

*****ATTACHMENTS*****

III

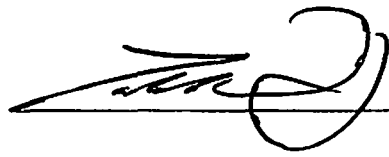
4.3

Res. No. 120 - 17 - 18. By Alderperson Wolf. December 18, 2017.

A RESOLUTION authorizing advertising for bids for construction and implementation of the new Sheboygan A's light project in the Wildwood Baseball Complex.

RESOLVED: That the Department of Public Works is hereby authorized and directed to advertise for bids for the construction of a six and eight light pole design, called the Sheboygan A's Light Project, located at the Wildwood Baseball Complex at 2328 New Jersey Avenue, according to plans and specifications prepared by Musco Lighting, and submit a resume of bids received and accepted to the Common Council for further consideration.

Public Works



I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of

_____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: Request to approve authorization of advertising for bids for implementation and construction of new lights and poles at the Wildwood Baseball complex.

REPORT PREPARED BY: Joseph L. Kerlin, Superintendent of Parks and Forestry

REPORT DATE: December 13, 2017

MEETING DATE: December 18, 2017

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The City of Sheboygan has been working with the Sheboygan A's to replace field lighting at the Wildwood Baseball Field Complex. The estimated cost for the project is around \$425,000.

STAFF COMMENTS:

Through the Sheboygan A's fundraising campaign, donations and commitments of \$395,000 for the project have been secured. City staff and representatives of the Sheboygan A's are confident that this is enough to start the project while fundraising continues. The City budgeted \$80,000 in 2017 for this project. The Department of Public Works will facilitate the bidding and constructions of the lighting project.

ACTION REQUESTED:

Motion to request the Public Works Committee recommend to the Common Council to authorize advertising for bids for the Sheboygan A's Lighting Project.

ATTACHMENTS:

Ballpark Vitalization Account

Sheboygan Athletic Club
 Ballpark Vitalization Account
 Updated December 1, 2017

Year 2017 Contributions

<u>Fund Raising Campaign</u>	<u>Date</u>	<u>Amount</u>	<u>Balance</u>	<u>Notes</u>
Year End 2016 Balance FWD	11-Jan-17	\$ 106,021.55	\$ 106,021.55	Contribution includes \$50,000 PLENCO & \$50,000 Brotz Foundation
Can Contributions	6-Oct-17	\$ 678.50	\$ 106,700.05	
Donations	6-Oct-17	\$ 1,624.25	\$ 108,324.30	
Interest Earned	21-Sep-17	\$ 525.60	\$ 108,849.90	
Jackson Club	27-Jun-17	\$ 1,825.00	\$ 110,674.90	
Jersey Sales	13-Jul-17	\$ 150.00	\$ 110,824.90	
Memorials	27-Jul-17	\$ 1,720.00	\$ 112,544.90	
Moyer Recognition	6-Jul-17	\$ 2,622.00	\$ 115,166.90	
Pledgathon	27-Jul-17	\$ 50.00	\$ 115,216.90	
Scoreboard Payment	31-Mar-17	\$ 1,500.00	\$ 116,716.90	
Vitalization Contributions	2-Oct-17	\$ 21,750.00	\$ 138,466.90	Kohler \$16,750 & Aurora \$5000
Account Transfer	30-Sep-17	\$ 8,532.18	\$ 146,999.08	
SBA Gift	10-Oct-17	\$ 100,000.00	\$ 246,999.08	

<u>Other Lighting Commitments</u>			<u>Funding Designation</u>
Kohler Contribution 2018-19	\$ 33,000.00		Lighting (\$16,500 each year 2018-2019)
City of Sheboygan	\$ 80,000.00		Lighting
City of New Holstein Light Purchase	\$ 35,000.00		Lighting
<u>Other Vitalization Commitments</u>			
Sargento	\$ 50,000.00		Concession Stand
Gutschow Foundation	\$ 100,000.00		Social Deck(s)

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing advertising for the bids for construction and implementation of the new Sheboygan A's light project in the Wildwood Baseball Complex.

REPORT PREPARED BY: Joseph L. Kerlin, Superintendent of Parks and Forestry

REPORT DATE: January 5, 2018

MEETING DATE: January 9, 2018

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The City of Sheboygan has been working with the Sheboygan A's to replace field lighting at the Wildwood Baseball Field Complex. The estimated cost of the project is \$425,000.

STAFF COMMENTS:

Through the Sheboygan A's fundraising campaign, donations and commitments of \$395,000 for the project have been secured. City Staff and Representatives of the Sheboygan A's are confident that this is enough to start the project while fundraising continues. The City budgeted \$80,000 in 2017 for this project. The Department of Public Works will facilitate the bidding and construction of the lighting project.

ACTION REQUESTED:

Motion to approve Res. No. 120-17-18 A RESOLUTION authorizing advertising for the bids for construction and implementation of the new Sheboygan A's light project in the Wildwood Baseball Complex.

ATTACHMENTS:

- I. Res. No. 120-17-18
- II. Ballpark Vitalization Account

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A RESOLUTION authorizing the Appropriate City Officials to advertise for a request for proposal from qualified vendors for establishment and operation of an authentic German Beer Garden Concession at Kiwanis Park, area eight, in the City of Sheboygan.

REPORT PREPARED BY: Joseph L. Kerlin, Superintendent of Parks and Forestry

REPORT DATE: January 4, 2018

MEETING DATE: January 9, 2018

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

In 2017 city staff and officials met with two different organizations proposing to offer services for establishment of a beer garden in a City of Sheboygan Park. Both organizations have some type of connection with the beer gardens operated recently in the Milwaukee County Parks. The proposal that was most well received was that of an authentic German Biergarten to be held in area eight of Kiwanis Park.

After several discussions and researching other communities that already have a beer garden in their parks, it was determined that staff would propose advertising an RFP for the operation of a German Beer Garden for the season of 2018. This would allow DPW to hold reservations in this area for the season. It would also allow any interested qualified organization or business equal opportunity to make a proposal for the operation of the beer garden.

STAFF COMMENTS:

Area eight of Kiwanis Park is an attractive area along the Sheboygan River set apart from the rest of the park. It offers two open shelters, restrooms, and a small concession stand. It is also adjacent to a baseball field that is currently not scheduled for games.

At this time area eight is underutilized with only a few rentals taking place each year. Providing a social destination, that meets the Purpose and Scope of the City's Comprehensive Outdoor Recreation Plan, will bring many new visitors to the park. Increased community use is also one of the best ways to prevent unwanted action in our public spaces.

Leasing this area will also provide a new revenue stream to the City Parks budget and lessor will be responsible for improvements and maintenance to area eight's facilities.

ACTION REQUESTED:

Motion to approve Res. No. 12-17-18. A RESOLUTION authorizing the Appropriate City Officials to advertise for a request for proposals from qualified vendors for the establishment and operation of an authentic German Beer Garden Concession at Kiwanis Park, area eight, in the City of Sheboygan.

ATTACHMENTS:

- I. Res. No. 121-17-18
- II. Draft RFP Beer Garden Concession Kiwanis Park Area #8

III

Other Matters

8.2

Res. No. 121-17-18. By Alderperson Wolf. December 18, 2017.

A RESOLUTION authorizing the Appropriate City Officials to advertise for a request for proposal from qualified vendors for establishment and operation of an authentic German Beer Garden Concession at Kiwanis Park, area eight, in the City of Sheboygan.

WHEREAS: The city is looking at providing additional recreation facilities for the benefit of its citizens and park system.

WHEREAS: City officials have talked to several vendors and have researched communities that provide a beer garden in their parks system.

WHEREAS: The Public Works Department would like to better use an underutilized area in Kiwanis Park.

WHEREAS: A request for proposal would allow all qualified vendors equal opportunity to make a proposal for the operation of the beer garden.

RESOLVED: That the appropriate City Officials are hereby authorized to advertise for a proposal for the establishment and operation of an authentic German Beer Garden Concession at Kiwanis Park, area eight, in the City of Sheboygan.

Public Works



I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

REQUEST FOR PROPOSALS CITY OF SHEBOYGAN



BEER GARDEN CONCESSION KIWANIS PARK AREA #8

REQUEST FOR PROPOSALS # 1933-17
Due Date **January 15, 2018**

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1 NOTICE TO PROPOSERS

1.1 Summary

The City of Sheboygan ("City") is soliciting Proposals from qualified vendors for establishment and operation of an authentic German Beer Garden Concession at Kiwanis Park in the City of Sheboygan. Vendors submitting Proposals ("Proposers") are required to read this Request for Proposals ("RFP") in its entirety and follow the instructions contained herein.

1.2 Important Dates

Deliver Proposals no later than the due time and date indicated below. The City will reject late Proposals:

Issue Date: December 6, 2017
Questions Due: January 3, 2018
Proposals Due: 1:00 pm on January 15, 2018

1.3 Format

Submit Technical and Cost Proposals (Form D) in separate, distinct parts within the proposal package.

Hardcopy proposals typed and securely bound on 8.5 by 11-inch paper, otherwise identical to the electronic version.

Electronic proposal in a PDF format stored on a common media (CD, DVD, or flash drive), identical in content and sequence to hardcopy proposals submitted.

Cost Proposal (Form D): One Copy
Technical Proposal: Five Copies
Electronic Proposal: One (1) complete copy (Cost and Technical)

The City will not consider illegible Proposals.

Elaborate proposals (i.e., expensive artwork) beyond that sufficient to present a complete and effective proposal, are not necessary or desired.

1.4 Labeling

All proposals must be clearly labeled:
Request for Proposals # 1933-17
Proposer's Name and Address
Title: Kiwanis Park Beer Garden Concession
Due: Wednesday, January 15, 2018

1.5 Delivery of Proposals

Delivery of hard copies to:

City of Sheboygan Purchasing Agent
City Hall-Attention Bernard Rammer
828 Center Avenue, Suite 205
Sheboygan WI 53081

Delivery of electronic copy to:

Via email: Bernard.rammer@sheboyganwi.gov
or on a commonly used media included with the hard copies such as CD/DVD/Jump Drive

Proposals must be delivered as instructed. Deliveries to other City departments and/or locations may result in disqualification.

Note: When mailing your response via a third party delivery service, the outside of the packaging MUST be clearly marked with the RFP/RFQ name and number. This ensures that the bid can be delivered to the purchasing agent without having to open the bid.

1.6 Appendix A: Standard Terms & Conditions

Proposers are responsible for reviewing this attachment prior to submission of their Proposals. City of Sheboygan Standard Terms and Conditions are the minimum requirements for the submission of Proposals.

1.7 Appendix B: Sample Agreement

Proposers are responsible for reviewing this attachment prior to submission of their Proposals. The Sample Agreement shall serve as the basis of the contract resulting from this RFP. The terms of this template contract shall become contractual obligations following award of the RFP. By submitting a proposal, Proposers affirm their willingness to enter into a contract containing these terms.

1.8 Multiple Proposals

Multiple Proposals from Proposers are permitted; however, each must fully conform to the requirements for submission. Proposers must sequentially label (e.g., Proposal #1, Proposal #2) and separately package each Proposal. Proposers may submit alternate pricing schemes without having to submit multiple Proposals.

1.9 City of Sheboygan Contact Information

The City of Sheboygan Purchasing Agent:
Bernard Rammer
828 Center Avenue, Suite 205
Sheboygan WI 53081
(920)459-3469
Bernard.rammer@sheboyganwi.gov

The City employs spam filtering that occasionally blocks legitimate emails, holding them in "quarantine". The contact listed in this RFP will acknowledge all emails received. Proposers not receiving acknowledgement within twenty-four hours shall follow-up via phone with specific information identifying the originating email address for message recovery.

1.10 Inquiries, Clarifications, and Exceptions

Proposers are to raise any questions they have about the RFP document without delay. Direct all questions, *in writing*, to the Purchasing Agent via U.S Mail or electronic mail.

Proposers finding any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP document shall immediately notify the Buyer and request clarification. In the event that it is necessary to provide additional clarification or revision to the RFP, the City will send addenda to all bidders of record— see 1.11 below.

Proposals should be as responsive as possible to the provisions stated herein. A prospective vendor may take "exception" to bid terms, conditions, specifications and dates stated within the bid package. However, the City of Sheboygan reserves the right to disqualify any and all bids submitted which include exceptions, if deemed not in the City's best interests.

Addenda

In the event that it is necessary to provide additional clarification or revision to the RFP, the City will issue addenda to all bidders of record. It is the Proposers responsibility to **register their Email** address with the Purchasing Agent (Bernard.rammer@sheboyganwi.gov) in order to receive the addenda. Proposers must acknowledge the receipt of any addenda on Form B. Failure to register or retrieve addenda and include their provisions may result in disqualification. Addenda to be distributed will include any questions received and answers to same.

1.11 Oral Presentations/Site Visits/Meetings

Proposers may be asked to attend meetings, make oral presentations, inspect City locations or make their facilities available for a site inspection as part of this RFP process. Such presentations, meetings or site visits will be at the Proposers expense.

1.12 Acceptance/Rejection of Proposals

The City reserves the right to accept or reject any or all proposals submitted, in whole or in part, and to waive any informalities or technicalities, which at the City's discretion is determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any proposer responding to this request. The City expressly reserves the right to reject any and all proposals responding to this invitation without indicating any reasons for such rejection(s).

The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.

1.13 Withdrawal or Revision of Proposals

Proposers may, without prejudice, withdraw Proposals submitted prior to the date and time specified for receipt of Proposals by requesting such withdrawal before the due time and date of the submission of Proposals. After the due date of submission of Proposals, no Proposals may be withdrawn for a period of 90 days or as otherwise specified or provided by law. Proposers may modify their Proposals at any time prior to opening of Proposals.

1.14 Non-Material and Material Variances

The City reserves the right to waive or permit cure of nonmaterial variances in the offer if, in the judgment of the City, it is in the City's best interest to do so. The determination of materiality is in the sole discretion of the City.

1.15 Public Records

Proposers are hereby notified that all information submitted in response to this RFP may be made available for public inspection according to the Public Records Law of the State of Wisconsin or other applicable public record laws. Information qualifying as a "trade secret" as defined in State of Wisconsin Statutes and identified as same by the Proposer may be held confidential.

Proposers shall seal separately and clearly identify all information they deem to be "trade secrets," as defined in the State of Wisconsin Statutes. Do not duplicate or co-mingle information, deemed confidential and sealed, elsewhere in your response.

S. 19.36(5)

(5) TRADE SECRETS. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90(1)(c).

s. 134.90(1)(c)

(c) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

The City cannot ensure that information will not be subject to release if a request is made under applicable public records laws. The City cannot consider the following confidential: a bid in its entirety, price bid information, or the entire contents of any resulting contract. The City will not provide advance notice to Proposers prior to release of any requested record.

