies do arise in public spaces from time to time. The City will notify the Concessionaire of the cancellation of an Engagement as far in advance as possible.

37. **Question:** *Will the City permit private event tents?*

**Answer:** The City will not permit private events as part of the Engagements.

38. **Question:** *Does the Concessionaire have to operate at every Selected Location? Could the Concessionaire decline an Engagement at one of the Selected Locations?*

**Answer:** The City will require the Selected Concessionaire to operate at all of the Selected Locations listed in Appendix 1 of the RFP. However, a Respondent may provide in writing, any information or concerns it might have about a particular Selected Location, by attachment to Form 1 of the RFP. Respondents may also make objections under Section 3.38 of the RFP. The Concessionaire has the option to accept or decline Additional Engagements if
the City adds locations to the Selected Locations or asks that the Concessionaire operate at a Special Event for the City. (See Section 3.2.1. of the RFP)

Questions Received by the Project Manager Prior to the Pre – Proposal Meeting (Questions 39 – 54)

39. **Question**: Is there a limit to the number of licenses that will be awarded the opportunity to host a mobile garden? If so, how many?

**Answer**: A license will be awarded to one Concessionaire to operate an Engagement at each of the Selected Locations listed in Appendix 1 of the RFP.

40. **Question**: Will it be a once off opportunity to host one location for five days and that’s it, or go to a different location the next week?

**Answer**: The Concessionaire will have the opportunity to operate at a different Selected Location each week for a minimum of 12 weeks. (See Section 3.3.2 of the RFP)

41. **Question**: Will the licensee have any control over the location they are awarded?

**Answer**: The Concessionaire will be awarded a Concession Agreement to operate at all of the Selected Locations, not just one location. (See Section 1.5 of the RFP)

42. **Question**: Can a licensee operate and remain at a location or a section of the city that may suit them logistically?

**Answer**: The Concessionaire may operate at a Selected Location for a maximum of five days. The Concessionaire must operate at all of the Selected Locations listed in Appendix 1 of the RFP. (see Sections 1.5 and 3.3.4 of the RFP)

43. **Question**: Are there any fees involved outside of the off-premise catering license?

**Answer**: The Respondent must investigate, as it would for any other business opportunity, the permits, licenses and fees required to operate the Mobile Food & Beverage Garden Program.

44. **Question**: Is the licensee responsible for every cost building each mobile garden?

**Answer**: Yes, the Concessionaire is responsible for all costs to build and operate the Mobile Food & Beverage Garden Program at each Selected Location

45. **Question**: Does the City provide water and/or power?
**Answer:** The City will not provide water and power. The Concessionaire is responsible for providing all utilities, including potable water, at the Selected Locations. (see Section 3.7 of the RFP)

**46. Question:** One of my employers holds 4 PLCB licenses, but they are located respectively in Delaware & Chester County. Is this program open to any persons who operate within the Commonwealth of PA or exclusively for City of Philadelphia operators?

**Answer:** The Mobile Food & Beverage Garden Program is open to all Respondents. Respondents holding PLCB licenses must check with their PLCB advisor or with the PLCB to determine if they are eligible to receive a PLCB Off-Premises Catering Permit.

**47. Question:** Is the meeting for liquor license holders? I am the owner of a food truck; does this pertain to us also?

**Answer:** The Pre-Proposal Meeting was open to the public and was held on February 18, 2016. Those attending included organizations that have the capacity to become the Selected Concessionaire and others who are seeking the opportunity to subcontract with the Selected Concessionaire. Only current holders of a PLCB license are eligible to obtain the PLCB Off-Premises Catering Permit which is required to operate the Mobile Food & Beverage Garden Program.

**48. Question:** Do I have to fill out paperwork to join the Mobile Food & Beverage Garden Program, or can you use information you already have?

**Answer:** The Mobile Food & Beverage Garden Program is a new concession and you must complete the forms and fulfill the requirements described in the RFP in order to submit a Proposal.

**49. Question:** I intend on applying for the permit at FDR Park. Do you know if the Pavilion at FDR is an option for use?

**Answer:** Respondents to the Mobile Food & Beverage Garden Program RFP will submit a Proposal to operate at all of the Selected Locations listed in Appendix 1 of the RFP. Subsequent to approval of the FDR Parks Engagement dates, the Boathouse Pavilion at FDR Park may be available to the Selected Concessionaire to use for the FDR Park Engagement.

**50. Question:** Is there a general guideline for the concession fee?

**Answer:** There is no general guideline for an appropriate Concession Fee. (see Section 3.1 of the RFP)
51. Question: I help manage a bar in NE Philadelphia. The bar has been open for more than 3 years. It recently changed ownership and the liquor license is in the process of being transferred to the new ownership. Would this bar still qualify?

Answer: Please refer to Section 1.3 of the RFP.

52. Question: I assist in managing a couple of small food spots in Philly. I noticed in the RFP, there may be food subcontractors. Is this food subcontractor selected by the owner/operator of the beer garden? Would we qualify to submit an RFP for a food subcontractor without owning a liquor license?

Answer: Food subcontractors, if they are desired by the Selected Concessionaire, will be chosen by the Selected Concessionaire. The Selected Concessionaire will determine the appropriate qualifications of its subcontractors. Please consider using the Pre-Proposal Meeting Attendance and Contact Information list, posted as Addendum No. 1 to the RFP, to contact prospective concessionaires about potential subcontracting opportunities.

53. Question: Is the RFP only for owner/operators of the beer garden for those with liquor licenses or is it for the food subcontractors as well?

Answer: The purpose of the RFP is to solicit Proposals from organizations that have the capacity to manage and operate all aspects of the Mobile Food & Beverage Garden Program. Those organizations may choose to manage and operate the Program with the support of subcontractors.

Question Received After the Pre Proposal Meeting and Before the Deadline for Questions (Question #54)

54. Question: Our development department, which includes our design team, needs a specific site in order to properly vet the financial commitment to build out the location. Are we able to request a specific site? Or are the sites designated at random?

Answer: The Selected Concessionaire will operate the Mobile Food & Beverage Garden at all of the Selected Locations listed in Appendix 1 of the RFP. The City’s concept is that the Concessionaire will create a Program “theme and look” and obtain vending units, portable restroom facilities and attractive tables and chairs that support the look and can be easily transported and installed at each Selected Location.

END OF ADDENDUM TEXT; SIGNATURE PAGE FOLLOWS.
ADDENDUM NO. 2
ACKNOWLEDGEMENT OF RECEIPT

CITY OF PHILADELPHIA, DEPARTMENT OF PARKS AND RECREATION
REQUEST FOR PROPOSALS FOR MOBILE FOOD & BEVERAGE GARDEN PROGRAM
RFP C-103-16

I have carefully read Addendum No. 2 to the Request for the Mobile Food and Beverage Garden Program in the Philadelphia Parks and Recreation System, and I certify that I have received all pages listed in Addendum No. 2.

________________________________________________________________________
Name of Respondent

________________________________________________________________________
Signature of Respondent’s Authorized Official

________________________________________________________________________
Printed Name and Title of Signer

________________________________________________________________________
Date
Addendum No. 1  Date: February 22, 2016  
Concession RFP # C-103-16  
Deadline for Submitting Proposals: March 31, 2016, at 10:30 AM, Local Time

It is the sole responsibility of the Respondent to ensure it has received all addenda to the RFP. The Procurement Commissioner may, in the Commissioner’s sole discretion, reject any Proposal for which not all the addenda have been executed and returned.

NOTICE

REQUEST FOR PROPOSAL #C-103-16

For Mobile Food & Beverage Garden Program

RFP # C-103-16
IS AMENDED AS FollowS:

Except as expressly amended by this Addendum No. 1, the RFP is unchanged. Except as otherwise defined in this Addendum No. 1, capitalized words and phrases used in this Addendum No. 1 have the meanings assigned to them in the RFP.

• Attached are the sign in sheets from the mandatory pre-proposal meeting on February 18, 2016.

END OF ADDENDUM TEXT; SIGNATURE PAGE FollowS.
ADDENDUM NO. 1  
ACKNOWLEDGEMENT OF RECEIPT  

CITY OF PHILADELPHIA, Department of Parks and Recreation REQUEST FOR PROPOSALS For the Mobile Food & Beverage Garden Program, RFP#C-103-16  

I have carefully read Addendum No. 1 to the Request for Proposals for Mobile Food & Beverage Garden Program, and I certify that I have received all pages listed in Addendum No. 1.  

Name of Respondent  

__________________________  
Signature of Respondent’s Authorized Official  

__________________________  
Printed Name and Title of Signer  

__________________________  
Date
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<td>Frank Martino</td>
<td>267-970-0367</td>
<td><a href="mailto:the.chef@the.grill.cheese.us">the.chef@the.grill.cheese.us</a></td>
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<td>1311 Sambom Enterprise LLC (COPA)</td>
<td>Lughshighe Hennigan</td>
<td>215-545-0170</td>
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<td>Prime Stache</td>
<td>David Soy</td>
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<td>J. Thomas and Associates, LLC</td>
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<td>Aden Terranova</td>
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REQUEST FOR PROPOSALS #C-103-16

FOR MOBILE FOOD & BEVERAGE GARDEN PROGRAM

ISSUED BY:
THE CITY OF PHILADELPHIA
DEPARTMENT OF PARKS AND RECREATION
KATHRYN OTT LOVELL, COMMISSIONER

and

PROCUREMENT DEPARTMENT
TREVOR J. DAY, ACTING
COMMISSIONER

THE CITY WILL HOLD A
MANDATORY PRE-PROPOSAL MEETING on:
February 18, 2016, 10:00 a.m.
ONE PARKWAY, 18TH FLOOR
CITY PLANNING COMMISSION MEETING ROOM
1515 ARCH STREET
PHILADELPHIA, PENNSYLVANIA

SEALED PROPOSALS WILL BE RECEIVED UNTIL March 31, 2016
AT 10:30 A.M. LOCAL TIME (THE “DEADLINE FOR SUBMITTING PROPOSALS”).

PROPOSALS MUST BE SUBMITTED TO
THE CITY OF PHILADELPHIA PROCUREMENT DEPARTMENT AT
MUNICIPAL SERVICES BUILDING, 1401 JOHN F. KENNEDY BOULEVARD, ROOM 170A, PHILADELPHIA, PA 19102
AND WILL BE OPENED IMMEDIATELY AFTER THE DEADLINE FOR SUBMITTING PROPOSALS

Questions regarding this Request for Proposals must be submitted in writing before
February 25, 2016 at 5:00 p.m. local time (“Deadline for Questions”) and directed to
Marc Wilken, Project Manager at marc.wilken@phila.gov
Table of Contents

Section 1 – Overview & General Information
1.1 Purpose of this Request for Proposals ............................................. 1
1.2 Description of Program ................................................................. 1
1.3 Respondents to this RFP; the Concession Agreement and Concessionaire ................................................................. 1
1.4 Conservancy Contract ................................................................. 2
1.5 Operating Schedule ................................................................. 2
1.6 Program Operates only on Dates Permitted .................................. 2
1.7 Standard Provisions ................................................................. 2
1.8 Concession Fee ................................................................. 2
1.9 Review Entire RFP Carefully; RFP Will Be Part of Concession Agreement ........................................................................... 2
1.10 Mandatory Pre-Proposal Meeting ............................................. 3
1.11 Project Manager; Questions about the RFP .................................. 3
1.12 Deadline for Submitting Proposals ........................................... 4
1.13 Not an Exclusive Right; Food Service Program ................................. 4
1.14 No Obligation on City to Execute a Concession Agreement ............ 4
1.15 Modifications; Late Proposals ................................................. 4
1.16 Public Disclosure ........................................................................... 4

Section 2 – Term
2.1 Initial Term and Renewal Term(s) of the Concession Agreement ... 4
2.2 City Council Authorization; Extended Term ...................................... 5

