

REQUEST FOR PROPOSALS
FOR
FOOD AND REFRESHMENT CONCESSION AT SPRAIN RIDGE PARK

ISSUE DATE: February 13, 2017
DUE DATE: March 14, 2017 at 4:00 P.M.

Issued By:

Kathleen M. O'Connor
Commissioner

Westchester County
Department of Parks, Recreation & Conservation
450 Saw Mill River Road
Ardsley, New York 10502

I. PROPOSAL INFORMATION

The County of Westchester (the “County”), acting by and through its Department of Parks, Recreation & Conservation (the “Department”, “Parks”, or the “Parks Department”), is requesting proposals from qualified individuals and entities operate the food and refreshment concession located at Sprain Ridge Park, 149 Jackson Avenue, Yonkers, New York 10705 , for the period of May 1, 2017, through December 31, 2021, with the sole option of the County of Westchester (“the County”) to renew the agreement for an additional term of five years.

Copies of this Request for Proposals (“RFP”) may be downloaded from the County’s website for RFP’s: <http://www.westchestergov.com/rfp> under “Sprain Ridge Park Food and Refreshment Concession”.

A.) SCHEDULE

Issue Date:	February 13, 2017
Pre-Proposal Meeting:	February 28, 2017 at 11:00 a.m.
Requests for Clarification Due:	March 3, 2017 at 4:00 p.m.
Due Date:	March 14, 2017 at 4:00 p.m.

B.) PRE-PROPOSAL MEETING

A pre-proposal meeting will be held on February 28, 2017 at 11:00 a.m. The meeting will be held inside the concession stand located at Sprain Ridge Park, 149 Jackson Avenue, Yonkers, New York 10705. Attendance at the pre-proposal conference is not mandatory. This information session presents an opportunity for the proposer to clarify any concerns regarding proposal requirements. The proposer is cautioned that, although the proposal conference is optional, no modification or changes will be allowed in the pricing because of the failure of the proposer to have attended the conference. **NO COMMUNICATIONS OF ANY KIND AT THE PRE-PROPOSAL MEETING WILL BE BINDING AGAINST THE COUNTY.**

C.) REQUESTS FOR CLARIFICATION

All requests for clarification must be submitted, as set forth below, no later than 4:00 pm on March 3, 2017. All requests for clarification must be written and emailed to John Condon, Director of Concessions, at jmcc@westchestergov.com

Formal written responses will be distributed by the County by being posted on the County website for RFPs: <http://www.westchestergov.com/rfp>

NO COMMUNICATIONS OF ANY KIND WILL BE BINDING AGAINST THE COUNTY, EXCEPT FOR THE FORMAL WRITTEN RESPONSES TO ANY REQUEST FOR CLARIFICATION.

D.) PROPOSAL SUBMISSION

Each proposer must submit one (1) original and five (5) copies of its proposal to:

John Condon
Director of Concessions
Westchester County Department of Parks, Recreation and Conservation
450 Saw Mill River Road
Ardsley, New York 10502

If a proposer desires to submit a proposal for both of the Sites (as defined below), the proposer must submit two separate, complete proposals.

Each proposal must be in a sealed envelope clearly marked: "Proposal – Sprain Ridge Park Food and Refreshment Concession".

The original and all copies of each proposer's proposal must be received by the County by the stated due date. The County is not responsible for any internal or external delivery delays that may cause the proposer's proposal to arrive beyond the deadline. No proposal will be accepted from nor any agreement awarded to any proposer that is in arrears upon any debt or in default of any obligation owed to the County. Additionally, no agreement will be awarded to any proposer that has failed to satisfactorily perform pursuant to any prior agreement with the County.

E.) RFP AMENDMENTS OR ADDENDA

Should the County find it necessary to amend this RFP and/or issue any addenda, such documents will be posted to the County's website for RFPs: <http://www.westchestergov.com/rfp>

II. BACKGROUND, THE SITE, SCOPE OF WORK, MINIMUM QUALIFICATIONS, TYPE OF AGREEMENT AND ANTICIPATED TERM, AND PROPOSAL CONTENT

A.) BACKGROUND

Plans are in place to reopen the Sprain Ridge Park pool on or about July 4, 2017.

ELQ Industries of New Rochelle is now at work on \$7.8 million of repairs and renovations. The contract calls for the bath house, spray park and recreation pool to be ready for swimmers this summer.

Once financing is approved by the Board of Legislators, work can begin on a second pool which is geared for diving and swimming laps. The spray park and recreation pool and bath house are scheduled to be open during 2017. Pending all approvals, the diving and swimming pool will be open in 2018.

The intent of this Request For Proposals ("RFP") is to seek out and select a contractor who will upgrade the concession stand to make it operational and provide high quality service at reasonable prices for patrons at Sprain Ridge Park with an emphasis on customer service.

B.) THE SITE

The successful proposer(s) will perform the Work (as defined below) under either a license agreement as described in Section II(E) of this RFP. The successful proposer will perform the Work the following specific buildings and property:

The licensed area for the food and refreshment concession consists of a concession building of approximately 1,960 square feet with approximately 4,000 square feet of patio area. From this location, patrons are served food, beverages and snacks. The food and refreshment concession operation is located in an area adjacent to the pool deck and will not be accessible to other park patrons. The successful proposer(s) will only operate a Concession at the Site. The license agreement shall also include vending in the pool area. It is understood that individuals may bring in their own food for consumption on the grounds of Sprain Ridge Park, including the pool area.