To the extent permitted by such laws, it is the intention of the City to withhold the contents of Proposals from public view until such times as competitive or bargaining reasons no longer require non-disclosure, in the City's opinion. At that time, all Proposals will be available for review in accordance with such laws.

1.16 Tax Exempt

The City of Sheboygan as a municipality is exempt from payment of federal excise taxes and State of Wisconsin taxes per Wisconsin statute 77.54(9a). Federal Tax ID #39-6005599. A completed Wisconsin Department of Revenue Form S-211 (R.2-00) can be furnished. Our CES number is 245770.

1.17 Proposers Responsibility

Proposers shall examine this RFP and shall exercise their judgment as to the nature and scope of the work required. No plea of ignorance concerning conditions or difficulties that exist or may hereafter arise in the execution of the work under the resulting contract, as a consequence of failure to make necessary examinations and investigations, shall be accepted as an excuse for any failure or omission on the part of the Proposers to fulfill the requirements of the resulting contract.

2 DESCRIPTION OF SERVICES/COMMODITIES

2.1 Introduction

The City of Sheboygan is accepting proposals from qualified vendors for the right to provide an authentic German Beer Garden (*Biergarten*) concession in Kiwanis Park. These services may include, but are not limited to; 1) Establishment and construction of a suitable outdoor concession facility 2) complete operation of the concession 3) acceptance of overall responsibility for the included facilities even while closed 4) advertisement of the concession to promote use. Successful proposers will consider how their services complement and integrate with existing park uses as well as engage a diversity of members of the community. The successful Proposer(s) shall compensate the City in return for these rights, meet the City's requirements for operations and abide by the City's terms and conditions for granting these rights, set forth in this solicitation and also in the resulting agreement, if issued.

2.2 Goals

The goal of signing an agreement with an outside vendor(s) and conveying the rights to provide these services is to serve the public interest of Park patrons by offering seasonal services and enhance the safety and ambience of these parks by maintaining a business in an under- utilized area of the park.

2.3 Term

The agreement, if issued, shall commence in the spring of 2018 and end on December 1, 2021. Upon mutual agreement the City and selected vendor(s) may extend the agreement for up to two additional one year periods (i.e. 2022 & 2021). The City reserves the right to negotiate an alternate term. The terms and conditions of this RFP cover the initial and all subsequent agreement periods granted.

2.4 Locations/Background Information

The solicitation includes rights for Area # 8, Kiwanis Park, Kiwanis Park Drive, Sheboygan WI. Parking for patrons is currently available along Kiwanis Park Drive. Area # 8 is a well shaded, level area of the park adjacent to a stretch of the Sheboygan River. Nearby park amenities include a public boat/kayak launch, a new skateboard park and several ball diamonds and soccer fields.

2.5 Amenities

Use of the following amenities shall be available to the Permittee(s): **Main shelter** including bathrooms and drinking fountain, storage area, electrical outlets and water connections. Water connections will be turned on from approximately April 1st to October 30th each season. The **Concession Stand** is situated to the South of the Main Shelter. In addition, there is a large green space area to the east of both the Main Shelter and the concession stand. This area borders the Sheboygan River.

Note: The Jaycee Pavilion to the south of the Concession stand is **not** included in this offering initially but could be made available for specific events or possibly be incorporated into the area at a future date by mutual agreement.

2.6 No Real Estate

It is expressly understood and agreed that this Agreement is not a lease or a conveyance of Real Estate, but merely a granting to Permittee the right to conduct certain activities and provide certain services on City property for the benefit and convenience of the public.

2.7 Requirements for Operations

Permittee must abide by the following requirements in order for the City to continue granting to the Permittee the right to conduct concession activities:

1. Equipment

Provide and maintain in good order all furnishings and equipment required to adequately establish and operate an *Authentic German Beer Garden* including lighting, perimeter fencing, tables, chairs, benches, service counters, landscape materials, refrigeration, food preparation equipment, food storage equipment, beer dispensing equipment as well as trash receptacles, sound systems and signage. Also to be provided will be cleaning equipment, tools and fixtures. Under no circumstance will any City owned furnishings and equipment be used for the purposes of the concession without the express consent of the City.

The concessionaire shall include plans to erect some sort of perimeter barrier between the areas included in the agreement and the rest of the park. The barrier shall be tasteful in design and be approved in advance by the City of Sheboygan.

2. Concessions

Provide food and beverage concessions Permittee must abide by all City laws. The City must approve all concessions, prior to sale. Permittee shall provide to the City by March First of each annual period granted a specific list of concessions. The City will review the annual list and reserves the right to disapprove any concessions. Permittee may not expand or change concessions without prior City review and approval. All concessions for sale shall be individually listed on an inventory and filed with the City, prior to sale.

2.8 Blackout Dates

The Proposer agrees that on the following days the concession will not be in operation so as to avoid conflict/competition with long standing festivals in the park:

The third Saturday in July-Hmong Festival
The first Saturday in August-Jaycee Bratwurst Days

If the concessionaire is able to reach an agreement with the organizers of the above festivals which would effectively grant permission for operation of the concession on these dates, said agreement shall be in **writing** and a copy of same shall be placed on file with the City of Sheboygan no less than 14 days prior to the black-out dates. Under no circumstance will the concessionaire operate on these dates without written an agreement allowing for same between the concessionaire and the organizers of the affected festivals.

2.9 Hours of Operations

Maintain hours of operations that are constant with park hours and predetermined open/closed times. Permittee shall open for the season no later than June 1st and close no earlier than October 15th. Permittee may begin to move in equipment and set up for the season earlier with permission from the City.

The Concession shall be open for business not less than 5 days in any given week with the possible exception of the Blackout dates above.

The concession shall be open for business a minimum of 8 hours/day.

Hours of operation will be clearly posted and will be between 10:00 AM and 10:00 PM daily.

2.10 Appearance

Permittee's employees must display professional appearance, wear name tags at all times identifying them as an employee of the Permittee.

2.11 Storage

Permittees that are granted successive terms may store equipment, between terms, in available locked storage or under cover of the open area of the main shelter. Permittee may not store equipment outside of buildings during this time. All storage of materials shall be at the sole risk if the concessionaire. The Parks Superintendent or his designee shall determine acceptable storage of materials.

2.12 Maintenance

Permittee is responsible for cleanliness and cleaning supplies for the facilities including storage rooms, the main shelter, the concession stand, grounds around the building, and restrooms. Permittee shall be solely responsible keeping the grounds immediately adjacent to the facility(s) picked up of paper and debris.

Permittee shall be responsible for opening, closing and cleaning daily the restrooms included under this offering. Permittee is responsible for stocking bathroom supplies including toilet paper, hand soap and paper towels. Permittee is responsible for maintaining the landscaping around the area designated to include weeding, mulching and basic pruning and without the use of pesticides. The permittee will work with the Parks Superintendent to establish boundaries for lawn maintenance.

Custodial services provided by the successful proposer and chemicals, trash-liners, soap and paper used are required.

2.13 Capital Improvement

Permittee and City shall discuss, at least annually, the merits of improving the premises to which the Permittee has access under this agreement. Upon mutual consent the City and Permittee *may* enter into an agreement to share the costs of improvements required or desired to maintain the functionality of the premises or improve the marketability of services provided from the premises. The City and Permittee shall negotiate cost sharing. Considerations may include, but are not limited to; the cost of the improvement, life of the improvement, percentage of premises occupied by Permittee, number of months annually occupied by Permittee, and the schedule of reimbursement to City by Permittee for its agreed-upon share of improvement.

Permittee may not make permanent modifications to the premises covered in this agreement without the City's express and written approval. The City reserves the right to modify, repair or improve the premises at its discretion, without approval of Permittee, so long as it is done at the City's expense.

At a minimum, the permittee shall be expected to invest not less than \$ 20,000.00 (Twenty Thousand Dollars) in Capital Improvements within the first three years of operation.

2.14 Advertisement

Advertisements must be approved by the City in advance. Permittee shall not use park logo, taglines, mission/vision or make reference to the City without prior approval. The Parks Division and the City of Sheboygan Building Inspection Department shall approve signs and banners, including menu boards. It is understood that in the operation and conduct of this agreement, City does not grant Permittee the right to sell or distribute any goods or services provided by City, nor does City grant Permittee the right to use a City trade name, trademark, logotype, advertising, or other commercial symbol.

2.15 Subcontracting

Permittee shall not assign or subcontract any portion of this agreement. Furthermore, Permittee is not allowed to rent facilities to any third Party.

2.16 Insurance

Keep insurance with indemnification for the City as required per Appendix A: Standard Terms and Conditions #12 and 13.

2.17 Damage

The Permittee will immediately report any damage caused to the City's property and shall be held responsible for the restitution of any said damage whether the damage is caused by the permittee, permittees customers or an outside person. The Permittee shall not be responsible for damage from City's mechanical malfunctions, broken water lines, or acts of nature unless actions by the permittee have directly or indirectly caused the malfunction.

The Permittee shall be wholly responsible for all areas under his or her control during the entire term of the agreement. Responsibility shall be 24 hours per day, 7 days per week.

2.18 Deposit

A damage deposit in the amount of \$3,000 for each annual season is required, which Permittee must pay prior to occupying the location. At the conclusion of the agreement and after inspection the City will refund the damage deposit less any assessed damage. In cases where damage is greater than \$3,000 the City shall keep the entire annual damage deposit and Permittee shall pay to the City the difference between the damage and deposit, within 30 days of notice by the City.

2.19 Surrender of Building

Not later than three (3) days after the date of termination of this Agreement, Permittee agrees to vacate and surrender the portions of the premises allocated to it for the operation of this Agreement, remove personal property there from, and deliver possession of the same to City, in as good condition as the premises were in at the commencement of the Agreement with the exception of unavoidable wear through careful use and damage by fire or other casualty beyond the control of Permittee. All equipment and other property of City (if any) on the premises shall remain the property of the City after the termination of this Agreement. An inventory of City property and equipment (if any) will be performed before release.

2.20 Facility Access

The Parks Division will provide access to; 1) lockable in-building storage 2) concession stand 3) restrooms Note the facilities covered in this solicitation are not all accessible by vehicle. Permittee must provide access to premises 24/7 for Parks staff.

2.21 Taxes and Expenses

Permittee is responsible for and shall pay all taxes and expenses pertaining to their business. Permittee agrees to timely pay all taxes, assessments, or other public charges levied or assessed by lawful the personal property of Permittee on the premises during the term of the agreement. Permittee shall pay an allowance for utilities for the spaces they occupy with the amount to be determined.

2.22 Auditing/Records

Permittee shall retain and make available to the City: 1) statements of profit and loss, 2) operating statistics, pricing for concessions or 4) any documents of a similar nature pertaining to the Permittee's operations on City property.

3 REQUIRED CONTENT OF PROPOSALS

3.1 Section 1 – General Information, Signatures, and Required Guarantees and Certifications

- A. Form A – Signature Affidavit
- B. Form B – Receipt Forms and Submittal Checklist
- C. Form C – Contractor Profile Information

3.2 Section 2 – References, Performance, Litigations

- A. List any and all contracts or agreements your firm has currently with the City of Sheboygan
- B. Provide a list of governmental organizations/municipalities and/or clients with whom your firm has done similar business and/or has had similar contracts in size and scope within the last 5 years. Be specific and include the information in RFP Form E.
- C. Disclosure of Contract Failures, Litigations

Disclose any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the consultant or in which the consultant has been judged guilty of liable or which may affect the performance of the services to be rendered herein, in which the Firm, any of its employees, subcontractors, or sub consultants is or has been involved in within the last three (3) years.

3.3 Section 3 – Background Information

Responses must be in the same sequence as listed and must be identified with the corresponding question number. i.e., Question 1, Question 2, etc.

1. Qualifications Overview / General Company Information

Provide a brief overview of the general background and services provided by your firm, including size of organization, description of organization structure, number of years in business and experience in serving governmental entities. Demonstrate the firm's capability and evidence of your experience providing services equal to or greater in scope than those requested in this RFP.

2. Organization Management Approach

Describe the approach to organization management and the responsibilities of the management and staff personnel, if applicable, who will perform work on the contract; describe method employed to ensure prompt service, customer satisfaction, prompt compliant resolution, effective employee performance and training, and timely initiation and completion of all work. Please provide a resume (1 page limit) for each of the key personnel described.

3.4 Section 4 – Technical Questionnaire

Responses must be in the same sequence as listed and must be identified with the corresponding question number. i.e., Question 1, Question 2, etc.

1. Please provide a brief overview (four pages maximum) of how the Proposer plans on meeting the requirements of this RFP, including, but not limited to:
 - a. staffing considerations
 - b. equipment available
 - c. concession assortments
 - d. any certifications held

2. Please provide a list of ideas for making this agreement more beneficial to the public and the city.

3.5 Section 5 – Cost Proposal

Please submit cost proposal, Form D, separate from the rest of the proposal.

T



Form A: Signature Affidavit

RFP #: 1933-17 German Beer Garden

This form must be returned with your response.

In signing Proposals, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise take any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit Proposals, that Proposals have been independently arrived at, without collusion with any other Proposers, competitor or potential competitor; that Proposals have not been knowingly disclosed prior to the opening of Proposals to any other Proposers or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this Proposals, hereby agrees with all the terms, conditions, and specifications required by the City in this Request for Proposals, declares that the attached Proposals and pricing are in conformity therewith, and attests to the truthfulness of all submissions in response to this solicitation.

Proposers shall provide the information requested below. Include the legal name of the Proposers and signature of the person(s) legally authorized to bind the Proposers to a contract.

COMPANY NAME

SIGNATURE

DATE

PRINT NAME OF PERSON SIGNING



Form B: Receipt of Forms and Submittal Checklist

RFP #: 1933-17 German Beer Garden

This form must be returned with your response.

Proposers hereby acknowledge the receipt and/or submittal of the following forms:

Forms	Initial to Acknowledge SUBMITTAL	Initial to Acknowledge RECEIPT
Description of Services/Commodities	N/A	
Form A: Signature Affidavit		
Form B: Receipt of Forms and Submittal Checklist		
Form C: Vendor Profile		
Form D: Fee Proposal		
Form E: References		
Appendix A: Standard Terms & Conditions	N/A	
Appendix B: Sample Agreement	N/A	
Addendum #		
Addendum #		

VENDOR NAME

COMPANY NAME



Form C: Vendor Profile

RFP #: 1933-17 German Beer Garden

COMPANY INFORMATION

This form must be returned with your response.

COMPANY NAME (Make sure to use your complete, legal company name.)			
FEIN		(If FEIN is not applicable, SSN collected upon award)	
CONTACT NAME (Able to answer questions about proposal.)		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS		CITY	STATE ZIP

ORDERS/BILLING CONTACT

Address where City purchase orders/contracts are to be mailed and person the department contacts concerning orders and billing.

