

City of Philadelphia



(Bill No. 190130)

AN ORDINANCE

Authorizing the Parks and Recreation Commissioner and the Procurement Commissioner to enter into a Concession Agreement with Loveluck LLC, for the design, construction, management and operation of a food and beverage concession in the Fairmount Park Welcome Center in John F. Kennedy Plaza, a/k/a Love Park, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Parks and Recreation Commissioner and the Procurement Commissioner are hereby authorized to enter into a Concession Agreement for the design, construction, management and operation of a food and beverage concession in the Fairmount Park Welcome Center in John F. Kennedy Plaza, a/k/a Love Park, with Loveluck LLC. The terms of the Concession Agreement must be substantially consistent with those set forth in the term sheet attached to this Ordinance as Exhibit "A", the Concession Fee Schedule attached as Exhibit "B" and the Economic Opportunity Plan attached as Exhibit "C."

SECTION 2. The City Solicitor is hereby authorized to review and approve the Concession Agreement authorized by this Ordinance, which Agreement shall contain such terms and conditions as the City Solicitor shall deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

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EXHIBIT A

TERM SHEET

For the Design, Construction, Management and Operation of a Food and Beverage Concession in the Fairmount Park Welcome Center in John F. Kennedy Plaza/Love Park:

1. Parties. The City of Philadelphia acting through its Parks and Recreation Commissioner and Procurement Commissioner (the “City”) and Loveluck LLC (“Concessionaire”).
2. Term. The Initial Term of the Agreement is for 10 years, plus the time between the date of the Concession Agreement and delivery of possession of the Welcome Center to Concessionaire (the Possession Date) with two 5-year Renewal Terms at the City’s sole discretion.
3. License. The City gives the Concessionaire an exclusive license to design, construct, manage and operate a food and beverage concession in the Fairmount Park Welcome Center in John F. Kennedy Plaza/Love Park (the Concession).
4. Other Locations Inside Love Park. In addition, Concessionaire shall have a limited, non-exclusive license to conduct events in other locations inside Love Park subject to the City’s permitting and licensing requirements, and subject to such rent as the City shall determine. Gross Revenues earned at such events outside the Welcome Center shall be included in the Concession Fee owed to the City.
5. Concession Fee. The Concession Agreement provides for the Concessionaire to pay the City a Concession Fee, consisting of Minimum Annual Guarantee (MAG) payments and 1% of Concessionaire’s Gross Revenues for each year of the Term, except the first year, following the City’s delivery of possession of the Welcome Center to Concessionaire, all as shown in **Exhibit “B”**, the Concession Fee Schedule.
6. Hours of Operation. The Concession Agreement provides that the Concession will be open seven (7) days/week with the following hours: Monday-Thursday, 11 AM–10 PM; Friday-Saturday, 10 AM–11 PM (until midnight in the warm months); and Sunday, 10 AM–9 PM. The Concession will be closed on Thanksgiving Day, Christmas Eve and Christmas Day.

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7. Economic Opportunity Plan. Concessionaire has executed the Economic Opportunity Plan attached as **Exhibit “C,”** which shall be part of the agreement.
8. Utilities. Concessionaire shall pay its share of utility consumption within the Licensed Space.
9. Maintenance and Repairs. The Concessionaire shall be responsible for all maintenance, repairs, trash and snow removal within the Licensed Space.
10. No City Financial Obligations. Nothing in the Concession Agreement obligates the City to maintain the facility or to appropriate or spend money at any time or for any reason.

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EXHIBIT B

CONCESSION FEE SCHEDULE

Concession Fee (Minimum Annual Guarantee (MAG) and Gross Revenues Percentage Fee) for the Design, Construction, Management and Operation of a Food and Beverage Concession in the Fairmount Park Welcome Center

Year 1 (2019)*	\$0.00	plus Gross Revenue Percentage Fee of 1%
Year 2 (2020)	\$60,000.00	plus Gross Revenue Percentage Fee of 1%
Year 3 (2021)	\$61,800.00	plus Gross Revenue Percentage Fee of 1%
Year 4 (2022)	\$63,648.00	plus Gross Revenue Percentage Fee of 1%
Year 5 (2023)	\$65,556.00	plus Gross Revenue Percentage Fee of 1%
Year 6 (2024)	\$67,512.00	plus Gross Revenue Percentage Fee of 1%
Year 7 (2025)	\$69,528.00	plus Gross Revenue Percentage Fee of 1%
Year 8 (2026)	\$71,616.00	plus Gross Revenue Percentage Fee of 1%
Year 9 (2027)	\$73,764.00	plus Gross Revenue Percentage Fee of 1%
Year 10 (2028)	\$75,972.00	plus Gross Revenue Percentage Fee of 1%

FIRST RENEWAL TERM, IF EXERCISED

Year 11 (2029)	\$78,240.00	plus Gross Revenue Percentage Fee of 1%
Year 12 (2030)	\$80,580.00	plus Gross Revenue Percentage Fee of 1%
Year 13 (2031)	\$82,992.00	plus Gross Revenue Percentage Fee of 1%
Year 14 (2032)	\$85,476.00	plus Gross Revenue Percentage Fee of 1%
Year 15 (2033)	\$88,044.00	plus Gross Revenue Percentage Fee of 1%

