

## **REQUEST FOR PROPOSAL**

**For the Management and Operation of Event Planning and Catering at  
the Fairmount Park Horticulture Center**

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Issued By:



Katrina Wilhelm, Executive Director

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**MANDATORY PRE-PROPOSAL MEETING & HORTICULTURE CENTER TOUR:**

**TUESDAY, DECEMBER 22, 2009, 10:30 A.M.**

Fairmount Park Horticulture Center

North Horticulture Center Drive and Montgomery Drive

Philadelphia, PA 19131-3711

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**SEALED PROPOSALS WILL BE RECEIVED UNTIL FEBRUARY 1, 2010 AT 3:00 P.M. LOCAL TIME  
(THE "DEADLINE FOR SUBMITTING PROPOSALS")**

**AT**

**1617 JOHN F. KENNEDY BOULEVARD, SUITE 1670, PHILADELPHIA, PA 19103**

**AND WILL BE OPENED IMMEDIATELY AFTER THE DEADLINE FOR SUBMITTING PROPOSALS**

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Questions regarding this Request for Proposals must be directed to Katrina L. Wilhelm,  
Executive Director, Fairmount Park Conservancy, 1617 John F. Kennedy Boulevard,  
Suite 1670, Philadelphia, PA 19103

This Request for Proposals and any accompanying materials will be posted on the  
following website: <http://www.phila.gov/rfp/>

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## **SECTION 1 – GENERAL INFORMATION**

### **1.1 Background**

- 1.1.1 The City of Philadelphia (“**City**”) is the owner of the arboretum called the Fairmount Park Horticulture Center (the “**Horticulture Center**”). The Horticulture Center is under the jurisdiction of the Department of Parks and Recreation (“**Parks and Recreation**”). Parks and Recreation is the legal successor to the former Fairmount Park Commission.
- 1.1.2 The Fairmount Park Conservancy (the “**Conservancy**”) was founded in 2001 by the former Fairmount Park Commission. The Conservancy is a private, non-profit corporation dedicated to supporting the Fairmount Park System of parks in Philadelphia.
- 1.1.3 Under a license agreement between the City and Conservancy (the “**Master License Agreement**”), the City will give an exclusive license to the Conservancy to manage and operate Event Planning and Catering at the Horticulture Center, including, for example, weddings, birthday and anniversary parties, bar and bat mitzvah celebrations, graduations, receptions, and corporate meetings and receptions. Because of approvals needed within the City, the Conservancy expects to execute the Master License Agreement with the City before the end of January 2010.

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

This Request for Proposal (“**RFP**”) is being issued by the Conservancy. The Conservancy is issuing this RFP to hire a concessionaire to undertake all aspects of Event Planning and Catering at the Horticulture Center for the Conservancy. The Conservancy is requesting Proposals from all individuals and firms that would like to manage and operate event planning and catering services at the Horticulture Center (“**Event Planning and Catering**”). By issuing this RFP and entering into a concession for Event Planning and Catering, the Conservancy hopes to encourage events at the Horticulture Center and increase use of a highly valued Fairmount Park facility and to generate revenue streams to reinvest in the Horticulture Center and Fairmount Park System.

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

Each firm or individual that submits a proposal in response to this RFP (a “**Proposal**”) will be considered a “**Respondent**.” The Conservancy intends to enter into negotiations for a written contract (the “**Concession Agreement**”) with the Respondent whose proposal the Conservancy determines best serves the objectives and meets the criteria set forth in this RFP. Upon execution of the Concession Agreement by the Conservancy and the successful Respondent, the successful Respondent will become the “**Concessionaire**” under the Concession

Agreement. The Concession Agreement will give the Concessionaire an exclusive right (“**License**” or “**Concession**”) to operate and manage Event Planning and Catering at the Horticulture Center and to exercise the rights and perform the duties described in this RFP and the Concession Agreement.

#### **1.4 Proposed Concession Summary**

The Concessionaire will have complete responsibility for Event Planning and Catering at the Horticulture Center. The responsibilities of the Concessionaire include those set forth in this RFP at Section 3 and Section 4 and those set forth in the Concession Agreement. In consideration of the license granted to the Concessionaire under this RFP, the Concessionaire shall pay the Conservancy a Concession Fee and shall provide funding for capital improvements to the Horticulture Center as explained below in this RFP. Each Respondent’s Proposal must describe, at a minimum, the management and operating practices, personnel requirements, revenue enhancement opportunities, and reporting mechanisms that it would employ in performing the Event Planning and Catering.

#### **1.5 Respondent Qualifications**

Respondents must demonstrate substantial experience in professional Event Planning and Catering services and sufficient financial capability to operate and manage the Event Planning and Catering at the highest level.

#### **1.6 Mandatory Pre-Proposal Meeting; Mandatory Tour of the Fairmount Park Horticulture Center**

1.6.1 A mandatory “**Pre-Proposal Meeting**” will be held at the Horticulture Center for all interested Respondents on the date, time and location stated on the cover page of this RFP. The purpose of the Pre-Proposal Meeting will be to review the requirements contained in this RFP and receive questions that potential Respondents may have. All potential Respondents are required to RSVP to Bridget Bonasch, Fairmount Park Conservancy, at 215-988-9334 or [bbonasch@fairmountparkconservancy.org](mailto:bbonasch@fairmountparkconservancy.org), regarding their attendance at the Pre-Proposal Meeting.

1.6.2 After the Pre-Proposal Meeting, Conservancy and Parks and Recreation staff will conduct a mandatory tour of the Horticulture Center.

1.6.3 The Conservancy will not consider the Proposal of any Respondent that did not attend the mandatory Pre-Proposal Meeting and tour.

#### **1.7 Project Manager; Questions to this RFP**

1.7.1 The “**Project Manager**” for this RFP is Katrina L. Wilhelm, Executive Director, Fairmount Park Conservancy. Her contact information is:

Email: [kwilhelm@fairmountparkconservancy.org](mailto:kwilhelm@fairmountparkconservancy.org)

Fax: 215-988-9335

Mail: 1617 John F. Kennedy Blvd

Suite 1670

Philadelphia, PA 19103

Questions concerning this RFP, including any questions concerning the Concession Agreement, may be asked at the Pre-Proposal Meeting. Otherwise, questions must be submitted to the Project Manager in writing, by e-mail, fax or letter, no later than **January 12, 2010 at 5:00 p.m. local time** (“**Deadline for Questions**”). Questions submitted by telephone will not be answered by the Conservancy. The Conservancy is not obligated to answer or respond to any questions received after the Deadline for Questions.

- 1.7.2. The Conservancy will answer all questions asked at the Pre-Proposal Meeting or timely submitted to the Conservancy, and which the Conservancy in its sole discretion determines concern a material element of the proposal process or Concession Agreement. The Conservancy will provide its answers in writing by an addendum to this RFP prior to the Deadline for Submitting Proposals; and the Conservancy will post its answers on the following website: <http://www.phila.gov/rfp/>. The Conservancy and the City are not bound by any oral response made by any Conservancy or City employee to any questions.
- 1.7.3 The addenda issued by the Conservancy are the Conservancy’s only official method for communicating information to all potential Respondents. Respondents should check <http://www.phila.gov/rfp/> before submitting a Proposal to verify that they have reviewed all the addenda relating to this RFP. Each Respondent must acknowledge in its Proposal that it has reviewed all addenda to this RFP.

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

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

## **1.9 No Obligation on Conservancy to Execute a Concession Agreement**

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

## **1.10 Modifications; Late Proposals**

Until the Deadline for Submitting Proposals, a Respondent may submit a

modified Proposal to replace all or any portion of a Proposal the Respondent submitted previously. The Conservancy will only consider the latest version of a Respondent's Proposal. The Conservancy 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 the Conservancy with written notification by e-mail, fax, or letter at the address for the Conservancy provided in Section 1.7.1.

