

REQUEST FOR PROPOSALS

**FOR THE ESTABLISHMENT, OPERATION AND MAINTENANCE
OF A RESTAURANT AT THE
CHAMBERSBURG MEMORIAL PARK AND MUNICIPAL POOL,
BOROUGH OF CHAMBERSBURG**

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By the Borough of Chambersburg
and
Borough of Chambersburg Recreation Department

TABLE OF CONTENTS

Section I – Project Background

A. Existing Conditions

Section II – Project Components

A. Overview

B. Capital Improvements

C. Additional Requirements

D. General Lease Agreement Terms

1. Indemnification and Release

2. Certificates of Insurance

3. Borough's Right to Inspect

4. Confidential and Proprietary Information of the Borough

5. Default

6. Non-indebtedness

7. Condition of the Lease Premises

8. Compliance with Applicable Laws

9. Entire Agreement; No Amendment

10. No Joint Venture of Partnership

11. Severability

12. Waiver of Jury Trial

13. Governing Law

14. Counterparts

15. Assignment Prohibited

16. Venue

17. Interpretation

18. Time of the Essence

19. Force Majeure Event

Section III – The RFP Process / Proposal Procedure

A. Proposal Submission Instructions

B. Proposal Submission Requirements

C. Proposal Content

1. Proposed Capital Investment, Improvements and Design

2. Planned Operations

3. Fee Offer

4. Operating Experience

5. Financial Capability

Section IV – Evaluation and Selection Procedures and Criteria

A. Proposal Evaluation Criteria

B. Evaluation Procedures

Section V – Miscellaneous Requirements and Conditions

The Borough of Chambersburg and Borough of Chambersburg Recreation Department (collectively “Borough”) requests proposals for the establishment, operation and maintenance of a restaurant, with or without a liquor license, at the Chambersburg Municipal Pool within Chambersburg Memorial Park.

I. PROJECT BACKGROUND

A. EXISTING CONDITIONS

Chambersburg Memorial Park is a public park located off of Memorial Drive in Chambersburg. The Park is open year round, and includes three softball fields, open field areas for soccer and other recreational sports, a basketball court, four tennis courts, a bandshell for concerts and other outdoor performances, picnic areas with grills, and a large pavilion with an open barbecue pit. The Park also has a large playground for older children, a play area for pre-schoolers and toddlers, and a skate park. Miniature golf and sand volleyball courts are also located in the Park. The Park hosts special events in warm weather months, including the Hispanic Festival, Battle of the Bands, 4th of July celebration and a softball tournament. In addition, Park facilities may be rented by members of the public for special events such as private parties and sporting events. Annual park visits total approximately 145,000, including 25,000 visits during fall soccer, 17,000 during spring soccer, 11,000 visits by walkers, and 10,000 visitors during the 4th of July celebration.

The Chambersburg Municipal Pool is located within the Park. A large main pool offers a 50 M section for lap swimmers, a wading area for novice swimmers, a diving area, and a 100' slide. Pool facilities also include a tot pool for children ages 5 and under. The Pool opens Memorial Day weekend (Saturday, Sunday and Monday) and each weekend until school is dismissed for the summer. Upon school dismissal, the Pool is open seven days a week from 12:30 a.m. to 8:00 p.m. The Pool closes on Labor Day Monday. The Pool is open and may be rented for special events from 8:00 p.m. to 10:00 p.m. The Pool has approximately 41,000 visits annual, and is rented for special events approximately nine (9) times per month.

Memorial Park and the Municipal Pool are located in the Low Density Residential zoning district. The Park and the Pool are permitted recreational amenities within the district. As an accessory use to the Park, the Borough currently operates a snack bar at the Pool. Through this RFP, the Borough desires to expand the current food service offerings in the Park and at the Pool by making available to the successful applicant (hereinafter “Lessee”) an approximate 36,500 square foot parcel of land on the east side of the Park adjacent to Memorial Drive (“Leased Premises”) on which to construct and operate a full-service restaurant. As described in further detail below, the exact orientation and location of the Leased Premises will be determined according to the Lessee’s proposal. A diagram depicting the general area of the Leased Premises is attached as Appendix A.

II. PROJECT COMPONENTS

A. OVERVIEW

The Borough is seeking proposals from individuals or entities with a strong background in the food service industry to build, operate, and maintain a high-quality restaurant on the Leased Premises. The restaurant should be accessible to both Pool and Park patrons, and may contain both indoor and outdoor dining facilities. A liquor license may be utilized at the restaurant. However, any proposals which include the service of liquor must provide for structural and operational controls that will prevent the purchase or consumption of alcohol by Pool patrons. The Borough expects the restaurant to make a significant improvement to the ambience of the Pool and Park, provide a convenient service to the public, and generate revenues that will be reinvested by the Borough into the Parks system and Recreation Department.

Proposers are advised to review the contents of this RFP closely, as the provisions of this Section II will become part of the Lease Agreement.

Term

The Borough will enter into a ten-year land lease (“Lease”) with the Lessee for the Leased Premises. The Lease will provide for optional five-year annual renewals. At the termination of the Lease, the restaurant facility will become the Property of the Borough. As described below, proposals shall include proposed terms for the proper decommissioning of the restaurant facility, including ownership of tangible property within the restaurant facility (seating, kitchen equipment, etc.)

Lease Fee

The Lessee will pay an annual lease fee for use of the Leased Premises to the Borough. The annual lease fee shall be a percentage of the total annual gross receipts of the restaurant facility or a minimum dollar value, whichever is higher.