Section 3 – Concession Agreement: Specific Contract Provisions
3.1 Concession Fee; Late Payments; Accounting Report ......................... 5
3.2 Selected Locations ......................................................................... 6
3.3 The Operating Schedule and Hours of Operation; City Approvals of Program Components ....................................................... 7
3.4 Food Preparation and Standards .................................................. 8
3.5 Licenses and Permits ..................................................................... 8
3.6 Restrooms ................................................................................... 8
3.7 Utilities ..................................................................................... 9
3.8 Seating ..................................................................................... 9
3.9 Trash and Recycling .................................................................... 9
3.10 Lighting ................................................................................... 9
3.11 Entertainment; Promotion Space for Park Representatives .................. 10
3.12 Security Deposit ...................................................................... 10
3.13 Conditions Of Site Upon Conclusion of Engagements ....................... 10
3.14 Selected Location Restrictions .................................................. 10
3.15 Tree Management Provisions.................................................. 11
3.16 Personnel........................................................................... 11
3.17 Security Plan......................................................................... 11
3.18 Signs; Department of Parks and Recreation’s Mark................. 12
3.19 Customer Service............................................................... 12
3.20 Marketing........................................................................... 12
3.21 Maintenance........................................................................ 13
3.22 Alterations to the Selected Locations..................................... 13
3.23 City Access to Selected Locations.......................................... 13
3.24 Public Access to Selected Locations......................................... 14
3.25 Storage............................................................................... 14
3.26 Environmentally-Friendly (“Green”) Products & Practices........... 14
3.27 Hazardous Materials........................................................... 15
3.28 ADA Compliance ................................................................ 15
3.29 Subcontracting.................................................................... 15
3.30 Smoking Policy.................................................................... 15
3.31 Anti-Discrimination Policy and Reports Regarding Participation of Disadvantaged Firms............................ 16
3.32 No City Obligation............................................................... 16
3.33 Ownership of the Selected Locations...................................... 16
3.34 Reserved............................................................................ 16
3.35 Standard Provisions............................................................ 16
3.36 Indemnification, Release and Insurance................................. 16
3.37 Confidential Information....................................................... 16
3.38 Objections........................................................................ 17

Section 4 – Selection Criteria & Respondents Qualifications…... 17

Section 5 – Reservation of Rights; Concession Agreement Effectiveness

5.1 To Reject Proposal............................................................... 18
5.2 To Postpone, Cancel, or Reissue RFP..................................... 18
5.3 To Reject for Reason ........................................................... 18
5.4 To Supplement, Amend of Modify RFP................................. 19
5.5 To Waive Requirements Not Material.................................... 19
5.6 To Request Modifications, Supplements, or Clarifications....... 19
5.7 To Request Interviews or Presentations................................. 19
5.8 To Conduct Investigations.................................................... 19
5.9 To Elect Not to Contract....................................................... 19
5.10 Concession Agreement Effectiveness................................. 19
5.11 Agree to the Provisions of this RFP................................. 20
1. **OVERVIEW & GENERAL INFORMATION**

1.1 **Purpose of this Request for Proposals.** The City of Philadelphia (the “City”) through its Department of Parks and Recreation (“Department”), in partnership with the Fairmount Park Conservancy (“FPC”) is issuing this Request for Proposals (the “RFP”) to select a vendor to operate a mobile food and beverage garden program (the “Program”). The Program will serve food and beverages, both alcoholic and non-alcoholic, for up to five consecutive days during a series of consecutive pop-up residencies (the “Engagement(s)”) at various park locations throughout the Department’s park system. Please see Appendix 1 “Selected Locations” for the list of sites which may be available for the Program. The Program will provide seating for 50-200 people, depending on Selected Locations’ capacity. The Program will be self-contained and provide its own restrooms, power, lighting and sanitation equipment and services.

1.2 **Description of Program.** The City’s goal in issuing this RFP for the Program is to attract people to the City’s parks and provide a new amenity for park users. It is anticipated that the Program will introduce residents to Philadelphia Parks & Recreation’s incredible, and often unknown, assets in a fun and engaging way. This innovative reuse of outdoor space invites people to experience an old Philadelphia tradition in the parks, harkening back to the mid-19th century when German immigrants brought ‘biergartens’ here. The Program revives the old tradition with an original 21st century twist, offering families throughout the City the opportunity to experience a nearby beer garden with their friends and neighbors. Patrons and visitors alike will have a chance to celebrate Philadelphia’s rich culture, history and beautiful parks while celebrating the city as one of the world’s craft beer capitals.

1.3 **Respondents to this RFP; the Concession Agreement and Concessionnaire.** Firms or individuals interested in responding to this RFP must submit a proposal form (the “Proposal”). The Proposal must include Form 1 of this RFP and all of the documents listed in Section 10 of this RFP. Each firm or individual that submits a Proposal in response to this RFP will be considered a “Respondent”.

1.3.1 Respondents must have a minimum of three years of experience operating one or more successful food and beverage venues that are currently in business. The City is particularly interested in receiving proposals from individuals or firms whose current venues offer settings and menus widely recognized to be more creative and of higher quality than the average city venue. Respondents experienced at operating outdoor venues will be given additional consideration at proposal selection time. Refer to Section 4 for further criteria.

1.3.2 Respondents must hold a current Pennsylvania Liquor Control Board (“PLCB”) liquor license(s) in good standing for any existing establishments and be capable of securing a **PLCB “Off-Premises Catering Permit”** for the sale of alcoholic beverages, which will be mandatory for the Program. See Section 3.5.

1.3.3 The City and FPC will evaluate Proposals and select the Respondent the City believes will best fulfill the purposes of this RFP and meet the selection criteria set forth in Section 4 of this RFP. The City intends to enter into a written contract (the “Concession Agreement”)
with the selected Respondent. The City will provide a Food & Beverage Garden Permit (the “Permit(s)”) for each of the Engagements. When the Respondent and the City have fully signed the Concession Agreement, the Respondent will become a “Concessionaire.” The Concession Agreement will give the Concessionaire a license to operate the Program, selling food and beverages in each Selected Location on the dates and times specified on the Permit(s) and/or at the direction of The City.

1.4 **Conservancy Contract.** The City intends to enter into a professional services agreement with FPC. If the City enters into an agreement with FPC (the “Conservancy Contract”), FPC will oversee the Concession.

1.5 **Operating Schedule.** The City and FPC intend to work with the Concessionaire to develop an Operating Schedule (defined in Section 3.3.4 below) for the Program consisting of specific dates of Engagements at Selected Locations. See Section 3.3 of this RFP for details on the Operating Schedule. The City strongly encourages all Respondents to visit each of the Selected Locations in Appendix 1 to assess site access, determine guest capacity, and assess the ability to set up the required amenities for the Engagement, such as a mobile kitchen, restrooms and other equipment at each Selected Location. The City cannot guarantee that all Selected Locations will be available or that they will be available during dates preferred by the Concessionaire.

1.6 **Program Operates Only On Dates and Times Permitted.** The Program will operate only during the months, dates and times specified in the Permits subject to the terms of the Concession Agreement. The Program only pertains to activity at the Selected Locations specified on each Permit. Hours of Operation for service are proposed in Section 3.3.4.2 of this RFP.

1.7 **Standard Provisions.** The Concessionaire shall comply with the City’s standard provisions (the “Standard Provisions”). The Standard Provisions are attached to this RFP as Appendix 2. Capitalized words and phrases used in this RFP and not defined in this RFP have the meaning assigned to them in the Standard Provisions.

1.8 **Concession Fee.** A Respondent must propose a Concession Fee as described in more detail in Section 3.1 of this RFP. Each Respondent must state its proposed daily Concession Fee as further detailed in Section 10 of this RFP.

1.9 **Review Entire RFP Carefully; RFP Will Be Part of Concession Agreement.** Upon the City’s issuance of a Concession Agreement to the Concessionaire, this RFP, together with the Standard Provisions, the Concessionaire’s Proposal, the Concession Agreement, and the Permits, will become the “Concession Agreement Documents.” The Concessionaire shall comply with the Concession Agreement Documents. Therefore, the City urges each potential Respondent to carefully review this entire RFP, especially Section 3 which contains the Specific Contract Provisions, the Standard Provisions, and the Insurance and Indemnity Provisions and to prepare its Proposal carefully, because each document contains provisions that will become legally binding obligations of the Respondent as the Concessionaire.
1.10 Mandatory Pre-Proposal Meeting. The City will hold a “Mandatory Pre-Proposal Meeting” for all interested potential Respondents on the date and time, and at the location, stated on the cover page of this RFP. The Mandatory Pre-Proposal Meeting will provide the opportunity to ask questions about the Mobile Food and Beverage Garden Program, this RFP, and other Concession Agreement Documents.

1.11 Project Manager; Questions about the RFP.

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

   Email: marc.wilken@phila.gov
   Fax: 215-683-0232
   Mail: One Parkway Building – 10th Floor
         1515 Arch Street
         Philadelphia, PA 19102

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

1.11.3 The City will answer all questions asked at the Mandatory Pre-Proposal Meeting or timely submitted to the City in writing, which the City in its sole discretion determines concern material elements of the RFP process or Concession Agreement. The City will provide its answers in writing by an addendum to this RFP prior to the Deadline for Submitting Proposals, and the City will post its answers on the following websites: http://www.phila.gov/bids (under the Public Works bidding opportunities section) and http://www.phila.gov/ParksandRecreation/aboutus/divisions/development/Pages/concessions.aspx.

1.11.4 The City is not bound by any oral response made by any City employee to any questions. The addenda issued by the City are the City’s only official method for communicating information to all potential Respondents. Respondents should check http://www.phila.gov/bids (under the Public Works bidding opportunities section) and http://www.phila.gov/ParksandRecreation/aboutus/divisions/development/Pages/concessions.aspx 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.

1.11.5 The City reserves the right to extend or postpone the date and time of the Deadline for Submitting Proposals by an addendum to this RFP.
1.12 The Deadline for Submitting Proposals is set forth on the cover page of this RFP. The required place for a Respondent to submit its Proposal is also set forth on the cover page of this RFP. If a Respondent intends to deliver its Proposal on the day of the Deadline for Submitting Proposals, the City strongly recommends that the Respondent allow enough time to travel to the Municipal Services Building listed on the cover page of this RFP, to go through building security, and to find the appropriate room.

1.13 Not an Exclusive Right to Operate in the Philadelphia Parks and Recreation System. The City currently operates a food service program under concession agreements that permit food trucks to vend at JFK Plaza and other locations throughout the Department’s Parks & Recreation system (the “Food Service Program”). The City reserves the right to operate its Food Service Program.

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

1.15 Modifications; Late Proposals. Until the Deadline for Submitting Proposals, a Respondent may submit a modified Proposal to replace all or any portion of a Proposal the Respondent submitted previously. The City will only consider the latest version of a Respondent’s Proposal. The City will not consider or evaluate late Proposals and late modifications. A Respondent may withdraw its Proposal from consideration at any time before the Deadline for Submitting Proposals. To withdraw a Proposal, the Respondent must provide written notification to the City’s Procurement Department Commissioner, Trevor J. Day, by email: trevor.day@phila.gov

To withdraw a Proposal, a Respondent must also provide a copy of its withdrawal notice to the Project Manager by email at the email address provided in Section 1.11.1 above.

1.16 Public Disclosure. This RFP, each Proposal, the Concession Agreement, and the written documents and communication related to them, may be subject to public disclosure under law, except as provided in Section 3.37 of this RFP.

2. TERM

2.1 Initial Term and Renewal Term(s) of the Concession Agreement. The “Initial Term” of the Concession Agreement starts on the date the City executes the Concession Agreement and all the conditions set forth in Section 5.10 of this RFP have been completely satisfied (the “Commencement Date”). The Initial Term expires at 11:59:59 P.M. the day before the 1st anniversary of the Commencement Date. The Initial Term of the Concession Agreement will be one year, with the option, at the City’s sole discretion, for three one-year renewal terms (“Renewal Terms”). Each Renewal Term starts at 12:00 A.M. immediately following expiration of the Initial Term or preceding Renewal Term, as the case may be. To renew the Concession Agreement, the City must provide written notice to the Concessionaire of the City’s desire to renew the Concession Agreement (the “Renewal Notice”) no later than 180 days before expiration of the Initial Term or then-current Renewal Term, as the case may be. In
the Concession Agreement and this RFP, “Term” means the Initial Term and all Renewal Terms, if any. In the Concession Agreement and this RFP, the date the Concession Agreement expires, is terminated, or otherwise ends is the “Concession Agreement Ending Date.”

