



City Public Library

**REQUEST FOR PROPOSAL (RFP) NUMBER 141065
FOR PROFESSIONAL SERVICES**

**Mitchell Park Library & Community Center Café
(CIP NUMBER PE-09006)**

Pre-proposal Meeting:

11:00

Tuesday, May 31, 2011

RFP submittal deadline:

3:00 P.M.

Tuesday, June 14, 2011

**Contract Administrator:
(Email address)**

john.montenero@cityofpaloalto.org

**CITY OF PALO ALTO
PURCHASING/CONTRACT ADMINISTRATION
250 HAMILTON AVENUE
PALO ALTO, CA 94301
(650) 329-2271**

**REQUEST FOR PROPOSAL (RFP) NO. 141065
FOR PROFESSIONAL SERVICES**

TITLE: Mitchell Park Library & Community Center Café

1. INTRODUCTION

- The City of Palo Alto is seeking proposals from qualified firms for a café vendor to sell light food and beverages to library and community center patrons at the New Mitchell Park Library & Community Center, which is currently under construction at 3700 Middlefield Rd in Palo Alto.
- Please note that vendors will be responsible for purchasing and maintaining any non-fixture* equipment used in the café.

2. ATTACHMENTS

The attachments below are included with this Request for Proposals (RFP) for your review and submittal (see asterisk):

Attachment A – Proposer's Information Form*
Attachment B – Scope of Work/Services
Attachment C – Sample Lease Agreement
Attachment D – Sample Table, Qualifications of Vendor Relative to City's Needs
Attachment E – Business Plan Proposal Format
Attachment F – Insurance Requirement

The items identified with an asterisk (*) shall be filled out, signed by the appropriate representative of the company and returned with submittal.

3. INSTRUCTIONS TO PROPOSERS

3.1 Pre-proposal Conference

A pre-proposal conference will be held Tuesday, May 31, 2011 at 11:00 a.m. in the Human Resources Conference Room, located on the first floor of City Hall, 250 Hamilton Avenue, Palo Alto, CA 94301. All prospective Proposers are strongly encouraged to attend.

3.2 Examination of Proposal Documents

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

- 3.2.1 Have carefully read and fully understand the information that was provided by the City to serve as the basis for submission of this proposal.
- 3.2.2 Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
- 3.2.3 Represent that all information contained in the proposal is true and correct.
- 3.2.4 Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
- 3.2.5 Acknowledge that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the City permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed to any fact or condition.

3.3 Addenda/Clarifications

Should discrepancies or omissions be found in this RFP or should there be a need to clarify this RFP, questions or comments regarding this RFP must be put in writing and received by the City no later than 1:00 p.m., Wednesday (*the one before the proposal deadline*), May 25, 2011. Correspondence shall be addressed to John Montenero, Contract Administrator, City of Palo Alto, 250 Hamilton Avenue, Palo Alto, CA 94301 or e-mailed to john.montenero@cityofpaloalto.org. Responses from the City will be communicated in writing to all recipients of this RFP. Inquiries received after the date and time stated will not be accepted and will be returned to senders without response. All addenda shall become a part of this RFP and shall be acknowledged on the Proposer's Form.

The City shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the City or its representatives.

3.4 Submission of Proposals

All proposals shall be submitted to:

City of Palo Alto
Purchasing and Contract Administration
250 Hamilton Avenue, Mail Stop MB
Palo Alto, CA 94301

Proposals must be delivered no later than 3:00 p.m. on Tuesday, May 24, 2011. All proposals received after that time will be returned to the Proposer unopened.

The Proposer shall submit 6 copies of its proposal in a sealed envelope, addressed as noted above, bearing the Proposer's name and address clearly marked, "RFP NO. 141065 FOR PROFESSIONAL SERVICES: Mitchell Park Library & Community Center Cafe." The use of double-sided paper with a minimum 30% post-consumer recycled content is strongly encouraged. Please do not submit proposals in plastic binders.

3.4 Withdrawal of Proposals

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

3.5 Rights of the City of Palo Alto

This RFP does not commit the City to enter into a contract, nor does it obligate the City to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The City reserves the right to:

- Make the selection based on its sole discretion;
- Reject any and all proposals;
- Issue subsequent Requests for Proposals;
- Postpone opening for its own convenience;
- Remedy technical errors in the Request for Proposals process;
- Approve or disapprove the use of particular subconsultants;
- Negotiate with any, all or none of the Proposers;
- Accept other than the lowest offer;
- Waive informalities and irregularities in the Proposals and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the City.

An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and of the Proposer.

4. PROPOSED TENTATIVE TIMELINE

The tentative RFP timeline is as follows:

RFP Issued	May 17, 2011
Pre-Proposal Meeting	May 31, 2011

Deadline for questions, clarifications	June 7, 2011
Proposals Due	June 14, 2011
Finalist Identified	June 21, 2011
Consultant Interviews	June 28, 2011
Consultant selection and contract preparation	July 01, 2011
Contract awarded	July 01, 2011
Work commences	August 2012

5. INFORMATION TO BE SUBMITTED (to be submitted in this order only)

These instructions outline the guidelines governing the format and content of the proposal and the approach to be used in its development and presentation. The intent of the RFP is to encourage responses that clearly communicate the Proposer's understanding of the City's requirements and its approach to successfully provide the products and/or services on time and within budget. Only that information which is essential to an understanding and evaluation of the proposal should be submitted. Items not specifically and explicitly related to the RFP and proposal, e.g. brochures, marketing material, etc. will not be considered in the evaluation.