CONTACT NAME		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS		CITY	STATE ZIP



Form D: Fee Proposal

RFB #: 1933-17 German Beer Garden

This form must be returned with your response.

Prepare the fee proposal as all inclusive, not-to-exceed, fixed fees:

- All Inclusive – Covers all direct and indirect necessary expenses including but not limited to; travel, telephone, copying and other out-of-pocket expenses.
- Not To Exceed – The actual fees shall not exceed the amount specified in fee proposal.
- Fixed Fee – All prices, rates, fees and conditions outlined in the proposal shall remain fixed and valid for the entire length of the contract and any/all renewals.

Instructions: Bidder may submit a proposal for any or all of the locations listed below for the rights to conduct the activities specified in this proposal for the years indicated.

Please provide a description of how the agreement will be structured including payments to the City of Sheboygan as well as any all inclusive fixed reimbursements for ancillary services.

1. Kiwanis Park Area # 8

Item	Description	Year ¹	Amount of Payment to City
1.	First agreement term	2018	\$
2.	Second agreement term	2019	\$
3.	Third agreement term	2020	\$
4.	Fourth agreement term -Optional	2021	\$
5.	Fifth agreement term-Optional	2022	\$
Total			\$

¹ Permittee shall open for the season no later than one week prior to Memorial Day and close no earlier than October 15th.

COMPANY NAME _____



Form E: References

RFP #: 1933-17 German Beer Garden

This form must be returned with your response.

REFERENCE #1 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

REFERENCE #2 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

REFERENCE #3 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

COMPANY NAME _____

APPENDIX A

STANDARD TERMS AND CONDITIONS

1. **General.** Throughout this document, "CITY OF SHEBOYGAN," "City" and "Purchasing" shall be synonymous and mean the CITY OF SHEBOYGAN. The words "bid" and "proposal" are synonymous, as are the words "bidder," "proposer" and "contractor." The phrases "request for proposal," "invitation for bids," "request," "invitation," and "solicitation" shall also be synonymous. As applied to the winning or selected bidder, the words "bid," "proposal," and "contract" are synonymous.
2. **Entire Agreement, Order of Precedence** These standard terms and conditions shall apply to any Purchase Order issued as a result of this Request for Bid/Proposal, except where expressly stated otherwise in the RFP or in a written instrument covering this purchase signed by an authorized representative of the City and the Contractor, in a form approved by the City Attorney (a "Separate Contract"). If such a separate contract is executed it shall constitute the entire agreement and no other terms and conditions, whether oral or written, shall be effective or binding unless expressly agreed to in writing by the City.
If a Separate Contract is not executed, these Standard Terms and Conditions, the City's request for proposals, the version of the vendor's bid that was accepted by the City and the City's Purchase Order (if any) shall constitute a contract and will be the entire agreement.
Order of Precedence: If there is a conflict between this Section A and any terms in the vendor's accepted bid or proposal, this Section A shall control unless the parties expressly agree to another order of precedence, in writing. If there is a conflict between this Section A and a Separate Contract, the terms and conditions of the Separate Contract shall control.
- I. **TERMS FOR SUBMISSION OF BIDS: The following section applies to the bid/selection process only.**
3. This invitation for bids does not commit the City to award a contract, pay any costs incurred in preparation of bids, or to procure or contract for services or equipment. The City may require the bidder to participate in negotiation and to submit such additional price or technical or other revisions to his or her bids as may result from negotiation. The bidder shall be responsible for all costs incurred as part of his or her participation in the pre-award process.
The City reserves the right to accept or reject any or all bids submitted, in whole or in part, and to waive any informalities or technicalities which at the City's discretion are determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any offeror responding to this request. The City expressly reserves the right to reject any and all bids responding to this invitation without indicating any reasons for such rejections(s).
The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.
4. **Addenda.** Changes affecting the specifications will be made by addenda. Changes may include, or result in, a postponement in the bid due date. Bidders are required to complete the Bidder Response Sheet, acknowledging receipt of all parts of the bid, including all addenda.
5. **Price Proposal.** All bidders are required to identify the proposed manufacturer and model, and to indicate the proposed delivery time on the attached Proposal Form. Failure to do so may cause the bid to be considered not responsive. If desired, the bidder may include product literature and specifications. The price quoted will remain firm throughout each contract period. Any price increase proposed shall be submitted sixty (60) calendar days prior to subsequent contract periods and shall be limited to fully documented cost increases to the bidder which are demonstrated to be industry-wide.
6. **Price Inclusion.** The price quoted in any bid shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the furnishing and delivery of equipment or services pursuant to the specifications attached thereof. Any items omitted from the specifications which are clearly necessary for the completion of the project shall be considered a portion of the specifications although not directly specified or called for in these specifications.
7. **Pricing and Discount.**
 - a. Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea. etc.) as stated on the bid/proposal or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price. If an apparent mistake exists in the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
 - b. In determination of award, discounts for early payment will only be considered when all other conditions are equal. Early payment is defined as payment within fifteen (15) days providing the discount terms are deemed favorable. All payment terms must allow the option of Net 30.
8. **F.O.B. Destination Freight Prepaid.** Bid prices must include all handling, transportation and insurance charges. Failure to bid FOB Destination Freight Prepaid may disqualify your bid.
9. **Award.**
 - a. The City will have sole discretion as to the methodology used in making the award. Where none is specified, the award will be made to the lowest responsible bidder in compliance with the specifications and requirements of this solicitation.
 - b. The right is reserved to make a separate award of each item, group of items or all items, and to make an award in whole or in part, whichever is deemed in the best interest of the City.
10. **Responsiveness and Responsibility.** Award will be made to the responsible and responsive bidder whose bid is most advantageous to the City with price and other factors considered. For the purposes of this project, responsiveness is defined as the bidder's conformance to the requirements of the solicitation. Being not responsive includes the failure to furnish information requested.

Responsibility is defined as the bidder's potential ability to perform successfully under the terms of the proposed contract. Briefly, a responsible bidder has adequate financial resources or the ability to obtain said resources; can comply with required delivery taking into account other business commitments; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; and has the necessary organization, experience and technical skills.

The City reserves the right to refuse to accept any bid from any person, firm or corporation that is in arrears or is in default to the City, or has failed to perform faithfully any previous contract with the City. If requested, the bidder must present within five (5) working days evidence satisfactory to the City of performance ability and possession of necessary facilities, financial resources, adequate insurance, and any other resources required to determine the bidder's ability to comply with the terms of this solicitation document.

11. Cancellation.

- a. The City reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds.
- b. In the event the Bidder shall default in any of the covenants, agreements, commitments, or conditions and any such default shall continue un-remedied for a period of ten (10) days after written notice to the Bidder, the City may, at its option and in addition to all other rights and remedies which it may have, terminate the Agreement and all rights of the Bidder under the Agreement.
- c. Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for contract termination. If the Bidder fails to maintain and keep in force the insurance, if required, the City shall have the right to cancel and terminate the contract without notice.

II. **CONDITIONS OF PURCHASE:** The following section applies to purchases/contracts after the award. See Paragraphs 1 & 2 for applicability and order of precedence.

12. Specifications.

- a. All bidders must be in compliance with all specifications and any drawings provided with this solicitation. Exceptions taken to these specifications must be noted on your bid.
- b. When specific manufacturer and model numbers are used, they are to establish a design, type, construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and the bidder/proposer is responsible for providing sufficient information to establish equivalency. The City shall be the sole judge of equivalency. Bidders are cautioned to avoid bidding alternates which do not meet specifications, which may result in rejection of their bid/proposal.

13. Regulatory Compliance.

- a. Seller represents and warrants that the goods or services furnished hereunder, including all labels, packages, and container for said goods, comply with all applicable standards, rules and regulations in effect under the requirements of all Federal, State and local laws, rules and regulations as applicable, including the Occupational Safety and Health Act (OSHA), as amended, with respect to design, manufacture or use for their intended purpose of said goods or services. Seller shall furnish Material Safety Data Sheets (MSDS) whenever applicable.
- b. If it is determined by the City that such standards are not met, the seller agrees to bear all costs required to meet the minimum standards as stated above for the equipment/products furnished under this contract.

14. Warranty. Unless otherwise specifically stated by the bidder, products shall be warranted against defects by the bidder for ninety (90) days from the date of receipt. If bidder or manufacturer offers warranty that exceeds 90 days, such warranty shall prevail.

15. Ownership of Printing Materials. All artwork, camera-ready copy, negative, dies photos and similar materials used to produce a printing job shall become the property of the City. Any furnished materials shall remain the property of the City. Failure to meet this requirement will disqualify your bid.

16. Item Return Policy. Bidder will be required to accept return of products ordered in error for up to twenty-one (21) calendar days from date of receipt, with the City paying only the return shipping costs. Indicate in detail on the Bidder Response Sheet, your return policy.

17. Payment Terms and Invoicing. The City will pay properly submitted vendor invoices within thirty (30) days of receipt, providing good and/or services have been delivered, installed (if required), and accepted as specified.

- a. Payment shall be considered timely if the payment is mailed, delivered, or transferred within thirty (30) days after receipt of a properly completed invoice, unless the vendor is notified in writing by the agency of a dispute before payment is due.
- b. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order, including reference to purchase order and submittal to the correct address for processing. Invoice payment processing address is shown on the upper middle section of the purchase order. Send invoices to Accounts Payable address on the purchase order. Do not send invoices to Purchasing or ship to address.
- c. Bidders, proposers shall include discounts for early payment as a percent reduction of invoice. Invoice discounts shall be determined where applicable, from the date of acceptance of goods and/or the receipt of invoice, whichever is later. Discounts for early payment terms stated on the bid/proposal must be shown plainly on the invoice; discounts for early payment not shown on the invoice will be taken.
- d. Invoices submitted not in accordance with these instructions will be removed from the payment process and returned within ten (10) days.

18. F.O.B. Destination Freight Prepaid. Unless otherwise agreed in writing, the vendor shall bear all handling, transportation and insurance charges. Title of goods shall pass upon acceptance of goods at the City's dock.

19. **Tax Exemption.** The CITY OF SHEBOYGAN is exempt from the payment of Federal Excise Tax and State Sales Tax. . Any other sales tax, use tax, imposts, revenues, excise, or other taxes which are now, or which may hereafter be imposed by Congress, the State of Wisconsin, or any other political subdivision thereof and applicable to the sale of material delivered as a result of the bidder's bid and which, by terms of the tax law, may be passed directly to the City, will be paid by the City.
20. **Non-Discrimination.** In the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
21. **Indemnification.** The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the CITY OF SHEBOYGAN, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of Contractor and any of Contractor's subcontractors in the performance of this agreement, whether caused by or contributed to by the negligence of the City or its officers, officials, agents or employees.
22. **Insurance.**
The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Contractor shall not commence work under this Contract, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
- a. **Commercial General Liability** - The Contractor shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and list the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds.
 - b. **Automobile Liability** - The Contractor shall procure and maintain during the life of this contract Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
 - c. **Worker's Compensation** - The Contractor shall procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease - Each Employee, and \$500,000 Disease - Policy Limit. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.
 - d. **Professional Liability** - The Contractor shall procure and maintain professional liability insurance with coverage of not less than \$1,000,000. If such policy is a "claims made" policy, all renewals thereof during the life of the contract shall include "prior acts coverage" covering at all times all claims made with respect to Contractor's work performed under the contract. This Professional Liability coverage must be kept in force for a period of six (6) years after the services have been accepted by the City.
 - e. **Acceptability of Insurers** - The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
 - f. **Proof of Insurance, Approval.** The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City. If any of the policies required above expire while this Contract is in effect, Contractor shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:
CITY OF SHEBOYGAN
828 Center Avenue, Suite 205
Sheboygan, WI 53081
The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.
23. **Work Site Damages.** Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.
24. **Compliance.**
- a. **Regulations.** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.
 - b. **Licensing and Permits.** The Contractor selected under this bid shall be required to demonstrate valid possession of appropriate required licenses and will keep them in effect for the term of this contract. The Contractor shall also be required, when appropriate, to obtain the necessary building permits prior to performing work on City facilities.

25. Warranty of Materials and Workmanship.
- a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be first class and in accordance with the Contract Documents and shall be performed by persons qualified in their respective trades.
 - b. Work not conforming to these warranties shall be considered defective.
 - c. This warranty of materials and workmanship is separate and independent from and in addition to any other guarantees in this Contract.
26. Replacement of Defective Work or Materials. Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of the City notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this contract and its specifications.
27. Reservation of the Right to Inspect Work. At any time during normal business hours and as often as the City may deem necessary, the Contractor shall permit the authorized representatives of the City to review and inspect all materials and workmanship at any time during the duration of this contract, provided, however, the City is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, contract requirements and specifications.
28. Weapons Prohibition. Contractor shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the Contractor's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m). This section does not apply to employees who are required to carry a weapon under the express terms of the Contract (such as armed security guard services, etc.).

APPENDIX B: SAMPLE AGREEMENT

OPERATING AGREEMENT FOR Beer Garden Concession in Kiwanis Park Area # 8 FOR THE 2018-2021 Summer and
Fall seasons
Between the CITY OF SHEBOYGAN and [NAME OF PERMITTEE]

THIS AGREEMENT, entered into by and between the CITY OF SHEBOYGAN, a municipal corporation (hereinafter referred to as "City"), and [NAME OF PERMITTEE], a [partnership/limited liability company/limited liability partnership/etc.] (hereinafter referred to as "Permittee"), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, The City of Sheboygan desires to contract with a qualified party to establish and operate an authentic German Beer Garden concession in a specific area of Kiwanis Park in Sheboygan WI in an effort to honor the strong German heritage in the city, provide a new and somewhat unique venue for its citizens and increase traffic in an under-utilized portion of the park, and,

WHEREAS, The City of Sheboygan has been approached by a concern expressing an interest to establish such a concession and in response has publically issued a Request For Proposals for same in an effort to make sure that all parties having an interest are given an opportunity to submit a proposal and;

WHEREAS, the party named herein has submitted a formal response to the City's request for proposals and following review of said response, The City of Sheboygan has determined that the proposal is in the best interest of the general public and the city of Sheboygan and,

WHEREAS, Respondents proposal, was accepted by the City, and confirmed by the Public Works Committee, subject to the execution of this Operating Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow Permittee to use the Area # 8 of Sheboygan Kiwanis Park (hereinafter, the "Premises") to establish and operate an authentic German Beer Garden Concession.
2. Grant and Description of Premises. City does hereby grant to Permittee permission to establish and operate the concession at the Premises, described in the Proposal documents in a manner as set forth in this Agreement.
3. Scope of Services. In entering into this Agreement, Permittee agrees to the following terms and conditions regarding the services being offered by Permittee at the Premises:
 - A. Services to be provided. Permittee shall provide establish and provide complete operations for a seasonal authentic German beer garden concession including the availability of at least one authentic German beer at all times, assorted domestic beers as well as soft drinks.
 - B. Permittee shall provide and offer for sale a light food menu to include snacks, authentic Sheboygan Bratwurst and other meat and sausage products with a preference for those that are made in Sheboygan.