2.2 City Council Authorization; Extended Term. Despite Section 2.1 above, with the Concessionaire’s written approval, the City may introduce an ordinance in Philadelphia City Council that would authorize the Initial Term to be 5 years and would authorize one Renewal Term of 5 years. If City Council passes that ordinance, then upon the ordinance becoming law:

1. the Initial Term automatically converts to a 5-year period that starts retroactively on the Commencement Date and expires at 11:59:59 P.M. the day before the fifth anniversary of the Commencement Date;

2. the City may renew the Initial Term for up to one five-year Renewal Term in accordance with the renewal procedures set forth in Section 2.1 above; and

3. the other provisions of Section 2.1 above remain unchanged.

3. CONCESSION AGREEMENT: SPECIFIC CONTRACT PROVISIONS

3.1 Concession Fee. In the Concession Agreement, “Concession Fee” means the combined Daily Concession Fee and Gross Revenue Percentage Fee. “Daily Concession Fee” means the amount the Concessionaire will pay for every day the Concessionaire vends as part of the Program. “Gross Revenue” means all revenue, however characterized, the Concessionaire receives in connection with its management and operation of the Program, including, but not limited to, all revenue from food, beverage and sales prior to all operating expenses, but excluding revenue from merchandise sales. “Gross Revenue Percentage Fee” means the percentage of Gross Revenue the Concessionaire will pay to the City as part of its Concession Fee.

3.1.1 Subject to this Section 3.1.1, throughout the Term, the Concessionaire shall pay the Concession Fee to the City without deduction, setoff, or counterclaim, unless such deductions, setoffs or counterclaims are approved by the City, no later than the 15th day of each month for the preceding month of Engagements. Concessionaire shall pay the Concession Fee by check made payable to “City of Philadelphia” and shall deliver the payment to the Project Manager at the mail address provided in Section 1.1.1 of this RFP.

3.1.2 If the Concessionaire has any Concession Fee payments that are due after the Concession Agreement Ending Date, the Concessionaire shall pay the remaining Concession Fee payments to the City no later than 15 days from the Concession Agreement Ending Date.

3.1.3 Late Payments. If the Concessionaire fails to pay the Concession Fee to the City within 10 business days after receipt of written notice from the City that the Concession Fee is unpaid, then the Concessionaire shall pay the City a late fee of ten percent of the Concession Fee amount due. If the Concessionaire presents a check to the City that a bank returns unpaid, the City may require the Concessionaire to make any future payments by certified check or money order. In addition, the Concessionaire shall pay to the City a returned check fee of, at a minimum, $35 for
each returned check, plus any other reasonable fees, costs, charges and expenses incurred by the City including but not limited to costs and expenses incurred by the City as a result of the check being returned and in connection with the collection of any payments due.

3.1.4 Accounting Report. Concessionaire shall prepare a monthly “Accounting Report” providing a daily count by Selected Location of the Program patrons, Gross Revenues (with separate lines for food and beverage sales), merchandise sales and all other categories of its income under the Concession Agreement. The report should also list the vending dates and the location where vending occurred on each date. Concessionaire shall submit the Accounting Report to the City no later than the 15th day of each month for the preceding month’s activities, together with Concessionaire’s Concession Fee payment as described above in Section 3.1.1.

3.1.4.1 The Concessionaire shall have an appropriate Mobile Point of Sales (“POS”) system at each Selected Location to adequately capture daily customer counts and detailed daily sales revenue data and enable the Concessionaire to create the Accounting Report.

3.1.4.2 The Concessionaire shall provide all customers with an electronic or paper receipt for every transaction at each Engagement.

3.1.5 Throughout the Term, within 120 days following the Concessionaire’s fiscal year end, Concessionaire shall submit to the City a report that includes (1) an annual summary description of the Concessionaire’s programs and activities at the Selected Location(s) (2) the Concessionaire’s annual financial statement for the most recent fiscal year end, prepared by a Certified Public Accountant in accordance with Generally Accepted Accounting Principles (GAAP), consistently applied, and (3) the Concessionaire’s tax return for the most recent calendar year. Concessionaire shall also promptly submit to the City all supplemental reports, documents, records, and other information that the City may reasonably require.

3.1.6 The requirements of Section 3 of this RFP survive the Concession Agreement Ending Date until Concessionaire has made the final and full Concession Fee payment and submitted to the City the final Accounting Report and annual documents as required under Section 3.1.5 above.

3.2 Selected Locations. The Program locations include, but are not limited to, the Selected Locations listed in Appendix 1.

3.2.1 The City reserves the right, at any time, to add additional locations to the Selected Locations in Appendix 1 or request that the Concessionaire vend at a special event for the City (“Additional Engagements”). If the City notifies the Concessionaire of an Additional Engagement, the Concessionaire shall have 14 days from the receipt of the City’s notification to accept or decline the Additional Engagement opportunity. If the Concessionaire fails to respond to the City’s request within the fourteen day period, or responds that it does not want to establish and operate the Additional Engagement(s) as requested by the City, then the City may seek food and beverage services for the Additional Engagement(s) from another provider for that Additional Engagement(s).

3.2.2. Dates for the Additional Engagements will not prevent the Concessionaire from vending the Engagements on the Operating Schedule. If the Concessionaire agrees to vend for Additional
Engagements, then the Additional Engagements are subject to the terms of the Concession Agreement Documents (defined in Section 1.9 of this RFP) and the Concessionaire shall pay the Concession Fee as proposed for that contract year for all new Selected Locations or for special events. The City will issue a permit for the Additional Engagements.

3.2.3 In the event that an appropriate date for a Selected Location listed in Appendix 1 cannot be determined, no matter the reason, such location will be excluded from the dates of Engagement on the Permit for that contract year. However, it will be retained as a Selected Location for subsequent contract years during the Term.

3.2.4 The City reserves the right to withdraw a Selected Location at any given time.

3.3 The Operating Schedule, and Hours of Operation; City Approvals of Program Components.

3.3.1 Start of Program. The City anticipates issuing Permits in the summer of 2016. The City hopes to develop an exciting season of the Mobile Food and Beverage Gardens Program with high quality food and beverage products, in partnership with the stewardship organizations and community groups affiliated with each Selected Location.

3.3.2 Length of Program. The City and the Concessionaire agree to schedule the Program for a minimum of 12 consecutive weeks from June through October. The City is interested in scheduling as many as 18 consecutive weeks. Pursuant to Section 3.2.1 of this RFP, Additional Engagements may be added to the Program throughout the Initial Term and Renewal Terms.

3.3.3 City Approvals of the Program Components. The Concessionaire must obtain the City’s approval of the Program components, including but not limited to: food, beverages, merchandise, price points of menu items and merchandise, storage containers, Vending Unit(s), Restrooms, tables, chairs, benches, lighting, tents and location of the Concessionaire’s Vending Unit(s), Restrooms, tents, tables, chairs, benches and equipment at each Selected Location. This Section 3.3.3 is not intended to limit the Concessionaire’s obligation to obtain City approvals under Section 17 of the Standard Provisions, Appendix 2, or any other Section of this RFP.

3.3.4 Program Operating Schedule. The Concessionaire shall operate the Program at the Selected Locations on the dates and times approved by the City (the “Operating Schedule”).

3.3.4.1 Required Number of Days of Operation Per Week for Engagements. The Concessionaire shall operate for a minimum of three days per week - Friday, Saturday, and Sunday - at each Selected Location. The City would prefer the days of the week the Concessionaire operates at each Selected Location be the same at each Selected Location and therefore consistent for each Engagement in the Program. The Concessionaire may operate for up to a maximum of five days per week, unless the City provides written approval to the Concessionaire for additional operating days per week.

3.3.4.2 Hours of Operation. The Program may operate during the following maximum days and hours: Wednesdays and Thursdays: 12-10pm, Fridays and Saturdays: 12-
11pm, Sundays: 12-10pm (“Hours of Operation”). The City would prefer the times of the week the Concessionaire operates at each Selected Location be the same at each Selected Location and therefore consistent for each Engagement in the Program. The City shall not permit any Hours of Operation to go past 11:00pm.

3.3.4.3 After the City and the Concessionaire have agreed upon the Operating Schedule, the Concessionaire may not change the dates of Engagements at Selection Locations without the City’s written approval.

3.3.5 Inclement Weather. Despite Section 3.3.4 of this RFP, in the event of inclement weather, Concessionaire may open the Program later or close the Program earlier than the hours set forth in the Concessionaire’s Hours of Operation. The Concessionaire shall notify the Project Manager and shall post any changes in the Operating Schedule or the Hours of Operation due to inclement weather on any websites or social media platforms that the Concessionaire manages in connection with the Program.

3.4 Food Preparation and Standards. The Concessionaire shall provide a partially enclosed unit(s) for food preparation (kitchen) and food and beverage service at each Selected Location the “Vending Unit(s)”). The Vending Unit(s) must be in compliance with the standards and requirements for mobile food and beverage units issued by the City of Philadelphia Department of Licenses and Inspection, the Philadelphia Health Department and other City and State agencies having jurisdiction over similar food and beverage operations. The Concessionaire shall review and incorporate to the extent possible the best practices for concessions provided in Section 6 of the Philadelphia Comprehensive Food Standards, attached as Appendix 5 to this RFP. For more information and to find an electronic copy of the Philadelphia Comprehensive Food Standards, please visit www.phila.gov/nutritionstandards.

3.5 Licenses and Permits. The Concessionaire shall secure all necessary licenses and permits to serve food and alcohol at each of the Selected Locations. Please note that the Concessionaire must have applied for and secured the PLCB Off-Premises Catering Permit from the Pennsylvania Liquor Control Board and the deadline for the PLCB Off-Premises Catering Permit application is March 1, 2016. Copies of these permits and licenses must be submitted for inspection prior to the start of the Program.

3.6 Restrooms. The Concessionaire shall, at its sole cost and expense, provide high quality, public restrooms in a portable trailer at each Selected Location (the “Restrooms”) The City, at its sole discretion, may agree to allow the Concessionaire to provide portable restrooms covered by tents, if the City approves of the Concessionaire’s design and plan of portable restrooms covered by tents.

3.6.1 The Concessionaire shall service and maintain the Restrooms at its sole expense.

3.6.2 The Restrooms shall be open and accessible only during the Hours of Operation at each Engagement.

3.6.3 The Concessionaire shall ensure that the number of Restrooms provided at each Selected Location complies with the standards set by the City of Philadelphia Health Department and Licenses and Inspections and any other applicable Federal, State, or local laws or statutes,
including the American Disabilities Act.

3.6.4 The Concessionaire shall provide hand washing sinks and soap at each Selected Location.

3.7 **Utilities.**

3.7.1 The Concessionaire shall provide its own electric service from a battery-powered, quiet generator for each Selected Location. Gas-powered generators are prohibited.

3.7.2 The Concessionaire shall provide its own source of water for food prep and hand washing for each Selected Location.

3.7.3 The Concessionaire shall promptly pay all charges and fees when and as they become due for all public utilities and utility service used at the Selected Location or in connection with the Program, including, but not limited to: gas, steam, heat, light, electricity, telephone, sewer rents, water, water meter and water charges. In addition, the Concessionaire shall, at its sole cost and expense, promptly pay all charges and fees when and as they become due for new conduits, cables, or other means of providing or improving utility services to the Selected Location. Without limiting the requirements set forth above in this Section 3.7, the Concessionaire shall pay all late charges, interest, penalties, and fees arising from the Concessionaire’s failure to promptly pay all charges and fees imposed by any provider of utility service to the Selected Location, or any installer of utility equipment at the Selected Location. No utilities are to be installed at any Selected Location without the prior written consent of the City.

3.7.4 The City is not required in any manner to provide or pay for utilities or utility service to the Selected Location. The City is not liable for any interruption in utilities or utility service to the Selected Location. The City makes no representation that there is utility service available at any of the Selected Locations.

3.8 **Seating.** The Concessionaire shall provide tables and quality seating for patrons at each Selected Location subject to the City’s approval under Section 3.3.3 of the RFP. The Concessionaire shall ensure that there is adequate seating for a minimum of 50 patrons at a time at each Selected Location, with the opportunity to scale up to as many as 200 patrons where appropriate site capacity exists.

3.9 **Trash and Recycling.** The Concessionaire shall, at its sole cost and expense, provide its own waste receptacles for trash and recycling at each Selected Location and pay for the daily removal of all waste and recyclables generated from each Selected Location (i.e., arrange for private collection). The daily removal of all waste and recyclables at each Selected Location shall occur after the close of business.