### **1.11 Public Disclosure**

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

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

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

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

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

## **SECTION 2 – DESCRIPTION OF HORTICULTURE CENTER**

### **2.1 Location and Access**

The Horticulture Center is located in West Fairmount Park, one-quarter mile north of the Please Touch Museum at Memorial Hall. The address of the Horticulture Center is 100 North Horticulture Center Drive and Montgomery Drive. It is easily accessible from major roadways. It is about a quarter mile from Interstate-76, the

Schuylkill Expressway, by way of Montgomery Drive. It can also be reached from Montgomery Drive coming from Belmont Avenue, a major thoroughfare in West Philadelphia and Fairmount Park.

## **2.2 Features: Gardens, Reception & Meeting Rooms, Parking**

2.2.1 The Horticulture Center is an operating arboretum with an active greenhouse. It features a 22-acre arboretum with allays of mature trees, sculptures, a 50 foot reflecting fountain, and open lawn suitable for outdoor gatherings. The gardens are graced with many unusual species of flowers, woody plants and trees, a small pond, a creek and a wetland. Around the grounds are theme gardens and groves. Display Gardens contain perennials, herbs, an accessible garden for the disabled, a demonstration garden, and a vegetable garden. Perennial Gardens is a butterfly garden. The Puryear Pavilion in the trees is unique. The groves include a Japanese maple collection, a pinetum (a collection of evergreen trees of all genus) and the Centennial Arboretum dating back to 1876, which contain majestic trees of Asian, European and North American origin. The grounds are interspersed by nature trails and contain two picnic groves and sculptures of poets and musicians. Nearby the Horticulture Center is an authentic re-creation of a 16<sup>th</sup> to 17<sup>th</sup> Century Japanese House and Garden that enhances the allure of the Horticulture Center.

2.2.2. The main building at the Horticulture Center (the “**Building**”) includes a lobby area, meeting room, greenhouses, a tropical plant room, large event room, and separate men’s and women’s restrooms and an accessible restroom for the disabled. The Building can seat 250 people for meals (with dance space), and can accommodate approximately 550 people for cocktail receptions. The meeting room in the Building seats approximately 50 people and, in addition to meetings, can be used for small receptions and meals, retreats, and training sessions.

2.2.3 The Horticulture Center has 200 unmarked parking spaces along the drive leading to the Building and in the parking lot across from the Building.

2.2.4 The Building is served by a dual fired boiler (oil and gas) and radiant heat.

## **2.3 History & Previous Use of the Horticulture Center**

2.3.1 The Horticulture Center Building is an exhibition hall and greenhouse. It was built for the Bicentennial celebration in 1976. It sits on the site of the former Horticultural Hall, a celebrated building constructed for the Centennial Exposition of 1876.

2.3.2. The Horticulture Center has been used for catered events before. Until a previous concession agreement ended in 2005, the Horticulture Center was

one of the most popular facilities for catered events in Philadelphia.

- 2.3.3 A list of the number and types of events that took place in the Horticulture Center in 2005 is included in this RFP at **Appendix 1**. Sample photos from previous events at the Horticulture Center are included in this RFP at **Appendix 2**.

## 2.4 Horticulture Center Facilities

The License given to the Concessionaire under the Concession Agreement will apply only to the Horticulture Center facilities listed below. See **Appendix 3** for a floor plan of the Building.

- Gated 22-acre arboretum that includes open lawn areas (suitable for picnics and outdoor gatherings) as well as a fountain, display garden and terrace for use during catered events;
- The following areas and facilities in the Building:
  - a 17' x 34' vestibule;
  - 48' x 28' meeting room;
  - 16' x 8' men's restroom, 16' x 8' women's restroom, and an accessible restroom for the disabled;
  - 48' x 123' display garden room and a 143' x 174' display garden and greenhouse room;
  - 25' x 35' preparation area and a 11' x 12' walk-in cooler;
  - 24' x 17' storage space;
  - 34' x 34' receiving area;
  - Loading docks located on the side of Building; and
  - Fixtures installed by the City in the Building areas listed above.
- A parking lot for patrons across the driveway from the Building.

## 2.5 Horticulture Center Public Operations

Under the Master License Agreement, subject to available appropriation of funds by City Council, the City will agree that it will maintain and repair facilities in the Fairmount Park System, including the Horticulture Center, in accordance with the City's standard operations and procedures for the Fairmount Park System; except, however, (1) to the extent maintenance and repair is assumed by the Conservancy or the Concessionaire, and (2) also to the extent the Horticulture Center is damaged by the Conservancy or by the Concessionaire, its Subcontractors, sublicensees, Permittees, and clients and their guests and contractors.

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

### 3.1 Term of the Concession Agreement

The “**Initial Term**” of the Concession Agreement will start on February 16, 2010,

or the date the Conservancy executes the Concession Agreement and all the conditions set forth in Section 7.3 have been completely satisfied, whichever is later (in either event, the “**Commencement Date**”). The Initial Term expires on the 1<sup>st</sup> anniversary of the Commencement Date. The Conservancy, at its sole discretion, may renew the Concession Agreement for up to three one-year periods (each period a “**Renewal Term**”). To renew the Concession Agreement, the Concessionaire must provide written notice of the Conservancy’s desire to renew the agreement (“**Renewal Notice**”) to the Concessionaire at least 60 days before expiration of the Initial Term or then-current Renewal Term, as the case may be. In the Concession Agreement and the RFP, “**Term**” means the Initial Term and all Renewal Terms, if any. In the Concession Agreement and the RFP, the date the Concession Agreement expires, is terminated, or otherwise ends, is called the “**Concession Agreement Ending Date.**”

### **3.2 Use of the Horticulture Center: Uses Required and Uses Permitted**

- 3.2.1 The License given by the City to the Concessionaire under the Concession Agreement applies only to those areas and facilities of the Horticulture Center listed in Section 2.4.
- 3.2.2 The Concessionaire shall manage and operate all aspects of Event Planning and Catering at the Horticulture Center, including but not limited to marketing, advertising, scheduling, staging, staffing, equipment, supplies, parking and valet service, catering, and clean up.
- 3.2.3 The Concessionaire in good faith shall cooperate and communicate regularly with the Conservancy and the City to ensure the successful operation of the Concession and the successful operation of the Horticulture Center during public hours. The Concessionaire shall be considerate of the day-to-day operations and work of the Horticulture Center staff.

### **3.3 Operating Schedule; Conservancy & City Events; Holidays**

- 3.3.1 Except as provided in Sections 3.3.1.1, 3.3.1.2 and 3.3.1.3, the Concessionaire may rent the Horticulture Center during hours that it is closed to the public. Public hours for the Horticulture Center are listed below, but the City may change them from time to time:

The grounds of the Horticulture Center are open daily, except holidays, between the hours of 8 am to 5 pm from November 1<sup>st</sup> to March 31<sup>st</sup>, and 8 am to 6 pm from April 1<sup>st</sup> to October 31<sup>st</sup>. The Horticulture Center Building is also open daily, except holidays, between the hours of 9 am to 3 pm.

- 3.3.1.1 The Concessionaire may use and or rent out the display garden and

greenhouse space, meeting room and fountain display garden and terrace area during public hours, subject to prior approval by the Conservancy and the Commissioner of Parks and Recreation.

3.3.1.2 The Horticulture Center Building is not air conditioned and therefore may not be suitable for events during the months of July and August. The fountain, display garden and terrace area may be used for events during those months.

3.3.1.3 The Concessionaire shall not rent the Horticulture Center on dates on which certain annual events are held at the Horticulture Center. **Appendix 4** sets forth a list of annual events at the Horticulture Center. Any rental by the Concessionaire of the Horticulture Center that conflicts with the events set forth in Appendix 4 is void.