Development Plan

Proposers should submit a sketch development plan for the entire Leased Premises showing the size, location and orientation of the restaurant facility, associated parking and any other improvements. The sketch development plan should include all elements required for sketch land development plans under the Borough of Chambersburg Code of Ordinances § 258-6. The sketch development plan shall note whether any zoning variances will be required. All development plans are subject to the Borough’s approval.

Operational Plan

Proposers should submit a detailed operational plan for the entire Leased Premises. The plan should include, but not be limited to, intended use of the facility, hours of operation, services to be provided (including any catering services at the restaurant or to other areas of the Park), staffing plans, safety and security plans, menu, programming plans, mechanisms to measure customer satisfaction, a detailed list of all proposed fees and prices, landscaping / horticulture plans, and maintenance, snow, rubbish removal, and cleaning schedules. The plan shall also

include plans for a revenue control system that will ensure the accurate and complete recording of all revenues.

Because the restaurant facility will be accessible to the Municipal Pool, the plan should include operational and structural measures that will be utilized to prevent patrons from avoiding the main Municipal Pool entrance and entering the Pool through the restaurant. Proposals that include use of a liquor license must also describe the operational and structural measures that will be used to prevent Pool patrons from purchasing and / or consuming alcohol from the restaurant.

The Lessee will be required to provide an update to its Operational Plan to the Borough at least annually during the term of the Lease.

Restaurant

The Lessee will be required to construct, operate and maintain a restaurant at a high standard of quality. The restaurant should make a significant improvement to the ambience of the Park, Pool and surrounding area while providing a convenient service to the public.

Proposers should submit a design drawing or architectural renderings of the exterior and interior of the restaurant facility they propose to construct. The Borough will consider alternate proposals that involve renovation of the existing pool clubhouse. Proposers should submit elevation drawings showing the restaurant and associated features on the Leased Premises. The Lessee will be responsible for, at its sole cost and expense, the construction of the restaurant and any associated improvements to the Leased Premises. The Borough will view favorably proposals that incorporate high-quality architectural features that will enhance the ambience of the Park and Pool. The final design of the exterior and interior of the restaurant are subject to the Borough's prior written approval.

Proposers should submit a menu and price list in their proposals that demonstrate quality, variety and affordability. Proposers should include some low-cost items on their menus. The Borough will view favorably proposals which incorporate diverse and / or health food choices such as salads, fresh fruit, yogurt, nuts, granola bars, protein bars, bottled water, juices, smoothies, etc. All prices and menu items are subject to the Borough's prior written approval.

The Lessee will be required to maintain adequate inventory to assure a constant supply of food and beverages. Any staff assigned by the applicant to sell food and beverages to the public must possess all Federal, State and Borough authorizations, and possess, and at all times display, appropriate Department of Agriculture permits. The applicant may only operate the restaurant if he or she has obtained the appropriate, valid permits and authorizations required by the Department of Agriculture.

Customer Service, Community Relations & Special Events

The purpose of the restaurant facility is to serve Park and Pool patrons and enhance the community's experience at both facilities. The Borough will view favorably proposals that demonstrate an awareness of the role of the restaurant as an integral part of the surrounding

community. The Borough will view favorably proposals that show a commitment to cooperate with and support park administration, park users and the community.

The Borough expects the Lessee to maintain a high-quality amenity for the public. The Borough encourages proposers to implement customer service mechanisms that will enhance and maintain the satisfaction of patrons, including special events and / or joint promotional events with other recreation activities and offering catering services at the restaurant and / or within other areas of the Park. These mechanisms should be outlined in each proposal. All special events or programs shall be subject to the Borough's written approval, and in no event shall the Leased Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by the Borough and such a closure has been announced to the public at least two weeks in advance of such activities or events.

Licensing Requirements

Proposers are solely responsible for obtaining and maintaining compliance with all applicable local, state and federal permits and approvals for the construction and operation of the restaurant on the Leased Premises. The Borough will make reasonable efforts to support the Lessee in obtaining necessary permits and approvals.

Proposers shall identify in the proposal whether or not a liquor license will be utilized at the restaurant. If the proposal contemplates use of a liquor license, the proposal shall describe how the proposal complies with applicable requirements of the Liquor Code, 47 P.S. § 1-101 et seq., and Chapter 92 of the Borough of Chambersburg Code of Ordinances.

Hours of Operation

The Lessee may operate the portion of the restaurant accessible to Pool patrons only during the Pool season and during pool operating hours. The publicly-accessible side of the restaurant will not be limited by park hours or season. All hours of operation are, however, subject to the Borough's prior, written approval.

Tables, Chairs & Umbrellas

The Lessee may place tables, chair and umbrellas on the Leased Premises outside of the restaurant. The design, color, placement, and number of all tables, chairs and umbrellas are subject to the Borough's prior, written approval.

Parking & Vehicular Access

Vehicular access to the restaurant shall be through the park circle on McKinley Street. Parking for restaurant patrons is available in several existing parking lots within Memorial Park. The existing paved parking lots contain approximately 265 spaces, including 16 ADA-accessible spaces. An additional 50 parking spaces are available on an unpaved (grass) area within the Park. Proposers may include plans for the construction of additional parking within the Park, at the proposer's expense. Proposers shall identify any parking that will be valet and / or reserved parking for restaurant patrons. Construction of additional parking areas within the Park shall be subject to the Borough's written approval.

Assumption of street maintenance for Memorial Park Circle, and maintenance of Memorial Fountain within the Park Circle, by proposers is encouraged but not required. Proposals should also identify any planned improvements for pedestrian accessways (i.e. sidewalks) on or adjacent to the Leased Premises.

Staff

The Lessee will be required to have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the restaurant. The Borough reserves the right to require that all staff wear uniforms that have been approved in writing by the Borough.