3.10 **Lighting.** The Concessionaire shall, at its sole cost and expense, provide lighting to illuminate each Selected Location during evening hours. The Concessionaire shall ensure that lighting is adequate for safety, security and ambience, but that the lighting does not disturb nearby residences.
3.11 Entertainment; Promotion Space for Park Representatives.

3.11.1 The City encourages the Concessionaire to consider providing “Entertainment” to contribute to a lively atmosphere at each Selected Location. However, the Concessionaire shall ensure that noise from the Entertainment cannot be heard beyond the boundaries of a respective Selected Location. In some instances, the Entertainment may be provided by local park stewardship organizations at Selected Locations, upon mutual agreement by the Concessionaire and the City. The City, at its sole discretion, reserves the right to discontinue the Entertainment at any Selected Location at any given time.

3.11.2 The Concessionaire shall provide space for representatives from the City, FPC and affiliated park and/or neighborhood friends/stewardship organizations (where applicable) to collect and/or distribute information at each Selected Location.

3.12 Security Deposit. The Concessionaire shall submit to the City a “Security Deposit” of TEN THOUSAND DOLLARS ($10,000.00). The Concessionaire shall pay the Security Deposit to the City, in the form of a certified check. The City will deposit the check at a bank account in the name of the City of Philadelphia (the “Security Deposit Account”). As an alternative to the Security Deposit Account, the Concessionaire may provide a standby letter of credit issued by a commercial bank acceptable to the City and in a format approved by the City’s Risk Management Office. The Security Deposit shall be available to the City to retain as security for:

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

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

3.12.3 Compensation for any damage to the Selected Locations arising in connection with any activities at the Engagements under the Concession Agreement and not otherwise covered by Concessionaire’s insurance (that names the City as additional insured).

3.13 Conditions of Site Upon Conclusion of Engagement. At the conclusion of each Engagement, the Concessionaire shall take all steps necessary to leave each Selected Location in the same or better condition than it was found.

3.14 Selected Location Restrictions. Concessionaire shall not:

1. use the Selected Locations for any purpose that is unlawful, unsafe, hazardous or in violation of any law or regulation;

2. leave waste at the Selected Locations;
3. place, dispose of or store any material or substance at the Selected Location that is illegal, controlled, hazardous or toxic;

4. permit any other person to bring, place, dispose of or store any material or substance that is illegal, controlled, hazardous or toxic;

5. allow any unauthorized person to park a trailer, recreational vehicle, boat, commercial vehicle, truck, or equipment; provided, however, the Concessionaire may permit access by construction or utility vehicles to perform routine maintenance;

6. use the Selected Location for repair of motor vehicles; and obstruct a sidewalk, driveway, exit, or entrance in the Selected Location; and not,

7. make, install, or construct any unauthorized improvements.

3.15 **Tree Management and Preservation.** The Concessionaire shall not cut down, prune or remove any trees or permit any attachments to the trees at each Selected Location without prior, written approval from the City. If requested by the City, then the Concessionaire shall create a fence perimeter around trees at the Selected Locations.

3.16 **Personnel.**

3.16.1 Concessionaire shall employ, provide, and train all personnel necessary and prudent for the safe, efficient, and successful management and operation of the Program.

3.16.2 Concessionaire shall cause its employees to conduct themselves at all times in a courteous and professional manner that reflects well upon the City. Concessionaire shall 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 3.16.

3.17 **Security Plan.** Concessionaire shall, at its sole cost and expense, develop and implement a security plan for and at the Selected Locations, during the Operating Schedule and any setup or breakdown days at each Selected Location (“Security Plan”). The Concessionaire must obtain the City’s written approval of the Security Plan. The Security Plan shall include, but not be limited to the following measures:

3.17.1. Define the Program area with fencing to manage entry/egress points and customer flow, for security purposes, and for compliance with any regulations regarding the serving of alcoholic beverages;

3.17.2 Ensure that entrances and exits are manned by at least one (1) dedicated staff member at all times;

3.17.3. Provide private security staff at each Selected Location during the Operating Schedule, scaling up for appropriate higher volume service times;
3.17.4. Secure the Selected Location and its equipment and supplies outside of the Hours of Operation, when the Program at the Selected Location is not open to the public; and

3.17.5. Remove any graffiti from equipment, Vending Unit(s), trash and recycling receptacles, Restrooms and any other items associated with the Program at any Selected Location.

3.18 Signs; Department of Parks and Recreation’s Mark. The Concessionaire shall not at any time erect, hang, paint or otherwise create any sign or advertisement in, on or about the Selected Location without the prior written approval of the City. In addition, the Concessionaire shall not, without the prior written approval of the City, erect, hang, place, or display in, on or about the Selected Location any utilitarian items, including but not limited to trash receptacles, which promote and advertise any product. Concessionaire shall cause each sign to meet all specifications required by the Department and, at a minimum, include the Department of Parks and Recreation’s mark or logo. The City may request other marks or logos to be added to each sign, as needed.

3.19 Customer Service. The Concessionaire shall create and maintain a high-quality amenity for the public. The Concessionaire shall implement customer service procedures that will please patrons and the general public.

3.20 Marketing. Concessionaire shall use its best efforts to obtain maximum customer participation in the Program. Concessionaire shall use all commercially reasonable marketing and publicity, including, but not limited to, sales promotions, a website, the internet, newspaper ads, radio and television ads, magazines, flyers, posters, and other means of communication. Concessionaire shall create and actively distribute printed materials that highlight the Program (collectively with Concessionaire’s other marketing and publicity activities, the “Promotional Activities”).

3.20.1 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 any other advertising materials related to the Program, a prominent, easily legible statement that clearly indicates the Program is “operated in partnership with the City of Philadelphia Department of Parks and Recreation.” The City, at its sole discretion, may also require the Concessionaire to list additional organizations on any advertising materials related to the Program.

3.20.2 Concessionaire’s Promotional Activities are subject to the City’s prior, written approval. Concessionaire may propose an initial comprehensive plan for Promotional Activities and, if Concessionaire obtains the City’s approval of the plan, then as long as Concessionaire strictly complies with the approved plan Concessionaire does not need to obtain additional approval of its Promotional Activities from the City.
3.20.3 The Concessionaire must obtain the prior, written approval of the City prior to entering into any marketing or sponsorship agreements. If the Concessionaire violates this Section 3.20.3, the City shall take any action that the City may deem necessary to protect the City’s interests. If the Concessionaire does not implement the necessary action requested by the City, the City may immediately terminate the Concession Agreement.

3.21 **Maintenance.** Concessionaire shall, at its sole cost and expense, maintain and operate the Selected Location in good and safe condition and in accordance with industry standards, including, but not limited to performing all necessary and prudent maintenance, repairs, and replacement of the equipment, materials, supplies, structures, and signs used or provided by the Concessionaire. Concessionaire shall also keep all signs and structures at the Selected Location in good condition and free of graffiti.

3.21.1 The Concessionaire, at its sole cost and expense, shall promptly repair all damage to any Selected Location caused by the Concessionaire or its employees, agents, contractors, invitees, or clients and their guests, or otherwise arising from Concessionaire’s exercise of its License under the Concession Agreement.

3.21.2 **The City is not obligated to provide any services, materials or equipment related to any Engagement, Selected Location, or the Program.**

3.21.3 The Concessionaire shall comply with any Law governing the use of pesticides, herbicides, fungicides and insecticides at the Selected Location, including, but not limited to storage, inventory, purchases, disposal, and application. The Concessionaire shall not use any pesticide, herbicide, fungicide or insecticide that is prohibited by the Department’s regulations or practices, and any Federal, State and local law or regulation. The Concessionaire shall obtain prior written approval from the City before application of any pesticide, herbicide, fungicide or insecticide on any Selected Location.

3.22 **Alterations to the Selected Locations.** The Concessionaire shall not make, cause, or permit any alterations to the Selected Locations without the prior review and written approval of the City. The Concessionaire shall submit to the City plans and specifications for the proposed alterations and all additional information the City may reasonably request. The City’s approval of any proposed alterations may be conditioned upon a requirement that the Concessionaire provides the City with a performance and payment bond satisfactory to the City in all respects and upon other requirements the City deems necessary or prudent to protect the interests of the City.

3.23 **City Access to the Selected Locations**

3.23.1 The City shall have access to the Selected Locations for the purpose of:

1. inspecting, maintaining, and repairing the Selected Locations;
2. enforcing the Concession Agreement;

Page 13 of 24
3. accessing adjacent parkland; and,

4. the safety, improvement or preservation of the Selected Locations.

3.23.2 The City shall provide reasonable advance access notice to the Concessionaire (save in emergency when no notice will be required).

3.23.3 In the exercise of its right of access as set forth above in Section 3.23.1, the City shall not interfere with the Concessionaire’s conduct of its business at the Selected Locations.

3.24 **Public Access to the Selected Locations.** The public shall have access to the Selected Locations and the use of any roads, bridges or trails that pass through the Selected Locations for ingress and egress to the Selected Location and adjoining park land, in addition to the rest rooms and parking lot facilities located at or next to the Selected Locations. Any restrictions by the Concessionaire on public access to areas of the Selected Locations for safety or security concerns, other than the fenced areas surrounding any trees required by the City, are subject to the City’s prior written approval.

3.25 **Storage.** The City does not represent or warrant that there is adequate storage space at the Selected Locations. The Concessionaire shall, at its sole cost and expense, obtain any additional storage space required for its operation of the Program. The Concessionaire shall not permit any equipment or supplies to be stored in the interior or exterior of the Selected Locations within public view. The Concessionaire shall store its equipment on a nightly basis and anytime the Program is closed in compliance with the City-approved Security Plan.

3.26 **Environmentally-Friendly ("Green") Products & Practices**

3.26.1 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 Program, which may include the installation of Energy Star compliant appliances, the use of energy efficient, non-polluting, low noise generators, the employment of energy and water conservation measures, the use of low toxicity chemicals, preservation of natural areas, and the use of environmentally-friendly products.

3.27 Hazardous Materials

3.27.1 Concessionaire shall not use or store any asbestos, hazardous or toxic materials or substances, (hereinafter “hazardous material”), as defined in any Federal, State, or local laws, regulations and rules, except for household cleaning supplies.

3.27.2 If the Concessionaire causes or permits the release of any hazardous material, as defined above in Section 3.27.1, in or on the Selected Location, the Concessionaire shall indemnify, defend and hold the City harmless from any and all actions, claims, demands, costs, damages and expenses of any kind, including: (1) reasonable attorneys’ fees, (2) diminution in value of the Selected Location, and (3) damages for the loss or restriction on use of the Selected Location, which are made against or incurred by the City arising during or after the Term of the Concession Agreement. The Concessionaire is liable for any release arising during the Term of the Concession Agreement and this liability services the Concession Agreement Ending Date. The Concessionaire is not liable for the release of hazardous materials on the Selected Location prior to the Commencement Date.

3.28 ADA Compliance. In connection with operation and management of the Selected Location and the Program, the Concessionaire shall comply with the Americans With Disabilities Act ("ADA"), especially for ADA requirements that are specific to outdoor recreational services. The Concessionaire is encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level of required accessibility.

3.29 Subcontracting. Concessionaire may have some of its services and supplies provided by a subcontractor. The Concessionaire shall obtain the prior, written approval of the City before entering into any subcontract under the Concession Agreement.

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

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

3.29.3 Any purported subcontract(s) that Concessionaire enters into in violation of this Section 3.29 or of any other Section in this RFP or the Concession Agreement is void.

3.30 Smoking Policy. Smoking in or on the Selected Location or any park under the jurisdiction of the Department is strictly prohibited. The Concessionaire shall not permit smoking at the Selected Location and shall install no smoking signs at the Selected Location, as requested by the City.
3.31. **Anti-Discrimination Policy and Reports Regarding Participation of Disadvantaged Firms.**

3.31.1 Concessionaire shall comply with the Anti-Discrimination Policy as set forth in Appendix 3 to this RFP.

3.31.2 The Concessionaire shall submit to the City quarterly reports that summarize the Concessionaire’s activities related to its contracts with minority-owned, women-owned, and disabled-owned firms. The reports shall serve as a mechanism to ensure the Concessionaire is in compliance with the participation commitments the Concessionaire made in its S & C Form (set forth as Form 2 to this RFP).