Permittee shall provide these services at a minimum from June 1st to October 15th

[ENTER ANY OTHER SPECIAL CONDITIONS THAT APPLY.]

Permittee shall not engage in any other service or activity at the Premises without the prior written Agreement of the City of Sheboygan, or designee, (including, i.e., leasing out the Premises to third parties), and any such unauthorized service or activity will be considered a breach of the terms of this Agreement subject to the Default provisions of Section 26 of this Agreement.

- C. Permits and Licenses. Permittee agrees, at its own expense, to obtain and keep current all licenses and permits necessary for the operation of Permittee's business, and comply with all Federal, State and City

statutes, ordinances, rules and regulations applicable to Permittee's business. Permittee agrees to obtain all inspections and permits by the Sheboygan County Health Department, Fire Department or any other governmental agency that are required to operate the services authorized under this Agreement. Permittee shall provide the City with proof of such compliance upon request. Failure to comply with this provision shall be a default under this Agreement.

- D. **Equipment.** City shall be responsible for providing a lockable maintenance storage area in the main shelter, rest rooms and other features associated with the main shelter. Including access to water and electrical service, and [ENTER ANY OTHER CITY PROVIDED EQUIPMENT]. Permittee shall provide all other equipment necessary to operate the facility, including, but not limited to, all furnishings, safety equipment, food preparation and serving equipment concessions, refrigerators, freezers, microwaves, cash registers, dishes, glassware, cleaning supplies, soap, and toilet paper and hand towels. Permittee may place an additional means of storage on the property in a location approved by the Parks Superintendent, or his/her designee. Permittee may, solely at Permittee's expense, install a security system in the Shelter or other structures on the Premises. Permittee may install or use other equipment with the written permission of the Parks Superintendent, or his/her designee. Permittee shall provide the Parks Superintendent, or designee, with a current list of all the Permittee's equipment at the Premises.
- E. **Utilities.** Permittee is responsible for all utilities (electrical and water) used at the Premises as well as trash collection. The estimated monthly utility costs for the Premises for the 2018 permit year are \$ XXX for electric service and \$ XXX for water service. This amount shall be due to the CITY OF SHEBOYGAN, on a monthly basis and prorated as necessary, by the 5th of each month. Failure to pay this amount by the due date will result in a late penalty of \$50. Failure to pay this amount in full, plus any accrued penalties, by the 15th of each month will constitute a default under Section 26 of this Agreement. Permittee shall only be responsible for utilities during the months that services are being offered at the Premises. If this Agreement is renewed under Section 4, the estimated monthly utility costs for the Premises for the successive permit years shall be based on the actual utility costs of the preceding permit year.]
- F. **Product.** All items offered for sale by Permittee, including, but not limited to, food, alcoholic beverages, non-alcoholic beverages, snacks and confections, shall be approved by the Parks Superintendent, or his/her designee. All items for sale shall be individually listed on an inventory, a copy of which shall be filed with the City of Sheboygan.
- G. **Equipment Safety.** Permittee shall maintain all equipment, including safety equipment (fire extinguishers, first aid kits etc.), in a safe working order at all times and store said equipment in a safe manner to prevent any unauthorized use or operation thereof.
- H. **Storage.** Permittee may store equipment necessary to provide the services set forth in Subsection A above as indicated on Attachment A and consistent with Subsection C above.
- Permittee may store equipment on the premises but shall not store any items, on the Premises from October through May of each year except with express permission from the City, and in any event, may only do so consistent with Subsection C above.
- I. **Maintenance.** Permittee shall be responsible for maintaining the Premises in a clean, safe and attractive condition at all times, including keeping the grounds immediately adjacent to the Premises picked up of all paper and debris. Permittee shall keep the river frontage area free of weeds and debris. Every day, the Permittee shall also be responsible for opening, closing and cleaning the restrooms at the Premises, including installing and refilling paper products and soap, and maintaining the restrooms in a clean and sanitary condition. Permittee agrees that should the Parks Division determine that the maintenance requirements of this Subsection are not being met, the Parks Division may perform or have performed additional cleaning or maintenance, and charge the actual costs of such work to Permittee, payable within thirty (30) days of the issuance of the invoice, or as a deduction from the Permittee's security deposit.
- J. **Alterations to Premises.** No modifications of any kind, or fixtures, additions or removals shall be made to the Premises without the written permission of the Parks Superintendent, or his/her designee. Any and all alterations shall comply with local building codes and ordinances.
- K. **Signage.** All signs and banners, including menu boards, shall be approved by the Parks Superintendent or

designee and the City of Sheboygan Building Inspection Dept. The Permittee shall post a readily observable sign at the Premises stating the Permittee's name, the Operating Agent and contact information as set forth below in Section 11, and a notice that Permittee and the Permittee's activities are not affiliated with, nor in any way endorsed by, the City.

- L. Closing Date. The closing date of the Permittee's activities at the Premises shall be determined by Permittee, but such date shall occur no later than the Park Division's building winterization schedule.
 - M. Surrender of Premises. Upon the termination of this Agreement under Section 26, or, in the event that this Agreement is not renewed or expires under Section 4, by December 15 of the permit year, whichever is earlier, Permittee agrees to vacate and surrender the portions of the Premises allocated to it by this Agreement, remove all personal property therefrom, and deliver possession of the same to City, in as good condition as the Premises was in at the commencement of the Agreement, with the exception of unavoidable wear and tear through careful use and with the exception of damage by fire or other casualty beyond the control of Permittee. However, if Permittee has renewed this Agreement for all successive years permit years from 2019 - 2021, Permittee may be granted additional time to surrender the Premises under this Subsection by written agreement with the Parks Superintendent, or his/her designee. Any damages to the Premises beyond normal and expected wear and tear shall be the responsibility of the Permittee. If these damages are not repaired by the Permittee before surrender of the Premises to the City, the City shall cause the repairs to be made and deduct the cost thereof from the security deposit. Any balance still owing by Permittee after deduction from the security deposit shall be due within thirty (30) days of the invoice. All improvements, equipment and other property of the City on the Premises shall remain the property of the City after the termination of this Agreement. No fixtures, whether or not purchased by Permittee, shall be removed without the permission of the City. An inventory of City property and equipment will be performed before release. Any property of Permittee remaining on the Premises thirty (30) days after surrender of the building will become the property of the City.
 - N. Security Deposit. The Permittee must pay to the City of Sheboygan a security deposit in the amount of \$3,000 prior to occupying the Premises. Upon the surrender of the Premises, and after inspection by the City, the security deposit will be refunded to the Permittee, less any deductions for damage and other assessable costs under this Agreement. In cases where the damage and other assessable costs are greater than \$3,000, the City shall keep the entire security deposit and Permittee shall pay to the City the remaining balance within 30 days of the invoice from the City.
 - O. Payment. For the use of the Premises and the right to provide the services set forth above therein, and utility costs imposed under Subsection D above, as well as the security deposit under subsection N above, Permittee agrees to pay the City for the each permit year (2018, 2019, 2020) based on the bid amounts submitted in Form N of the original bid proposal. Payments shall be made in thirds due no later than May 15, July 1, and September 1. If this Agreement is renewed for the permit years from 2020-2021, and 2021-2022, 2022-2023 Permittee agrees to pay the City [ENTER BID AMOUNT] for each additional permit year, with the same payment schedule. A payment will be considered late, and a default of the terms of this Agreement, if not received within five (5) days of the due date.
4. Term and Effective Date. This initial three year Agreement shall become effective upon execution by the parties and shall expire on December 31, 2021, after which Permittee will no longer be permitted to conduct the vending activities set forth in this Agreement. However, this Agreement may be renewed for two (2) successive one-year terms (for the 2022 and 2023 permit years) upon the mutual agreement of both parties. To renew the Agreement, Permittee must, by November 1 of each permit year, submit written notice to the City of Permittee's desire to renew this Agreement for the upcoming permit year. The City's decision to renew or not renew the Agreement for the upcoming year will be based upon the Permittee's performance under this Agreement and corresponding Request for Proposal, and the decision to renew or not renew the Agreement is not reviewable, and solely that of the City of Sheboygan.. The City will notify Permittee in writing of its decision to renew or not renew this Agreement by December 1. If the Agreement is renewed for the following permit year the terms and conditions of this Agreement will remain in place through December 31 of the following year, or until the Agreement is renewed, terminated, or expires.
5. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
6. Status of Permittee. It is agreed that Permittee is an independent contractor and not an employee or representative of the City and that any persons who Permittee utilizes and provides for services under this Agreement are employees of Permittee and are not employees of the CITY OF SHEBOYGAN.

7. **Assignability and Subcontracting.** Permittee shall not assign or subcontract any interest or obligation under this Agreement without City's prior written approval. All of the services required hereunder shall be performed by Permittee and employees of Permittee. If Permittee is a corporation, partnership, limited partnership, limited liability company, limited liability partnership or other entity that is not an individual person, then an assignment prohibited within the meaning of this provision shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock or ownership interests, by which an aggregate of 50% or more of Permittee's stock or ownership interests shall be vested in a party or parties who are not stockholders, partners, members or others who possess ownership interests in Permittee as of the date hereof.
8. **No Real Estate.** It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to Permittee the right to conduct certain activities and provide certain services on City property for the benefit and convenience of the public,
9. **Access to Premises.** City, by its representatives, shall have access to Premises at any reasonable time provided such entry shall not interfere with Permittee's conduct of business. In case of emergency, the circumstances of which to be solely determined by City, City shall enter the Premises with or without force, as necessary, without assuming any liability for such entry and without affecting Permittee's obligations under this Agreement.
10. **Designated Representative.** Permittee designates [ENTER NAME OF CONTRACTING AGENT] as Contract Agent with primary responsibility for the performance of this Agreement. In case the Contract Agent is replaced for any reason, or in the event of the death, disability, removal or resignation of the Contract Agent, Permittee will designate another Contract Agent within seven (7) calendar days by notifying the City as set forth below in Section 21, Notices. The City may accept another person as the Contract Agent, or may terminate this agreement under Section 26, at its option.
11. **Operating Agent.** Permittee shall designate an Operating Agent of Permittee's activities at the Premises, who will be the person primarily responsible for the day-to-day operation of the Permittee's activities at the Premises. Permittee shall provide the name and contact information of this person to the Parks Superintendent, or his/her designee, within forty-eight (48) hours of commencing activities at the Premises under this Agreement, or within twenty-four (24) hours of any changes to the Operating Agent or the Operating Agent's contact information.
12. **Advertising.** It is understood that in the operation and conduct of this Agreement, City does not grant Permittee the right to sell or distribute any goods or services provided by City, nor does City grant Permittee the express right to use a City trade name, trademark, logotype, advertising, or other commercial symbol. In any commercial advertisement or announcement, Permittee may use the name of Kiwanis Park but any such advertisement or announcement must also indicate that Permittee's activities are not associated with or affiliated with the City.
13. **Marketing:** Permittee will agree to include and/or prominently display the CITY OF SHEBOYGAN Logo in the premises and on any marketing materials. Marketing materials will be approved by the City and any City logos provided by City Marketing Representative. The CITY OF SHEBOYGAN will agree to display and promote marketing materials of Permittee on the Parks Website and other appropriate venues with the prior approval of the Parks Superintendent and City Attorney.
14. **Amendments.** This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of the Permittee and the Parks Superintendent, or his/her designee.
15. **No Waiver.** No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Permittee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Permittee therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
16. **Indemnification.** The Permittee shall be liable to and hereby agrees to indemnify, defend and hold harmless the CITY OF SHEBOYGAN, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Permittee's and/or Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers,

officials, agents, or its employees.

17. Insurance.

- A. **Required Insurance.** The Permittee will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Permittee shall not commence work under this Agreement, nor shall the Permittee allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Purchasing Agent and City Attorney.
- 1) **Commercial General Liability.** During the life of this Agreement, the Permittee shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Permittee's coverage shall be primary and list the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds.
 - 2) **Automobile Liability.** During the life of this Agreement, the Permittee shall procure and maintain Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
 - 3) **Worker's Compensation.** During the life of this Agreement, the Permittee shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. The Permittee shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - 4) **Umbrella Liability.** During the life of this Agreement, the Permittee shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability (if required), Business Automobile Liability and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
- B. **Acceptability of Insurers.** The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- C. **Proof of Insurance, Approval.** The Permittee shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Permittee shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Purchasing Agent the Permittee shall provide copies of additional insured endorsements or insurance policies, if requested by the City Purchasing Agent.
- D. **Notice of Change in Policy.** The Permittee and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- E. **Insufficient Coverage.** In the event of expiration, material change, or cancellation of insurance required by this Agreement, Permittee shall immediately cease use of the Premises and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Purchasing Agent consistent with the requirements of this Section.
- F. **Purchasing Agent.** All information required to be provided to the Purchasing Agent should be addressed as follows:

City of Sheboygan Purchasing Agent,
828 Center Avenue, Suite 205

Sheboygan, WI 53081

18. **Non-Discrimination.** In the performance of the services under this Agreement the Permittee agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. Permittee further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin.
19. **Taxes and Assessments.** Permittee agrees to timely pay all taxes, assessments, or other public charges levied or assessed by lawful authority (but reasonably preserving Permittee's right of appeal) against the personal property and services of Permittee on the Premises during the term of this Agreement.
20. **Severability.** It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
21. **Notices.** All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

City: City Clerk's Office
City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

Permittee: [Contract Agent]
[Business Name] [Business Address] [City,
ST Zip]

22. **Third Party Rights.** This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
23. **Audit and Retaining of Documents.** The Permittee agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Agreement. Any other reports or documents shall be provided within five (5) working days after the Permittee receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Agreement shall be retained by the Permittee for a period of three (3) years after completion of all work under this Agreement, in order to be available for audit by the City or its designee.
24. **Choice of Law and Forum Selection.** This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction Sheboygan County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
25. **Compliance with Applicable Laws.** The Permittee shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Permittee and its agents and employees. The Permittee's failure to comply with any such laws, ordinances or regulations shall be a default subject to Section 26 of this Agreement.