3.3.1.3.1 The Conservancy and Parks and Recreation may use and or rent out (and retain the rental payments) the Horticulture Center during and after the hours the Horticulture Center is open to the public and for other events that are not listed in **Appendix 4**. It is the intention of the Conservancy to limit that use to no more than six events in a calendar year. The Conservancy shall provide the Concessionaire with written notification of each event the Conservancy or City schedules at the Horticulture Center.

3.3.2 The Concessionaire shall not rent the Horticulture Center during any official City holiday without the prior written approval of the Conservancy and the Commissioner of Parks and Recreation. Any rental by the Concessionaire in violation of this Section 3.3.2 is void.

### **3.4 Event Planning and Catering Operation's Personnel**

3.4.1 Concessionaire shall employ and provide all personnel necessary and prudent for the safe and efficient performance of the Event Planning and Catering.

3.4.2 Concessionaire and its employees shall at all times conduct themselves courteously, professionally, and in a manner that reflects well upon the Conservancy and the City. Concessionaire shall train and supervise its employees and cause them to be well-groomed and neat. Concessionaire shall cause its employees to be presentable and outfitted in appropriate attire which clearly identifies them as Concessionaire's employee. The Conservancy may, at its sole reasonable discretion or at the direction of the City, require the Concessionaire to remove and replace any employee

that does not meet the requirements of this Section 3.4.2.

### **3.5 Equipment for Event Planning and Catering; Maintenance and Repair**

3.5.1 The Concessionaire shall, at its sole cost and expense, provide, setup and use all equipment, material, and supplies necessary and prudent for the safe, efficient and successful performance of the Event Planning and Catering, including but not limited to kitchen equipment, tables and chairs, china, silverware, glassware, table linens and overlays, food and beverages to be consumed at the events, and equipment needed for heating and food preparation, sound systems, surfaces for a dance floor, and supplemental lighting fixtures.

3.5.1.1 Prior to each event at the Horticulture Center that the Concessionaire books or caters, Concessionaire shall communicate with Horticulture Center staff to coordinate appropriate schedules for delivering equipment, materials, and supplies to the Horticulture Center to minimize interference with public enjoyment of the Horticulture Center during hours the Horticulture Center is open to the public.

3.5.2 Concessionaire shall not make capital improvements to the Horticulture Center or install any fixtures in the Horticulture Center without the prior written approval of the Conservancy and the Commissioner of Parks and Recreation. The City may condition its approval upon a requirement that the Concessionaire remove designated improvements or fixtures on or before the Concession Agreement Ending Date, and that requirement automatically becomes part of the Concession Agreement enforceable by the Conservancy. On or before the Concession Agreement Ending Date, the Concessionaire shall remove those improvements and fixtures designated by the City and return the Horticulture Center to a condition as good or better than at the Commencement Date. Unless the City conditions its approval on the Concessionaire removing designated improvements or fixtures, all the capital improvements and fixtures that the Concessionaire makes or installs in the Horticulture Center become the property of the City upon completion or installation. The requirements of this Section 3.5.2 survive the Concession Agreement Ending Date.

3.5.3 To reduce the likelihood of damage to the Horticulture Center, the Concessionaire shall establish written, standard operating procedures for load and unloading equipment, materials, and supplies, set up and take down, clean up, and other operations in connection with Event Planning and Catering. The Concessionaire shall obtain the written approval of the procedures from the Conservancy and the Commissioner of Parks and Recreation.

- 3.5.4 Concessionaire shall, at its sole cost and expense, maintain, operate, and conduct the Event Planning and Catering in good and safe condition and in accordance with industry standards, including but not limited to performing all necessary and prudent maintenance, repair, and replacement of the equipment, materials, and supplies used by Concessionaire for Event Planning and Catering.
- 3.5.5 At all times during the Term, the Concessionaire, at its sole cost and expense and in accordance with the provisions of the Concession Agreement, shall promptly repair all damage to the Horticulture Center caused by the Concessionaire or its employees, agents, contractors, invitees, or clients and their guests, or otherwise arising from Concessionaire's exercise of its License under the Concession Agreement.
- 3.5.6 At all times during the Term, neither the Conservancy nor City is required to provide any services, materials or equipment related to Event Planning and Catering.
- 3.5.7 On the Concession Agreement Ending Date, Concessionaire shall leave the Horticulture Center in the same condition in which it was found immediately prior to the Concessionaire's entry onto the Horticulture Center, except for reasonable wear and tear, casualty covered by the Concessionaire's insurance (with the City as loss payee), and Concessionaire's improvements that were duly approved by the Conservancy and City under the Concession Agreement.
- 3.5.8 All maintenance and repair required of the Concessionaire in this Section 3.5 is subject to the prior written approval of the Conservancy and the Commissioner of Parks and Recreation. Concessionaire shall promptly complete all maintenance and repair, but in no event later than a deadline specified to the Conservancy and the City, each in their reasonable discretion.

### **3.6 Parking**

If the vehicle parking needs for any event reasonably would be expected to exceed the capacity of the Horticulture Center parking lot and driveway parking, then Concessionaire shall arrange additional parking and valet service to and from an off-site parking area.

### **3.7 Storage Space**

The Concessionaire may use storage space (24' x 17') available at the Horticulture Center and identified in **Appendix 3**. If additional storage space is required, Concessionaire shall arrange for additional storage off-site from the Horticulture Center at Concessionaire's sole cost and expense.

### 3.8 Utilities

- 3.8.1 The Conservancy makes no representations or warranties regarding the adequacy of the utilities and utility service currently available at and serving the Horticulture Center. The Concessionaire shall, at its sole cost and expense, connect to and or upgrade any existing utility service or create a new utility systems as needed for Concessionaire's operations of the Event Planning and Catering (including but not limited to supplying and installing any necessary feeder cables, meters, wiring, gas lines, water, sewer lines, pumps, etc.). Before making any new utility connection, upgrading utility service, or creating any new utility system, the Concessionaire shall obtain all permits and approvals required by Applicable Laws and shall obtain the prior written approval of the Conservancy and the Commissioner of Parks and Recreation.
- 3.8.2 The Concessionaire is not responsible for paying of any charges or fees for all public utilities and utility service used at the Horticulture Center in connection with Event Planning and Catering.

### 3.9 Best Efforts To Book Events; Marketing

- 3.9.1 Concessionaire shall use its best efforts to book events at the Horticulture Center using all commercially reasonable means, including but not limited to marketing and publicizing the availability of the Horticulture Center for events and catered affairs via the internet, newspaper ads, magazines and other means of communication. Concessionaire shall create and actively distribute a brochure that highlights the menu and price points for catered events at the Horticulture Center (collectively with other marketing and publicity activities, the "**Promotional Activities**").
- 3.9.2 At all times during the Term of the Concession Agreement, the Concessionaire shall include on its stationery letterhead and in all print, broadcast, and electronic publicity (including but not limited to subtenant's website homepage), and advertising materials, a prominent, easily legible statement that reads: "**Horticulture Center is a Fairmount Park property operated by the Department of Parks and Recreation in partnership with the Fairmount Park Conservancy.**"
- 3.9.3 Concessionaire's Promotional Activities are subject to prior approval of the Conservancy and the City. Concessionaire may propose a plan for Promotional Activities and, if Concessionaire obtains the Conservancy's and 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 Conservancy and City.

### **3.10 Administrative Requirements**

#### **3.10.1 Responsiveness to the Public**

Concessionaire shall accept and respond to public inquiries regarding the availability of the Horticulture Center.

#### **3.10.2 Site Tours**

Concessionaire shall provide site tours for prospective renters of the Horticulture Center in coordination with Horticulture Center staff.