Deliveries & Storage

Proposals shall include a notation including the proposed location of a loading dock / service entrance for the restaurant. The loading dock and entrance shall not interfere with operations of the Park. The final location of the loading dock / service entrance will be determined by the Borough.

The Borough makes no representations that there is adequate storage space at the Leased Premises. The Lessee shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the restaurant. The Lessee will be required to store all outdoor equipment on a nightly basis and anytime the restaurant is closed.

Maintenance & Landscaping

The Lessee will be required, at its sole cost and expense (or thorough arrangements with third parties), to operate and maintain the Leased Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Leased Premises, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, fencing, gutters, curbs and fixtures. In addition, all signs and structures on the Leased Premises must be kept in good condition and free of graffiti. The erection of any ancillary structures at the Leased Premises shall be subject to the Borough's prior written approval.

The Lessee will be required to maintain and improve the landscaping at the Leased Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, the Borough will require that any trees on the Leased Premises be pruned as needed. The Lessee will be required to submit detailed plans to the Borough of all horticulture and landscaping work to be performed. All work to be performed at the Leased Premises is subject to the Borough's prior written approval.

Utilities

The Borough makes no representations regarding the adequacy of utilities currently in place at the Leased Premises. The Lessee will be required to connect to and / or upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals. Extension of natural gas service may be negotiated as a shared expense between the Borough and Lessee. Upon connection, the Lessee will be required to pay for any and all utility costs connected with the operation of the restaurant during the Lease term.

Music & Sound

The Lessee will be required to comply with all laws, rules and regulations of appropriate agencies regarding noise levels, including Chapter 200 of the Borough of Chambersburg Code of Ordinances. The Lessee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Borough. Any musical programming or other types of entertainment must be approved by the Borough.

Snow, Rubbish Removal & Recycling

The Lessee will be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish and litter from the Leased Premises and any areas of parking reserved for or regularly-used by restaurant patrons. The Lessee will be required to provide adequate and easily accessible waste and recycling receptacles, approved by the Borough, and have these receptacles emptied on a daily basis and removed by a private carrier. The location and placement of all waste and recycling receptacles is subject to the Borough's prior written approval. The Lessee will be required to comply with all Borough, State and Federal regulations regarding recycling. In addition, the Lessee will be required to demonstrate to the Borough's satisfaction, through a detailed maintenance plan, that they will keep and maintain the Leased Premises in excellent condition throughout the lease term.

Security

The Lessee, at its sole cost and expense, shall be responsible for all security at the Leased Premises year round and shall provide a 24 hour-a-day security system at the Leased Premises in accordance with plans approved by the Borough in writing in advance. The Lessee will be required to secure the Leased Premises and any other equipment every evening.

Safety

Since safety is of the utmost concern, proposers with prior experience in operating this type of facility or similar facilities should submit their personal and / or company safety record. Each proposal should include a detailed outline of maintenance schedules and safety precautions required for the operation of the Leased Premises as well as any applicable staff qualifications and certifications. Proposers should also provide descriptions of the locations and types of required to comply with all national safety guidelines and Federal, State and Borough laws, rules and regulations related to the construction, operation and maintenance of the Leased Premises.

Signage & Advertising

All signage shall be complimentary to the Park setting. The Lessee will be required to prominently display signage at the Leased Premises listing all prices, rates and hours and days of operation. The design and placement of all exterior signage is subject to the Borough's prior written approval, and any necessary approval by the Zoning Hearing Board. At most, the Lessee will be permitted to place two signs, one freestanding and one wall sign, on the Leased Premises or adjacent thereto. Each sign may not exceed to twenty (20) square feet in size.

Naming Rights

Proposers should be aware that the Borough will require that the Borough own a portion or all of any name selected by the Lessee for the Leased Premises that indicates Borough or Park property. The Borough will not own any portion of a new name that is not associated with Borough property.

Environmental Considerations

As a protector and provider of green spaces, the Borough is deeply committed to respecting the environment. Therefore, all proposed operational plans should include a detailed description of environmentally friendly practices planned for the Leased Premises.

Access to Leased Premises

The Lessee will be required to provide the Borough will full and free access to the Leased Premises to ensure the Borough's satisfaction with the Lessee's compliance with the terms of the Lease Agreement.

No Exclusive Vending Rights

Proposers should note that the Lease Agreement will not grant the Lessee exclusive rights to sell in the Park and Pool at which the Leased Premises are located. Moreover, the Borough may grant other permits to vendors to sell the same or similar items authorized under the Lease Agreement within the Park and Pool.

B. CAPITAL IMPROVEMENTS

The Borough anticipates a substantial investment from the Lessee. The Lessee will be responsible for all costs associated with the construction, development, operation and maintenance of the proposed restaurant and the Leased Premises.

Development & Improvements

The Lessee will be expected to perform the following development and improvements to the Leased Premises:

- Development and construction of the restaurant facility, or renovation of existing facilities.
- Repair to pedestrian sidewalks (if necessary).
- Development and construction of additional parking facilities (if necessary).

Permits, Licenses and Approvals

The Lessee will be responsible for obtaining all necessary permits, licenses and approvals from all Federal, State and local agencies having jurisdiction for the operation and maintenance of the Leased Premises. The Lessee will also be responsible for obtaining and complying with all Federal, State and local permits and approvals for construction and development activities on the Leased Premises.

Certificate of Occupancy

The Lessee will be required to operate and occupy the Leased Premises in accordance with all applicable laws and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Leased Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. The Lessee shall at all times operate the Leased Premises in accordance with the provisions of any required licenses and permits.