C.) SCOPE OF WORK

The successful proposer(s) will provide a Concession at the Site and shall

- Provide food and beverage services in accordance with quality standards which shall be determined at the sole discretion of the Commissioner of the Department, or her designee, in conformance with generally accepted professional standards.
- Upgrade the concession stand to code, in compliance with the Department of Health standards and provide equipment to operate the stand and specifically complete the improvements listed in Schedule A.
- Provide patrons with high quality food and beverage services on a daily basis, at reasonable prices, all prices subject to the prior approval of the Commissioner.
- Provide food and beverage services in a professional, clean and efficient manner, and in compliance with all Department of Health standards, as well as the standards of the Department.
- Provide courteous and efficient service emphasizing customer satisfaction by minimizing waiting times for food and beverages, complying with the park schedule and providing adequate coverage throughout the entire season.
- Concession operator is responsible to have the hood professionally cleaned and tagged no later than June 15th of each year of the agreement or sooner if directed by the Commissioner or her designee.
- Concession operator is responsible to maintain the fire suppression system which shall be inspected and tagged no later than June 15th of each year of the agreement.
- Remove refuse daily to designated dumpster and all recyclables to the appropriate recycling container as directed by the Commissioner or her designee.
- Provide license fee to the County as a privilege of providing these services.
- Clean all public areas inside the concession stand, including but not limited to storage area, food preparation area, eating area and a radius of Fifty (50) feet around the concession area. The area in front of the concession area shall be power washed weekly from opening day through Labor or at other times if directed by the Commissioner or her

designee.

D.) MINIMUM QUALIFICATIONS

The proposer must have at least five (5) years of direct, continuous experience as an owner or operator of a restaurant or food concession business with annual gross sales in excess of \$100,000. The requisite experience can be possessed by either the proposer or the officers or employees of the proposer.

E.) TYPE OF AGREEMENT AND ANTICIPATED TERM

As noted above, the Work would be performed under the terms of a license agreement with the County. The County's goal in requesting proposals under this RFP is to enter into a license agreement with the County pursuant to which it would have a license for the Site and operate the agreed-upon food and beverage business operation on the Site.

The successful proposer will be responsible for the day-to-day operations of the Site, with the understanding that the County as the owner of the Sites has the ultimate decision-making authority. The successful proposer will, at its sole cost and expense, manage, operate, improve and repair the Site in accordance with standard industry practices in compliance with all Department of Health regulations. In addition, the successful proposer shall be responsible to obtain and/or acquire all licenses, supplies, materials, accessories and equipment necessary to undertake these responsibilities.

The term of any agreement resulting from this RFP is a license agreement, anticipated to commence on or about May 1, 2017 through December 31, 2021, with the County having the sole option to extend the term for another five (5) years (in accordance with the limitations set forth in Section 249.131 of the Laws of Westchester County).

F.) PROPOSAL CONTENT

Each proposal must include the listed items below. Proposals that do not contain everything specified below and/or do not conform to the below-described guidelines for proposals will not be reviewed or considered. Please be sure to include all information requested.

- 1.) Proposer Certification (Section IV)
- 2.) Schedule E: Questionnaire Regarding Business Enterprises Owned and Controlled by Persons of Color or Women
- 3.) Schedule F: Certification Regarding Business Dealings with Northern Ireland
- 4.) Schedule G: Disclosure of Relationships to County
- 5.) Schedule H: Criminal Background Disclosure
- 6.) The proposer's responses to the items outlined in Schedule "B", including any County attachments that are required as explained in Schedule "B". The proposer's response shall be divided into the three sections identified in Schedule "B".
- 7.) Fee proposal, on the form in Schedule "C".

Please be advised that proposals must conform to the following guidelines:

- 1.) Proposals **MUST** be signed with **ORIGINAL SIGNATURES** on **ALL DOCUMENTS** that require signatures. The proposal must contain a cover letter, written on the proposer's letterhead, which states the date of submission of the proposal and states the following: "This proposal constitutes a valid, binding and continuing offer at the prices set forth in this proposal for a period of one hundred and twenty (120) days from the date of submission of this proposal." The cover letter must be signed by a person authorized by the proposer to make a binding proposal. Proposals that lack the required statement or have an unsigned cover letter will be rejected.
- 2.) Proposals must be typed or printed in black ink. All corrections made by the proposer must be made prior to the due date for proposals, and must be initialed and dated by the proposer. No changes will be allowed after the due date for proposals.

Proposers may be required to give an oral presentation to the County to clarify or elaborate on the written proposal.

III. LEGAL

A.) UNDERSTANDINGS

Please take notice, by submission of a proposal in response to this RFP, the proposer agrees to and understands that:

- any proposal, attachments, additional information, etc. submitted pursuant to this RFP constitute merely a suggestion to negotiate with the County of Westchester and is not a bid under Section 103 of the New York State General Municipal Law;
- submission of a proposal, attachments, and additional information shall not entitle the proposing entity to enter into a service agreement with the County of Westchester for the required services;
- by submitting a proposal, the proposing entity agrees and understands that the County of Westchester is not obligated to respond to the proposal, nor is it legally bound in any manner whatsoever by submission of same;
- any and all counter-proposals, negotiations or any communications received by a proposing entity, its officers, employees or agents from the County, its elected officials, officers, employees or agents, shall not be binding against the County of Westchester, its elected officials, officers, employees or agents unless and until a formal written agreement for the services sought by this RFP is duly executed by both parties and approved by the Westchester County Board of Acquisition & Contract and the Office of the Westchester County Attorney.