#### **3.10.3 Bookings**

Concessionaire shall accept, book and confirm all reservations in a timely manner.

#### **3.10.4 Site User License Agreement**

Concessionaire shall execute a site user license agreement (“**User Agreement**”) with each renter of the Horticulture Center to confirm the reservation of each event. The Concessionaire must obtain the Conservancy’s approval of the User Agreement, which the Conservancy cannot unreasonably withhold. The Concessionaire may not amend or change the form of the User Agreement approved by the Conservancy without the Conservancy’s prior written approval.

### **3.11 Cleaning; Trash Collection; Recycling; Walk Through Inspection**

3.11.1 Concessionaire shall, at its sole cost and expense, clean-up and remove all waste, garbage, refuse, rubbish, organic debris and litter generated by and related to the Event Planning and Catering at the Horticulture Center. Clean-up may include, but is not limited to, cleaning and restocking the restrooms with paper products as well as sweeping and mopping or steam cleaning the floors of the Building.

3.11.1.1 Concessionaire shall conduct a walk through inspection with Horticulture Center staff after the clean-up of each event. Concessionaire shall notify Horticulture Center staff to arrange for a timely walk through inspection. See **Appendix 5** for a sample walk-through inspection sheet.

3.11.2 Concessionaire shall provide proper waste and recycling receptacles for the Horticulture Center Building and grounds where events and catering take place, including but not limited to providing separate trash containers for recyclable materials in compliance with all City, State, and Federal regulations regarding recycling.

### **3.12 Environmentally-Friendly (“Green”) Products & Practices**

The City of Philadelphia and the Department of Parks and Recreation are implementing eco-friendly initiatives to create a positive impact on the environment and the health of visitors and residents of Philadelphia. Therefore, the Conservancy strongly encourages the Concessionaire to employ eco-friendly practices and products in the operation and maintenance of the Event Planning and Catering.

The Conservancy encourages the Concessionaire to use chlorine-free, biodegradable products such as, but not limited to, paper towels, napkins, utensils, and plates if the Concessionaire intends to use any disposable products during Event Planning and Catering. Additionally, the Conservancy encourages Concessionaires to use “Green Seal” eco-friendly products such as, but not limited to, soaps and cleaners for operational and cleaning purposes. A list of “Green Seal” certified products can be found at <http://www.green seal.org/findaproduct/index.cfm>. The Conservancy also encourages the serving of sustainable food products and the training of staff on environmentally-friendly food practices.

### **3.13 Subcontracting**

- 3.13.1 Subject to the requirements of Section 6.6 of the RFP, Concessionaire may elect to have some services and supplies performed or provided by a subcontractor as well (for example, without limitation, cleaning, linens, and paper goods). Notwithstanding the foregoing sentence, the Conservancy reserves the right to approve any subcontracts. Despite any subcontracts that Concessionaire may enter into, Concessionaire is not relieved of any of its obligations under the Concession Agreement.
- 3.13.2 Concessionaire shall cause all its subcontracts to specify that the Conservancy is designated as third party beneficiary of the subcontract. Concessionaire shall also cause its subcontracts to specify that the subcontractor is bound by the same requirements as Concessionaire under the Concession Agreement including, without limitation, indemnification of the Conservancy and the City, insurance, maintenance and preservation of records, and audit by the Conservancy.
- 3.13.3 Concessionaire shall include in each of its subcontracts a provision that the subcontractor shall continue to provide the services it would have under its subcontract with the Conservancy, for the remainder of the term of its agreement with the Conservancy, if:
  - a. the Conservancy terminates the Concession Agreement,
  - b. the subcontractor is not in default under its subcontract or the Concession Agreement, and

- c. the Conservancy provides written notice to the subcontractor of the Conservancy's desire that the subcontractor continue to provide those services.

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

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

### **3.14 Menu and Pricing Points; Alcoholic Beverages**

3.14.1 Concessionaire shall provide menus that demonstrate quality, variety, and a range of pricing points.

3.14.2 The Concessionaire or its sub-licensees, contractors, or subcontractors, may serve alcoholic beverages in or at the Horticulture Center solely for private events. It shall be a condition precedent to the right of the Concessionaire and its contractors and subcontractors that serve alcoholic beverages at the Horticulture Center that they have obtained all permits and licenses required under Applicable Laws for the serving of alcoholic beverages.

### **3.15 Security**

3.15.1 Throughout each event under the Concession Agreement, the Concessionaire shall maintain security within the Horticulture Center Building and in the surrounding outdoor areas used in connection with the event, including, but not limited to, the parking lot across from the Horticulture Center Building.

3.15.2 At all times during the Term of the Concession Agreement, the Concessionaire shall work with Parks and Recreation staff to secure the Horticulture Center at the conclusion of each event.

### **3.16 Alterations to the Horticulture Center**

Except as otherwise provide in Section 3.22 below regarding the Concessionaire's Annual Capital Improvement Plan, the Concessionaire shall not make, cause, or permit any alterations to the Horticulture Center, without the prior review and written approval of the Conservancy and the Commissioner of Parks and Recreation. As part of the Conservancy's and Parks and Recreation's prior review, the Concessionaire must submit to the Conservancy and Parks and

Recreation detailed plans and specifications for the proposed alterations and all additional information reasonably requested by the Conservancy and Parks and Recreation. The Conservancy's and Parks and Recreation's approval of any alterations may be conditioned upon a requirement that the Concessionaire provide the Conservancy and Parks and Recreation with a performance and payment bond satisfactory to the Conservancy and Parks and Recreation in all respects and upon other requirements the Conservancy and Parks and Recreation deem necessary or prudent to protect the interests of the Conservancy and City.

### **3.17 Smoking Policy**

Smoking in the Horticulture Center Building is strictly prohibited. The Concessionaire shall not permit smoking in any area of the Horticulture Center Building. Smoking is permitted outside the Building where Parks and Recreation have placed proper receptacles for cigarette and cigar butts. Concessionaire may, at its sole cost and expense, place appropriate receptacles in other outdoor areas of the Horticulture Center to accommodate smokers at outdoor events. If Concessionaire places any such additional receptacles, then Concessionaire shall promptly maintain and clean the receptacles following each event.

### **3.18 Persons with Disabilities**

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

### **3.19 Licenses and Permits**

The Concessionaire shall, at its sole cost and expense, obtain and maintain during the Term all licenses and permits required under all Applicable Laws and related to the Event Planning and Catering. The Concessionaire shall, and shall cause all of its contractors and subcontractors, to procure and maintain all necessary approvals, permits and licenses for the lawful operation of its business.

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

3.20.1 The Concession Fee is comprised of all Rental Fees and Catering Fees, as described in Section 6.9 of this RFP. Concessionaire shall pay the Concession Fee to the Conservancy without deduction, setoff, or counterclaim no later than the 15<sup>th</sup> day of the month following the month in which the Concessionaire receives the Rental Fees and Catering Fees upon which the Concession Fee is based.

3.20.2 Concessionaire shall prepare and submit to the Conservancy, a monthly "**Accounting Report**". The Accounting Report shall include a detailed income and expense statement for activities conducted at the Horticulture Center, including, but not limited to, gross revenues from all categories of

income associated with the Event Planning and Catering. The Accounting Report shall also include a description of the activities undertaken by the Concessionaire on or with respect to the Horticulture Center, including, but not limited to, documentation of all events held at the Horticulture Center. Concessionaire shall submit the Accounting Report to the Conservancy no later than the 15<sup>th</sup> day of each month for the preceding month's activities, together with all deposits, payments and fees the Concessionaire owes the Conservancy for the preceding month's activities under the Concession Agreement.