3.32 **No City Obligation.** Despite any other provision of the RFP and the Concession Agreement, the Concession Agreement does not obligate the City to appropriate or spend money at any time or for any reason.

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

3.34 Reserved.

3.35 **Standard Provisions.** As previously stated in Section 1.7 of this RFP, the Concessionaire shall comply with the Standard Provisions. The Standard Provisions are attached to this RFP as Appendix 2.

3.36 **Indemnification, Release and Insurance.** The Concessionaire shall promptly indemnify, defend, and release the City, as set forth in Appendix 4 to the RFP. In addition, on or before the Commencement Date of the Concession Agreement, the Concessionaire shall obtain, and throughout the Term, shall maintain the types and minimum amounts of insurance as set forth in Appendix 4. As a condition precedent to the effectiveness of the License the City gives to Concessionaire under the Concession Agreement, Concessionaire must provide the City’s 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 4.

3.37 **Confidential Information.**

3.37.1 If a Respondent chooses to include in its Proposal material of a confidential nature, then the Respondent must mark the confidential material as noted below and explain why it is confidential. The City will exercise reasonable care to honor confidentiality requests, subject to Applicable Laws.
3.37.2 Each Respondent must identify the pages of its Proposal that contain confidential information by prominently marking those pages as explained below. Respondents are reminded that the mere designation of information as confidential does not necessarily make it so under Applicable Laws. The Pennsylvania Right to Know Act may require the City to disclose certain information regardless of whether the Respondent has designated it as confidential. The City recommends that each Respondent confer with legal counsel regarding the disclosure requirements of the Right to Know Act. Respondents should include the following notice in the front of each copy of their Proposal:

**NOTICE**

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

3.38 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.

4. SELECTION CRITERIA & RESPONDENT QUALIFICATIONS

As stated previously in Section 1.3.1 of this RFP, Respondents must have a minimum of three years of experience operating one or more successful food and beverage venues that are currently in business. The City is particularly interested in receiving proposals from individuals or firms whose current venues offer settings and menus widely recognized to be more creative and of higher quality than the average city venue. Respondents experienced at operating outdoor venues will be given additional consideration at proposal selection time.

Respondents must hold a current PLCB liquor license(s) in good standing for any existing establishments.
and be capable of securing a PLCB Off-Premises Catering Permit for the sale of alcoholic beverages, which will be mandatory for the Program.

Respondents must complete and submit the Proposal according to the format and directions laid out in the **Form 1 attached to this RFP.** The City and FPC will evaluate each Respondent’s Proposal to select the Concessionaire. The City’s criteria for selecting the Concessionaire include, but are not limited to, the factors listed below. No particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list below.

1. Completeness of Proposal. Addresses each point and/or question laid out in **Form 1** and includes all requested attachments in **Form 1.**
2. Experience operating a restaurant or food service business.
3. Experience vending food and beverages at off-site locations, outside of a traditional restaurant facility (i.e.; catering events or operating outdoor beer gardens).
4. Experience obtaining PLCB Off-Premises Catering Permits for the sale of alcoholic beverages.
5. Ability to obtain the necessary number of PLCB Off-Premises Catering Permits for the sale of alcoholic beverages to run the Program for a minimum of 12 weeks per year.
6. Financial capacity to make the necessary capital investments for the Program and to operate the Program.
7. Staffing: Experience level and/or training plans for staff, and adequate capacity to staff the Program that reflects a thorough understanding of the Program’s needs.
9. Proposed Daily Concession Fee and Gross Revenue Percentage Fee to be paid to the City.
10. Aesthetics of the mobile food and beverage garden set-up, including, but not limited to, vending units, seating, fencing and lighting.
11. Feasibility of the operations.
13. Familiarity with Selected Locations and an understanding of the unique site requirements/capacity at each Selected Location.
14. Willingness to vend at any/all Selected Locations.
15. Quality of the menu, including variety, quality of ingredients and presentation.
16. Menu price points: Menu offerings are accessible to a majority of City residents.
17. Local Products: Whether the Respondent offers locally produced or locally sourced food and beverages.
18. Ability to meet the best practices for food concession standards found in Section 6 of the Philadelphia Comprehensive Food Standards, attached as **Appendix 5** to this RFP.
19. Concessionaire’s plan for disabled-owned, minority-owned or woman-owned businesses.
20. Concessionaire’s Local Business Entity and Local Impact Certifications. For more information, please see **Form 4** of this RFP.

**5. RESERVATION OF RIGHTS; CONCESSION AGREEMENT EFFECTIVENESS**

The City reserves the following rights with respect to the evaluation and selection of the Concessionaire.

5.1 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 this RFP, or it is otherwise in the City’s best interest to do so.

5.2 To reject all Proposals, or to postpone, cancel and reissue this RFP or not reissue this RFP if, in the City’s sole judgment, it is in the City’s best interest to do so.

5.3 To reject a Proposal if, in the City’s sole judgment, the Respondent has been:

5.3.1 delinquent or unfaithful in the performance of any contract with the City or with others;

5.3.2 is delinquent with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia) and has not made arrangements satisfactory to the City regarding payment of the taxes or indebtedness;

5.3.3 is not in compliance with City regulatory codes applicable to Respondent; is financially or technically incapable; or is otherwise not a responsible Respondent.

5.4 To supplement, amend, or otherwise modify any section of this RFP at any time prior to selection of one or more Respondents as Concessionaire.

5.5 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, the RFP, or the Concession Agreement Documents.

5.6 To request that some or all of the Respondents clarify, modify or supplement their respective Proposals, including information inadvertently omitted.

5.7 To request interviews or oral presentations from one or more of the Respondents.

5.8 To conduct investigations with respect to the qualifications of each Respondent and call a Respondent’s references.

5.9 To elect not to enter into a contract with any Respondent, whether or not a notice of Intent to Contract has been issued, if the City determines it is in the City’s best interest to do so.

5.10 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:

1. the Concession Agreement has been signed by the Concessionaire and approved as to form by the City’s legal counsel;

2. the Concession Agreement has been executed by the City’s Department of Parks and Recreation Commissioner and the City’s Procurement Department Commissioner;

3. the Respondent has submitted certificates of insurance to the City in accordance with Section 3.36 of this RFP and Appendix 4 to this RFP; and,

Page 19 of 24
4. the Respondent has submitted copies of their PLCB Off-Premises Catering Permit(s) to the City.

5.11 By submitting a Proposal in response to this RFP, the Respondent expressly acknowledges and agrees to all the provisions contained in this RFP, including but not limited to the rights reserved by the City, but except as provided in Section 3.38 of this RFP.

6. 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:

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

6.2 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.

6.3 Upon submission, Respondent’s Proposal becomes the property of the City and will not be returned to the Respondent.

6.4 Respondent will promptly permit the City to inspect any food and beverage service projects, spaces or facilities operated by the Respondent.

6.5 Respondent will promptly provide additional information or more detailed information upon request by the City, including information inadvertently omitted by a Respondent.

6.6 Respondent will promptly send representatives for interviews with City officials when requested by the City.

6.7 Respondent’s Proposal shall remain open for acceptance by the City and in full effect for at least 180 calendar days from the Deadline for Submitting Proposals set forth on the cover page of this RFP.

6.8 Respondent may not issue news releases (including, but not limited to, commercial advertising) pertaining to this RFP without prior, written approval of the City.

6.9 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 email address specified on the cover page of this RFP for submitting Proposals.
7. RESPONDENTS RESTRICTED; RESPONDENTS MAY ONLY SUBMIT ONE PROPOSAL.

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

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

7.3 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.

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

8. INFORMATION AND DATA IN THIS RFP IS NOT WARRANTED

The City has provided information and data in this RFP to help potential Respondents understand the Program and the purpose of this RFP, and to help each Respondent prepare a Proposal. The City believes the information in this RFP is reliable, but the City does not represent or warrant that the information is accurate. Each potential Respondent is encouraged to conduct its own investigations into any matter of concern to it about the Program, this RFP, Standard Provisions, Appendix 2, Form 1, Selected Locations, or the Respondent’s Proposal.

9. AMENDMENTS

The Concession Agreement Documents applicable to a Concessionaire may be amended only by a written agreement signed by the City of Philadelphia Commissioner of Parks and Recreation and City of Philadelphia Procurement Department Commissioner and by a duly authorized officer of the Concessionaire.

10. INSTRUCTIONS To submit a Proposal that is considered complete and responsive to this RFP, Respondent must do all of the following:

10.1 Proposal. Complete, sign, date and submit an original signed Form 1 and five copies of its Form 1, together with any relevant attachments and one full electronic copy of Form 1 and any relevant attachments on CD-ROM or jump drive, by the Deadline for Submitting Proposals to the place for submitting Proposals, as each is set forth on the cover page of this RFP. The signed
Form 1 and the signature page provided in Section 11 of this RFP must be signed by a person with authority to bind the Respondent to all of the provisions of its Proposal, this RFP, and the Concession Agreement. 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, nor will the City accept Proposals that are not signed in accordance with Section 11 of the RFP. 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 Mobile Food and Beverage Garden Program”, RFP # C-103-16, and,
3. The Deadline for Submitting Proposals, as stated on the cover page of this RFP.

10.1.1 Concession Fee. Using Form 1, each Respondent must propose a Daily Concession Fee and Gross Revenue Percentage Fee to be paid as the Concession Fee payment to the City, over a one-year period. Also on Form 1, Respondents must propose a Concession Fee for three possible renewal years and for the possible ten years to provide for Concession Fees to be paid if an extended term is authorized by City Council.

10.1.2 Nothing in the Concessionaire’s Proposal will obligate the Concessionaire to provide services under this RFP for ten years. The Concessionaire and the City have to agree to request City Council authorization to extend the Term. For more details, please see Section 2.2 of this RFP.

10.1.3 The City suggests Respondents consider increasing the Daily Concession Fee and Gross Revenue Percentage Fee each year.

10.1.4 Each Respondent may, in addition to completing and submitting Form 1, submit on a separate schedule, with the heading “Alternative Concession Fee Proposal”, an Alternative Concession Fee Proposal for the right to operate and manage the Program from the Selected Locations. The City may, however, in its sole discretion, reject any Alternative Concession Fee Proposal.

10.1.5 Solicitation for Participation and Commitment Form. Each Respondent must complete Form 2. For more information, please see Section 3.31 of this RFP.

10.1.6 Tax Regulatory Clearance Form. Each Respondent must complete Form 3. For more information, please see Section 23 of the Standard Provisions, Appendix 2 to this RFP.

10.1.7 Local Business Entity or Local Impact Certification Form (optional). Each Respondent may choose to complete Form 4. Form 4 is referenced in Section 4 of this RFP.
10.2 Furnish all the items listed below:

10.2.1 Copy of the Respondent’s PLCB Off-Premises Catering Permit(s) for 2016. If Respondent does not have a copy of their 2016 PLCB Off-Premises Catering Permit(s), then the Respondent should attach its 2016 application(s) or a filing receipt(s) for the Respondent’s PLCB Off-Premises Catering Permit(s) to show that the Respondent has filed such application(s) with the PLCB, and if the City selects the Respondent to be the potential Concessionaire, then the Respondent must provide proof that it has obtained 2016 PLCB Off-Premises Catering Permit(s) before the City will issue a Concession Agreement to the Respondent.

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

10.2.3 Please disclose any bankruptcy filings over the past five years (if applicable).

10.3 Each Respondent is solely responsible for delivery of its Proposal on time and to the proper location, per the instructions of this Section 10 of the RFP. It is the Respondent’s responsibility to verify the receipt of their Proposal by the City’s Procurement Department. The City encourages Respondents to allow additional time for security sign-in procedures at the Municipal Services Building listed on the cover page of the RFP, if hand-delivering the Proposal on the date of the Deadline for Submitting Proposals.

11. 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.]
Signature:

By signing below, Respondent, intending to be legally bound, certifies and agrees to the following:

1. Respondent has read this City of Philadelphia RFP for Mobile Food and Beverage Garden Program, the Standard Provisions, and all corresponding forms, exhibits, appendices, and other documents related to the RFP and Standard Provisions.

2. If the City selects the Respondent and executes a Concession Agreement with the Respondent, then throughout the Term of its license under the Concession Agreement, Respondent, as Concessionaire, shall comply with the Concession Agreement Documents, including the RFP, Respondent’s Proposal, the Standard Provisions, Insurance and Indemnity Requirements, and the Concession Agreement and Permits.