In addition to the foregoing, by submitting a proposal, the proposing entity also understands and agrees that the County of Westchester reserves the right, and may at its sole discretion exercise, the following rights and options with respect to this RFP, except to the extent restricted by applicable law, including, but not limited to, the Westchester County Procurement Policy, as amended:

- To reject proposals that do not conform in all material respects to the RFP or meet the minimum requirements;
- To reject all proposals;
- To issue additional solicitations for proposals and/or amendments to this RFP;
- To waive any irregularities in proposals received;
- To negotiate for amendments or other modifications to proposals;
- To conduct investigations with respect to the qualifications of each proposer and obtain additional information the County deems necessary to determine the ability of the proposer to perform the scope of work and fulfill the obligations of the license agreement;
- To exercise its discretion and apply its judgment with respect to any aspect of this RFP, the evaluation of proposals, and the negotiations and award of any contract;
- To enter into one or more agreements, for all or only portions of the services solicited by this RFP, with one or more of the proposers, or to not to enter into an agreement for any of the services solicited by this RFP;
- To select the proposal from a responsible proposer that is most advantageous to the County and not necessarily on the basis of price or any other single factor or criterion;
- While this is an RFP and not a bid, the County reserves the right to apply the case law under General Municipal Law §103 regarding bidder responsibility in determining whether a proposer is a responsible vendor for the purpose of this RFP process;
- The County assumes no responsibility or liability of any kind for costs incurred in the preparation or submission of any proposal;
- The County is not responsible for any internal or external delivery delays which may cause any proposal to arrive beyond the stated deadline. To be considered, proposals MUST arrive at the place specified herein and be time stamped prior to the deadline.

B.) EVALUATION CRITERIA

In selecting the proposer with whom to commence contract negotiations for each Site, and in ultimately awarding any agreement for a Site based upon this RFP, the County will choose the proposal for each Site from a responsible proposer that is most advantageous to, and in the best interests of, the County, and otherwise in accordance with the County's Procurement Policy.

In order to determine what proposal is most advantageous for each Site, the County will evaluate all proposals on the basis of the criteria specified below. These criteria are general in nature and are intended to be used to develop a more detailed evaluation worksheet. These criteria are not necessarily listed in order of importance. The County reserves the right to weigh its evaluation criteria in any manner it deems appropriate. As indicated below, while the fee proposal will be one of the criteria, it is not the sole criterion.

- The proposer’s background and direct experience with the business operations proposed in its proposal, including operational experience and expertise.
- The backgrounds and qualifications of senior management and other identified key personnel especially experience related to business operations contemplated in its proposal.
- The proposer’s financial history and financial capability to perform the scope of work and fulfill the license agreement, including its ability to finance, manage, develop, operate and maintain the proposed business operation and finance all repairs and improvements.
- The proposer’s ability to finance, manage, undertake and complete the mandatory improvements to the Site that are specified in this RFP, and plan for completing the mandatory improvements to the Site.
- The proposer’s demonstrated ability to offer quality service to park patrons as demonstrated by experience with similar operations in other locations.
- The proposer’s plan for, and approach to, performing the scope of work and fulfilling the license agreement including its plan for, and approach to, its proposed business operation.
- The proposer’s proposed business plan.
- The proposer’s marketing and promotional plan and funding, including anticipated merchandising and sales, with consideration given to the creativity of these things.
- The proposer’s fee proposal.
- The proposer’s ability to provide the required insurance coverage.
- The quality and value of the proposer’s proposed pricing for the proposed business operation (and quality, value, and other similar aspects of menus for any proposed food service).

C.) CONTRACT

After selection of the successful proposer for the Site, and following contract negotiations, a formal written contract will be prepared by the County of Westchester and will not be binding until signed by both parties and approved by the Westchester County Board of Acquisition & Contract and the Office of the County Attorney. **NO RIGHTS SHALL ACCRUE TO ANY PROPOSER BY THE FACT THAT A PROPOSAL HAS BEEN SELECTED BY THE COUNTY FOR SUBMISSION TO THE BOARD OF ACQUISITION & CONTRACT FOR CONTRACT APPROVAL. SAID BOARD HAS THE RIGHT TO REJECT ANY RECOMMENDATION AND THE APPROVAL OF SAID BOARD IS NECESSARY BEFORE A VALID AND BINDING CONTRACT MAY BE EXECUTED BY THE COUNTY.**

Each proposer accepts and agrees that, if selected by the County, it will be asked to sign a contract containing the following, or language in substantially the following form:

1.) INSURANCE, INDEMNIFICATION, AND DEFENSE

“The Licensee agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule “D”, entitled "Standard Insurance Provisions", which is attached hereto and

made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "D", the Licensee agrees:

(a) that except for the amount, if any, of damage contributed to by, caused by, or resulting from the negligence of the County, the Licensee shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Licensee or third parties under the direction or control of the Licensee, including, without limitation, any liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss related to the Licensee's use of the licensed premises; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto, including, without limitation, any claims, demands or causes of action arising out of the Licensee's use of the licensed premises.

See: Schedule "D" to this RFP for the "Standard Insurance Provisions".

2.) NON-DISCRIMINATION

"The Licensee expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Licensee acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others."

3.) COMPLIANCE WITH LAWS

"The Licensee shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including, but not limited to, those applicable to the Licensee as an employer of labor. The Licensee shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and others employed to render the Work hereunder."