3.20.3 Within 90 days following the Concessionaire's fiscal year end, Concessionaire shall submit to the Conservancy and the City a report that includes (1) an annual summary description of the activities undertaken by the Concessionaire on or with respect to the Horticulture Center, including a detailed income and expense statement for activities conducted at the Horticulture Center, (2) the Concessionaire's annual financial statement prepared by a Certified Public Accountant according to Generally Accepted Accounting Principles (GAAP), consistently applied, and (3) the Concessionaire's tax return for the most recent calendar year. Concessionaire shall also promptly submit to the Conservancy all supplemental reports, documents, records, and other information that the Conservancy may reasonably require.

### **3.21. Ownership of Horticulture Center**

At all times during the Term of the Concession Agreement, the Horticulture Center is and will remain owned by the City of Philadelphia. Nothing contained in the Concession Agreement creates, grants, or gives to the Concessionaire any legal title, easement, leasehold, or other interest in the Horticulture Center other than a license.

### **3.22 Annual Capital Improvement Plan**

If the Conservancy renews the Concession Agreement for one or more Renewal Terms in accordance with Section 3.1 above, then the Concessionaire shall submit to the Conservancy a plan to make capital repairs, replacements, and improvements to the Horticulture Center ("**Annual Capital Improvement Plan**") during the upcoming Renewal Term. The Concessionaire shall submit its Annual Capital Improvement Plan reasonably promptly following the Concessionaire's receipt of the Conservancy's Renewal Notice, allowing for the work of architects, engineers, or other design professionals, if any, the Concessionaire may hire to prepare the Annual Capital Improvement Plan. (The Concessionaire is not obligated to hire architects, engineers, or other design professionals, but may do so in the Concessionaire's discretion in light of the extent of the proposed improvements.) The Concessionaire's Annual Capital Improvement Plan is subject to the Conservancy's prior written approval before the Concessionaire may implement the plan.

### **3.23 Annual Capital Payment**

Concessionaire shall pay the Annual Capital Payment to the Conservancy, as described in Section 6.11 of this RFP, not later than 30 days following the start of each Renewal Term, if any.

### **3.24 Master License Agreement Controls**

The Concession Agreement is subject in all respects to the Master License Agreement.

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

### **4.1 Ethics Requirements**

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

## 4.2 Tax Requirements

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

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

The Concessionaire shall treat all information it obtains from the Conservancy or from the City that is not generally available to the public as confidential and

proprietary to the Conservancy or to the City, respectively. The Concessionaire shall exercise all reasonable precautions to prevent any confidential and propriety information it obtains from the Conservancy and the City from being disclosed to any other person or entity. The Concessionaire shall promptly indemnify, defend, and hold harmless the Conservancy and 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 Conservancy or City confidential or proprietary information by the Concessionaire or its employees, or by any person acquiring that information, directly or indirectly, from the Concessionaire or its employees. The Concessionaire's obligations under this Section 4.3 survive the Concession Agreement Ending Date.

#### **4.4 Performance Bond**

4.4.1 The Concessionaire at its sole cost and expense shall, not later than two Business Days following execution of the Concession Agreement, provide the Conservancy with a performance bond (in a form approved by the Conservancy), in the amount of \$25,000 as security for the Concessionaire's faithful performance of, and compliance with, all the terms and conditions of the Concession Agreement.

4.4.2 The performance bond will not be acceptable under the Concession Agreement unless (A) it is given by a surety acceptable to the Conservancy; (B) names the Conservancy as obligee, and (C) is effective for the duration of the Term plus an additional three months, or is renewable in a sequence to achieve the same duration of effectiveness without any gap or lapse in coverage. If the Concessionaire obtains a renewable performance bond, then the Concessionaire shall deliver written evidence to the Conservancy not later than 30 days before the end of the term of the performance bond (or then-current renewal term, as the case may be) that the Concessionaire has renewed the bond.

4.4.3 In lieu of a performance bond, if requested by the Concessionaire, the Conservancy may, in its sole discretion, accept a cash deposit or irrevocable letter of credit (in form reasonably acceptable to the Conservancy) as security for:

4.4.3.1 the Concessionaire's faithful performance of, and compliance with, all the terms and conditions of the Concession Agreement, including but not limited to all costs and expenses to hire persons or firms to complete Concessionaire's performance of, and compliance with, the Concession Agreement;

4.4.3.2 compensation for any damages, costs, or expenses suffered or incurred by the Conservancy and the City, or either of them, related to

Concessionaire's Event of Default; or

4.4.3.3 compensation for any damage to the Horticulture Center arising in connection to any event or catering activities at the Horticulture Center under the Concession Agreement and not otherwise covered by Concessionaire's insurance (that names the City as payee).

4.4.4 In the Concession Agreement and this RFP, Concessionaire's performance bond, cash deposit, or letter of credit is called the "**Performance Security.**"

4.4.5 Following an Event of Default (see below) and expiration of any applicable cure period, if the Concessionaire has not materially cured the Event of Default, the Conservancy may obtain payment and compensation under, from, or out of, the Performance Security.

#### **4.5 Indemnification, Release and Insurance**

The Concessionaire shall promptly indemnify, defend, and release the Conservancy and the City, as set forth in **Appendix 6** 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 6**. It is a condition precedent to the Concessionaire's License under the Concession Agreement that Concessionaire provide the City of Philadelphia Risk Manager, on behalf of the Conservancy, with a certificate of insurance evidencing that 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 6.

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

4.6.1 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 Horticulture Center. The Concessionaire shall maintain its Books and Records in accordance with generally accepted accounting principles consistently applied.

4.6.2 The Conservancy and the City, or either of them, may inspect and audit all of the Concessionaire's Books and Records and Concessionaire's affairs at all reasonable times at the Horticulture Center, the City's offices, or other place the Conservancy may reasonably require.

## 4.7 Default

- 4.7.1 The Concessionaire shall commit an “**Event of Default**” under the Concession Agreement if:
- a. Concessionaire fails to timely pay to the Conservancy in full the Concession Fee; or
  - b. Concessionaire fails to timely perform, observe, fulfill, or comply with any other obligation, requirement, or prohibition imposed on or applicable to Concessionaire under the Concession Agreement.
- 4.7.2 If the Concessionaire commits an Event of Default under Section 4.7.1 above, and,
- a. in the case of an Event of Default under Section 4.7.1.(a), Concessionaire fails to cure the default within 5 days after receiving written notice from the Conservancy of the Event of Default,
  - b. in the case of an Event of Default under Section 4.7.1.(b), Concessionaire fails to cure the default within 30 days after receiving written notice from the Conservancy of the Event of Default, or
  - c. in the case of any Event of Default that poses a threat of imminent harm to persons or property, then without notice, the Conservancy may, in its absolute discretion, immediately suspend or terminate the Concession Agreement, in whole or in part, without liability to Concessionaire, and or may exercise its right to payment or compensation under, from, or out of, the Performance Security.
- 4.7.3 In addition to the Conservancy’s rights and remedies under Section 4.7.2 above, Concessionaire is liable for all damages, costs, and expenses suffered or incurred by the Conservancy and the City, or either of them, 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 Conservancy may exercise all rights and remedies available to it at law or in equity, in addition to the remedies available to the Conservancy under the Concession Agreement. The Conservancy may exercise its remedies under the Concession Agreement, at law, or in equity, separately, cumulatively, successively, and or repeatedly, in the Conservancy’s absolute discretion.
- 4.7.4 The Conservancy’s failure or delay in providing written notice of an Event of Default to Concessionaire does not relieve or excuse the Concessionaire

from any liability arising from or related to the Event of Default and does not waive any of the Conservancy's rights or remedies upon delivering written notice to the Concessionaire of the Event of Default and Concessionaire's failure to cure the Event of Default in the applicable cure period provided under Section 4.7.2, or in the case of an Event of Default that poses a threat of imminent harm to person or property, immediately and without notice.