________________________________________
Name of Respondent

________________________________________
Signature of Respondent’s Authorized Official

________________________________________
Printed Name and Title of Authorized Official

________________________________________
Date
APPENDIX 1

Mobile Food and Beverage Garden: Selected Locations

Please note: The site listing below contains hyper-links to google maps. The linked locations shown on each map are to provide general geographic location information only. The points do not reflect the exact location within each selected park site where the mobile food and beverage garden will set up, which will be determined at a later date. We encourage each Respondent to visit each site and assess its location, condition and capacity.

- Aviator Park/Logan Square
- Paine’s Park (Franklin’s Paine Skatepark)
- Schuylkill Banks (between Walnut & Market)
- Water Works / Lloyd Hall, lawn area between the two along the Schuylkill river
- Lemon Hill Mansion (park also available if desired)
- Playing Angels (Kelly Drive)
- Sedgley Woods Disc Golf Course
- Mt. Pleasant
- Clark Park
- Belmont Plateau
- Japanese House & Gardens (Shofuso)
- Horticulture Center
- Smith Memorial Arch/Whispering Wall
- Franklin Delano Roosevelt (FDR) Park
- Jefferson Square Park
- Hawthorne Park
- Penn Treaty Park
- Powers Park
APPENDIX 2

STANDARD PROVISIONS FOR THE CITY OF PHILADELPHIA

1 Ethics Requirements

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

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

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 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.

2 Tax Requirements

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

   a. Business Income and Receipts Tax
   b. Net Profits Tax
   c. City Wage Tax

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

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.

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.

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.

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 proprietary 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. Indemnification, Release and Insurance

The Concessionaire shall promptly indemnify, defend, and release the City, as set forth in Appendix 4 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 4 to the RFP. 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 4 to the RFP.

5. City’s Right to Inspect

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 Licensed Space. The Concessionaire shall maintain its Books and Records in accordance with generally accepted accounting principles consistently applied.

5.2 The City may inspect and audit all of the Concessionaire’s Books and Records and Concessionaire’s affairs at all reasonable times at the Department of Parks and Recreation’s offices, or other place the City may reasonably require.

5.3 Concessionaire’s compliance with Section 5.1 above may be done in conjunction with Concessionaire’s compliance with Section 3.1.5 of the RFP.

6 Non-Indebtedness

6.1 The Concessionaire represents and warrants that Concessionaire, and all entities under common control with the Concessionaire or controlled by it are not as of the Commencement Date indebted to the City. Concessionaire shall not at any time during the Term of the Concession Agreement be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. The Concessionaire shall remain current during the Term of the Concession Agreement with all such payments and shall inform the City upon receipt of any notices of delinquent payments. In addition to any other rights or remedies available to the City under the Concession Agreement, at law, or in equity, the Concessionaire acknowledges that any breach or failure to conform to Concessionaire’s representation, warranty, and covenant in this Section 6.1 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.

6.2 The Concessionaire shall cause its subcontractors (if any) to make a certification to the City similar to that made by the Concessionaire in Section 6.1 above. The Concessionaire shall include the provisions in Section 6.1 above in each subcontract under the Concession Agreement, with appropriate adjustment for the name of the subcontractor.
7. **Condition of the Licensed Space**

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

8. **Compliance with Applicable Laws**

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

8.1 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;

8.2 In accordance with Chapter 17-400 of The Philadelphia Code, Concessionaire agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, age, sex, sexual orientation, gender identity, religion, national origin or ancestry, constitutes, without limiting the generality of Section 9, a substantial breach of the Concession Agreement that entitles the City to all rights and remedies as agreed by the parties and/or provided available at law or in equity.

8.3 All federal, Commonwealth of Pennsylvania, and local requirements regarding the application, obtaining, and maintaining licenses, certificates, permits, and other approvals required for operation of the Concession; and

8.4 The tax requirements of all governmental authorities having jurisdiction over the Concession, the Concession Agreement, and Concessionaire’s operations under the Concession Agreement.
9. Entire Agreement; No Amendment

9.1 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.

9.2 The Concession Agreement may not be amended or modified except in writing signed by the City officials who signed the original Concession Agreement and also signed by Concessionaire’s duly authorized officers. Any proposed or purported amendment of the Concession Agreement made without strictly complying with this Section 4.10.2 is void. No course of conduct between the City and Concessionaire, and no industry custom, is effective to amend the Concession Agreement or waive any of the Concessionaire’s obligations under the Concession Agreement.

10. 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.

11. Severability

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

12. Waiver of Jury Trial

THE CONCESSIONAIRE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING UNDER OR RELATED TO THE CONCESSION AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY TORT CLAIM). THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE CITY TO ENTER INTO THE CONCESSION AGREEMENT. THE CONCESSIONAIRE SHALL INCLUDE A PROVISION IN ALL ITS SUBCONTRACTS UNDER THE CONCESSION AGREEMENT UNDER WHICH ITS CONTRACTORS ALSO WAIVE TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING UNDER OR RELATED TO THE CONCESSION AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY TORT CLAIM).
13. **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.

14. **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.

15. **Assignment Prohibited**

Except for subcontracts permitted under Section 3.29 of the RFP, 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.

16. **Venue**

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

17. **Validity of City Approvals**

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

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

18. **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.
19. **Time of the Essence**

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

20. **Force Majeure Event**

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

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

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


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

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

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

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

22. Default

22.1 The Concessionaire will commit an “Event of Default” under the
Concession Agreement if:

a. Concessionaire fails to timely pay to the City in full the Concession
Fee; or

b. Concessionaire fails to timely comply with any other obligation
applicable to Concessionaire under the Concession Agreement.

22.2 If the Concessionaire commits an Event of Default under Section 22.1 above,
and,

a. in the case of an Event of Default under Section 22.1, 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 22.1, 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 22.1(b) that cannot
reasonably be cured within 30 days after receiving the City’s written
notice of the Event of Default, Concessionaire fails to actively start to
cure the Event of Default within the 30-day period and then
continuously and diligently pursue the cure to completion in not more
than 90 days after receiving the City’s written notice of the Event of
Default, or

d. in the case of any Event of Default that poses a threat of imminent
harm to persons or property,

then without further notice the City may, in its absolute discretion,
immediately suspend or terminate the Concession Agreement, in whole or in
part, without liability to City.
22.3 In addition to the City’s rights and remedies under Section 22.2 above, Concessionaire shall pay all damages, costs, and expenses suffered or incurred by the City arising from or related to the Event of Default. Also, if Concessionaire commits an Event of Default and fails to cure the Event of Default within the applicable cure period (if any), then the City may exercise all rights and remedies available to it at law or in equity, in addition to the remedies available to the City under the Concession Agreement. The City may exercise its remedies under the Concession Agreement, at law, or in equity, from or related to the Event of Default and does not waive any of the City’s rights or remedies separately, cumulatively, successively, and repeatedly, in the City’s absolute discretion.

22.4 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 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 22.2 above or immediately and without notice in the case of an Event of Default that poses a threat of imminent harm to person or property.

23. The Philadelphia Tax and Regulatory Status and Clearance Statement

23.1 It is the policy of the City of Philadelphia to ensure that each contractor and subcontractor has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation of other regulatory provisions contained in The Philadelphia Code. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Respondent is required to submit with its proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as Form 3).

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

23.3 The selected Respondent will also be required to assist the City in obtaining the above information from its proposed subcontractors (if any). If a proposed subcontractor is not in compliance with City Codes and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to participate in the contract contemplated by this RFP and the selected Respondent may find it necessary to replace the non-compliant subcontractor with a compliant subcontractor. Respondents are advised to take these City policies into consideration when entering into their contractual relationships with proposed subcontractors.
23.4 If a Respondent or a proposed subcontractor is not currently in compliance with the City’s tax and regulatory codes, please contact the Revenue Department to make arrangements to come into compliance at 215-686-6600 or revenue@phila.gov.

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

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\(^1\) Respondents that have a Business Privilege Tax Number should use that number, as it is automatically their Commercial Activity License Number, and need not apply for a new Commercial Activity License Number. Similarly, Respondents with a Business Privilege Tax Account Number should use that number as their Business Income and Receipts Tax Account Number.

\(^2\) Commercial Activity Licenses are not typically required for non-profit organizations; however, Business Income and Receipts Tax Account Numbers typically are required.
Under the authority of Executive Order No. 03-12, the City of Philadelphia has established an antidiscrimination policy ("Policy") relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises in City contracts. Executive Order 03-12 is administered by the City’s Office of Economic Opportunity ("OEO").

The purpose of this Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City's antidiscrimination policy is applicable to this Request for Proposals ("RFP").

The Office of Economic Opportunity has approved the following projected ranges of participation for this RFP which serve as a guide in determining each Respondent's responsibility and relate to the total dollar amount of the Concession Fee as defined in the RFP:

- **MBE**: Best and Good Faith Efforts
- **WBE**: Best and Good Faith Efforts

These ranges represent the percentage of MBE and/or WBE (collectively, "M/WBE") participation that should be attained by M/WBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses and through Respondent’s exercise of Best and Good Faith Efforts. Best and Good Faith Efforts are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/WBEs. These ranges are derived from an analysis of factors such as the size and scope of the contract and the availability of certified M/WBEs to perform various elements of the contract.

The submission of a Solicitation For Participation and Commitment Form and any supporting documentation (more fully discussed below) is an element of responsiveness to the RFP and failure to submit the required information will result in rejection of your proposal.

Respondent hereby verifies that all forms, information and documentation submitted to OEO are true and correct and is notified that the submission of false information by Respondent is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities which may include payment of a fine of at least $1,000 and a term of imprisonment of not more than two years. Respondent also acknowledges that under 18 Pa.C.S. §4107.2 (a)(4) it is a felony in the third degree, punishable by a term of imprisonment of not more than seven years in addition to the payment of any fines or restitution, if, under any contract awarded pursuant to this RFP, Respondent fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.
A. M/WBE PARTICIPATION

1. Only firms that are certified by an approved certifying agency\(^1\) and identified in the OEO Certification Registry by the time of contract award will be credited toward the participation ranges on City contracts. An OEO Certification Registry is maintained by the OEO and is available online at [www.phila.gov/OEO/directory](http://www.phila.gov/OEO/directory). Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry.

2. No Respondent that seeks to meet the participation range(s) for participation by entering into a subcontract with any M/WBE participant shall be considered to meet the range(s) if the M/WBE participant does not perform a commercially useful function (“CUF”). An M/WBE performs a Commercially Useful Function when it performs a distinct element of a City Contract (as required by the services to be performed in accordance with the RFP) which is worthy of the dollar amount of the M/WBE Subcontract and the M/WBE carries out its responsibilities by managing and supervising the services involved and actually self-performing at least twenty percent (20%) of the services of the Subcontract with its own employees. For suppliers, an M/WBE performs a Commercially Useful Function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material and paying for it from its own funds. Commercial usefulness will be evaluated and determined by the OEO on a proposal by proposal basis as informed by prevailing industry standards and the M/WBE’s NAIC codes. Participation that is not commercially useful will not be counted.

3. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Respondents will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

4. An MBE/WBE submitting as the prime Respondent is required, like all other Respondents, to submit a proposal that is responsive to the Policy. The M/WBE Respondent will receive credit towards the participation range for its certification category (e.g., MBE range or WBE range). In addition, the participation of an M/WBE partner, as part of a joint venture created for this contract, may be credited towards the participation ranges only to the extent of the M/WBE partner’s ownership interest in the joint venture in accordance with the following criteria:

- The MBE, WBE or DSBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/WBE partner(s) must derive substantial benefit from the arrangement;
- The M/WBE partner(s) must be substantially involved in all phases of the contract including planning, staffing and daily management;
- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

5. M/WBE Subcontractors must perform at least twenty percent (20%) of the total amount of work to be performed under the Subcontract with their own employees.

6. In listing participation commitments on the Solicitation for Participation and Commitment Form, Respondents are required to list a detailed description of the services or supply effort, the dollar amount

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\(^1\) Approved certifying agencies are identified on the OEO webpage found at [www.phila.gov/OEO](http://www.phila.gov/OEO). Respondent is strongly encouraged to search the Pennsylvania Unified Certification Program (“PaUCP”) Directory which offers a robust listing of DBEs; the PaUCP Directory is found at [www.paucp.com](http://www.paucp.com).
of the quotation, and percentage of the Concession Fee the participation represents. In calculating the percentage amount, Respondents may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information from Respondents in the event of an inconsistency or ambiguity in the Solicitation For Participation and Commitment Form.