All proposals shall address the following items in the order listed below and shall be numbered 1 through 8 in the proposal document.

5.1 Chapter 1 – Proposal Summary

This Chapter shall discuss the highlights, key features and distinguishing points of the Proposal. A separate sheet shall include a list of individuals and contacts for this Proposal and how to communicate with them. Limit this Chapter to a total of three (3) pages including the separate sheet.

5.2 Chapter 2 – Profile on the Proposing Firm(s)

This Chapter shall include a brief description of the Prime Proposer's firm size as well as the proposed local organization structure. Include a discussion of the Prime Proposer firm's financial stability, capacity and resources. Include all other firms participating in the Proposal, including similar information about the firms.

Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the consultant or its insurers within the last five years.

5.3 Chapter 3 – Qualifications of the Firm

This Chapter shall include a brief description of the Proposer's and sub-Proposer's qualifications and previous experience on similar or related projects. Provide in a table format (see Sample Table, Attachment D) descriptions of pertinent project experience with other public municipalities and private sector that includes a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, the period over which the work was completed, and the name, title, and phone number of client's to be contacted for references. Give a brief statement of the firm's adherence to the schedule and budget for the project.

This chapter shall include information regarding any relationships with firms and/or individuals who may submit proposals in response to the RFPs being developed.

5.4 Chapter 4 – Work Plan or Proposal

This Chapter shall present a well-conceived service plan. Include a full description of major tasks and subtasks. This section of the proposal shall establish that the Proposer understands the City's objectives and work requirements and Proposer's ability to satisfy those objectives and requirements. Succinctly describe the proposed approach for addressing the required services and the firm's ability to meet the City's schedule, outlining the approach that would be undertaken in providing the requested services.

5.5 Chapter 5 – Type of food and beverages:

In addition to identifying food and beverages to be provided, each proposal should describe where the food will be prepared and if such location is licensed by state or local agencies as a food preparation area.

5/6 Chapter 6 – Project Staffing

This Chapter shall discuss how the Proposer would propose to staff this project. Key project team members shall be identified by name, title and specific responsibilities on the project. An organizational chart for the project team and resumes for key Proposer personnel shall be included. Key personnel will be an important factor considered by the review committee. Changes in key personnel may be cause for rejection of the proposal.

5.5 Chapter 7 – Use of Planned Space for café

This Chapter shall include your proposed Layout of available space, including décor, appliances, hardware, and other devices, equipment needs (e.g. merchandising cabinets); design plans for table & chairs, and any other

space needs in order to operate the proposed café, including a possible proposed arrangement to use the Library & Community Center's Catering Kitchen. Please note the Technical Specifications for the Café Space listed in the Scope of Work and the restrictions on the space.

5.7 Chapter 8- Revenue Proposal

Each proposal shall contain a revenue proposal for the library/ community center, such as rent or a profit sharing arrangement in lieu of rent. A proposal for use of the Catering Kitchen, if applicable, should be included in this chapter along with an additional revenue proposal.

5.8 Chapter 9 – Cleaning

This chapter shall contain a plan for clean up of café area and patron seating areas, including trash, recycling, and compost removal.

5.9 Chapter 9 – Hours of Operation

This Chapter shall contain a proposal for the café's hours of operations, including any need for access to the Catering Kitchen, if applicable.

The hours of operation for the café shall be at a minimum of 40 hours per week and are not entirely dependent on the hours of operations for the library, community center, park, or other adjacent uses. Typical hours of operation for the library may be 10 a.m. to 8 p.m. at the most, to 1 p.m. to 5 p.m. at the least. Hours of operation for the library vary depending on the day of the week. Typical community center hours of operation may be 8 a.m. to 5:30 p.m. Typical park hours are 8 a.m. until sunset.

Additionally, the City holds special events at Mitchell Park. Parents use the parking lot to drop off children who attend the various schools which ring the block.

5.10 Customer Service - High quality customer service is very important to the City of Palo Alto. The proposal should include a customer service philosophy and specific strategies for achieving results

5.11 Teen Friendly Business - The Mitchell Park Community Center will be home to the City of Palo Alto Teen Center, providing a welcoming and supportive environment for the teen community will be very important. The proposal should address how your business will provide a welcoming and supportive environment for the teen community

Chapter 10 – Proposal Exceptions

This Chapter shall discuss any exceptions or requested changes that Proposer has to the City's RFP conditions, requirements and sample contract. If there are no exceptions noted, it is assumed the Proposer will

accept all conditions and requirements identified in the Attachment C – “Sample Agreement for Services.” Items not excepted will not be open to later negotiation.