- 4.7.5 The Conservancy's exercise of its right to payment or compensation from the Performance Security does not relieve the Concessionaire from liability for any damages, costs, or expenses suffered or incurred by the Conservancy and the City, or either of them, or the costs to repair any damages to the Horticulture Center, that exceed the amount of the Performance Security. If the Conservancy exercises its right to payment or compensation from the Performance Security, and if the Conservancy does not also terminate the Concession Agreement, then the Concessionaire shall promptly restore the Performance Security to the required amount of \$25,000.

#### **4.8 Non-Indebtedness**

- 4.8.1 The Concessionaire represents and warrants that Concessionaire, and all entities under common control with the Concessionaire or controlled by it are not as of the Commencement Date indebted to the City, and Concessionaire shall not at any time during the Term of the Concession Agreement be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. The Concessionaire shall remain current during the Term of the Concession Agreement with all such payments and shall inform the Conservancy and the City upon receipt of any notices of delinquent payments. In addition to any other rights or remedies available to the Conservancy under the Concession Agreement, at law, or in equity, the Concessionaire acknowledges that any breach or failure to conform to Concessionaire's representation, warranty, and covenant in this Section 4.8.1 may, at the option of the Conservancy, result in the termination of the Concession Agreement. In addition, Concessionaire understands that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.
- 4.8.2 The Concessionaire shall cause its Subcontractors (if any) to make a certification to the Conservancy similar to that made by the Concessionaire in Section 4.8.1 above. The Concessionaire shall include the provisions in Section 4.8.1 in each subcontract under the Concession Agreement, with appropriate adjustment for the name of the subcontractor.

#### **4.9 Condition of the Horticulture Center**

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

#### **4.10 Safety Measures**

The Concessionaire shall, at its sole cost and expense, take all steps necessary and desirable for the safe exercise of the Concession and to prevent any injury or damage to any person or property in, on, or about the Horticulture Center arising in connection with exercise of the Concession.

#### **4.11 Compliance with Applicable Laws**

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

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

#### **4.12 Entire Agreement; No Amendment**

- 4.12.1 The Concession Agreement is the complete, final, and exclusive expression of the Conservancy's and Concessionaire's agreement about the Concession. All prior negotiations and agreements, if any, between the Conservancy and Concessionaire relating to the Concession are superseded by and merged into the Concession Agreement.
- 4.12.2 The Concession Agreement may not be amended or modified except in writing approved by the Conservancy and approved by the City in advance in writing. Any proposed amendment of the Concession Agreement made without strictly complying with this Section 4.12.2 is void.

#### **4.13 No Joint Venture Or Partnership**

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

#### **4.14 Severability**

The provisions of the Concession Agreement are severable. If any provision of the Concession Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, then that provision shall be 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 will not affect any other provision of the Concession Agreement. If any provision of the Concession Agreement is held invalid or unenforceable so that the Conservancy is deprived of a material consideration to it under the Concession Agreement, then the Conservancy may, in its absolute discretion, terminate the Concession Agreement without liability to the Concessionaire.

#### **4.15 Waiver of Jury Trial**

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

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

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

#### **4.17 Counterparts**

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

#### **4.18 Assignment Prohibited**

Except as set forth in Section 3.13 above, Concessionaire shall not assign the Concession Agreement or any of its rights or obligations under the Concession Agreement. Any attempted assignment by Concessionaire in violation of this provision is void and will be deemed an offer to the Conservancy to immediately terminate the Concession Agreement, which the Conservancy may accept or decline in the Conservancy's sole discretion.

#### **4.19 Venue**

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

#### **4.20 Validity of Conservancy and City Approvals**

4.20.1 Unless expressly specified otherwise in the Concession Agreement, any review, approval, permission, or consent that the Concessionaire is required to obtain from the Conservancy under the Concession Agreement will not be valid or effective unless obtained or confirmed in writing from the Executive Director of the Conservancy or his or her designee.

4.20.2 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 of the Department of Parks and Recreation or the Commissioner's designee, in addition to the Conservancy.

4.20.3 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 or confirmed in writing by the Commissioner of Parks and Recreation or his or her designee.

#### **4.21 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 this Concession Agreement.

#### **4.22 Third Party Beneficiary**

The City is a third party beneficiary of the Concession Agreement. Despite the City's status as third party beneficiary of the Concession Agreement, Concessionaire acknowledges and agrees that the City is not obligated to provide any funding, services, or other support for Concessionaire's performance of the Event Planning and Catering.

#### **4.23 Time of the Essence**

Time is of the essence in Concessionaire's compliance with each and every obligation and limitation applicable to Concessionaire under this Concession Agreement.

#### **4.24 Force Majeure Event**

4.24.1 Concessionaire is excused from compliance with any obligation or limitation under the Concession Agreement where (1) compliance with the obligation or limitation is rendered impossible by any unexpected event in the nature of a hurricane, tornado, earthquake, war, terrorism, riot, embargo, or labor strike (except a strike by Concessionaire's own employees), (2) the breakdown or failure of any apparatus, equipment or machinery in the Horticulture Center required in connection with the Event and Catering Planning where the breakdown or failure is not in any way the fault of Concessionaire, and (3) Concessionaire cannot reasonably make alternative arrangements to comply with the obligation or limitation despite the unexpected event ((1), (2), and (3) together, a "**Force Majeure Event**").

4.24.2 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 this Concession Agreement, and if the Force Majeure Event continues for 2 months or longer, then the Conservancy may terminate this agreement in its sole discretion.

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

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

### **5.1 General**

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

### **5.2 Management Experience Qualifications**

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

### **5.3 Records and Reports**

Respondents must have the capability to maintain and furnish management records and reports, as required in Section 3.20 and 4.6, in a format satisfactory to the Conservancy.

### **5.4 Respondents Restricted**

- 5.4.1 No Proposal will be accepted from, and the Concession Agreement will not be awarded to, any person, firm, or corporation that is in arrears or is in default of any debt to the City, including without limitation tax delinquencies, or any contract obligation, or has defaulted as surety or otherwise, upon obligations to the City, or has failed to perform faithfully any previous contract with the City, or has failed to execute a contract the person, firm, or corporation negotiated with the City.
- 5.4.2 The Conservancy will not accept any Proposal from, nor award the Concession Agreement to, any official, officer, director, official, or employee of the Conservancy or City. The Conservancy will not accept

any Proposal from, nor award the Concession Agreement to, any person, firm, or corporation in which any official, officer, director, or employee of the Conservancy or City has a direct or indirect financial interest, including but not limited to a firm in which the Conservancy or City official's, officer's, director's, or employee's parent, grandparent, spouse, sibling, child, or relative in-law is an officer, director, or employee.

- 5.4.3 The Conservancy will not accept any Proposal from, nor award the Concession Agreement to, any Respondent that is involved in litigation against the City of Philadelphia.

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

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

## **SECTION 6 – PROPOSAL SUBMISSION REQUIREMENTS**

### **6.1 Responsiveness**

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

### **6.2 Form of Proposal**

- 6.2.1 Each Respondent must submit one original signed cover letter and Proposal and eight copies of the cover letter and Proposal. The original letter must be signed by a person with authority to bind the Respondent to all of the provisions of its Proposal.
- 6.2.2 Each Respondent's Proposal must follow the form of this RFP. It must be typed on 8-1/2" x 11" paper and marked clearly on the cover page with Respondent's name and clearly refer to this RFP. Pages should be numbered clearly. Respondents must not submit Proposals in plastic sleeves or spiral binders. Illustrations may be included. Oversized drawings may be submitted, but they must be accompanied by 8½" x 11" sectionals or reduced to 8 ½" x 11". **Each Respondent must seal its Proposal in envelopes, packets, or boxes, as the case may be, to ensure confidentiality of the information prior to the Deadline for Submitting Proposals. The Conservancy will only accept Proposals in hard copy and will not accept Proposals by facsimile or by e-mail.**
- 6.2.3 Wherever a Respondent is providing information required by this RFP, the

Respondent must identify the information by using the corresponding Section number, Appendix or Form of this RFP that requires the information.