4.) RECORD-KEEPING, ACCOUNTING, AND AUDITS

“The Licensee shall keep the books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Commissioner of Parks, Recreation & Conservation or her duly authorized designee (the “Commissioner”), and shall permit inspection of said books and records by the County as often as deemed necessary in the opinion of the Commissioner. The Licensee shall submit at the end of each fiscal year a certified annual report, or as required by the Commissioner, a profit and loss statement of operations under the terms of the contractual agreement, in a form considered to be accounting practice according to the American Institute of Certified Public Accounts and satisfactory to the Commissioner. This report must be submitted within sixty (60) days of the end of the fiscal year. The County, its employees and agents, shall have the right to inspect the Licensee’s operation at any time and for whatever reason.”

5.) RECORDS OR RECORDED DATA

“All records or recorded data of any kind compiled by the Licensee in completing the Work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Licensee may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Chief Information Officer. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Licensee are to be considered “works made for hire.” If any of the work performed does not qualify as “works made for hire,” the Licensee hereby assigns to the County all right, title and interest (including ownership of copyright) in such work and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The Licensee agrees to assist the County, if required, in perfecting these rights. The Licensee shall provide the County with at least one copy of each deliverable.

The Licensee agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Licensee agrees to enable the County’s continued use of the deliverable, or to modify or replace it. If the County determines that none of these

alternatives is reasonably available, the deliverable may be returned.”

6.) INDEPENDENT CONTRACTOR

“The Licensee and the County agree that the Licensee and its officers, employees, agents, contractors, consultants, and/or subcontractors are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Licensee covenants and agrees that neither the Licensee nor any of its officers, employees, agents, contractors, subcontractors, and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.”

7.) TERMINATION FOR CONVENIENCE

“The County, upon thirty (30) days notice to the Licensee, may terminate this Agreement in whole or in part when the County deems it to be in its best interest.”

8.) TERMINATION FOR DEFAULT

“If the Licensee defaults in the performance of any term, condition or covenant herein contained, the County, at its option and in addition to any right it might have to seek damages, judicial enforcement or any other lawful remedy, may terminate this license upon ten (10) days written notice to the Licensee, provided, however, that the Licensee may defeat such notice by curing the default complained of, within the notice period. In the event of such termination, the County may take custody of and use any property of the Licensee located at the licensed area on the date of termination in order to operate this license until such time as all obligations and indebtedness of the Licensee to the County hereunder shall be fully satisfied.”

D.) NON-COLLUSION

The proposer, by signing the proposal, does hereby warrant and represent that any ensuing agreement has not been solicited, secured or prepared directly or indirectly, in a manner contrary to the laws of the State of New York and the County of Westchester, and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or the giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any County employee, officer or official.

E.) CONFLICT OF INTEREST

The award of a contract is subject to provisions of all Federal, State and County laws. All proposers must disclose with their proposals the name of any officer, director or agent who is also an employee of the County of Westchester. Further, all proposers must disclose the name of any County officer, employee, or elected official who owns, directly or indirectly, an interest of ten percent or more in the proposer or any of its subsidiaries or affiliates.

F.) CONTENTS OF PROPOSAL AND FREEDOM OF INFORMATION LAW

The New York State Freedom of Information Law as set forth in Public Officers Law, Article 6, Sections 84-90, mandates public access to government records. However, proposals submitted in response to this RFP may contain technical, financial background or other data, public disclosure of which could cause substantial injury to the proposer's competitive position or constitute a trade secret. Proposers who have a good faith belief that information submitted in their proposals is protected from disclosure under the New York Freedom of Information Law shall:

a) Insert the following notice in the front of its proposal:

"NOTICE

The data on pages ___ of this proposal identified by an asterisk (*) contains technical or financial information constituting trade secrets or information the disclosure of which would result in substantial injury to the proposer's competitive position.

The proposer requests that such information be used only for the evaluation of the proposal, but understands that any disclosure will be limited to the extent that the County considers proper under the law. If the County enters into an agreement with this proposer, the County shall have the right to use or disclose such information as provided in the agreement, unless otherwise obligated by law."

and

b) clearly identify the pages of the proposals containing such information by typing in bold face on the top of each page " *** THE PROPOSER BELIEVES THAT THIS INFORMATION IS PROTECTED FROM DISCLOSURE UNDER THE STATE FREEDOM OF INFORMATION LAW.**"

The County assumes no liability for disclosure of information so identified, provided that the County has made a good faith legal determination that the information is not protected from disclosure under applicable law or where disclosure is required to comply with an order or judgment of a court of competent jurisdiction.

The contents of the proposal which is accepted by the County, except portions "Protected from

Disclosure", may become part of any agreement resulting from this RFP.

G.) MBE/WBE

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises which are owned and controlled by persons of color or women in contracts and projects funded by the County. Therefore, all proposers are required to complete the questionnaire attached to this RFP as Schedule "E".

H.) MACBRIDE PRINCIPLES

Pursuant to Act No. 56-1999, no County procuring officer may award or recommend for award any contract not subject to competitive bidding to a proposer that does not execute a certification substantially in the form attached hereto as Schedule "F". Therefore, all proposers are required to submit with their proposal the Certification Form attached to this RFP as Schedule "F".

I.) REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

All proposers are required to submit with their proposal the Disclosure Form attached to this RFP as Schedule "G".

J.) CRIMINAL BACKGROUND DISCLOSURE

All proposers are required to submit the Criminal Background Disclosure form attached to this RFP as Schedule "H".