Americans with Disabilities Act (“ADA”) Compliance

The Lessee shall be required to provide ADA accessibility throughout the Leased Premises. The Lessee shall comply with all Federal, State and local requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Proposers are encouraged to exceed accessibility requirements whenever possible, and not simply provide the minimum level required.

Evaluation of Capital Investment & Design

The Borough will weigh capital investment and design in its evaluation process (for more information, please see the “Proposal Content Guidelines” section). Therefore, Proposers should describe all intended capital work and provide cost estimates for this capital work in the proposal submission. In addition, please include a detailed capital / design timetable which clearly outlines proposed improvements and the anticipated duration of each improvement.

In compiling the capital submission, Proposers should be aware that the cost estimates provided in the successful proposal will become a minimum required capital expenditure in the Lease Agreement and the time frame proposed will become a mandatory capital schedule. In the event the Lessee performs all capital improvements for less than the minimum required capital expenditure, any excess monies will be remitted to the Borough as additional Lease fees. If the Lessee, by the expiration or sooner termination of the Lease Agreement fails to expend the minimum capital expenditure required up to the date of expiration or sooner termination, the Borough may also require any unexpended monies to be remitted to the Borough as additional Lease fees. Therefore, please be realistic or even conservative in the investment and time frame you offer. All capital improvements and fixed equipment applied toward the Proposer’s capital investment will become the property of the Borough upon termination or expiration of the Lease. The Lessee will also be required to supply all additional equipment and materials necessary for successful operation of the restaurant. Proposers should differentiate between equipment to be applied towards the minimum required capital expenditure versus personal expendable items in their proposals. Personal expendable items not applied toward the required capital expenditure will remain the property of the Lessee.

Bonds

The Lessee will be required to provide two bonds (or other form of security acceptable to the Borough), a performance bond to ensure that all capital work is completed, and a decommissioning bond, to ensure that the restaurant is appropriately decommissioned upon expiration or termination of the Lease. The performance bond and decommissioning bond shall be posted in a form acceptable to the Borough. To guarantee the completion of all capital work and the prompt payment of moneys due to a contractor, subcontractor, and any persons furnishing labor or materials for improvements to the Leased Premises, the Lessee shall post a

performance bond in the amount of either one hundred percent (100%) of the total cost of the proposed construction on the Leased Premises, or, if the construction is proposed in phases, one hundred percent (100%) of the cost of each phase of construction before commencing each phase of such work. The Lessee shall also estimate the cost to appropriately decommission the restaurant at the termination or expiration of the Lease such that the restaurant will be in a condition to accommodate a new tenant. The Lessee shall post a decommissioning bond in the amount of one hundred percent (100%) of the total cost of decommissioning with the Borough.

Available Plans

Any available plans may be obtained from the Borough offices at 100 S. Second Street, Chambersburg, Pennsylvania 17201. There may be a nominal fee for reproductions. The Borough makes no representations as to the availability, accuracy or completeness of these documents.

C. ADDITIONAL REQUIREMENTS

1. The Lessee will be required to carry Commercial General Liability insurance, dedicated to the Leased Premises and the operations there in the amount of \$1,000,000 per occurrence, and statutory limits of Worker's Compensation coverage. The CGL policy shall name the Borough of Chambersburg, including its officials and employees, as an additional insured. The Lessee will also be required to carry property insurance equal to the replacement cost value of the structures constructed on the Leased Premises, with the Borough of Chambersburg named as a loss payee.
2. The Lessee will be required to submit monthly statements of gross receipts from all categories of income in a format approved by the Borough. Within sixty (60) days following the end of each operating year, the Lessee will be required to submit a detailed income and expense statement for the past year's operation.
3. The Lessee will be required to pay all taxes applicable to the operation of the restaurant. Gross receipts shall exclude the amount of any federal, state or local sales taxes which are paid by the Lessee.
4. The Lessee will be responsible for regular pest control inspection and extermination, as needed, on the Leased Premises.
5. The Lessee will be prohibited from cutting down, pruning or removing any trees on the Leased Premises without prior written approval from the Borough.
6. The Lessee will be required to cooperate with the Borough during special and other unanticipated events.
7. Smoking in any building is strictly prohibited. Smoking is also prohibited in the Park and Pool, other than on paved areas. The Lessee will be required to adhere to and enforce this policy.

8. The Lessee will be prohibited from selling any beverages in glass bottles. All beverages, other than beverages that will be consumed entirely within the restaurant, will be required to be in non-glass, shatter-proof containers.
9. This RFP is not open to any Borough official, officer, director, employee of the Borough or a relative of a Borough official, officer, director or employee. The Borough will not accept any proposal from any person, firm or corporation in which any official, officer, director or employee of the Borough (or relative of the same) has a direct or indirect financial interest. The term “relative” shall include a parent, grandparent, spouse, sibling, child or relative in-law.
10. This RFP is not open to any individual, firm, entity, corporation, partnership or business that is delinquent with the Borough for any type of account, including any delinquent taxes, water bills, sewer bills, liens, judgments, fees or other debts.
11. Submissions in response to this RFP will be binding on the proposer for one hundred and twenty (120) days from the date of submission.

D. GENERAL LEASE AGREEMENT TERMS

The provisions of Sections II.A – C. shall become specific provisions in the Lease Agreement between the Lessee and the Borough. In addition to these specific provisions, the following general provisions shall become part of the Lease Agreement. *Please note that these provisions may change if the proposal includes renovation of existing facilities as opposed to construction of new facilities.*

1. Indemnification and Release

The Lessee shall promptly indemnify, hold harmless, defend, and release the Borough from any and all claims, suits, causes of action, losses, and damages (including attorney’s fees and court costs) arising out of the Lessee’s operations under the Lease Agreement.