26. **Default/Termination.**

- A. In the event Permittee shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue un-remedied for a period of ten (10) days after written notice thereof to Permittee, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Permittee, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Permittee under this Agreement.
 - B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the Permittee with ten (10) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Permittee and accepted by the City.
26. **Authority.** Permittee represents that it has the authority to enter into this Agreement. If the Permittee is not an individual, the person signing on behalf of the Permittee represents and warrants that he or she has been duly authorized to bind the Permittee and sign this Agreement on the Permittee's behalf.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

FOR THE CITY OF SHEBOYGAN

FOR [PERMITTEE'S NAME]

[NAME], [TITLE]	Date

APPENDIX C Facilities

Area # 8 of Kiwanis Park is a level, spacious and somewhat under-utilized site featuring many amenities that are felt to be attractive to a concern interested in establishing an outdoor Authentic German Beer Garden Concession. Sitting just south of the bend of Kiwanis Park Drive, Area 8 is served by wide, paved promenades and considerable frontage along the Sheboygan River. The site is easily accessible for all persons. Kiwanis Park Drive features parking along both sides however there are no "designated" ADA parking spaces.



View of Area # 8 looking east/southeast from the curb line of Kiwanis Park Drive

Main Shelter

The Main Shelter is a stone and wood structure that includes men's and ladies bath rooms, a small storage/utility area and a large lighted area under roof with open sides. Additional features include hot and cold running water and electrical power. The main shelter is level with the grade on the north and elevated on the south making it easily accessible while providing an "overlook" to the South. The open area under roof may be attractive to the concessionaire to allow for operations during light rainfall. There is also a large paved patio area on the South end surrounded by steel railings.



View of Main shelter looking North/Northeast from paved promenade



View of Main shelter looking Northwest from paved promenade



View of Main Shelter canopied area looking south/southwest

Large Green Space

Available for use by the Concessionaire is a large shaded/semi shaded greenspace between the Main Shelter and the stout wood fence along the banks of the Sheboygan River. This area is thought to be very attractive for use as the main "garden" area of the beer garden concession. The site is flat and drains well and is currently established lawn.

The rustic wood fence along the river creates a natural barrier without compromising river views and offers a nice mix of sun and shade during the mid-day hours.

In order to utilize the large green space effectively it is felt that some sort of border enclosure would need to be constructed. This would allow for the concessionaire to control entry into and out of the space.

In addition, the existing turf, while quite hearty, would not effectively withstand prolonged foot traffic over several months each year. Thus it is felt by the city that an alternative surface material will most likely need to be installed.



View of large open greenspace to the East of the Main shelter taken from just south of the concession stand.



Alternate View of green Space from the south looking due north. Main shelter can be seen in upper left.

CONCESSION STAND

Situated to south of the main shelter and east of the large green space is the concession stand. The stand features several service windows and is thought to be a good fit for the concessionaire for the sale of food as well as beverages. The Concession stand also features electric power 110vAC. There is a paved patio to the North of the stand featuring several permanent charcoal grills which would be available for use by the concessionaire.



View of the concession stand from just off the patio



View of the concession stand from along the fence bordering the river in the open green space.

Jaycee Pavilion

The large Jaycee Pavilion to the South of the concession stand is not being offered for use by the concessionaire at this time. The Jaycees organization contributed heavily to the cost of construction of this structure. That said the city wishes to leave the door open and allow proposers the ability to include this structure into their overall plan whether initially or at some point in the future. Please note that any usage may require some involvement with the Jaycee's Organization.



APPENDIX D: Area # 8 Overhead View



REQUEST FOR PROPOSALS CITY OF SHEBOYGAN



BEER GARDEN CONCESSION KIWANIS PARK AREA #8

REQUEST FOR PROPOSALS # 1933-17
Due Date **January 15, 2018**

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1 NOTICE TO PROPOSERS

1.1 Summary

The City of Sheboygan ("City") is soliciting Proposals from qualified vendors for establishment and operation of an authentic German Beer Garden Concession at Kiwanis Park in the City of Sheboygan. Vendors submitting Proposals ("Proposers") are required to read this Request for Proposals ("RFP") in its entirety and follow the instructions contained herein.

1.2 Important Dates

Deliver Proposals no later than the due time and date indicated below. The City will reject late Proposals:

Issue Date: December 6, 2017

Questions Due: January 3, 2018

Proposals Due: 1:00 pm on January 15, 2018

1.3 Format

Submit Technical and Cost Proposals (Form D) in separate, distinct parts within the proposal package.

Hardcopy proposals typed and securely bound on 8.5 by 11-inch paper, otherwise identical to the electronic version.

Electronic proposal in a PDF format stored on a common media (CD, DVD, or flash drive), identical in content and sequence to hardcopy proposals submitted.

Cost Proposal (Form D): One Copy
Technical Proposal: Five Copies
Electronic Proposal: One (1) complete copy (Cost and Technical)

The City will not consider illegible Proposals.

Elaborate proposals (i.e., expensive artwork) beyond that sufficient to present a complete and effective proposal, are not necessary or desired.

1.4 Labeling

All proposals must be clearly labeled:

Request for Proposals # 1933-17

Proposer's Name and Address

Title: Kiwanis Park Beer Garden Concession

Due: Wednesday, January 15, 2018

1.5 Delivery of Proposals

Delivery of hard copies to:

City of Sheboygan Purchasing Agent
City Hall-Attention Bernard Rammer
828 Center Avenue, Suite 205
Sheboygan WI 53081

Delivery of electronic copy to:

Via email: Bernard.rammer@sheboyganwi.gov

or on a commonly used media included with the hard copies such as CD/DVD/Jump Drive

Proposals must be delivered as instructed. Deliveries to other City departments and/or locations may result in disqualification.

Note: When mailing your response via a third party delivery service, the outside of the packaging **MUST** be clearly marked with the RFP/RFQ name and number. This ensures that the bid can be delivered to the purchasing agent without having to open the bid.

1.6 Appendix A: Standard Terms & Conditions

Proposers are responsible for reviewing this attachment prior to submission of their Proposals. City of Sheboygan Standard Terms and Conditions are the minimum requirements for the submission of Proposals.

1.7 Appendix B: Sample Agreement

Proposers are responsible for reviewing this attachment prior to submission of their Proposals. The Sample Agreement shall serve as the basis of the contract resulting from this RFP. The terms of this template contract shall become contractual obligations following award of the RFP. By submitting a proposal, Proposers affirm their willingness to enter into a contract containing these terms.

1.8 Multiple Proposals

Multiple Proposals from Proposers are permitted; however, each must fully conform to the requirements for submission. Proposers must sequentially label (e.g., Proposal #1, Proposal #2) and separately package each Proposal. Proposers may submit alternate pricing schemes without having to submit multiple Proposals.

1.9 City of Sheboygan Contact Information

The City of Sheboygan Purchasing Agent:
Bernard Rammer
828 Center Avenue, Suite 205
Sheboygan WI 53081
(920)459-3469
Bernard.rammer@sheboyganwi.gov

The City employs spam filtering that occasionally blocks legitimate emails, holding them in ‘quarantine’. The contact listed in this RFP will acknowledge all emails received. Proposers not receiving acknowledgement within twenty-four hours shall follow-up via phone with specific information identifying the originating email address for message recovery.

1.10 Inquiries, Clarifications, and Exceptions

Proposers are to raise any questions they have about the RFP document without delay. Direct all questions, **in writing**, to the Purchasing Agent via U.S Mail or electronic mail.

Proposers finding any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP document shall immediately notify the Buyer and request clarification. In the event that it is necessary to provide additional clarification or revision to the RFP, the City will send addenda to all bidders of record– see 1.11 below.

Proposals should be as responsive as possible to the provisions stated herein. A prospective vendor may take “exception” to bid terms, conditions, specifications and dates stated within the bid package. However, the City of Sheboygan reserves the right to disqualify any and all bids submitted which include exceptions, if deemed not in the City’s best interests.

Addenda

In the event that it is necessary to provide additional clarification or revision to the RFP, the City will issue addenda to all bidders of record. It is the Proposers responsibility to **register their Email** address with the Purchasing Agent (Bernard.rammer@sheboyganwi.gov) in order to receive the addenda. Proposers must acknowledge the receipt of any addenda on Form B. Failure to register or retrieve addenda and include their provisions may result in disqualification. Addenda to be distributed will include any questions received and answers to same.

1.11 Oral Presentations/Site Visits/Meetings

Proposers may be asked to attend meetings, make oral presentations, inspect City locations or make their facilities available for a site inspection as part of this RFP process. Such presentations, meetings or site visits will be at the Proposers expense.

1.12 Acceptance/Rejection of Proposals

The City reserves the right to accept or reject any or all proposals submitted, in whole or in part, and to waive any informalities or technicalities, which at the City's discretion is determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any proposer responding to this request. The City expressly reserves the right to reject any and all proposals responding to this invitation without indicating any reasons for such rejection(s).

The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.

1.13 Withdrawal or Revision of Proposals

Proposers may, without prejudice, withdraw Proposals submitted prior to the date and time specified for receipt of Proposals by requesting such withdrawal before the due time and date of the submission of Proposals. After the due date of submission of Proposals, no Proposals may be withdrawn for a period of 90 days or as otherwise specified or provided by law. Proposers may modify their Proposals at any time prior to opening of Proposals.

1.14 Non-Material and Material Variances

The City reserves the right to waive or permit cure of nonmaterial variances in the offer if, in the judgment of the City, it is in the City's best interest to do so. The determination of materiality is in the sole discretion of the City.

1.15 Public Records

Proposers are hereby notified that all information submitted in response to this RFP may be made available for public inspection according to the Public Records Law of the State of Wisconsin or other applicable public record laws. Information qualifying as a "trade secret" as defined in State of Wisconsin Statutes and identified as same by the Proposer may be held confidential.

Proposers shall seal separately and clearly identify all information they deem to be "trade secrets," as defined in the State of Wisconsin Statutes. Do not duplicate or co-mingle information, deemed confidential and sealed, elsewhere in your response.

S. 19.36(5)

(5) TRADE SECRETS. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90(1)(c).

s. 134.90(1)(c)

(c) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

The City cannot ensure that information will not be subject to release if a request is made under applicable public records laws. The City cannot consider the following confidential: a bid in its entirety, price bid information, or the entire contents of any resulting contract. The City will not provide advance notice to Proposers prior to release of any requested record.

To the extent permitted by such laws, it is the intention of the City to withhold the contents of Proposals from public view until such times as competitive or bargaining reasons no longer require non-disclosure, in the City's opinion. At that time, all Proposals will be available for review in accordance with such laws.

1.16 Tax Exempt

The City of Sheboygan as a municipality is exempt from payment of federal excise taxes and State of Wisconsin taxes per Wisconsin statute 77.54(9a). Federal Tax ID #39-6005599. A completed Wisconsin Department of Revenue Form S-211 (R.2-00) can be furnished. Our CES number is 245770.

1.17 Proposers Responsibility

Proposers shall examine this RFP and shall exercise their judgment as to the nature and scope of the work required. No plea of ignorance concerning conditions or difficulties that exist or may hereafter arise in the execution of the work under the resulting contract, as a consequence of failure to make necessary examinations and investigations, shall be accepted as an excuse for any failure or omission on the part of the Proposers to fulfill the requirements of the resulting contract.

2 DESCRIPTION OF SERVICES/COMMODITIES

2.1 Introduction

The City of Sheboygan is accepting proposals from qualified vendors for the right to provide an authentic German Beer Garden (*Biergarten*) concession in Kiwanis Park. These services may include, but are not limited to; 1) Establishment and construction of a suitable outdoor concession facility 2) complete operation of the concession 3) acceptance of overall responsibility for the included facilities even while closed 4) advertisement of the concession to promote use. Successful proposers will consider how their services complement and integrate with existing park uses as well as engage a diversity of members of the community. The successful Proposer(s) shall compensate the City in return for these rights, meet the City's requirements for operations and abide by the City's terms and conditions for granting these rights, set forth in this solicitation and also in the resulting agreement, if issued.

2.2 Goals

The goal of signing an agreement with an outside vendor(s) and conveying the rights to provide these services is to serve the public interest of Park patrons by offering seasonal services and enhance the safety and ambience of these parks by maintaining a business in an under- utilized area of the park.

2.3 Term

The agreement, if issued, shall commence in the spring of 2018 and end on December 1, 2021. Upon mutual agreement the City and selected vendor(s) may extend the agreement for up to two additional one year periods (i.e. 2022 & 2021). The City reserves the right to negotiate an alternate term. The terms and conditions of this RFP cover the initial and all subsequent agreement periods granted.

2.4 Locations/Background Information

The solicitation includes rights for Area # 8, Kiwanis Park, Kiwanis Park Drive, Sheboygan WI. Parking for patrons is currently available along Kiwanis Park Drive. Area # 8 is a well shaded, level area of the park adjacent to a stretch of the Sheboygan River. Nearby park amenities include a public boat/kayak launch, a new skateboard park and several ball diamonds and soccer fields.

2.5 Amenities

Use of the following amenities shall be available to the Permittee(s): **Main shelter** including bathrooms and drinking fountain, storage area, electrical outlets and water connections. Water connections will be turned on from approximately April 1st to October 30th each season. The **Concession Stand** is situated to the South of the Main Shelter. In addition, there is a large green space area to the east of both the Main Shelter and the concession stand. This area borders the Sheboygan River. Finally, There is a large open-air pavilion to the South of the premise commonly referred to as the Jaycee Pavilion.

2.6 No Real Estate

It is expressly understood and agreed that this Agreement is not a lease or a conveyance of Real Estate, but merely a granting to Permittee the right to conduct certain activities and provide certain services on City property for the benefit and convenience of the public.

2.7 Requirements for Operations

Permittee must abide by the following requirements in order for the City to continue granting to the Permittee the right to conduct concession activities:

1. Equipment

Provide and maintain in good order all furnishings and equipment required to adequately establish and operate an *Authentic German Beer Garden* including lighting, perimeter fencing, tables, chairs, benches, service counters, landscape materials, refrigeration, food preparation equipment, food storage equipment, beer dispensing equipment as well as trash receptacles, sound systems and signage. Also to be provided will be cleaning equipment, tools and fixtures. Under no circumstance will any City owned furnishings and equipment be used for the purposes of the concession without the express consent of the City.

The concessionaire shall include plans to erect some sort of perimeter barrier between the areas included in the agreement and the rest of the park. The barrier shall be tasteful in design and be approved in advance by the City of Sheboygan.

2. Concessions

Provide food and beverage concessions Permittee must abide by all City laws. The City must approve all concessions, prior to sale. Permittee shall provide to the City by March First of each annual period granted a specific list of concessions. The City will review the annual list and reserves the right to disapprove any concessions. Permittee may not expand or change concessions without prior City review and approval. All concessions for sale shall be individually listed on an inventory and filed with the City, prior to sale.

2.8 Blackout Dates

The Proposer agrees that on the following days the concession will not be in operation so as to avoid conflict/competition with long standing festivals in the park:

**The third Weekend (Saturday & Sunday) in July-Hmong Festival
The first Weekend (Thursday-Sunday)in August-Jaycee Bratwurst Days**

If the concessionaire is able to reach an agreement with the organizers of the above festivals which would effectively grant permission for operation of the concession on these dates, said agreement shall be in **writing** and a copy of same shall be placed on file with the City of Sheboygan no less than 14 days prior to the black- out dates. Under no circumstance will the concessionaire operate on these dates without written an agreement allowing for same between the concessionaire and the organizers of the affected festivals.