6.2.4 Each Respondent's Proposal must include the following (please see other provisions of this RFP for a fuller explanation of several of the matters listed):

1. Cover letter and Proposal Security;
2. Description of company profile, organization, and personnel (see 6.5);
3. Management Experience Qualifications, and at least three references (see 5.2 and 6.5.7);
4. Financial Information (see 6.7);
5. Completed Solicitation for Participation and Commitment Form (see 6.6);
6. Statement of Understanding of the Purpose of this RFP (see 6.8);
7. Completed Rental Fee Proposal Form (see 6.9);
8. Completed Catering Fee Proposal Form (see 6.9);
9. Completed Initial Capital Improvements Proposal Form (see 6.10);
10. Completed Annual Capital Payment Proposal Form (see 6.11);
11. Operational Plan (see 6.13);
12. Pro-Forma (see 6.12).

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

1. Respondent's name and address
2. Identification as "Proposal for Management and Operation of Event Planning and Catering at Fairmount Park Horticulture Center"
3. Deadline for Submitting Proposals, as stated on the cover page of this RFP

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

6.3.1 Each Respondent must submit its Proposal to the Conservancy no later than the Deadline for Submitting Proposals. Each Respondent is solely responsible for delivery of its Proposal on time and to the proper location. The "Deadline for Submitting Proposals" and the location for submitting Proposals are set forth on the cover page of this RFP.

6.3.2 The Conservancy may request Respondents to make oral presentations after the Deadline for Submitting Proposals. The date and time of the oral presentations shall be determined by the Conservancy.

### **6.4 Proposal Security**

6.4.1 Each Respondent must submit with its proposal a check, made payable to

the “Fairmount Park Conservancy” in the amount of One Thousand Dollars (\$1,000.00) (“**Proposal Security**”). The Conservancy may reject any proposal that is not accompanied by the required Proposal Security.

- 6.4.2 A Respondent’s Proposal Security may be retained in full by the Conservancy if the Respondent (a) executes the Concession Agreement but fails to furnish the required Performance Security within three days following execution of the Concession Agreement or fails to provide the required evidence of insurance documents within 5 days after the Concession Agreement is executed or (b) fails to execute a Concession Agreement in accordance with the terms of its Proposal, unless the Conservancy has permitted the Respondent to withdraw its Proposal. Proposal Security will be returned to unsuccessful Respondents after the Concession Agreement is signed with the successful Respondent.

## **6.5 Company Profile; Operating Experience**

Each Respondent must:

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

- 6.5.7 Provide at least three recent references with whom the Respondent has worked and who can describe such matters as the Respondent's financial and operational capability (e.g., operating quality catering services at facilities comparable in size to the Horticulture Center). The Respondent must include the name of the reference entity, a description of the nature of the listed reference's experience with the Respondent, and the name, title, address, email address, and telephone number of a contact person at the reference entity.
- 6.5.8 List all contracts the Respondent and all its Related Companies have had with the Conservancy, or with the City, in the last five years.
- 6.5.9 If Respondent or any of its Related Companies has filed for bankruptcy protection in the last five years (or had a bankruptcy petition filed against it), Respondent must provide a brief explanation of the circumstances and outcome of the filing.
- 6.5.10 List all surety companies that have previously issued performance bonds on behalf of Respondent or any its Related Companies, the addresses of each surety company, the amount of each bond, and the term of each bond. List any performance bonds that were called in the last five years due to unsuccessful completion of the contract.

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

The Concession Agreement is subject to Mayor's Executive Order, No.02-05 relating to the participation of minority-owned, women-owned, and disabled-owned businesses in City contracts. Respondents are required to respond to the requirements specified in **Appendix 7** of this RFP and should submit the "**Solicitation for Participation and Commitment Form**" (the "**S & C Form**") attached to this RFP as **Form A** to identify its solicitations and any commitments made with M/W/DSBEs (defined in **Appendix 7**) to participate in the Concession Agreement. Respondents must indicate on the S & C Form the work being performed and the dollar amount and percentage of work being performed by a M/W/DSBE firm. Respondents are also required to submit documentation of their "Good Faith Efforts" (as more fully described in **Appendix 7**), whether or not they have achieved any commitments with M/W/DSBEs. For a listing of firms certified as M/W/DSBEs, please visit <http://mbec.phila.gov/home/directory.asp>. The Conservancy may, in its sole discretion, reject any Proposal that does not include a completed S & C Form.

## **6.7 Financial Information**

Each Respondent must provide evidence of its financial capacity and stability; accountant prepared financial statements for the most recent fiscal year ended that are in accordance with generally accepted accounting principles; and a federal tax

return. Each Respondent must also provide creditor reference(s) and a description of the loans or lines of credit made available to the Respondent and dates that the accounts were established as well as the name of the Respondent's creditor's account officer(s). By submitting a Proposal each Respondent authorizes the Conservancy to contact the Respondent's creditor references regarding that information.

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

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

## **6.9 Concession Fee Proposal: Rental Fees and Catering Fees**

6.9.1 Using **Form B**, each Respondent must propose "**Rental Fees**" for each event at the Horticulture Center. The Concessionaire shall pay to the Conservancy the entire amount of the Rental Fees paid to the Concessionaire by those who rent the Horticulture Center.

In addition to the Rental Fees, using **Form C**, each Respondent must propose "**Catering Fees**" to be paid to the Conservancy for the right to operate catered events at the Horticulture Center. Catering Fees should be based on the guest count for each event at the Horticulture Center (i.e., the number of individuals attending an event).

6.9.1.1 Rental Fees and Catering Fees must be competitive with other major catering facilities in the Philadelphia event market.

6.9.1.2 Rental Fees may vary by season, day of the week, room (e.g., the meeting room, display garden, greenhouse, outdoor gardens, etc.) and type of event (e.g., a wedding, bar or bat mitzvah, corporate reception, etc.) being held at the Horticulture Center.

6.9.1.3 Catering Fees may be a flat fee or may vary by the number of guests for an event (e.g., a Catering Fee for guest counts less than 125 people, and a different Catering Fee for guest counts at or above 125 people).

6.9.1.4 Rental Fees are subject to the written approval of the

Conservancy.

6.9.1.5 In this RFP, and for purposes of the Concession Agreement, “**Concession Fee**” means the combined Rental Fees and the Catering Fees.

## **6.10 Initial Capital Improvements**

6.10.1 The City has identified capital funds that it will use to make improvements to the Horticulture Center (“**Capital Improvement Funds**”). The City intends to use the Capital Improvement Funds to undertake the repairs, replacements and improvements to the Horticulture Center listed below (“**City Capital Improvements**”). The City has not guaranteed the time within which the City Capital Improvements will be completed, and it is possible that some or all the City Capital Improvements will not be completed until after the Initial Term of the Concession Agreement.

- Upgrade Food Preparation Station;
- Renovations to the Lobby;
- Renovations to the Meeting Room;
- Improve Restroom Facilities;
- Other.

6.10.2 Respondents must provide a minimum of Twenty Five Thousand Dollars (\$25,000) in capital funds during the Initial Term of the Concession Agreement (“**Initial Term Capital Investment**”) to be used either (1) to offset the cost of the above mentioned City Capital Improvements or (2) to fund other improvements proposed by the Respondent (“**Respondent Capital Improvements**”) on **Form D**.