2. Certificates of Insurance

On or before the commencement date of the Lease Agreement, the Lessee shall obtain and throughout the term of the Lease Agreement, maintain the types and minimum amounts of insurance set forth in Section II.C.1 of this RFP. As a condition precedent to the effectiveness of the Lease Agreement, the Lessee must provide the Borough with a certificate of insurance that shows the Lessee has obtained the types and required amounts of insurance.

3. Borough’s Right to Inspect

The Lessee shall keep and make available complete and accurate books of accounts, financial records, and other records within the Borough relating to the Lessee’s development, management and operation of the Leased Premises. The Lessee shall maintain its books of accounts and financial records in accordance

with generally accepted accounting principles. The Borough may inspect and audit all of the Lessee's records relating to the Leased Premises at all reasonable times at any place the Borough may reasonably require.

4. Confidential and Proprietary Information of the Borough

The Lessee shall treat all information it obtains from the Borough that is not generally available to the public as confidential and proprietary to the Borough. The Lessee shall exercise all reasonable precautions to prevent any confidential and proprietary information it obtains from the Borough from being disclosed to any other person or entity. The Lessee shall promptly indemnify, defend, and hold harmless the Borough 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 Borough confidential or proprietary information by the Lessee or its employees, or by any person acquiring that information, directly or indirectly, from the Lessee or its employees.

5. Default

- a. The Lessee will commit an "Event of Default" under the Lease Agreement if:
 - i. The Lessee fails to timely pay to the Borough in full the Lease Fee; or
 - ii. The Lessee fails to timely perform, observe, fulfill or comply with any other obligation, requirement or prohibition imposed on or applicable to the Lessee under the Lease Agreement.
- b. If the Lessee commits an Event of Default and,
 - i. The Lessee fails to cure the Event of Default within 30 days after receiving written notice from the Borough of the Event of Default,
 - ii. In the Event of Default that cannot reasonably be cured within 30 days after receiving the Borough's written notice of the Event of Default, the Lessee fails to actively start to cure the Event of Default within the 30-day period and then continuously and diligently pursue the cure to completion in not more than 90 days after receiving the Borough's written notice of the Event of Default, or
 - iii. In the case of any Event of Default that poses a threat of imminent harm to persons or property,

Then without further notice the Borough may, in its sole and absolute discretion, immediately suspend or terminate the Lease Agreement, in whole or in part, without liability to the Lessee.

- c. In addition to the Borough's rights and remedies under paragraph (b) above, the Lessee is liable for all damages, costs and expenses suffered or incurred by the Borough arising from or related to the Event of Default. If the Lessee commits an Event of Default and fails to cure the Event of Default within the applicable cure period (if any), then the Borough may exercise all rights and remedies available to it at law or in equity, in addition to the remedies available to the Borough under the Lease Agreement. The Borough may exercise its remedies under the Lease Agreement, at law or in equity, separately, cumulatively, successively and repeatedly, in the Borough's sole and absolute discretion.
- d. The Borough's failure or delay in providing written notice of an Event of Default to the Lessee does not relieve or excuse the Lessee from any liability arising from or related to the Event of Default and does not waive any of the Borough's rights or remedies upon delivering written notice to the Lessee of the Event of Default and the Lessee's failure to cure the Event of Default.

6. Non-indebtedness

The Lessee represents and warrants that it, and all entities under common control with the Lessee or controlled by it are not, as of the effective date of the Lease Agreement, indebted to the Borough. The Lessee shall not at any time during the term of the Lease Agreement be indebted to the City, for or on account of any delinquent taxes, water bills, sewer bills, liens, judgments, fees or other debts for which not written agreement or payment plan satisfactory to the Borough has been established. In addition to any other rights or remedies available to the Borough under the Lease Agreement at law or in equity, the Lessee acknowledges that a breach or failure to conform to this representation, warranty and covenant may, at the option of the Borough, result in the termination of the Lease Agreement.

7. Condition of the Leased Premises

The Borough makes no representation or warranty regarding the condition of the Leased Premises, including its suitability for the restaurant. The Lessee accepts the Lease given by the Lease Agreement and agrees to use the Leased Premises in its "AS IS" condition for the purposes set forth in the Lease Agreement. The Lessee submitted its Proposal and has entered into the Lease Agreement solely based on the Lessee's own investigation of the condition of the Leased Premises.

8. Compliance with Applicable Laws

The Lessee shall promptly comply with all present state, federal and local laws, ordinances, regulations, orders, rules and requirements that apply to any of the following: the Lease Agreement, the Leased Premises and the Lessee's operation of the restaurant and any associated facilities under the Lease Agreement.

9. Entire Agreement; No Amendment

The Lease Agreement is the complete, final and exclusive expression of the Borough's and the Lessee's agreement about the Leased Premises. All prior negotiations and agreements, if any, between the Borough and the Lessee relating to the Leases Premises are superseded by and merged into the Lease Agreement. The Lease Agreement may not be amended or modified except in writing signed by the Borough officials who signed the original Lease Agreement and also signed by the Lessee's duly authorized officers.

10. No Joint Venture or Partnership

The Lease Agreement does not create a joint venture or partnership between the Borough and the Lessee. The Lessee is an independent entity and not an agent of the Borough.

11. Severability

The provisions of the Lease Agreement are severable. If any provision of the Lease Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, then that provision is deemed adjusted to the minimum extent necessary to cure the invalidity or unenforceability. The remainder of the Lease Agreement shall remain in full force and effect.