2.9 Hours of Operations

Maintain hours of operations that are constant with park hours and predetermined open/closed times. Permittee shall open for the season no later than June 1st and close no earlier than October 15th. Permittee may begin to move in equipment and set up for the season earlier with permission from the City.

The Concession shall be open for business not less than 5 days in any given week with the possible exception of the Blackout dates above.

The concession shall be open for business a minimum of 8 hours/day.

Hours of operation will be clearly posted and will fall between 10:00 AM and 10:00 PM daily.

2.10 Appearance

Permittee's employees must display professional appearance, wear name tags at all times identifying them as an employee of the Permittee.

2.11 Storage

Permittees that are granted successive terms may store equipment, between terms, in available locked storage or under cover of the open area of the main shelter. Permittee may not store equipment outside of buildings during this time. All storage of materials shall be at the sole risk if the concessionaire. The Parks Superintendent or his designee shall determine acceptable storage of materials.

2.12 Maintenance

Permittee is responsible for cleanliness and cleaning supplies for the facilities including storage rooms, the main shelter, the concession stand, grounds around the building, and restrooms. Permittee shall be solely responsible keeping the grounds immediately adjacent to the facility(s) picked up of paper and debris.

Permittee shall be responsible for opening, closing and cleaning daily the restrooms included under this offering. Permittee is responsible for stocking bathroom supplies including toilet paper, hand soap and paper towels. Permittee is responsible for maintaining the landscaping around the area designated to include weeding, mulching and basic pruning and without the use of pesticides. The permittee will work with the Parks Superintendent to establish boundaries for lawn maintenance.

Custodial services provided by the successful proposer and chemicals, trash-liners, soap and paper used are required.

2.13 Capital Improvement

Permittee and City shall discuss, at least annually, the merits of improving the premises to which the Permittee has access under this agreement. Upon mutual consent the City and Permittee *may* enter into an agreement to share the costs of improvements required or desired to maintain the functionality of the premises or improve the marketability of services provided from the premises. The City and Permittee shall negotiate cost sharing. Considerations may include, but are not limited to; the cost of the improvement, life of the improvement, percentage of premises occupied by Permittee, number of months annually occupied by Permittee, and the schedule of reimbursement to City by Permittee for its agreed-upon share of improvement.

Permittee may not make permanent modifications to the premises covered in this agreement without the City's express and written approval. The City reserves the right to modify, repair or improve the premises at its discretion, without approval of Permittee, so long as it is done at the City's expense.

At a minimum, the permittee shall be expected to invest not less than \$ 20,000.00 (Twenty Thousand Dollars) in Capital Improvements within the first three years of operation.

2.14 Advertisement

Advertisements must be approved by the City in advance. Permittee shall not use park logo, taglines, mission/vision or make reference to the City without prior approval. The Parks Division and the City of Sheboygan Building Inspection Department shall approve signs and banners, including menu boards. It is understood that in the operation and conduct of this agreement, City does not grant Permittee the right to sell or distribute any goods or services provided by City, nor does City grant Permittee the right to use a City trade name, trademark, logotype, advertising, or other commercial symbol.

2.15 Subcontracting

Permittee shall not assign or subcontract any portion of this agreement. Furthermore, Permittee is not allowed to rent facilities to any third Party.

2.16 Insurance

Keep insurance with indemnification for the City as required per Appendix A: Standard Terms and Conditions #12 and 13.

2.17 Damage

The Permittee will immediately report any damage caused to the City's property and shall be held responsible for the restitution of any said damage whether the damage is caused by the permittee, permittees customers or an outside person. The Permittee shall not be responsible for damage from City's mechanical malfunctions, broken water lines, or acts of nature unless actions by the permittee have directly or indirectly caused the malfunction.

The Permittee shall be wholly responsible for all areas under his or her control during the entire term of the agreement. Responsibility shall be 24 hours per day, 7 days per week.

2.18 Deposit

A damage deposit in the amount of \$3,000 for each annual season is required, which Permittee must pay prior to occupying the location. At the conclusion of the agreement and after inspection the City will refund the damage deposit less any assessed damage. In cases where damage is greater than \$3,000 the City shall keep the entire annual damage deposit and Permittee shall pay to the City the difference between the damage and deposit, within 30 days of notice by the City.

2.19 Surrender of Building

Not later than three (3) days after the date of termination of this Agreement, Permittee agrees to vacate and surrender the portions of the premises allocated to it for the operation of this Agreement, remove personal property there from, and deliver possession of the same to City, in as good condition as the premises were in at the commencement of the Agreement with the exception of unavoidable wear through careful use and damage by fire or other casualty beyond the control of Permittee. All equipment and other property of City (if any) on the premises shall

remain the property of the City after the termination of this Agreement. An inventory of City property and equipment (if any) will be performed before release.

2.20 Facility Access

The Parks Division will provide access to; 1) lockable in-building storage 2) concession stand 3) restrooms Note the facilities covered in this solicitation are not all accessible by vehicle. Permittee must provide access to premises 24/7 for Parks staff.

2.21 Taxes and Expenses

Permittee is responsible for and shall pay all taxes and expenses pertaining to their business. Permittee agrees to timely pay all taxes, assessments, or other public charges levied or assessed by lawful the personal property of Permittee on the premises during the term of the agreement. Permittee shall pay an allowance for utilities for the spaces they occupy with the amount to be determined.

2.22 Auditing/Records

Permittee shall retain and make available to the City: 1) statements of profit and loss, 2) operating statistics, pricing for concessions or 4) any documents of a similar nature pertaining to the Permittee's operations on City property.

3 REQUIRED CONTENT OF PROPOSALS

3.1 Section 1 – General Information, Signatures, and Required Guarantees and Certifications

- A. Form A – Signature Affidavit
- B. Form B – Receipt Forms and Submittal Checklist
- C. Form C – Contractor Profile Information

3.2 Section 2 – References, Performance, Litigations

- A. List any and all contracts or agreements your firm has currently with the City of Sheboygan
- B. Provide a list of governmental organizations/municipalities and/or clients with whom your firm has done similar business and/or has had similar contracts in size and scope within the last 5 years. Be specific and include the information in RFP Form E.
- C. Disclosure of Contract Failures, Litigations

Disclose any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves the consultant or in which the consultant has been judged guilty of liable or which may affect the performance of the services to be rendered herein, in which the Firm, any of its employees, subcontractors, or sub consultants is or has been involved in within the last three (3) years.

3.3 Section 3 – Background Information

Responses must be in the same sequence as listed and must be identified with the corresponding question number. i.e., Question 1, Question 2, etc.

1. Qualifications Overview / General Company Information

Provide a brief overview of the general background and services provided by your firm, including size of organization, description of organization structure, number of years in business and experience in serving governmental entities. Demonstrate the firm's capability and evidence of your experience providing services equal to or greater in scope than those requested in this RFP.

2. Organization Management Approach

Describe the approach to organization management and the responsibilities of the management and staff personnel, if applicable, who will perform work on the contract; describe method employed to ensure prompt service, customer satisfaction, prompt compliant resolution, effective employee performance and training, and timely initiation and completion of all work. Please provide a resume (1 page limit) for each of the key personnel described.

3.4 Section 4 – Technical Questionnaire

Responses must be in the same sequence as listed and must be identified with the corresponding question number. i.e., Question 1, Question 2, etc.

1. Please provide a brief overview (four pages maximum) of how the Proposer plans on meeting the requirements of this RFP, including, but not limited to:
 - a. staffing considerations
 - b. equipment available
 - c. concession assortments
 - d. any certifications held

2. Please provide a list of ideas for making this agreement more beneficial to the public and the city.

3.5 Section 5 – Cost Proposal

Please submit cost proposal, Form D, separate from the rest of the proposal.

T



Form A: Signature Affidavit

RFP #: 1933-17 German Beer Garden

This form must be returned with your response.

In signing Proposals, we certify that we have not, either directly or indirectly, entered into any agreement or participated in any collusion or otherwise take any action in restraint of free competition; that no attempt has been made to induce any other person or firm to submit or not to submit Proposals, that Proposals have been independently arrived at, without collusion with any other Proposers, competitor or potential competitor; that Proposals have not been knowingly disclosed prior to the opening of Proposals to any other Proposers or competitor; that the above statement is accurate under penalty of perjury.

The undersigned, submitting this Proposals, hereby agrees with all the terms, conditions, and specifications required by the City in this Request for Proposals, declares that the attached Proposals and pricing are in conformity therewith, and attests to the truthfulness of all submissions in response to this solicitation.

Proposers shall provide the information requested below. Include the legal name of the Proposers and signature of the person(s) legally authorized to bind the Proposers to a contract.

COMPANY NAME

SIGNATURE

DATE

PRINT NAME OF PERSON SIGNING



Form B: Receipt of Forms and Submittal Checklist

RFP #: 1933-17 German Beer Garden

This form must be returned with your response.

Proposers hereby acknowledge the receipt and/or submittal of the following forms:

Forms	Initial to Acknowledge SUBMITTAL	Initial to Acknowledge RECEIPT
Description of Services/Commodities	N/A	
Form A: Signature Affidavit		
Form B: Receipt of Forms and Submittal Checklist		
Form C: Vendor Profile		
Form D: Fee Proposal		
Form E: References		
Appendix A: Standard Terms & Conditions	N/A	
Appendix B: Sample Agreement	N/A	
Addendum #		
Addendum #		

VENDOR NAME

COMPANY NAME



Form C: Vendor Profile

RFP #: 1933-17 German Beer Garden

COMPANY INFORMATION

This form must be returned with your response.

COMPANY NAME (Make sure to use your complete, legal company name.)			
FEIN		(If FEIN is not applicable, SSN collected upon award)	
CONTACT NAME (Able to answer questions about proposal.)		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS		CITY	STATE ZIP

ORDERS/BILLING CONTACT

Address where City purchase orders/contracts are to be mailed and person the department contacts concerning orders and billing.

CONTACT NAME		TITLE	
TELEPHONE NUMBER		FAX NUMBER	
EMAIL			
ADDRESS		CITY	STATE ZIP



Form D: Fee Proposal

RFB #: 1933-17 German Beer Garden

This form must be returned with your response.

Prepare the fee proposal as all inclusive, not-to-exceed, fixed fees:

- All Inclusive – Covers all direct and indirect necessary expenses including but not limited to; travel, telephone, copying and other out-of-pocket expenses.
- Not To Exceed – The actual fees shall not exceed the amount specified in fee proposal.
- Fixed Fee – All prices, rates, fees and conditions outlined in the proposal shall remain fixed and valid for the entire length of the contract and any/all renewals.

Instructions: Bidder may submit a proposal for any or all of the locations listed below for the rights to conduct the activities specified in this proposal for the years indicated.

Please provide a description of how the agreement will be structured including payments to the City of Sheboygan as well as any all inclusive fixed reimbursements for ancillary services.

1. Kiwanis Park Area # 8

Item	Description	Year ¹	Amount of Payment to City
1.	First agreement term	2018	\$
2.	Second agreement term	2019	\$
3.	Third agreement term	2020	\$
4.	Fourth agreement term -Optional	2021	\$
5.	Fifth agreement term-Optional	2022	\$
Total			\$

¹ Permittee shall open for the season no later than one week prior to Memorial Day and close no earlier than October 15th.

COMPANY NAME



Form E: References

RFP #: 1933-17 German Beer Garden

This form must be returned with your response.

REFERENCE #1 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

REFERENCE #2 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

REFERENCE #3 – CLIENT INFORMATION			
COMPANY NAME	CONTACT NAME		
ADDRESS	CITY	STATE	ZIP
TELEPHONE NUMBER	FAX NUMBER		
EMAIL			
CONTRACT PERIOD	YEAR COMPLETED	TOTAL COST	
DESCRIPTION OF THE PERFORMED WORK			

COMPANY NAME

APPENDIX A STANDARD TERMS AND CONDITIONS

1. **General.** Throughout this document, "CITY OF SHEBOYGAN," "City" and "Purchasing" shall be synonymous and mean the CITY OF SHEBOYGAN. The words "bid" and "proposal" are synonymous, as are the words "bidder," "proposer" and "contractor." The phrases "request for proposal," "invitation for bids," "request," "invitation," and "solicitation" shall also be synonymous. As applied to the winning or selected bidder, the words "bid," "proposal," and "contract" are synonymous.
 2. **Entire Agreement, Order of Precedence** These standard terms and conditions shall apply to any Purchase Order issued as a result of this Request for Bid/Proposal, except where expressly stated otherwise in the RFP or in a written instrument covering this purchase signed by an authorized representative of the City and the Contractor, in a form approved by the City Attorney (a "Separate Contract"). If such a separate contract is executed it shall constitute the entire agreement and no other terms and conditions, whether oral or written, shall be effective or binding unless expressly agreed to in writing by the City.
If a Separate Contract is not executed, these Standard Terms and Conditions, the City's request for proposals, the version of the vendor's bid that was accepted by the City and the City's Purchase Order (if any) shall constitute a contract and will be the entire agreement.
Order of Precedence: If there is a conflict between this Section A and any terms in the vendor's accepted bid or proposal, this Section A shall control unless the parties expressly agree to another order of precedence, in writing. If there is a conflict between this Section A and a Separate Contract, the terms and conditions of the Separate Contract shall control.
- I. TERMS FOR SUBMISSION OF BIDS: The following section applies to the bid/selection process only.**
3. This invitation for bids does not commit the City to award a contract, pay any costs incurred in preparation of bids, or to procure or contract for services or equipment. The City may require the bidder to participate in negotiation and to submit such additional price or technical or other revisions to his or her bids as may result from negotiation. The bidder shall be responsible for all costs incurred as part of his or her participation in the pre-award process.
The City reserves the right to accept or reject any or all bids submitted, in whole or in part, and to waive any informalities or technicalities which at the City's discretion are determined to be in the best interests of the City. Further, the City makes no representations that a contract will be awarded to any offeror responding to this request. The City expressly reserves the right to reject any and all bids responding to this invitation without indicating any reasons for such rejections(s).
The City reserves the right to postpone due dates and openings for its own convenience and to withdraw this solicitation at any time without prior notice.
 4. **Addenda.** Changes affecting the specifications will be made by addenda. Changes may include, or result in, a postponement in the bid due date. Bidders are required to complete the Bidder Response Sheet, acknowledging receipt of all parts of the bid, including all addenda.
 5. **Price Proposal.** All bidders are required to identify the proposed manufacturer and model, and to indicate the proposed delivery time on the attached Proposal Form. Failure to do so may cause the bid to be considered not responsive. If desired, the bidder may include product literature and specifications. The price quoted will remain firm throughout each contract period. Any price increase proposed shall be submitted sixty (60) calendar days prior to subsequent contract periods and shall be limited to fully documented cost increases to the bidder which are demonstrated to be industry-wide.
 6. **Price Inclusion.** The price quoted in any bid shall include all items of labor, materials, tools, equipment, and other costs necessary to fully complete the furnishing and delivery of equipment or services pursuant to the specifications attached thereof. Any items omitted from the specifications which are clearly necessary for the completion of the project shall be considered a portion of the specifications although not directly specified or called for in these specifications.
 7. **Pricing and Discount.**
 - a. Unit prices shown on the bid/proposal or contract shall be the price per unit of sale (e.g., gal., cs., doz., ea. etc.) as stated on the bid/proposal or contract. For any given item, the quantity multiplied by the unit price shall establish the extended price. If an apparent mistake exists in the extended price, the unit price shall govern in the bid/proposal evaluation and contract administration.
 - b. In determination of award, discounts for early payment will only be considered when all other conditions are equal. Early payment is defined as payment within fifteen (15) days providing the discount terms are deemed favorable. All payment terms must allow the option of Net 30.
 8. **F.O.B. Destination Freight Prepaid.** Bid prices must include all handling, transportation and insurance charges. Failure to bid FOB Destination Freight Prepaid may disqualify your bid.
 9. **Award.**
 - a. The City will have sole discretion as to the methodology used in making the award. Where none is specified, the award will be made to the lowest responsible bidder in compliance with the specifications and requirements of this solicitation.
 - b. The right is reserved to make a separate award of each item, group of items or all items, and to make an award in whole or in part, whichever is deemed in the best interest of the City.
 10. **Responsiveness and Responsibility.** Award will be made to the responsible and responsive bidder whose bid is most advantageous to the City with price and other factors considered. For the purposes of this project, responsiveness is defined as the bidder's conformance to the requirements of the solicitation. Being not responsive includes the failure to furnish information requested.