SECOND RENEWAL TERM, IF EXERCISED

Year 16 (2034)	\$90,684.00	plus Gross Revenue Percentage Fee of 1%
Year 17 (2035)	\$93,408.00	plus Gross Revenue Percentage Fee of 1%
Year 18 (2036)	\$96,204.00	plus Gross Revenue Percentage Fee of 1%
Year 19 (2037)	\$99,084.00	plus Gross Revenue Percentage Fee of 1%
Year 20 (2038)	\$102,048.00	plus Gross Revenue Percentage Fee of 1%

*The first year of the Concession shall be a full 12-month period following the Possession Date (the date City Work is completed and the City delivers possession of the Welcome Center to Concessionaire). Each successive year thereafter shall be a full 12-month period following the applicable anniversary date of the Possession Date.

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EXHIBIT C ECONOMIC OPPORTUNITY PLAN

City of Philadelphia
Economic Opportunity Plan

Design, Construction, Management and Operation of a Food and Beverage Concession in the Fairmount Park Welcome Center in John F. Kennedy Plaza/Love Park

I. Introduction, Definitions and Diversity Practices

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of “Economic Opportunity Plan(s)” for certain classes of contracts and covered projects as defined in Section 17-1601. This Economic Opportunity Plan (“Plan”) memorializes the Contractor’s “Best and Good Faith Efforts” to provide meaningful and representative opportunities for Minority Business Enterprises (“MBEs”), Woman Business Enterprises (“WBEs”) and Disabled Business Enterprises (“DSBEs”) (collectively, “M/W/DSBEs” which also includes firms designated as Disadvantaged Business Enterprises or “DBEs”¹) and employ an appropriately diverse workforce in the Design, Construction, Management and Operation of a Food and Beverage Concession in the Fairmount Park Welcome Center in John F. Kennedy Plaza/Love Park (“Project”). The term “Best and Good Faith Efforts,” the sufficiency of which shall be in the sole determination of the City, means: a Contractor’s efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives of Chapter 17-1600 within this project. Best and Good Faith Efforts are rebuttably presumed met, when a Contractor makes commitments and causes its professional services providers and contractors retained by Contractor (collectively, the “Participants” and each a “Participant”) to make commitments within the M/W/DSBE Participation Ranges established for this RFP and employ a diverse workforce as enumerated herein.

This contract is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of this Plan, a responsive and responsible Contractor makes a legally binding commitment to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the project and its commitment to cause its Participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the project. The objectives set forth in this Plan shall be incorporated in all Contractor requests for proposals, bids and solicitations and communicated to all Participant levels.

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity (“OEO”). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency² or identified in the OEO Registry will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and

¹ “DBE” or “Disadvantaged Business Enterprise” means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If applicant makes solicitation(s) and commitment(s) with a DBE, applicant shall indicate which category, MBE or WBE, is submitted for counting.

²A list of “OEO approved certifying agencies” can be found at www.phila.gov/oEO

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available online at www.phila.gov/oeo/directory. If Contractor is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. Contractor is required to submit a statement summarizing current and past practices relating to its diversity practices ("Diversity Practices Statement"). This statement shall identify and describe examples of processes used to develop diversity at all levels of Contractor's organization including, but not limited to, board and managerial positions. This Diversity Practices Statement should also summarize Contractor's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. Attachment "A" to this Plan is provided for this purpose and should be submitted with Contractor's proposal although the City reserves the right to request it at any time prior to contract award.

D. Contractor also agrees to identify in this Plan, any "Equity Ownership" which shall mean the percentage of beneficial ownership in the Contractor's firm or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Contractor agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

E. Contractor and its Participant(s) hereby verify that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and are notified that the submission of false information is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Contractor and its Participants also acknowledge that if awarded a contract/subcontract resulting from this RFP, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of the contract/subcontract, Contractor and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

II. Goals

A. M/W/DSBE Participation Ranges

As a benchmark for the expression of Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this Project through the exercise of Best and Good Faith Efforts. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the project and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

Design	MBE Ranges 10% - 15%	And	WBE Ranges 5% - 10%
Construction	15% - 20%	And	10% - 15%
Maintenance and Operation	15% - 20%	And	10% - 15%

B. Workforce Diversity Goals and Requirements

Contractor and its Participants agree to exhaust their Best and Good Faith Efforts to employ minority persons, by race and ethnicity, and females in its workforce of apprentices and journeypersons at the following levels³:

- African American Journeypersons – 22% of all journey hours worked across all trades
- Asian Journeypersons – 3% of all journey hours worked across all trades
- Hispanic Journeypersons – 15% of all journey hours worked across all trades
- Female Journeypersons – 5% of all journey hours worked across all trades

- Minority Apprentices – 50% of all hours worked by all apprentices
- Female Apprentices – 5% of all hours worked by all apprentices

III. Contractor Responsiveness and Responsibility

A. Contractor shall identify all its M/W/DSBE commitments and evidence its agreement to employ a diverse workforce on the form entitled, “M/W/DSBE Participation and Workforce Commitments.” The Contractor’s identified commitment to use an M/W/DSBE on this form constitutes a representation by Contractor, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Contractor has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Contractor further represents that if Contractor is awarded the contract, Contractor will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Contractor shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern. Contractor is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Contractor’s contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Contractor to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

³ These goals have been informed by the City of Philadelphia Fiscal Year 2015 Annual Disparity Study, Economic Opportunity Plan Employment Composition Analysis.