12. Waiver of Jury Trial

THE LESSEE KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING UNDER OR RELATED TO THE LEASE AGREEMENT (INCLUDING BUT NOT LIMITED TO ANY TORT CLAIM). THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BOROUGH TO ENTER INTO THE LEASE AGREEMENT.

13. Governing Law

The Lease Agreement shall be governed by the law of the Commonwealth of Pennsylvania, and is to be interpreted in accordance with Pennsylvania law without reference to choice of law provisions.

14. Counterparts

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

15. Assignment Prohibited

The Lessee shall not assign the Lease Agreement or any of its rights or obligations under the Lease Agreement.

16. Venue

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

17. Interpretation

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

18. Time of the Essence

Time is of the essence in the Lessee's compliance with the Lease Agreement. If the Lessee proposes to utilize a liquor license on the Leased Premises, the Lessee agrees that the Lease Agreement shall become null, void and of no effect if the Lessee fails to obtain a liquor license from the Pennsylvania Liquor Control Board within six (6) months from the effective date of the Lease Agreement. If the Lease Agreement becomes null and void due to the Lessee's failure to timely obtain a liquor license, the Borough shall not be liable for any costs, expenses or damages to the Lessee as a result of the Lease Agreement becoming void.

19. Force Majeure Event

The Lessee and the Borough are excused from compliance with any obligation or limitation under the Lease 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; and (2) the Lessee or the Borough cannot reasonably make alternative arrangements to comply with the obligation or limitation despite the unexpected event ("Force Majeure Event"). The Lessee is excused from compliance with any obligation or limitation under the Lease Agreement because of a Force Majeure Event only for the duration of the Force Majeure Event or until the Lessee can sooner reasonably make alternative arrangements to enable its compliance.

III. THE RFP PROCESS / PROPOSAL PROCEDURE

A. PROPOSAL SUBMISSION INSTRUCTIONS

A Statement of Interest in the form attached hereto as Appendix B should be submitted by all interested parties by **April 30, 2012**.

Formal proposals should be typed on 8 1/2 " x 11" paper. Proposals should be bound, either in spiral binders or with fasteners. Illustrations should be included. Oversized drawings may be submitted, but must be accompanied by 8 1/2" x 11" sectionals or reductions to 8 1/2" by 11". All plans are subject to the Borough's prior written approval. No telegraphic or facsimile proposals will be accepted. The proposal will be evaluated on the basis of content, not length.

Proposals shall be submitted in a sealed envelope to the following address:

Borough of Chambersburg
C/o Jeffrey Stonehill, Manager
100 S. Second Street
Chambersburg, Pennsylvania 17201

Please submit four (4) copies of your proposal (including 4 copies of all required attachments). The following information should be printed on the outside of the envelope:

**Proposer's Name & Address
Proposal for the Construction, Operation and Maintenance of a
Restaurant at the Memorial Park and Pool
Proposals Due: July 31, 2012**

B. PROPOSAL SUBMISSION REQUIREMENTS

Each proposal submitted must meet the following requirements. Failure to comply will result in the automatic disqualification of a submission from further consideration.

1. All proposers must submit a proposal that includes a Lease Fee offer for each year of the Lease term. At the Borough's request, proposer shall submit documentation, satisfactory to the Borough, demonstrating that it has the financial capability to pay the fees set forth in its proposal.
2. All proposals must be received by **July 31, 2012 at 3 PM**. Hand delivery to the Borough office before the deadline is recommended to ensure consideration of your proposals. **Proposals and modifications received after the time and date**

listed above will be considered late, will be returned to the proposer unopened and will not be considered for the award.

C. PROPOSAL CONTENT

Each proposal shall include the following:

1. Proposed Capital Investment, Improvements and Design

- Proposers should submit sketch plan drawings of all improvements planned to the Leased Premises. The sketch plan(s) shall contain all attributes required of sketch land development plans under Section 258-6 of the Borough of Chambersburg Code of Ordinances. The sketch plan shall clearly show the proposed boundaries and orientation of the Leased Premises. All plans will be subject to the Borough's review and approval through the applicable zoning and land development processes.
- Proposers should submit designs of the exterior and interior of the restaurant facility, including dimensions, photographs and renderings. Elevation drawings showing the restaurant facility on the Leased Premises should also be submitted. All final designs of the Lessee must be approved by the Borough and other pertinent agencies in writing before construction can commence.
- Proposers should submit a detailed timetable describing all design, improvements and capital work. This timetable should clearly outline all intended improvements and investments, the projected cost of these improvements, and the anticipated duration of each improvement. The timetable may use "phases" as a schedule. An approximate time frame for each phase should be included.
- If the proposal includes the addition of parking, the parking shall be included on the sketch plan, and details regarding costs and timetable for construction shall be included.

2. Planned Operations

- Proposers should submit a detailed operational plan for the entire Leased Premises. This plan should include, but not be limited to, intended use of the restaurant, hours of operation, services to be provided, staffing plans, safety and security plans, menu, programming plans, mechanisms to measure customer satisfaction, a detailed list of all proposed fees and prices, landscaping / horticulture plans, and maintenance, snow, rubbish removal and cleaning schedules. The plan should also include details regarding the control of consumption, and service, of alcohol, if such service is planned.

- The Borough will view favorably proposals which incorporate ethnically diverse and / or healthy food choices, such as salads, fresh fruit, yogurt, nuts, granola bars, bottled water, juices, smoothies, etc.
- The Borough will view favorably proposals that demonstrate an awareness of the role of restaurant as an integral part of the Park, Pool and surrounding community. The Borough will view favorably proposals that show a commitment to cooperate with and support park administrators, park users and the community.
- Proposers should submit an estimated number of full-time and seasonal employees and the positions these employees will fill.
- Proposers should include a comprehensive pro-forma income and expense projection for each year of operation. This pro-forma projection should include explanations for all assumptions used in its formulation.