K.) INDEPENDENT PRICE DETERMINATION

By submission of a proposal, the proposer certifies, and in the case of a joint proposal each party certifies as to its own organization, that in connection with this proposal:

1. The prices in the proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any proposer; and
2. Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to award directly or indirectly to any other proposer; and
3. No attempt has been made or will be made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

IV.) PROPOSER CERTIFICATION

The undersigned agrees and understands that this proposal and all attachments, additional information, etc. submitted herewith constitute merely an offer to negotiate with the County of Westchester and is NOT A BID. Submission of this proposal, attachments, and additional information shall not obligate or entitle the proposing entity to enter into a service agreement with the County of Westchester for the required services. The undersigned agrees and understands that the County of Westchester is not obligated to respond to this proposal nor is it legally bound in any manner whatsoever by the submission of same. Further, the undersigned agrees and understands that any and all proposals and negotiations shall not be binding or valid against the County of Westchester, its directors, officers, employees or agents unless an agreement is signed by a duly authorized officer of the County of Westchester and approved by the Westchester County Board of Acquisition & Contract and by the Office of the County Attorney.

It is understood and agreed that the County of Westchester reserves the right to reject consideration of any and all proposals including, but not limited to, proposals which are conditional or incomplete. It is further understood and agreed that the County of Westchester reserves all rights specified in the Request for Proposals.

It is represented and warranted by those submitting this proposal that except as disclosed in the proposal, no officer or employee of the County of Westchester is directly or indirectly a party to or in any other manner interested in this proposal or any subsequent service agreement that may be entered into.

Proposer Name

By: _____
Name:
Title:

You Must Complete the Applicable Acknowledgement and Certificate of Authority Document(s), Which Are on the Pages Following This Page

ACKNOWLEDGMENT

STATE OF)
) ss.:
COUNTY OF)

On the _____ day of _____ in the year 2017 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

SOLE CORPORATE OFFICER ACKNOWLEDGMENT

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of _____, 2017, before me, the undersigned,
personally appeared _____,
(Name of Sole Officer)

on the basis of satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he/she executed the same in his/her capacity as

President and sole officer and director of _____,
(Name of Corporation)

the corporation described in and which executed the within instrument, and acknowledged that
he/she owns all the issued and outstanding capital stock of said corporation, and that by he/she
signed the within instrument on behalf of said corporation.

Notary Public

SOLE LLC MEMBER ACKNOWLEDGMENT

STATE OF _____)
) ss.:
COUNTY OF _____)

On this _____ day of _____, 2017, before me, the undersigned,
personally appeared _____,
(Name of Sole Member)

on the basis of satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he/she executed the same in his/her capacity as

Managing Member and sole member of _____,
(Name of LLC)

the LLC described in and which executed the within instrument, and acknowledged that he/she
owns the entire ownership interest in the LLC, and that by he/she signed the within instrument
on behalf of said LLC.

Notary Public

CERTIFICATE OF AUTHORITY
(CORPORATION)

I, _____,
(Officer other than officer signing document for the corporation)

certify that I am the _____ of
(Title)

the _____ a corporation duly
(Name of Corporation)

organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporation Law)

named in the foregoing document; that _____
(Person signing the document for the corporation)

who signed said document on behalf of the _____
(Name of Corporation)

was, at the time of signing _____
(Title of such person)

of the Corporation and that said document was duly signed for and on behalf of said Corporation by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the _____ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the officer described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is an officer of said corporation; that he/she is duly authorized to execute said certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public

CERTIFICATE OF AUTHORITY
(LIMITED LIABILITY COMPANY)

I, _____,
(member or manager other than person signing the document for the LLC)

certify that I am a _____ of _____
(member/manager) (Name of Limited Liability Company)

(the "LLC") duly organized under the Laws of the State of _____; that
(Name of State)

_____ who signed said the document on behalf of the LLC
(Person signing the document)

was, at the time of signing, a manager of the LLC; that said document was duly signed for and on behalf of said LLC and as the act of said LLC for the purposes therein mentioned.

(Signature)

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the _____ day of _____ in the year 2017 before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the member/manager described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is a member/manager of said LLC; that he/she is duly authorized to execute said certificate on behalf of said LLC, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public

CERTIFICATE OF AUTHORITY
(PARTNERSHIP)

I, _____,
(Partner other than Partner signing the document for the partnership)

certify that I am a General Partner of _____,
(Name of Partnership)

a partnership duly organized under _____,
(Law under which partnership is organized)

and named in the foregoing document; that _____,
(Partner signing the document)

who signed said document on behalf of the Partnership was, at the time of signing, a General Partner of said Partnership; that said document was duly signed for and in behalf of said Partnership and as the act and deed of said proposer for the purposes therein mentioned.

(Signature)

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On this _____ day of _____, in the year 2017 before me, the undersigned, a Notary Public in and for said State, _____ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the General Partner described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she resides at _____, and he/she is a general partner of said Partnership; that he/she is duly authorized to execute said certificate on behalf of said Partnership, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public

SCHEDULE "A"
SCOPE OF WORK

The successful proposer for each Site will provide all of the work specified below at the Site for which it was the successful proposer, and do so in accordance with all of the terms specified below, as part of providing the Concession at the Site.