Responsibility is defined as the bidder's potential ability to perform successfully under the terms of the proposed contract. Briefly, a responsible bidder has adequate financial resources or the ability to obtain said resources; can comply with required delivery taking into account other business commitments; has a satisfactory performance record; has a satisfactory record of integrity and business ethics; and has the necessary organization, experience and technical skills.

The City reserves the right to refuse to accept any bid from any person, firm or corporation that is in arrears or is in default to the City, or has failed to perform faithfully any previous contract with the City. If requested, the bidder must present within five (5) working days evidence satisfactory to the City of performance ability and possession of necessary facilities, financial resources, adequate insurance, and any other resources required to determine the bidder's ability to comply with the terms of this solicitation document.

11. Cancellation.

- a. The City reserves the right to cancel any contract in whole or in part without penalty due to non-appropriation of funds.
- b. In the event the Bidder shall default in any of the covenants, agreements, commitments, or conditions and any such default shall continue un-remedied for a period of ten (10) days after written notice to the Bidder, the City may, at its option and in addition to all other rights and remedies which it may have, terminate the Agreement and all rights of the Bidder under the Agreement.
- c. Failure to maintain the required certificates of insurance, permits, licenses and bonds will be cause for contract termination. If the Bidder fails to maintain and keep in force the insurance, if required, the City shall have the right to cancel and terminate the contract without notice.

II. CONDITIONS OF PURCHASE: The following section applies to purchases/contracts after the award. See Paragraphs 1 & 2 for applicability and order of precedence.

12. Specifications.

- a. All bidders must be in compliance with all specifications and any drawings provided with this solicitation. Exceptions taken to these specifications must be noted on your bid.
- b. When specific manufacturer and model numbers are used, they are to establish a design, type, construction, quality, functional capability and/or performance level desired. When alternates are bid/proposed, they must be identified by manufacturer, stock number, and the bidder/proposer is responsible for providing sufficient information to establish equivalency. The City shall be the sole judge of equivalency. Bidders are cautioned to avoid bidding alternates which do not meet specifications, which may result in rejection of their bid/proposal.

13. Regulatory Compliance.

- a. Seller represents and warrants that the goods or services furnished hereunder, including all labels, packages, and container for said goods, comply with all applicable standards, rules and regulations in effect under the requirements of all Federal, State and local laws, rules and regulations as applicable, including the Occupational Safety and Health Act (OSHA), as amended, with respect to design, manufacture or use for their intended purpose of said goods or services. Seller shall furnish Material Safety Data Sheets (MSDS) whenever applicable.
- b. If it is determined by the City that such standards are not met, the seller agrees to bear all costs required to meet the minimum standards as stated above for the equipment/products furnished under this contract.

14. Warranty. Unless otherwise specifically stated by the bidder, products shall be warranted against defects by the bidder for ninety (90) days from the date of receipt. If bidder or manufacturer offers warranty that exceeds 90 days, such warranty shall prevail.

15. Ownership of Printing Materials. All artwork, camera-ready copy, negative, dies photos and similar materials used to produce a printing job shall become the property of the City. Any furnished materials shall remain the property of the City. Failure to meet this requirement will disqualify your bid.

16. Item Return Policy. Bidder will be required to accept return of products ordered in error for up to twenty-one (21) calendar days from date of receipt, with the City paying only the return shipping costs. Indicate in detail on the Bidder Response Sheet, your return policy.

17. Payment Terms and Invoicing. The City will pay properly submitted vendor invoices within thirty (30) days of receipt, providing good and/or services have been delivered, installed (if required), and accepted as specified.

- a. Payment shall be considered timely if the payment is mailed, delivered, or transferred within thirty (30) days after receipt of a properly completed invoice, unless the vendor is notified in writing by the agency of a dispute before payment is due.
- b. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order, including reference to purchase order and submittal to the correct address for processing. Invoice payment processing address is shown on the upper middle section of the purchase order. Send invoices to Accounts Payable address on the purchase order. Do not send invoices to Purchasing or ship to address.
- c. Bidders, proposers shall include discounts for early payment as a percent reduction of invoice. Invoice discounts shall be determined where applicable, from the date of acceptance of goods and/or the receipt of invoice, whichever is later. Discounts for early payment terms stated on the bid/proposal must be shown plainly on the invoice; discounts for early payment not shown on the invoice will be taken.
- d. Invoices submitted not in accordance with these instructions will be removed from the payment process and returned within ten (10) days.

18. F.O.B. Destination Freight Prepaid. Unless otherwise agreed in writing, the vendor shall bear all handling, transportation and insurance charges. Title of goods shall pass upon acceptance of goods at the City's dock.

19. Tax Exemption. The CITY OF SHEBOYGAN is exempt from the payment of Federal Excise Tax and State Sales Tax. . Any other sales tax, use tax, imposts, revenues, excise, or other taxes which are now, or which may hereafter be imposed by Congress, the State of Wisconsin, or any other political subdivision thereof and applicable to the sale of material delivered as a result of the bidder's bid and which, by terms of the tax law, may be passed directly to the City, will be paid by the City.
20. Non-Discrimination. In the performance of work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
21. Indemnification. The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the CITY OF SHEBOYGAN, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of Contractor and any of Contractor's subcontractors in the performance of this agreement, whether caused by or contributed to by the negligence of the City or its officers, officials, agents or employees.
22. Insurance.
The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Contractor shall not commence work under this Contract, nor shall the Contractor allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
- a. Commercial General Liability - The Contractor shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and list the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds.
 - b. Automobile Liability - The Contractor shall procure and maintain during the life of this contract Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
 - c. Worker's Compensation - The Contractor shall procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease - Each Employee, and \$500,000 Disease - Policy Limit. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.
 - d. Liquor Legal Liability- The Contractor shall procure and maintain Liquor Legal Liability insurance with coverage of not less than \$1,000,000 This coverage shall be in force during the entire contract period.
 - e. Acceptability of Insurers - The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
 - f. Proof of Insurance, Approval. The Contractor shall provide the City with certificate(s) of insurance showing the type, amount, effective dates, and expiration dates of required policies prior to commencing work under this Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the Contract, or sooner, for approval by the City. If any of the policies required above expire while this Contract is in effect, Contractor shall provide renewal certificate(s) to the City for approval. Certificate Holder language should be listed as follows:
CITY OF SHEBOYGAN
828 Center Avenue, Suite 205
Sheboygan, WI 53081
The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City. The Contractor and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Contract.
23. Work Site Damages. Any damage, including damage to finished surfaces, resulting from the performance of this contract shall be repaired to the Owner's satisfaction at the Contractor's expense.
24. Compliance.
- a. Regulations. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.
 - b. Licensing and Permits. The Contractor selected under this bid shall be required to demonstrate valid **possession of appropriate required licenses and will** keep them in effect for the term of this contract. The Contractor shall also be required, when appropriate, to obtain the necessary building permits prior to performing work on City facilities.
25. Warranty of Materials and Workmanship.
- a. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be first class and in accordance with the Contract Documents and shall be performed by persons qualified in their respective trades.
 - b. Work not conforming to these warranties shall be considered defective.
 - c. This warranty of materials and workmanship is separate and independent from and in addition to any other guarantees in this Contract.
26. Replacement of Defective Work or Materials. Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of the City notwithstanding that it may have been previously overlooked or passed

by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this contract and its specifications.

27. Reservation of the Right to Inspect Work. At any time during normal business hours and as often as the City may deem necessary, the Contractor shall permit the authorized representatives of the City to review and inspect all materials and workmanship at any time during the duration of this contract, provided, however, the City is under no duty to make such inspections, and any inspection so made shall not relieve the Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, contract requirements and specifications.
28. Weapons Prohibition. Contractor shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Contract, other than while at the Contractor's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Contract, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m). This section does not apply to employees who are required to carry a weapon under the express terms of the Contract (such as armed security guard services, etc.).

APPENDIX B: SAMPLE AGREEMENT

OPERATING AGREEMENT FOR Beer Garden Concession in Kiwanis Park Area # 8 FOR THE 2018-2020 Summer and
Fall seasons
Between the CITY OF SHEBOYGAN and [NAME OF PERMITTEE]

THIS AGREEMENT, entered into by and between the CITY OF SHEBOYGAN, a municipal corporation (hereinafter referred to as "City"), and [NAME OF PERMITTEE], a [partnership/limited liability company/limited liability partnership/etc.] (hereinafter referred to as "Permittee"), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, The City of Sheboygan desires to contract with a qualified party to establish and operate an authentic German Beer Garden concession in a specific area of Kiwanis Park in Sheboygan WI in an effort to honor the strong German heritage in the city, provide a new and somewhat unique venue for its citizens and increase traffic in an under-utilized portion of the park, and,

WHEREAS, The City of Sheboygan has been approached by a concern expressing an interest to establish such a concession and in response has publically issued a Request For Proposals for same in an effort to make sure that all parties having an interest are given an opportunity to submit a proposal and;

WHEREAS, the party named herein has submitted a formal response to the City's request for proposals and following review of said response, The City of Sheboygan has determined that the proposal is in the best interest of the general public and the city of Sheboygan and,

WHEREAS, Respondents proposal, was accepted by the City, and confirmed by the Public Works Committee, subject to the execution of this Operating Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow Permittee to use the Area # 8 of Sheboygan Kiwanis Park (hereinafter, the "Premises") to establish and operate an authentic German Beer Garden Concession.
2. Grant and Description of Premises. City does hereby grant to Permittee permission to establish and operate the concession at the Premises, described in the Proposal documents in a manner as set forth in this Agreement.
3. Scope of Services. In entering into this Agreement, Permittee agrees to the following terms and conditions regarding the services being offered by Permittee at the Premises:
 - A. Services to be provided. Permittee shall provide establish and provide complete operations for a seasonal authentic German beer garden concession including the availability of at least one authentic German beer at all times, assorted domestic beers as well as soft drinks.
 - B. Permittee shall provide and offer for sale a light food menu to include snacks, authentic Sheboygan Bratwurst and other meat and sausage products with a preference for those that are made in Sheboygan.

Permittee shall provide these services at a minimum from June 1st to October 15th

[ENTER ANY OTHER SPECIAL CONDITIONS THAT APPLY.]

Permittee shall not engage in any other service or activity at the Premises without the prior written Agreement of the City of Sheboygan, or designee, (including, i.e., leasing out the Premises to third parties), and any such unauthorized service or activity will be considered a breach of the terms of this Agreement subject to the Default provisions of Section 26 of this Agreement.

- C. Permits and Licenses. Permittee agrees, at its own expense, to obtain and keep current all licenses and permits necessary for the operation of Permittee's business, and comply with all Federal, State and City statutes, ordinances, rules and regulations applicable to Permittee's business. Permittee agrees to obtain all inspections and permits by the Sheboygan County Health Department, Fire Department or any other governmental agency that are required to operate the services authorized under this Agreement. Permittee

shall provide the City with proof of such compliance upon request. Failure to comply with this provision shall be a default under this Agreement.

- D. Equipment. City shall be responsible for providing a lockable maintenance storage area in the main shelter, rest rooms and other features associated with the main shelter. Including access to water and electrical service, and [ENTER ANY OTHER CITY PROVIDED EQUIPMENT]. Permittee shall provide all other equipment necessary to operate the facility, including, but not limited to, all furnishings, safety equipment, food preparation and serving equipment concessions, refrigerators, freezers, microwaves, cash registers, dishes, glassware, cleaning supplies, soap, and toilet paper and hand towels. Permittee may place an additional means of storage on the property in a location approved by the Parks Superintendent, or his/her designee. Permittee may, solely at Permittee's expense, install a security system in the Shelter or other structures on the Premises. Permittee may install or use other equipment with the written permission of the Parks Superintendent, or his/her designee. Permittee shall provide the Parks Superintendent, or designee, with a current list of all the Permittee's equipment at the Premises.
- E. Utilities. Permittee is responsible for all utilities (electrical and water) used at the Premises as well as trash collection. The estimated monthly utility costs for the Premises for the 2018 permit year are \$ XXX for electric service and \$ XXX for water service. This amount shall be due to the CITY OF SHEBOYGAN, on a monthly basis and prorated as necessary, by the 5th of each month. Failure to pay this amount by the due date will result in a late penalty of \$50. Failure to pay this amount in full, plus any accrued penalties, by the 15th of each month will constitute a default under Section 26 of this Agreement. Permittee shall only be responsible for utilities during the months that services are being offered at the Premises. If this Agreement is renewed under Section 4, the estimated monthly utility costs for the Premises for the successive permit years shall be based on the actual utility costs of the preceding permit year.]
- F. Product. All items offered for sale by Permittee, including, but not limited to, food, alcoholic beverages, non-alcoholic beverages, snacks and confections, shall be approved by the Parks Superintendent, or his/her designee. All items for sale shall be individually listed on an inventory, a copy of which shall be filed with the City of Sheboygan.
- G. Equipment Safety. Permittee shall maintain all equipment, including safety equipment (fire extinguishers, first aid kits etc.), in a safe working order at all times and store said equipment in a safe manner to prevent any unauthorized use or operation thereof.
- H. Storage. Permittee may store equipment necessary to provide the services set forth in Subsection A above as indicated on Attachment A and consistent with Subsection C above.
- Permittee may store equipment on the premises but shall not store any items, on the Premises from October through May of each year except with express permission from the City, and in any event, may only do so consistent with Subsection C above.
- I. Maintenance. Permittee shall be responsible for maintaining the Premises in a clean, safe and attractive condition at all times, including keeping the grounds immediately adjacent to the Premises picked up of all paper and debris. Permittee shall keep the river frontage area free of weeds and debris. Every day, the Permittee shall also be responsible for opening, closing and cleaning the restrooms at the Premises, including installing and refilling paper products and soap, and maintaining the restrooms in a clean and sanitary condition. Permittee agrees that should the Parks Division determine that the maintenance requirements of this Subsection are not being met, the Parks Division may perform or have performed additional cleaning or maintenance, and charge the actual costs of such work to Permittee, payable within thirty (30) days of the issuance of the invoice, or as a deduction from the Permittee's security deposit.
- J. Alterations to Premises. No modifications of any kind, or fixtures, additions or removals shall be made to the Premises without the written permission of the Parks Superintendent, or his/her designee. Any and all alterations shall comply with local building codes and ordinances.
- K. Signage. All signs and banners, including menu boards, shall be approved by the Parks Superintendent or designee and the City of Sheboygan Building Inspection Dept. The Permittee shall post a readily observable sign at the Premises stating the Permittee's name, the Operating Agent and contact information as set forth below in Section 11, and a notice that Permittee and the Permittee's activities are not affiliated with, nor in any way endorsed by, the City.