B. RESPONSIVENESS

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

2. Respondents must submit documentary evidence of MBEs and WBEs who have been solicited and with whom commitments have been made in response to each of the participation ranges included in this RFP. Failure to submit the Solicitation For Participation and Commitment Form will result in the rejection of the proposal as nonresponsive, although the City, at its sole discretion, may allow Respondents to submit or amend the Solicitation For Participation and Commitment Form at any time prior to award. The Solicitation For Participation and Commitment Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled “Solicitation For Participation and Commitment Form”. Respondents should only make actual solicitations of M/WBEs whose services or materials are within the scope of this RFP. Mass mailing of a general nature to M/WBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The Respondent’s listing of a commitment with an M/WBE constitutes a representation that the Respondent has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City (“Contract Commitment”).

- If the Respondent has entered into a joint venture with an MBE and/or WBE partner, the Respondent is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled “Joint Venture Eligibility Information Form,” available at OEO, for the City’s review and approval of the joint venture arrangement.

3. If Respondent does not fully meet each of the range(s) for participation established for this RFP, Respondent must demonstrate that it exercised Best and Good Faith Efforts to achieve the M/WBE participation ranges along with a written request, on its letterhead, for the reduction of part or all of the M/WBE participation ranges (“Request For Reduction/Waiver”). Respondent, through the submission of documentary evidence must show that Respondent took all necessary steps and made reasonable efforts to achieve the M/WBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/WBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive; the City, at its sole discretion, may allow Respondents to submit or amend their submission at any time prior to award which may result in revision to Respondent’s participation commitments. The submission shall contain and discuss, at a minimum, the following:

- Reasons for not committing with any MBE/WBE/DSBES that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by Respondent.
- Any additional evidence pertinent to Respondent's conduct relating to this RFP including sufficient evidence which demonstrates to the OEO that Respondent has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing Respondent's efforts to achieve participation within the ranges, Respondent may submit any corroborating documentation (e.g., copies of advertisements for participation).
The Respondent's documentary evidence will be reviewed by the OEO to determine whether Respondent exercised Best and Good Faith Efforts in response to the participation ranges. **Respondent's expressed desire to self-perform services with its own employees will not excuse Respondent from exercising Best and Good Faith Efforts to include M/WBEs in its proposal and cannot be used as a basis for requesting a reduction or waiver of the participation ranges.** OEO's review will include consideration of the following:

- Respondent's contracting activities and business practices on similar public and private sector contracts. For example, if Respondent rejects any M/WBE based on price, Respondent must fully document its reasons for the rejection and also demonstrate that Respondent subjects non-M/WBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.

- Whether M/WBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/WBEs are given the same information, access to the plans and requirements of the contract and given adequate amount of time to prepare a quote/subproposal as others who were solicited by Respondent. The OEO will also investigate whether M/WBEs were accorded the same level of outreach as non-M/WBEs, for example whether Respondent short listed M/WBEs for participation or solicited M/WBEs at any pre-proposal meetings.

- Whether the Respondent's contracting decisions were based upon policies which disparately affect M/WBEs. OEO will ascertain whether Respondent selected portions of work or material needs consistent with the capacity of available M/WBE subcontractors and suppliers. OEO will consider whether Respondent employed policies which facilitate the participation of M/WBEs on City contracts such as segmentation of the contract or prompt payment practices.

4. **After review of the Respondent's submission and other information the OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to the awarding City Department. If the proposal is determined nonresponsive by the OEO, the Respondent will be notified and may file a written appeal with the Executive Director of OEO within forty-eight (48) hours of the date of notification; the decision of the Executive Director of OEO shall be final.**

C. RESPONSIBILITY

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract and the successful Respondent is required to enter into legally binding agreement(s) ("M/WBE Subcontract(s)") with its M/WBE participants for the services and in the dollar amount(s) and percentage(s) as so committed (the "Contract Commitment(s)"). M/WBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total value of the Concession Fee (including any increase in Concession Fee). Any change in commitment, including but not limited to, substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

2. The successful Respondent is required to pay its M/WBE participants promptly for services performed under the contract (including the supply of materials). In connection with the payment of its M/WBE participants, the successful Respondent agrees to fully comply with the City’s electronic payment verification systems.

3. No privity of contract exists between the City and any M/WBE participant identified in any contract resulting from this RFP. The City does not intend to give or confer upon any such M/WBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to Executive Order 03-12 or by reason of any contract resulting from the RFP except such rights or remedies that the M/WBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

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

D. ACCESS TO INFORMATION

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

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

E. RECORDS AND REPORTS

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

F. REMEDIES

1. The successful Respondent’s compliance with the requirements of Executive Order 03-12 is material to the contract. In the event the City determines that the successful Respondent has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract, which includes termination of the Contract, debar successful Respondent from proposing on and/or participating in any future contracts for a maximum period of three (3) years. These remedies 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/WBE participants.
APPENDIX 4

INDEMNIFICATION, RELEASE AND INSURANCE

On or before the Commencement Date, the Concessionaire shall promptly procure and throughout the Term must maintain, at its sole cost and expense, the types and minimum limits of insurance coverage specified below. Concessionaire shall procure all the required insurance from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. Concessionaire shall cause the insurance policies to provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, non-renewed or scheduled to lapse. All insurance required in this RFP and the Concession Agreement must be written on an “occurrence” basis and not a “claims-made” basis, unless otherwise noted below.

1. Workers' Compensation and Employers’ Liability

   a. Workers Compensation – Statutory Limits

   b. Employers Liability:

   $500,000 Each Accident - Bodily Injury by Accident;
   $500,000 Each Employee - Bodily Injury by Disease;
   $500,000 Policy limit - Bodily Injury by Disease;

   c. Other states endorsement including Pennsylvania.

2. General Liability Insurance

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

   b. Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; employees and volunteers as insureds; cross liability and broad form property damage (including completed operations).

3. Automobile Liability

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

   b. Coverage: owned, non-owned and hired vehicles.

4. Umbrella Liability Insurance at limits totaling $3,000,000 per occurrence when combined with insurance required under (1), (2) and (3) above.

5. Liquor Liability insurance with a $2,000,000 per occurrence combined single limit for liability arising out of the sale or serving of alcoholic beverages.
A. Concessionaire shall cause the City, its officials, officers, employees and agents, and the Fairmount Park Conservancy to be named additional insureds on all policies required under this RFP and the Concession Agreement except the Workers Compensation and Employer’s Liability Insurance. Concessionaire shall cause such policies to include an endorsement stating that the coverage afforded the additional insureds is primary to any other coverage available to them.

B. Concessionaire shall cause original certificates of insurance to be delivered to the City’s Park Concession Manager at City of Philadelphia, Department of Parks and Recreation, 1515 Arch Street, 10th Floor, Philadelphia, PA 19102, within ten (10) days after the execution date of the Concession Agreement and at least ten (10) days before each Renewal Term, if any. Concessionaire shall cause the actual endorsement adding the City as an additional insured to be also submitted to the City’s Park Concession Manager at the above address.

C. The insurance requirements set forth in this RFP and the Concession Agreement do no modify, limit or reduce Concessionaire’s indemnifications of the City under this RFP and the Concession Agreement and do not limit Concessionaire’s liability under the Concession Agreement to the limits of the policies of insurance required to be maintained by Concessionaire.

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

E. Fidelity Bond. Concessionaire shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Renewal Term(s) of the Concession Agreement, a fidelity bond in an amount equal to $10,000, covering Concessionaire’s employees who have financial responsibilities related to the receipt and disbursement of funds under the Concession Agreement. In lieu of a fidelity bond, Concessionaire may obtain coverage for Crime insurance with limits of $10,000. The fidelity bond or crime insurance, whichever is obtained by Concessionaire, shall name the City as a beneficiary. The Concessionaire shall submit evidence of the existence of the fidelity bond or crime insurance to the City prior to the Commencement Date.

F. Indemnification of City. Concessionaire agrees to defend, indemnify, and hold harmless the City, its officers, employees and agents from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, expenses and liabilities, occasioned wholly or in part by Concessionaire’s act or omission or negligence or fault or the act, omission, negligence or fault of Concessionaire’s agents, Subcontractors, employees or servants in connection with the privileges granted hereunder, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such subcontractors and suppliers, any breach of the Concession Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). The obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of the Concession Agreement.

G. From time to time, but not more than once each year, the City may, in its reasonable discretion, require the Concessionaire to obtain additional types and amounts of insurance, or either of them, than what Concessionaire is obligated to obtain and maintain under this RFP and the Concession Agreement.
Philadelphia Comprehensive Food Standards

Why food standards?
Among the ten largest cities, Philadelphia has some of the highest rates of poverty and related chronic diseases, including hypertension, type 2 diabetes, and heart disease. At the same time, research clearly indicates that improving dietary intake and ensuring ongoing access to nourishing foods can lower chronic disease risk. For example, research has shown that lowering excessive sodium intake from the average 3400mg/day to the recommended 2300mg/day can lower high blood pressure, and the risk for heart disease and stroke.

The more than 20 million meals served every year by City agencies and city-funded programs are an opportunity to help Philadelphians improve their diets and their health. While many agencies have existing nutrition recommendations, they can be inconsistent across programs, or not reflective of the latest dietary guidance. Comprehensive food standards reflect the shared values of all agencies and staff that food provided or funded by the City is healthy, appealing, and locally-grown when possible.

By implementing these standards the City of Philadelphia will:
- improve the health of Philadelphians, including nutritionally vulnerable populations such as youth and seniors;
- reduce the economic burden of health care costs associated with heart disease, stroke, and heart and kidney failure; and
- serve as a model for other large institutions, employers, and programs.

The nutrition standards are based on 1) the 2010 Dietary Guidelines, 2) food standards adopted by other local and federal governments and 3) review and feedback from City Agencies. As dietary guidelines and public health information is updated, the Philadelphia Department of Public Health (PDPH) will make periodic revisions to the standards to ensure they follow the latest dietary guidance.

Who would the standards impact?
All agencies that purchase, serve, sell, or otherwise provide food to clients, patients, employees and the general public will work to integrate standards into their foodservice programs (Sections 1-3). This includes contracted vendors. Where possible, agencies are encouraged to incorporate non-mandatory best practices for healthy meetings, sustainability and non-vending concessions (Sections 4-6). Some examples include:
- correctional facilities
- youth detention centers
- city-funded afterschool and summer programming
- shelters
- health care facilities
- vending machines on public property

1 The nutrition standards shall not apply if conformance will result in the loss of state or federal government funding.
What types of standards are there?

Sections 1-3: Nutrition Standards

1. Purchased Food: nutrient standards for individual ingredients purchased for preparation on site (e.g., dairy, bread/pasta, beverages, cereal, fruit and vegetables, meat).
2. Meals and Snacks Served: menu planning for meals and snacks served by program staff or a contracted vendor (daily amounts of calories, sodium, fat, and saturated fat; standards for servings, portions, and preparation).
3. Vending: nutrient standards for foods and beverages offered for sale on public property through vending machines.

Sections 4-6: Best Practices (non-mandatory)

4. Healthy Meetings/Special Occasion Guidelines: nutrition recommendations for trips, holiday parties, meetings and special events
5. Sustainability Guidelines: recommendations for departmental purchasing related to local and sustainable criteria.
6. Public Concessions, Catering and Special Events Best Practices: encouraged best practices for City-managed concessions or special events where food is served or sold to the general public.

Sections 1 and 2 overlap. Purchased food standards ensure that healthier foods such as fruits and vegetables and lean proteins, are a regular part of people’s diets and that people who only eat a few items of each meal are still eating healthy options. The meal and snack serving standards ensure that people eating whole meals and snacks have a healthy, balanced diet.

Healthy vending standards offer and promote healthy choices among City employees and Philadelphia residents who use City buildings. These standards apply to all beverages and snacks sold in vending machines on public property.

Healthy meeting and special occasion guidelines apply to trips, parties for holidays and internal special events or meetings where food is purchased from vendors not routinely used by the department for normal food service.