The Site

The successful proposer will accept the Site, including all buildings and their equipment, "as is" and in their present condition. At its sole cost and expense, the successful proposer will be required to complete the required improvements described below, in order to provide a Concession at the Site. At its sole cost and expense, the successful proposer will provide daily upkeep and maintenance of the Site, including maintaining the interior and exterior of the Site, in accordance with quality standards, which shall be determined at the sole discretion of the Commissioner of the Parks Department or her duly authorized designee (the "Commissioner"), and in conformance with generally accepted professional standards. Such maintenance shall include, but be limited to, non-structural items and shall *not* include roofs, exterior walls, or plumbing. The concession operator is responsible for maintaining the fire suppression system and having it compliant for all applicable codes as well as the operation and maintenance of the exhaust fan, including parts, labor and repairs. The County shall be responsible for structural repairs including plumbing (with the exception of grease traps), electrical (not including upgrades or installations resulting from the Licensee's equipment) and the roof. Without limiting the foregoing statement of the successful proposer's general upkeep and maintenance obligations, the successful proposer shall, specifically, be responsible for all of the following: cleaning all public areas at the Site, including without limitation bathrooms and hallways in the concession area; cleaning and maintaining all grease traps and drains resulting from concession operations; providing professional extermination and pest control services for the Site; having all garbage removed from the Site to designated containers; and maintaining all County-owned equipment at the Site, which is as follows:

Fixed Equipment:

- a. Exhaust hood with fan
- b. fire suppression system
- c. Two (2) toilets
- d. Two (2) bathroom sinks
- e. One hand sink

The successful proposer will not be allowed to make any alterations, additions, or improvements to the Site without prior written consent of the Commissioner. All alterations, additions, and improvements, whether temporary or permanent in character, shall at all times be deemed to be the property of the County and shall remain upon the premises at the termination of the agreement.

The Required Improvements

Without limiting any of the above-described upkeep and maintenance obligations, the successful proposer for each Site will be required to:

- 1.) Furnish and install new ceramic tile floor in the concession preparation area and raise floor drains accordingly (sample of tile and materials shall be approved prior to work commencing).
- 2.) Replace existing fluorescent 2' X 2' light fixtures and diffusers with energy efficient LED units.
- 3.) Paint interior of concession stand.

The Concession

In operating the Concession, the successful proposer will be required to:

- 1.) Operate it in a professional, clean, and an efficient manner, and in compliance with all applicable standards of the New York State Department of Health, the County Department of Health, and the Parks Department.
- 2.) Operate it with adequate, trained, courteous, and efficient staff, emphasizing customer satisfaction.
- 3.) Operate on a schedule to be approved by the Commissioner and shall remain open as long as the pool is open.
- 4.) Sell only the products and services that have been approved for sale by the Commissioner.
- 5.) Obtain the prior written approval of the Commissioner for all prices of products and services being sold.

Additional Terms

The Work is subject to, and the successful proposer shall comply with, all of the following terms.

Insurance

Section III(C)(1) and Schedule "D" specify the language (in substantial form) that is anticipated to be included in any contract resulting from this RFP. However, the successful proposer may be required to provide different and/or additional insurance if the County determines, in its sole discretion, that the use of the Site contemplated by the successful proposer's proposal requires such different and/or additional insurance.

Signs

The successful proposer may not place any sign or advertisement upon any property of the County (under any agreement that may result from this RFP) without written approval by the Commissioner. Any advertisements or flyers shall contain the following statement: "A facility of the County of Westchester, Department of Parks, Recreation and Conservation."

Security Deposit

The successful proposer will, at or before the execution of the license agreement, furnish to the County a security deposit in the form of cash or equivalent security in the amount of \$1,000 in year 1 which shall increase to \$5,000 in year 2. The security deposit is due upon signing such agreement as security for faithful performance and non-negligent performance of the agreement and the second installment (\$4,000) is due no later than December 31, 2017.

Utilities

The successful proposer shall pay for all electricity and water that are or may be required to operate the Concession at the Site. The successful proposer shall also install and pay for such other utilities, including, without limitation, telephone, or cable that are or may be required to operate the Concession at the Site.

Equipment for the Concession

The successful proposer will be responsible for furnishing all equipment to be used for the Concession at the Site. The successful proposer will, at its sole cost and expense, purchase, supply and furnish and repair or replace all equipment required for the proper operation of the Concession at the Site. All equipment shall comply with all applicable fire, electrical and safety codes. All equipment must meet or exceed New York State Department of Health and County Department of Health regulations and must be of commercial quality. The successful proposer will provide the County with a list of all equipment used for the Concession. In the event of a default by the successful proposer, at the County's option, the successful proposer shall not remove its equipment until the expiration of the term of the agreement and the County shall have the right to use the successful proposer's equipment for the remainder of the term of the agreement.

Compliance with Laws

The successful proposer will be required to comply with all applicable laws, ordinances, rules and regulations for its proposed business operation and to take all reasonable measures to ensure that its patrons abide by all applicable laws, ordinances, rules and regulations when they are at the Site. This includes, but is not limited to, compliance with all recycling and Department of Health laws and regulations.

Employees of the Successful Proposer

Each employee of the successful proposer will be required to be a citizen of the United States or an alien who has been lawfully admitted to the United States for permanent residence as evidenced by an alien registration receipt card. The successful proposer will be required to supervise and train its staff to perform their duties and to conduct themselves in an orderly and professional manner at all times. Each employee must thoroughly understand the need to exercise and display a courteous and polite demeanor when dealing with patrons of Sprain Ridge Park. The successful proposer will be required, after notice from the County, to discharge any employee whose conduct, demeanor or appearance is objectionable to the County.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "B"

The proposer shall prepare its proposal in response to, and in accordance with, the items outlined below. The proposer shall include in its proposal any County attachments that are required as specified below. The proposer's response shall be divided into the sections identified below.