6.10.2.1 If a Respondent is selected to execute the Concession Agreement with the Conservancy, and if Respondent submits a Respondent Capital Improvements plan, then the Conservancy will endeavor to review the Respondent’s proposed Respondent Capital Improvements and obtain the City’s approval of them not later than 30 days following execution of the Concession Agreement. Respondent Capital Improvements are not approved unless the Conservancy has obtained the City’s approval of them and the Conservancy approves them in a written notice to the Concessionaire. The Conservancy hopes to review the Respondent Capital Improvements and discuss them with the City before executing the Concession Agreement.

6.10.2.2 Following the later of the Commencement Date or the Conservancy’s approval of the Respondent Capital Improvements, the Concessionaire shall promptly commence and

diligently make all approved Respondent Capital Improvements, but in no event shall Concessionaire fail to complete the approved Respondent Capital Improvements within 90 days following the later of the Commencement Date and Conservancy's approval. The Concessionaire shall not make any proposed Respondent Capital Improvements not expressly approved by the Conservancy.

6.10.2.3 If the Respondent Capital Improvements are disapproved by the Conservancy, then the Concessionaire shall pay its Initial Term Capital Investment to help fund the City Capital Improvements.

6.10.3 The Conservancy will evaluate Proposals partly on the level to which a Respondent is willing to make a capital investment in the Horticulture Center.

6.10.4 In its Proposal, each Respondent must identify all fixed equipment and improvements that it proposes to apply towards its Initial Term Capital Investment. Equipment that is not a fixture does not apply toward the Concessionaire's capital expenditures and remains the property of the Concessionaire.

6.10.5 All capital improvements and fixtures applied towards the Concessionaire's capital investment are subject to the provisions of Section 3.5.2 of the RFP.

6.10.6 The Conservancy will not consider Proposals that request or require reimbursement to the Concessionaire of any portion of Concessionaire's capital improvement cost if the Concession Agreement is terminated following an Event of Default or a Force Majeure Event before the end of the Term.

## **6.11 Capital Improvements During Renewal Terms**

Using **Form E**, each Respondent must propose an annual amount that, as Concessionaire, it would pay during each Renewal Term ("**Annual Capital Payment**"). The Annual Capital Payment proposal is in addition to the Initial Term Capital Investment. Similar to Section 6.10.2, the Annual Capital Payment may be applied to the Annual Capital Improvement Plan, subject to the Conservancy's approval.

## **6.12 Pro-Forma**

Each Respondent must include in its proposal a well thought out pro-forma projection for the Initial Term and each potential Renewal Term (i.e., a four-year projection) of the projected number of events for the Event Planning and Catering

and projected Concession Fees. The pro-forma projection must include explanations for all the assumptions used in its formulation.

## **6.13 Operational Plan**

- 6.13.1 All Proposals must include a detailed operational plan for Event Planning and Catering at the Horticulture Center (“**Operational Plan**”). At a minimum, the following must be included in the Operational Plan:
- 6.13.1.1 A detailed description for operating and managing the Event Planning and Catering at the Horticulture Center, including, but not limited to, staffing, marketing, providing tours to prospective clients, booking and scheduling procedures, equipment purchases, and maintenance and repair of the Horticulture Center.
  - 6.13.1.2 Sample menus that demonstrate quality, variety, and provide a range of pricing points.
  - 6.13.1.3 Identification of Respondent’s on-site management team and description of the team’s background and experience.
  - 6.13.1.4 An estimated number of employees and the positions the employees will fill in Concessionaire’s performance of Event Planning and Catering.
  - 6.13.1.5 The customer service standards Respondent deems necessary for the Event Planning and Catering.
  - 6.13.1.6 Description of the catering firm(s) to be subcontracted by the Respondent to provide alternative catering options for clients.
  - 6.13.1.7 Description of any other requirements not mentioned in Section 3 of this RFP that are required to ensure the safe, sanitary and legal operation of the Horticulture Center in the public interest.
  - 6.13.1.8 A plan that makes it possible for users of the Horticulture Center who have special needs or desires to have specialized catering services; for example, kosher food, ethnic cuisine.
- 6.13.2 If the Conservancy renews the Concession Agreement for one or more Renewal Terms in accordance with Section 3.1 above, then the Concessionaire shall submit to the Conservancy a revised operational plan (“**Annual Operational Plan**”) for operating Event Planning and Catering

during the upcoming Renewal Term. The Concessionaire shall submit its Annual Operational Plan reasonably promptly following the Concessionaire's receipt of the Conservancy's Renewal Notice, but not later than 10 Business Days before the start of the upcoming Renewal Term. The Concessionaire's Annual Operational Plan is subject to the Conservancy approval, which may be subject to conditions and changes the Conservancy reasonably requires.

## **6.14 Confidential Information**

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

### **NOTICE**

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

## **6.15 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 Conservancy 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 Conservancy's selection of a Respondent for further negotiations leading to a Concession Agreement constitute acceptance by the Conservancy of any objection or proposed alternative provision set forth in that Respondent's Proposal.

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

**7.1 Conditions Regarding Proposals**

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

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

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

## **7.2 Reservation of Rights**

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

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

### **7.3 Concession Agreement Effectiveness**

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

- 7.3.1 The Respondent posts a sufficient Performance Security in a form satisfactory to the Conservancy;
- 7.3.2 The Concession Agreement has been signed by the Respondent and approved by the Conservancy's legal counsel; and
- 7.3.3 The Concession Agreement has been executed by the Conservancy.

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

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

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

### **8.1 Selection Committee**

Those Proposals that the Conservancy determines in its sole discretion are responsive to this RFP will be reviewed by a “**Selection Committee**” comprised of representatives from the Conservancy.

### **8.2 Proposal Evaluation Criteria**

- 8.2.1 The Selection Committee will evaluate Proposals by considering the criteria listed below. No particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list.
  - 8.2.1.1 Demonstrated experience at operating catering facilities that are similar in size and nature to the Horticulture Center.
  - 8.2.1.2 Concession Financial Proposals – Rental Fees, Catering Fees, Concession Fee, amount of Initial Term Capital Investment, and amount of Annual Capital Payment.
  - 8.2.1.3 Financial capability to perform the work required by the RFP and as presented in the Proposal.
  - 8.2.1.4 The proposed Operational Plan.

8.2.1.5 Menu quality, variety and range of pricing points.

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

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

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

The Conservancy will award the Concession Agreement to the Respondent whose proposal the Conservancy, in its sole discretion, determines best meets the goals of the Conservancy in issuing this RFP and is in the best interest of the Conservancy. For that reason, the Conservancy may not necessarily award a Concession Agreement to the Respondent offering the highest Rental Fees, Catering Fees, Concession Fee, Initial Term Capital Investment and Annual Capital Payment.

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

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

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

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

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

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

**This \_\_\_\_ day of \_\_\_\_\_, 2009**

\_\_\_\_\_  
**Name of Respondent**

\_\_\_\_\_  
**Signature of Individual or Authorized Signer**

\_\_\_\_\_  
**Printed Name and Title of Signer**

\_\_\_\_\_  
**Additional Authorized Signer (if applicable)**

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

\_\_\_\_\_  
**Federal Employer Identification Number**

\_\_\_\_\_  
**Phone Number**

\_\_\_\_\_  
**E-mail Address**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, Zip Code**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

**This \_\_\_\_ day of \_\_\_\_\_, 2009**

\_\_\_\_\_  
**Corporate or Company Name**

\_\_\_\_\_  
**Authorized Signer**

\_\_\_\_\_  
**Printed Name and Title of Signer**

\_\_\_\_\_  
**Additional Authorized Signer (if applicable)**

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

\_\_\_\_\_  
**Federal Employer Identification Number**

\_\_\_\_\_  
**Phone Number**

\_\_\_\_\_  
**E-mail Address**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, Zip Code**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_