Sustainability guidelines are based on similar policies adopted by New York City, the City of Los Angeles, the Commonwealth of Pennsylvania, and regional institutions and employers such as the School District of Philadelphia and area hospitals. Guidelines support local and regional food producers and food businesses, and minimizing environmental impact by sourcing food grown closer to where it is consumed. Additionally, the USDA encourages all entities participating in Federal Child Nutrition Programs to incorporate geographic preferencing into their product sourcing.

Concession, catering and special event best practices are based on standards developed and implemented by the U.S. Health and Human Services Agency/General Services Administration for federal concessions and vending.
As described in the previous two pages, the Philadelphia Comprehensive Food Standards impact all City agencies that purchase, serve, sell, or otherwise provide food, including contracted vendors. Since the Mobile Food and Beverage Garden Program opportunity is considered a concession, only Section 6: Public Concessions, Catering, and Special Events Best Practices of the Standards has been included as a part of this RFP for your review and consideration, as it is most applicable. Sections 1-5 of the Standards have been removed from this document for the purposes of this RFP. The complete Standards can be found at: www.phila.gov/nutritionstandards. The Concessionaire is encouraged to meet or exceed the best practices for concessions that follow.
Section 6. Public Concessions, Catering, and Special Events Best Practices

For City-managed concessions, cafeterias, catering or special events where food is served or sold to the general public, it is recommended that contracting entities incorporate the following best practices into the bid, Request for Proposals (RFPs), or vendor selection criteria.

MENU PLANNING
- Involve a registered dietitian or nutritionist in the preparation of the menus, recipes and quality control process (recipe adherence, proper handling, etc.).
- Offer variety in menu choices to accommodate light, vegetarian, and organic eaters.
- Offer menu selections for patrons with special dietary considerations like low cholesterol, low fat, low sodium and heart healthy.

FOOD PREPARATION
- Maximize the use of healthier cooking techniques in all food preparation.
- Eliminate or greatly reducing trans fatty acids and saturated fats in addition to lowering of fat content without sacrificing taste or quality.

MARKETING
- Utilize subtle and overt means of presenting and promoting wellness in general as well as providing controlled portions for light eaters and/or those with medically defined restrictions.
- Provide specific nutritional information (including caloric, sodium, fat content, etc) on food items at the point of choice to educate consumers about healthier food options.
- Utilize media/technology to provide easily accessible nutrition information for the customers and the strategic placement of useful nutrition information about the products served at the point of choice.
- Utilize the USDA’s Dietary Guidelines for Americans in food labeling and food promotions.

PORTIONS AND PRICING
- Feature a pricing strategy that favors healthier food options.
- Consider smaller portions for sugary drinks

SUSTAINABLE FOODS
- Purchase locally grown food and/or organic food products as well as all other food products.
- Purchase from producers or vendors that demonstrate a commitment to fair labor practices

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2 Adapted from the Health and Human Services Health and Sustainability Guidelines for Federal Concessions and Vending Operations
Form 1: Respondent’s Proposal

City of Philadelphia RFP: Mobile Food and Beverage Garden Program

Please complete, sign, date and submit an original and five copies of your proposal responding to the points of interest and questions listed below. Please include copies of the required attachments referenced in Section 10 of the RFP together with one full electronic copy of Form 1 and any relevant attachments on CD-ROM or jump drive. Proposals must be submitted by March 31, 2016, 10:30 A.M. Local Time, and must be submitted to THE CITY OF PHILADELPHIA PROCUREMENT DEPARTMENT AT MUNICIPAL SERVICES BUILDING, 1401 JOHN F. KENNEDY BOULEVARD, ROOM 170A, PHILADELPHIA, PA 19102

Section 1: Respondent Information

Name:

Name of Business:

Street Address:

City, State, Zip:

Business Phone #:

Cell Phone #:

E-mail:

Website, Facebook, Twitter, or other social media site or tool:

Certification

By signing below, I certify Respondent’s primary business is selling food and beverages.

Signature of Respondent’s Authorized Official ________________________________________

Date ______________
Section 2: Experience

Please detail your experience in the food/beverage industry, including the businesses owned and/or operated, including dates and location, with a description of each business. Please indicate whether each business currently owned has a liquor license from the Pennsylvania Liquor Control Board (PLCB).

a. Have you ever vended food and/or beverages at off-site locations? Have you ever vended at outdoor locations? If so, please provide details about the operation and your experience.

b. Do you have any experience securing and utilizing off-premises catering permits from the PLCB in the City of Philadelphia? If so, please provide details.

Section 3: Proposed Operations Plan

Please provide details about your proposed mobile food and beverage operation, including:

a. Details about the physical set-up: Please provide photos, images, drawings and/or diagrams clearly showing what the proposed operation will look like, and how it will be set-up. Please provide additional images wherever possible. Please include the following:

i. Specifications (including an image if possible) of the units that will be used.

ii. Approximate dimensions of the space needed. Please indicate the adjustments in dimensions needed to accommodate 50 seats, 100 seats, 150 seats and 200 seats.

iii. What seating will you use? How much will you provide at each Selected Location (please reference the list of approved locations in Appendix 1 to the RFP)?

iv. Estimated capital costs for the physical components of the operation, including vending units and furniture seating.

v. Details about the food prep and service areas.

vi. Details about the electric generators and capacity.

vii. Details about proposed bathroom units, capacity, location and service/management.

viii. How will lighting be handled?

ix. Where will water come from and how will it be used for site operations?

x. How will everything be set-up, broken down and moved at the end of Operations at each Selected Location?

xi. Where will the entrances/exits be placed?
b. Schedule: When would you propose beginning operations? For how many consecutive weeks would you run The Program -as described in the RFP- in the 2016 season (minimum 12 weeks)? What are your proposed weekly hours of operation for each engagement?

c. Selected Locations: Please include a written statement stating that you (insert business name) commit to vending at any/all of the Selected Locations listed in Appendix 1 to the RFP.

d. Alcohol: Do you have, or can you obtain, a license from the PLCB that permits you to sell alcohol at remote locations in the City of Philadelphia during all of the proposed dates and times of the Engagements? Please show proof that you have either secured the PLCB permits, or have made applications to the PLCB to obtain them for 2016.

e. Staffing: Please provide a staff operations plan for the proposed Operation. What positions will you create? How many staff will you hire for each Engagement? If possible, please provide detailed information about any key staff members, including their work experience and the length of time you’ve worked with them. Who will provide management/oversight?

f. Menu: Proposed menu including brief descriptions of the food and beverages to be sold and related prices.

g. Retail: Will you sell merchandise at the Engagements? If so, what will you sell? Please provide detailed descriptions and price points.

h. Waste Management: Who will manage waste for the Selected Locations? Please provide information about waste receptacles, including trash and recycling.

i. Security: Please detail your plans for security at each Selected Location, during both operating and non-operating hours.

j. Financial Management and Reporting: Please provide information about the mobile Point of Sale (POS) system that you will use for the Program. How will data, such as the number of patrons, be collected? How will it be reported?

k. Marketing: How will you market/promote the Program to help drive customer traffic?
Section 4: Financial Information

Using the form below, please propose a Concession Fee for the Program as described in Section 10 of the RFP. The Concession Fee proposed should include a Daily Concession Fee and a Gross Revenue Percentage Fee.

Please also attach to this proposal the financial information attachments described in Section 10 of the RFP, which include tax returns and financial statements.

CONCESSION FEE PROPOSAL FORM

Concession Fee (Daily Concession Fee and Gross Revenues Percentage Fee) for the operation of the Program. Prior to 2020, the City requests that Concessionaire propose Concession Fees for an extended Term and Renewal Term if City Council authorizes the parties to extend the Term. Proposing fees for these years does not commit the Concessionaire to seek City Council's authority for an extended term. But if Concessionaire fails to propose fees for these years, then the Concessionaire's Proposal may be deemed incomplete.

2016: $____________________ plus Gross Revenues Percentage Fee of ________ %
Daily Concession Fee

2017: $____________________ plus Gross Revenues Percentage Fee of ________ %
Daily Concession Fee

2018: $____________________ plus Gross Revenues Percentage Fee of ________ %
Daily Concession Fee

2019: $____________________ plus Gross Revenues Percentage Fee of ________ %
Daily Concession Fee

2020: $____________________ plus Gross Revenues Percentage Fee of ________ %
Daily Concession Fee
2021: $____________________ plus Gross Revenues Percentage Fee of ________ %

    Daily Concession Fee

2022: $____________________ plus Gross Revenues Percentage Fee of ________ %

    Daily Concession Fee

2023: $____________________ plus Gross Revenues Percentage Fee of ________ %

    Daily Concession Fee

2024: $____________________ plus Gross Revenues Percentage Fee of ________ %

    Daily Concession Fee

2025: $____________________ plus Gross Revenues Percentage Fee of ________ %

    Daily Concession Fee
FORM 2

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM
# ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM

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

## DEPARTMENT OF COMMERCE

**OFFICE OF ECONOMIC OPPORTUNITY (OEO)**

**Bid/RFP Opening Date:**

**Garden**

List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.

<table>
<thead>
<tr>
<th>MBE</th>
<th>WBE</th>
<th>DSBE</th>
<th>M-DBE</th>
<th>W-DBE</th>
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<tr>
<th>Work or Supply Effort to be Performed</th>
<th>Date Solicited</th>
<th>Commitment Made</th>
<th>Give Reason(s)</th>
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<tbody>
<tr>
<td></td>
<td>By Phone</td>
<td>By Mail</td>
<td>Yes (if Yes, give date)</td>
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<tr>
<th>Company Name</th>
<th>Address</th>
<th>Contact Person</th>
<th>Telephone Number</th>
<th>Fax Number</th>
<th>Email Address</th>
<th>OEO REGISTRY #</th>
<th>CERTIFYING AGENCY</th>
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<tr>
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<th>Amount Committed To</th>
<th>Dollar Amount</th>
<th>Percent of Total Bid/RFP</th>
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<tr>
<td>YES²</td>
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1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.

2. Attach all quotations to this form.

09/2010
FORM 3

CITY OF PHILADELPHIA TAX AND REGULATORY
STATUS AND CLEARANCE STATEMENT
FOR RESPONDENTS

THIS IS A CONFIDENTIAL TAX DOCUMENT NOT FOR PUBLIC DISCLOSURE

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

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

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

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

Authorized Signature ___________________________ Date __________

Print Name and Title ___________________________

* You can apply for a City of Philadelphia Business Income and Receipts Tax Account Number or a Commercial Activity License on line after you have registered your business on the City’s Business Services website located at http://business.phila.gov/Pages/Home.aspx. Click on “Register” or “Register Now” to register your business.
FORM 4

LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION

Instructions: Respondents who seek as a positive factor in the City’s consideration of their Proposal that they meet the Local Business Entity or Local Impact criteria as provided in Mayoral Executive Order No. 04-12 should complete this Certification and return it with their Proposal. Respondents providing this Certification should also include in a separate section of their Proposal labeled “Local Business Entity or Local Impact Certification,” a statement that the Respondent believes it has met the Local Business Entity or Local Impact criteria “as set forth in the attached Local Business Entity or Local Impact Certification.” Check all appropriate certification options that are applicable to Respondent and sign below:

Respondent Name: __________________________________________

Local Business Entity Certification

___ I certify that the Respondent named above is a Local Business Entity because Respondent complies with the following criteria set forth in Section 17-109(3)(b) of the Philadelphia Code:

I. During the preceding 12 months, Respondent has filed a Commercial Activity or Business Privilege tax return with the City establishing that Respondent conducted business within the City within the calendar year preceding the filing of the return; and

II. During the preceding 18 months, Respondent:
   A. Has continuously maintained a valid Commercial Activity or Business Privilege License and all other licenses and permits necessary to conduct business with the City;
   B. Has continuously occupied an office within the City, where business is conducted; and
   C. Satisfies at least one of the following requirements (Check those applicable to Respondent):
      ___ (1) More than half of Respondent’s full-time employees work in the City at least 60% of the time;
      ___ (2) More than 50 of Respondent’s full-time employees work in the City at least 60% of the time; or
      ___ (3) Respondent’s principal place of business is located in the City.

Local Impact Certification

___ I certify that in the performance of a contract resulting from this RFP, the Respondent named above will employ City residents.

___ I certify that in the performance of a contract resulting from this RFP, the Respondent will perform the work in the City.

Authorized Signature ___________________________ Date ___________________________

Print Name and Title