- L. Blackout dates: Permittee agrees with the annual Blackout dates as stated in the Request For Proposals and asserts that it will honor these dates unless written approval from the Festival Organizers is obtained, a copy of which will be filed with the City Attorney's Office no less than two weeks prior to the blackout date which expressly allows permittee to operate the concession during these festivals..
- M. Closing Date. The closing date of the Permittee's activities at the Premises shall be determined by Permittee, but such date shall occur no later than the Park Division's building winterization schedule.
- N. Surrender of Premises. Upon the termination of this Agreement under Section 26, or, in the event that this Agreement is not renewed or expires under Section 4, by December 15 of the permit year, whichever is earlier, Permittee agrees to vacate and surrender the portions of the Premises allocated to it by this Agreement, remove all personal property therefrom, and deliver possession of the same to City, in as good condition as the Premises was in at the commencement of the Agreement, with the exception of unavoidable wear and tear through careful use and with the exception of damage by fire or other casualty beyond the control of Permittee. However, if Permittee has renewed this Agreement for all successive years permit years from 2019 - 2021, Permittee may be granted additional time to surrender the Premises under this Subsection by written agreement with the Parks Superintendent, or his/her designee. Any damages to the Premises beyond normal and expected wear and tear shall be the responsibility of the Permittee. If these damages are not repaired by the Permittee before surrender of the Premises to the City, the City shall cause the repairs to be made and deduct the cost thereof from the security deposit. Any balance still owing by Permittee after deduction from the security deposit shall be due within thirty (30) days of the invoice. All improvements, equipment and other property of the City on the Premises shall remain the property of the City after the termination of this Agreement. No fixtures, whether or not purchased by Permittee, shall be removed without the permission of the City. An inventory of City property and equipment will be performed before release. Any property of Permittee remaining on the Premises thirty (30) days after surrender of the building will become the property of the City.
- O. Security Deposit. The Permittee must pay to the City of Sheboygan a security deposit in the amount of \$3,000 prior to occupying the Premises. Upon the surrender of the Premises, and after inspection by the City, the security deposit will be refunded to the Permittee, less any deductions for damage and other assessable costs under this Agreement. In cases where the damage and other assessable costs are greater than \$3,000, the City shall keep the entire security deposit and Permittee shall pay to the City the remaining balance within 30 days of the invoice from the City.
- P. Payment. For the use of the Premises and the right to provide the services set forth above therein, and utility costs imposed under Subsection D above, as well as the security deposit under subsection N above, Permittee agrees to pay the City for the each permit year (2018, 2019, 2020) based on the bid amounts submitted in Form N of the original bid proposal. Payments shall be made in thirds due no later than May 15, July 1, and September 1. If this Agreement is renewed for the permit years from 2020-2021, and 2021-2022, 2022-2023 Permittee agrees to pay the City [ENTER BID AMOUNT] for each additional permit year, with the same payment schedule. A payment will be considered late, and a default of the terms of this Agreement, if not received within five (5) days of the due date.
4. Term and Effective Date. This initial three year Agreement shall become effective upon execution by the parties and shall expire on December 31, 2021, after which Permittee will no longer be permitted to conduct the vending activities set forth in this Agreement. However, this Agreement may be renewed for two (2) successive one-year terms (for the 2022 and 2023 permit years) upon the mutual agreement of both parties. To renew the Agreement, Permittee must, by November 1 of each permit year, submit written notice to the City of Permittee's desire to renew this Agreement for the upcoming permit year. The City's decision to renew or not renew the Agreement for the upcoming year will be based upon the Permittee's performance under this Agreement and corresponding Request for Proposal, and the decision to renew or not renew the Agreement is not reviewable, and solely that of the City of Sheboygan.. The City will notify Permittee in writing of its decision to renew or not renew this Agreement by December 1. If the Agreement is renewed for the following permit year the terms and conditions of this Agreement will remain in place through December 31 of the following year, or until the Agreement is renewed, terminated, or expires.
5. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
6. Status of Permittee. It is agreed that Permittee is an independent contractor and not an employee or representative of the City and that any persons who Permittee utilizes and provides for services under this Agreement are

employees of Permittee and are not employees of the CITY OF SHEBOYGAN.

7. Assignability and Subcontracting. Permittee shall not assign or subcontract any interest or obligation under this Agreement without City's prior written approval. All of the services required hereunder shall be performed by Permittee and employees of Permittee. If Permittee is a corporation, partnership, limited partnership, limited liability company, limited liability partnership or other entity that is not an individual person, then an assignment prohibited within the meaning of this provision shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock or ownership interests, by which an aggregate of 50% or more of Permittee's stock or ownership interests shall be vested in a party or parties who are not stockholders, partners, members or others who possess ownership interests in Permittee as of the date hereof.
8. No Real Estate. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to Permittee the right to conduct certain activities and provide certain services on City property for the benefit and convenience of the public,
9. Access to Premises. City, by its representatives, shall have access to Premises at any reasonable time provided such entry shall not interfere with Permittee's conduct of business. In case of emergency, the circumstances of which to be solely determined by City, City shall enter the Premises with or without force, as necessary, without assuming any liability for such entry and without affecting Permittee's obligations under this Agreement.
10. Designated Representative. Permittee designates [ENTER NAME OF CONTRACTING AGENT] as Contract Agent with primary responsibility for the performance of this Agreement. In case the Contract Agent is replaced for any reason, or in the event of the death, disability, removal or resignation of the Contract Agent, Permittee will designate another Contract Agent within seven (7) calendar days by notifying the City as set forth below in Section 21, Notices. The City may accept another person as the Contract Agent, or may terminate this agreement under Section 26, at its option.
11. Operating Agent. Permittee shall designate an Operating Agent of Permittee's activities at the Premises, who will be the person primarily responsible for the day-to-day operation of the Permittee's activities at the Premises. Permittee shall provide the name and contact information of this person to the Parks Superintendent, or his/her designee, within forty-eight (48) hours of commencing activities at the Premises under this Agreement, or within twenty-four (24) hours of any changes to the Operating Agent or the Operating Agent's contact information.
12. Advertising. It is understood that in the operation and conduct of this Agreement, City does not grant Permittee the right to sell or distribute any goods or services provided by City, nor does City grant Permittee the express right to use a City trade name, trademark, logotype, advertising, or other commercial symbol. In any commercial advertisement or announcement, Permittee may use the name of Kiwanis Park but any such advertisement or announcement must also indicate that Permittee's activities are not associated with or affiliated with the City.
13. Marketing: Permittee will agree to include and/or prominently display the CITY OF SHEBOYGAN Logo in the premises and on any marketing materials. Marketing materials will be approved by the City and any City logos provided by City Marketing Representative. The CITY OF SHEBOYGAN will agree to display and promote marketing materials of Permittee on the Parks Website and other appropriate venues with the prior approval of the Parks Superintendent and City Attorney.
14. Amendments. This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of the Permittee and the Parks Superintendent, or his/her designee.
15. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Permittee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Permittee therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
16. Indemnification. The Permittee shall be liable to and hereby agrees to indemnify, defend and hold harmless the CITY OF SHEBOYGAN, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof,

arising from, in connection with, caused by or resulting from the Permittee's and/or Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.

17. Insurance.

- A. Required Insurance. The Permittee will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Permittee shall not commence work under this Agreement, nor shall the Permittee allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Purchasing Agent and City Attorney.
- 1) Commercial General Liability. During the life of this Agreement, the Permittee shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Permittee's coverage shall be primary and list the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the CITY OF SHEBOYGAN, its officers, officials, agents and employees as additional insureds.
 - 2) Automobile Liability. During the life of this Agreement, the Permittee shall procure and maintain Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
 - 3) Worker's Compensation. During the life of this Agreement, the Permittee shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. The Permittee shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - 4) Umbrella Liability. During the life of this Agreement, the Permittee shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability (if required), Business Automobile Liability and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
 - 5) Liquor Legal Liability. During the life of this agreement, the permittee shall procure and maintain Liquor Legal Liability coverage with a minimum limit of at least \$1,000,000
- B. Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- C. Proof of Insurance, Approval. The Permittee shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Permittee shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Purchasing Agent the Permittee shall provide copies of additional insured endorsements or insurance policies, if requested by the City Purchasing Agent.
- D. Notice of Change in Policy. The Permittee and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- E. Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, Permittee shall immediately cease use of the Premises and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Purchasing Agent consistent with the requirements of this Section.

F. Purchasing Agent. All information required to be provided to the Purchasing Agent should be addressed as follows:

City of Sheboygan Purchasing Agent,
828 Center Avenue, Suite 205
Sheboygan, WI 53081

18. Non-Discrimination. In the performance of the services under this Agreement the Permittee agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. Permittee further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin.
19. Taxes and Assessments. Permittee agrees to timely pay all taxes, assessments, or other public charges levied or assessed by lawful authority (but reasonably preserving Permittee's right of appeal) against the personal property and services of Permittee on the Premises during the term of this Agreement.
20. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
21. Notices. All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

City: City Clerk's Office
City of Sheboygan
828 Center Avenue
Sheboygan, WI 53081

Permittee: [Contract Agent]
[Business Name] [Business Address] [City,
ST Zip]

22. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
23. Audit and Retaining of Documents. The Permittee agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Agreement. Any other reports or documents shall be provided within five (5) working days after the Permittee receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Agreement shall be retained by the Permittee for a period of three (3) years after completion of all work under this Agreement, in order to be available for audit by the City or its designee.
24. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction Sheboygan County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
25. Compliance with Applicable Laws. The Permittee shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Permittee and its agents and employees. The Permittee's failure to comply with any such laws, ordinances or regulations shall be a default subject to Section 26 of this Agreement.
26. Default/Termination.
- A. In the event Permittee shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue un-remedied for a period of ten (10) days after written notice

thereof to Permittee, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Permittee, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Permittee under this Agreement.

B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the Permittee with ten (10) days' written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Permittee and accepted by the City.

26. Authority. Permittee represents that it has the authority to enter into this Agreement. If the Permittee is not an individual, the person signing on behalf of the Permittee represents and warrants that he or she has been duly authorized to bind the Permittee and sign this Agreement on the Permittee's behalf.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

FOR THE CITY OF SHEBOYGAN

FOR [PERMITTEE'S NAME]

[NAME], [TITLE]

Date

APPENDIX C Facilities

Area # 8 of Kiwanis Park is a level, spacious and somewhat under-utilized site featuring many amenities that are felt to be attractive to a concern interested in establishing an outdoor Authentic German Beer Garden Concession. Sitting just south of the bend of Kiwanis Park Drive, Area 8 is served by wide, paved promenades and considerable frontage along the Sheboygan River. The site is easily accessible for all persons. Kiwanis Park Drive features parking along both sides however there are no “designated” ADA parking spaces.



View of Area # 8 looking east/southeast from the curb line of Kiwanis Park Drive

Main Shelter

The Main Shelter is a stone and wood structure that includes men’s and ladies bath rooms, a small storage/utility area and a large lighted area under roof with open sides. Additional features include hot and cold running water and electrical power. The main shelter is level with the grade on the north and elevated on the south making it easily accessible while providing an “overlook” to the South. The open area under roof may be attractive to the concessionaire to allow for operations during light rainfall. There is also a large paved patio area on the South end surrounded by steel railings.



View of Main shelter looking Northwest from paved promenade



View of Main shelter looking North/Northeast from paved promenade



View of Main Shelter canopied area looking south/southwest

Large Green Space

Available for use by the Concessionaire is a large shaded/semi shaded greenspace between the Main Shelter and the stout wood fence along the banks of the Sheboygan River. This area is thought to be very attractive for use as the main “garden” area of the beer garden concession. The site is flat and drains well and is currently established lawn.

The rustic wood fence along the river creates a natural barrier without compromising river views and offers a nice mix of sun and shade during the mid-day hours.

In order to utilize the large green space effectively it is felt that some sort of border enclosure would need to be constructed. This would allow for the concessionaire to control entry into and out of the space.

In addition, the existing turf, while quite hearty, would not effectively withstand prolonged foot traffic over several months each year. Thus it is felt by the city that an alternative surface material will most likely need to be installed.



View of large open greenspace to the East of the Main shelter taken from just south of the concession stand.



Alternate View of green Space from the south looking due north. Main shelter can be seen in upper left.

CONCESSION STAND

Situated to south of the main shelter and east of the large green space is the concession stand. The stand features several service windows and is thought to be a good fit for the concessionaire for the sale of food as well as beverages. The Concession stand also features electric power 110vAC. There is a paved patio to the North of the stand featuring several permanent charcoal grills which would be available for use by the concessionaire.



View of the concession stand from just off the patio



View of the concession stand from along the fence bordering the river in the open green space.

Jaycee Pavilion

The large Jaycee Pavilion to the South of the concession stand is also being offered for use by the concessionaire at this time. The pavilion may be incorporated into the concessionaires' initial plans for use or can be used on a more intermittent basis for special events etc. Control over the structure as well as responsibility for its use will be the responsibility of the Concessionaire.



APPENDIX D: Area # 8 Overhead View