Section 1 - Basic Information, Qualifications, and Experience

This section shall contain all pertinent information relating to proposer's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the Work. At a minimum, this section shall contain the following information:

- Attachment 1
- Attachment 2
- Attachment 3, 4, or 5 (whichever is applicable)
- Attachment 6
- Attachment 7
- Attachment 8
- Attachment 9
- Attachment 10
- Attachment 11
- A list of key personnel to be assigned to the operation (including, but not limited to, overall management) and their function. A description of each person's professional qualifications, certifications, and personal background (e.g., education, employment). Proposers should provide as much information as possible.
- Documentation that clearly shows that the proposer meets the minimum qualifications specified in Section II(D) of this RFP.

Section 2 - Business Plan

The business plan is a comprehensive description of the proposer's approach and plan for accomplishing the Work and planned mode of operation and use of the Site, with emphasis on safety, service to the public, and cash controls. Further, the proposer shall describe the effort and skills necessary to operate the Concession. The business plan should be described in sufficient detail to permit the County to evaluate it fairly and without misinterpretation. Specifically, the business plan must include, but is not limited to, the following:

- The proposer's plan for operating the facility and accomplishing the Work and meeting the requirements set forth in this RFP.
- The proposer's plan to service to the public.
- Organizational chart.
- Number of employees and their relevant qualifications.
- Cash and inventory control procedures.
- Estimated gross revenue of the proposer for each year of the agreement, broken out according to revenue obtained from the Concession.
- Estimated operating costs for each year of the agreement.

- A complete listing of all fees to be charged during the term of the agreement.
- Maintenance plan including, but not limited to, pest control, garbage removal, and grease removal.
- A complete listing of all capital improvements including estimated costs, length of time to complete, and impact on the Site.
- Marketing and promotion plan.
- Plan for equipment and furnishings for the Site, including a description of the equipment and furnishings the proposer will provide for the operation of the Site.
- Recruitment training and supervisory programs.

The proposer must detail all plans for conducting business, or the proposer shall forego these opportunities.

Section 3 - Plan for Required Improvements

This section shall describe the proposer's plan for performing the required improvements specified in Schedule "A". The plan should provide a detailed explanation as to how the proposer will meet its time frame deadline for completion of the improvements and ensure that continuity of service to patrons and other users of the facility during such improvement period. Section 3 must contain a completed Attachment 12, along with a complete description of all proposed work with renderings and cost estimates.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "C"
FEE PROPOSAL

Food and Beverage Concession at Sprain Ridge Park:

The fees proposed below by the proposer are guaranteed annual fees, which the proposer will agree to pay to the County as consideration for the license agreement under which it will operate the Concession at the Site. Licensee shall pay to the County an annual license fee (hereinafter referred to as the "License Fee") during each year of the term of this Agreement which shall be equal to **either** a Minimum Annual License Fee or an annual per capita fee based on the number of bathing tickets sold, **whichever is greater**. The fee will be payable to the County in two equal installments during the first year, due on the first of the month in August and September in advance, and in years two through five, in three equal installments due on the first of the month from July through September. Any payment not received within seven (7) business days of the due date will be assessed with a 1.5% per month late fee. This late fee will be added to and become part of the guaranteed annual fees.

In the spaces below, please specify the annual per capita license fee that the proposer proposes to pay to the County.

PER CAPITA (PER BATHING TICKET SOLD) LICENSE FEE

The Annual Per Capita License Fee Can Be No Less Than \$0.25 per Bathing Ticket Sold

<u>Period</u>	<u>Per Capita License Fee</u>
May 1, 2017 to December 31, 2017	\$ _____
January 1, 2018 to December 31, 2018	\$ _____
January 1, 2019 to December 31, 2019	\$ _____
January 1, 2020 to December 31, 2020	\$ _____
January 1, 2021 to December 31, 2021	\$ _____

Failure to provide all such information requested herein may constitute grounds for disqualification.

Food and Beverage Concession at Sprain Ridge Park:

The Annual Minimum License Fee Can Be No Less Than \$1,000 in 2017 and \$5,000 for each year from 2018 through 2021

<u>Period</u>	<u>Annual Minimum License Fee</u>
May 1, 2017 to December 31, 2017	\$ _____
January 1, 2018 to December 31, 2018	\$ _____
January 1, 2019 to December 31, 2019	\$ _____
January 1, 2020 to December 31, 2020	\$ _____
January 1, 2021 to December 31, 2021	\$ _____

Failure to provide all such information requested herein may constitute grounds for disqualification.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "D"
STANDARD INSURANCE PROVISIONS

1. Prior to commencing work, the Licensee shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Licensee and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Licensee shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Licensee to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Licensee to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Licensee from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Licensee concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Licensee's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Licensee until such time as the Licensee shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Licensee shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov/>

If the employer is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 (c.s.1), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Products and Completed Operations.
- (iii) Products (Food) and Completed Operations.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

3. All policies of the Licensee shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Licensee.

[NO FURTHER TEXT ON THIS PAGE]

SCHEDULE "E"

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (*please check off below all that apply*)

_____ Black persons having origins in any of the Black African racial groups

_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

_____ Native American or Alaskan native persons having origins in any of the original peoples of North America

_____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

Name and Title of person completing questionnaire: _____

Signature: _____

Notary Public

Date

SCHEDULE "F"

CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND

A. The Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.

B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

(1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;

(2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;

(3) ban provocative religious or political emblems from the workplace;

(4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;

(5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;

(6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;

(7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;

(8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and

(9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.