3. Fee Offer

- The fee offer should state the highest sum each proposer is prepared to pay as a Lease Fee, expressed as guaranteed annual minimum fee versus a percentage of gross receipts, whichever is greater. The Borough urges that there be an escalation of at least five percent (5%) per year (compounded annually) in the guaranteed minimum fee over the lease term.

4. Operating Experience

- Proposers should submit a resume or detailed description of the proposer's professional qualifications, demonstrating extensive experience in the industry, including any work with the Borough, and / or access to individuals and / or firms with such expertise. Please include the names and addresses of all corporate officers, members and partners of the entity submitting the proposal. In addition, if the Proposer will be utilizing a restaurant management company or similar management entity, the same information shall submitted for each such entity.
- Proposers should attach a list of at least three (3) recent relevant references, with whom the proposer has previously worked and / or who can describe such matters as the proposer's financial, operational and construction capability. Include the name of the reference entity, a description of the nature of the listed reference's expertise with the proposer and the name, title, address and telephone number of a contact person at the reference entity.

5. Financial Capability

- Proposers should include a financial statement or statements prepared in accordance with standard accounting procedures. Financial statements should include, but are not limited to, annual income and net worth (assets and liabilities), including a breakdown of liquid and non-liquid assets. Proposers

should include supporting documentation of their financial worth, including but not limited to Certified Financial Statements, Balance Sheets and Income Statements and tax returns from the past three (3) years (corporate and / or personal).

- Proposers should identify the intended source of all funds proposed to be invested in the Leased Premises.

IV. EVALUATION AND SELECTION PROCEDURES AND CRITERIA

Proposals will be initially evaluated by a selection committee, based on the criteria listed below. Borough Council shall then evaluate proposals forwarded by the selection committee. The Borough will award the Lease to the proposer whose submission Borough Council judges best overall based on these criteria.

A. PROPOSAL EVALUATION CRITERIA

In evaluating proposals, the selection committee members and Borough Council members will use the following criteria:

- Proposed Capital Investment, Improvements and Design Submitted: See Sections II.B, II.C.1 (25%)
- Planned Operations: See Sections II.A, III.C.2 (25%)
- Lease Fee Offer: See Sections II.A, III.C.3 (20%)
- Operating Experience: See Section III.C.4 (15%)
- Financial Capability: See Section III.C.5 (15%)

B. EVALUATION PROCEDURES

The Borough will only consider proposals that meet satisfactory levels of the above criteria. The Borough is not required to accept the proposal that includes the highest fee offer. The Borough's acceptance of a proposal does not imply that every element of that proposal has been accepted.

The Borough cannot consider any proposal that does not comply with the "Submission Requirements" section of this RFP. Proposals that do not meet these requirements will not be evaluated.

The selection committee will conduct an initial evaluation of all satisfactory proposals and select the top three (3) proposals therefrom. Proposers whose proposals are selected will be invited to make a verbal presentation to the Borough Council at a regularly-scheduled meeting of Borough Council. The Borough anticipates that verbal presentations will occur on or about August, 2012.

Subsequent to the verbal presentations, Borough Council shall select the proposal to which the Lease will be awarded. The Borough anticipates that the winning proposal will be selected on or about September, 2012.

V. MISCELLANEOUS REQUIREMENTS AND CONDITIONS

The Borough reserves the right to postpone or cancel this RFP or reject all proposals, if in its judgment it deems it to be in the best interest of the Borough to do so.

Proposers are advised that the Borough has the option of selecting the proposer without conducting discussions or negotiations. Therefore, proposers should submit their best proposals initially, since discussions or negotiations may not take place.

Proposers are also advised that the award of the Lease is subject to applicable provisions of Federal, State and local laws requiring affirmative action and equal employment opportunity.

All RFP submission materials become the property of the Borough of Chambersburg. Proposal submission material will generally be made available for inspection and copying by interested parties upon written request, except when exempted from disclosure under the Pennsylvania Right to Know Act.