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1. Commercially Acceptable Function

A contractor that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Contractor receives towards the participation ranges. For example, a contractor using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

B. Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). **Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO.** Throughout the term of the contract, Contractor is required to continue its Best and Good Faith Efforts.

C. In the event Contractor does not identify on the M/W/DSBE Participation and Workforce Commitments Form that it has made M/W/DSBE commitments within the participation ranges established for this Contract and/or does not agree to employ a diverse workforce as described herein, Contractor must complete and submit a *Documentation of Best and Good Faith Efforts Form* ("BGFE Form"), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract and to employ a diverse workforce. The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Contractor must provide a list of all certification directories used for soliciting participation for this Contract. Contractor must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and

2. Contractor provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation; and

3. Contractor negotiated in good faith with interested M/W/DSBEs. An Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the Plan into consideration; and

4. Documentation of the following:

i. Any commitments to use M/W/DSBEs in its proposal for subcontracted services and materials supply even when Contractor would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the Contractor and any M/W/DSBE(s) related to this Proposal; and

iii. Attendance logs and/or records of any scheduled pre-proposal meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

Any arms length business assistance provided to interested M/W/DSBEs; and

ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and

iii. Telephone logs of communications related to this Contract; and

iv. Notification of and access to proposal documents at the Utility Supplier's office or other office locations for open and timely review; and

v. Contractor sought assistance from the Urban Affairs Coalition, PACareerlink, Opportunity Industrial Center and Philadelphia Works, Inc. to perform employment outreach; and

vi. Contractor published its policy of nondiscrimination in the hiring, retention and promotion of employees; and

vii. Any agreement with a training program that targets the employment of minority persons, disabled persons and women.

IV. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

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1. The City, acting through its OEO, will evaluate the responsiveness of the Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Contractor's amendment of its M/W/DSBE Participation and Workforce Commitments Form or BGFE Form.

B. Administrative Reconsideration

1. If the OEO determines that the Contractor has not made sufficient Best and Good Faith Efforts, the Contractor will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Contractor did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Contractor shall file a hard copy of this Plan, as certified below by OEO, with the Chief Clerk of City Council within fifteen (15) days of receiving a Notice of Award. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council
Room 402 City Hall
Philadelphia, Pennsylvania 19107

The Contractor also agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Contractor must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments.

B. Prompt Payment of M/W/DSBEs

The Contractor shall within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its

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M/W/DSBE subcontractors, the Contractor agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

Each month of the contract term and at the conclusion of the contract, the Contractor shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

C. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Utility Supplier's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

VI. Remedies and Penalties for Non-Compliance

A. The Contractor agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Contractor hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

Withhold payment(s) or any part thereof until corrective action is taken.

Terminate the contract, in whole or in part.

Suspend/Debar the Contractor from proposing on and/or participating in any future City contracts for a period of up to three (3) years.

Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with the Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in the contract. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of the Contract except such

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rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

CONTRACTOR:

LOVELUCK LLC

BY: Valerie Safran 1/30/19
SIGNATURE OF CONTRACTOR DATE

VALERIE SAFRAN, MANAGER
PRINT NAME OF CONTRACTOR AND TITLE

CITY OF PHILADELPHIA, by and through its
Office of Economic Opportunity

BY: Ioia Harper 2/4/19
IOIA HARPER, DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY⁴ DATE

[See Forms on following pages; these Forms, must be submitted by Contractor]

⁴ Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.

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STATEMENT OF DIVERSITY PRACTICES, POLICIES AND PAST ACHIEVEMENTS

Statement of Contractor (from Section 6.11 of Proposal, dated May 16, 2017, filed by Valerie Safran, t/a Turney-Safran Restaurant & Retail on behalf of Contractor):

Participation of Minority, Women and Disabled Owned Businesses

Turney-Safran Restaurant & Retail is committed to fostering, cultivating and sustaining a culture of diversity and inclusion. This commitment is reflected in our employees who represent different groups as defined by race, ethnicity, gender, gender identity, sexual orientation, religion, age, disability, socioeconomic and family status, political affiliation and national origin.

We believe every individual deserves the opportunity to work in an environment that is fair, transparent and inclusive. Our policies and practices promote respectful communication and cooperation between all employees.

As female owners of multiple businesses in the City of Philadelphia we hope to serve as role models for our staff and in our community. We participate in local women's organizations to promote the advancement of women in management and leadership roles.

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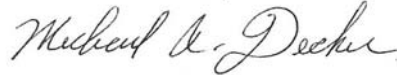
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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on October 10, 2019. The Bill was Signed by the Mayor on October 23, 2019.



Michael A. Decker
Chief Clerk of the City Council