D. The Contractor agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Contractor is in violation of paragraph "A," the County shall review such information and give the Contractor opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Contractor in default, and/or terminate this Agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Contractor shall pay to the County the difference between

the contract price for the uncompleted portion of this Agreement and the cost to the County of completing performance of this Agreement either by itself or by engaging another contractor. If this is a contract other than a construction contract, the Contractor shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Contractor plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement. In addition, the Contractor may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Contractor, giving the Contractor the opportunity for a hearing at which the Contractor may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

Agreed:

Name of Contractor: _____

Signature: (Authorized Representative) _____

Title: _____ Date: _____

Contract #: _____
Name of Contractor: _____

SCHEDULE "G"
REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

A potential County contractor must complete this form as part of the proposed County contract.

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

3.) Do any County officers or employees have an **interest**¹ in the Contractor or in any approved subcontractor that will be used for this contract?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

Signature: _____

Name: _____

Title: _____

Date: _____

¹ "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

SCHEDULE "H"

CRIMINAL BACKGROUND DISCLOSURE **INSTRUCTIONS**

Pursuant to Executive Order 1-2008, the County is required to maintain a record of criminal background disclosure from all persons providing work or services in connection with any County contract, including leases of County-owned real property and licenses:

- a.) If any of the persons providing work or services to the County in relation to a County contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County contract; and
- b.) If any of the persons providing work or services to the County in relation to a County contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure ("Persons Subject to Disclosure") include the following:

- a.) Consultants, Contractors, Licensees, Lessees of County-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, Subcontractors, Sublessees, or Sublicensees who are providing services to the County, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

Under Executive Order 1-2008, it is the duty of every County Consultant, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.¹ Accordingly, you are required to complete the attached Criminal Background Disclosure Form and Certification.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from the disclosure requirements of Executive Order 1-2008. If translation services are required by the Consultant, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Consultant, Contractor, Licensee, or Lessee.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal

¹ For these disclosures, a "crime" or "pending criminal charge" includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.

charge(s) will not automatically result in a denial of a person's right to work on a County contract, right to be on County property, or license, but may, if the County determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any parts of his/her conviction history or any pending criminal charge(s) for any reason, he/she may be prohibited from working or being on County property without any risk assessment. If it is later determined that a Person Subject to Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a County contract, be on County property, or license may be terminated at any time.

Please further note that, pursuant to Executive Order 1-2008, and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County has the right to bar a Person Subject to Disclosure from providing work or services to the County or from being on County property if any such person has:

- a.) A conviction of a crime(s);
- b.) A pending criminal proceeding for a crime(s); or
- c.) Refused to answer questions concerning his/her criminal background

Please finally note that any failure by a County Consultant, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1-2008 may be considered by the County to be a material breach and shall be grounds for immediate termination by the County of the related County contract.

Exemptions

Executive Order 1-2008 exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a County contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify the Procuring Officer². The Procuring Officer will then determine whether the Person(s) Subject to Disclosure are actually exempt, and provide written notification of his/her determination. If the Procuring Officer determines that a Person Subject to Disclosure is not exempt, the Procuring Officer will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

Subconsultants, Subcontractors, Sublessees, or Sublicensees

² Procuring Officer" shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(a) of the Laws of Westchester County, the Purchasing Agent.

Under Executive Order 1-2008, it is your duty to ensure that any and all approved subconsultants, subcontractors, sublessees, or sublicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subconsultant, subcontractor, sublessees, or sublicensees can be approved to perform work on a contract.

New Persons Subject to Disclosure

Under Executive Order 1-2008, you have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the County with any other updates that may be necessary to comply with the disclosures required by Executive Order 1-2008.

PLEASE CONTINUE TO THE

Criminal Background Disclosure Form and Certification

BEGINNING ON THE NEXT PAGE

Contract #: _____
Name of Consultant, Contractor, Lessee, or Licensee: _____

CRIMINAL BACKGROUND DISCLOSURE
FORM AND CERTIFICATION

If this form is being completed by a subconsultant, subcontractor, sublessee, or sublicensee, please consider all references in this form to "consultant, contractor, lessee, or licensee" to mean "subconsultant, subcontractor, sublessee, or sublicensee" and check here:

I, _____, certify that I am a principal or a
(Name of Person Signing Below)

representative of the Consultant, Contractor, Lessee, or Licensee and I am authorized to complete and execute this Criminal Background Disclosure Form and Certification. I certify that I have asked each Person Subject to Disclosure the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**

- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer **either** of the questions above are:

1. _____
2. _____
3. _____
4. _____
5. _____

(If more space is needed, please attach separate pages labeled "REFUSED to Answer - Continued.")

I certify that the names and titles of Persons Subject to Disclosure who answered "Yes" to **either of the** questions above are:

1. _____
2. _____
3. _____
4. _____
5. _____

(If more space is needed, please attach separate pages labeled "YES Answers - Continued.")

Each Person Subject to Disclosure listed above who has either **been convicted of a crime(s)** and/or **is subject to a pending criminal charge(s)** must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has **been convicted of a crime(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

A Person Subject to Disclosure who **is subject to a pending criminal charge(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but

not limited to, access to sensitive data and facilities and access to vulnerable populations.

- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By my signature below, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto County property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into County property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.

It is further understood and agreed that the consultant, contractor, lessee, or licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the County as necessary to comply with the requirements of Executive Order 1-2008.

Signature: _____

Name: _____

Title: _____

Date: _____

Notary Public

Date