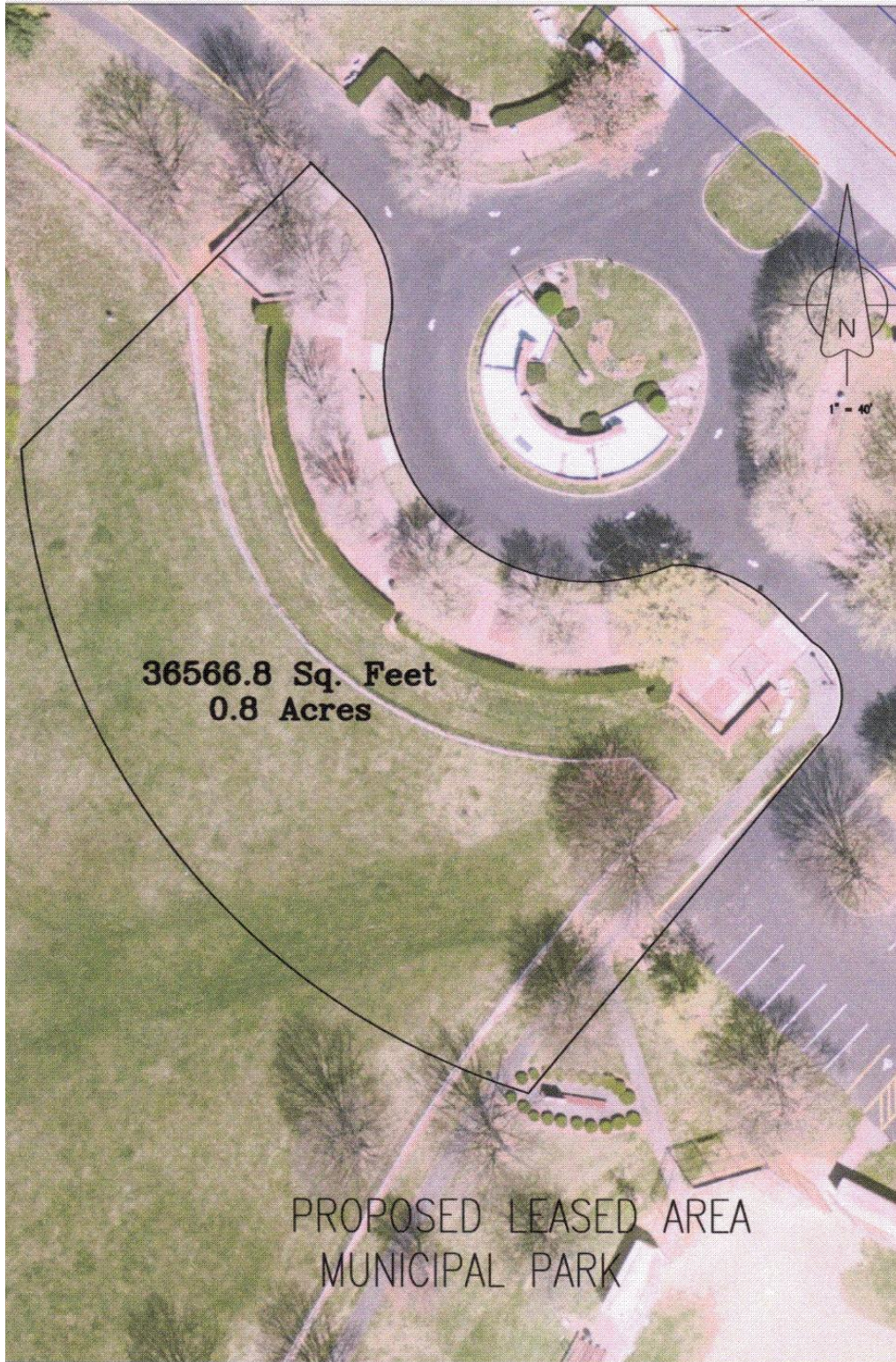
The Borough is subject to the Pennsylvania Right to Know Act, 65 P.S. § 67.101 et seq., which governs the process for the public disclosure of certain records maintained by the Borough. Individuals or firms that submit proposals to the Borough may request that the Borough except all or part of such a proposal from public disclosure, on the grounds that the proposal contains trade secrets, proprietary information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. The request for such an exception must be in writing and state, in detail, the specific reasons for the requested exception. It must specify the proposal or portions thereof for which the exception is requested. If the Borough grants the request for exception from disclosure, the Borough shall keep such proposal or portions thereof in secure facilities.

The Borough is not liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therein.

Proposers should be aware that the Leased Premises and restaurant facility thereon will be developed and operated pursuant to a Lease Agreement issued by the Borough. In the event the Lease Agreement is terminated, the Borough will not reimburse the lessee's unamortized capital improvement costs.

Questions regarding this RFP may be submitted in writing to Stephanie Lindsay, Salzmann Hughes, PC. To receive responses to questions regarding the RFP, any interested party must register with Salzmann Hughes, PC. All proposers will be automatically registered with Salzmann Hughes, PC. Any other interested individual may register by submitting a request to the above address which includes the individual's name, address, phone number and e-mail address. Any response provided to a proposer will be available for review by all proposers via electronic mail.

ATTACHMENT A
PROPOSED LEASED AREA MUNICIPAL PARK



ATTACHMENT B
STATEMENT OF INTEREST FORM

SUBMITTAL FORMAT

Information presented in the Statement of Interest (SOI) will be used to evaluate applicants and determine which entities will be asked to submit proposals. The SOI shall be limited in length as noted below. This section outlines the information which should be transmitted in each section.

NOTE: A page is considered to be letter size, printed on one side, single spaced and with characters no smaller than 12 point. All SOI submitted must contain four (4) copies. The interested applicant shall provide an introductory cover letter clearly stating that the applicant is submitting a SOI for this project. Additionally, the cover letter should identify:

- Legal corporate name of applicant
- Subsidiary names, D/B/A names, and all related investor names and addresses
- Primary staff contacts

The enclosed SOI document must include:

Full disclosure:

- Address and name of all existing operating business locations held by any of the investors related to this proposal

Professional Qualifications:

- The applicant's prime scope of services and experience on similar projects.
- The project manager and project team members and their personal qualifications.

Understanding of Project Scope:

- Briefly describe the proposed project.
- Briefly demonstrate the applicant's understanding of the scope of services based on experience.

Ability to Meet the Project Requirements:

- Briefly demonstrate the applicant's ability to commit resources to this project.
- List references from similar projects validating the applicant's ability to successfully meet project requirements.

The submitted SOI shall not exceed seven (7) total pages, excluding the introductory cover sheet. However, the applicant may provide the following appendix items, exclusive of the seven (7) pages SOI:

- Project Manager / Team Resumes
- Reference letters from past clients (no limit)

Failure to submit a SOI will disqualify an applicant from submitting a final proposal.

Should the Borough receive an inadequate quantity of SOI forms, the Borough reserves the right to extend the timetable for submittal.

All submissions are subject to Pennsylvania Open Records laws and are the property of the Borough of Chambersburg.