6. CONTRACT TYPE AND METHOD OF PAYMENT

It is anticipated that the agreement resulting from this solicitation, if awarded, will be a lease, or profit sharing, or other agreement form of contract. A Sample Agreement of Services is provided as Attachment C.

The agreement between the City and vendor is negotiable, and can include a monthly lease payment, profit sharing, and other elements based on the City’s interest in a term of at least 5 years.

Proposers shall be prepared to accept the terms and conditions of the Agreement, including Insurance Requirements in Attachment F. If a Proposer desires to take exception to the Agreement, Proposer shall provide the following information in Chapter 7 of their submittal package. Please include the following:

- Proposer shall clearly identify each proposed change to the Agreement, including all relevant Attachments.
- Proposer shall furnish the reasons for, as well as specific recommendations, for alternative language.

The above factors will be taken into account in evaluating proposals. Proposals that take substantial exceptions to the proposed Agreement may be determined by the City, at its sole discretion, to be unacceptable and no longer considered for award.

Insurance Requirements

The selected Proposer(s), at Proposer’s sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Attachment F.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the Risk Manager of the City of Palo Alto as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The selected Proposer agrees to provide the City with a copy of said policies, certificates and/or endorsement upon award of contract.

7. REVIEW AND SELECTION PROCESS

City staff will evaluate the proposals provided based on the following criteria:

7.1 Quality and completeness of proposal;

- 7.2 Quality, performance and effectiveness of the solution, goods and/or services to be provided by the Proposer;
- 7.3 Proposers experience, including the experience of staff to be assigned to the project, the engagements of similar scope and complexity;
- 7.4 Cost to the city;
- 7.5 Proposer's financial stability;
- 7.6 Proposer's ability to perform the work within the time specified;
- 7.7 Proposer's prior record of performance with city or others;
- 7.8 Proposer's ability to provide future maintenance, repairs parts and/or services; and
- 7.9 Proposer's compliance with applicable laws, regulations, policies (including city council policies), guidelines and orders governing prior or existing contracts performed by the contractor.

The selection committee will make a recommendation to the awarding authority. The acceptance of the proposal will be evidenced by written Notice of Award from the City's Purchasing/Contract Administration Division to the successful Proposer.

8. ORAL INTERVIEWS

Proposers may be required to participate in an oral interview. The oral interview will be a panel comprised of members of the selection committee.

Proposers may only ask questions that are intended to clarify the questions that they are being asked to respond.

Each Proposer's time slot for oral interviews will be determined randomly. Proposers who are selected shall make every effort to attend. If representatives of the City experience difficulty on the part of any Proposer in scheduling a time for the oral interview, it may result in disqualification from further consideration.

9. PUBLIC NATURE OF MATERIALS

Responses to this RFP become the exclusive property of the City of Palo Alto. At such time as the Administrative Services Department recommends to form to the City Manager or to the City Council, as applicable, all proposals received in response to this RFP becomes a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary". The City shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of Palo Alto may not accept or approve that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret,” or “Proprietary,” the City shall provide the Proposer who submitted the information with reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction.

10. COLLUSION

By submitting a proposal, each Proposer represents and warrants that its proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not directly induced or solicited any other person to submit a sham proposal or any other person to refrain from submitting a proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a proposal.

11. DISQUALIFICATION

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a proposal without further consideration:

- 11.1 Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal;
- 11.2 Any attempt to improperly influence any member of the evaluation team;
- 11.3 Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City;
- 11.4 Evidence of incorrect information submitted as part of the proposal;
- 11.5 Evidence of Proposer’s inability to successfully complete the responsibilities and obligation of the proposal; and
- 11.6 Proposer’s default under any previous agreement with the City, which results in termination of the Agreement.

12. NON-CONFORMING PROPOSAL

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the City.

13. GRATUITIES

No person shall offer, give or agree to give any City employee any gratuity, discount or offer of employment in connection with the award of contract by the city. No city employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a city contract.

14. FIRMS OR PERSONS NOT ELIGIBLE TO SUBMIT A PROPOSAL

In order to avoid any conflict of interest or perception of a conflict or interest, Proposer(s) selected to provide professional services under this RFP will be subject to the following requirements:

- 14.1 The Proposer(s) who works on the procurement will be precluded from submitting proposals or bids as a prime contractor or subcontractor in the ultimate procurement.
- 14.2 The Proposer(s) may not have interest in any potential Proposer for the ultimate procurement.

~ End of Section ~

Attachment A Proposer's Information Form

PROPOSER (please print):

Name: _____

Address: _____

Telephone: _____ Fax: _____

Contact person, title, email, telephone and fax number: _____

Proposer, if selected, intends to carry on the business as (check one):

☐ Individual ☐ Joint Venture

☐ Partnership

☐ Corporation

When incorporated? _____

In what state? _____

When authorized to do business in California? _____

☐ Other (explain): _____

ADDENDA

To assure that all Proposers have received each addendum, check the appropriate box(es) below. Failure to acknowledge receipt of an addendum/addenda may be considered an irregularity in the Proposal:

Addendum number(s) received: ☐ 1; ☐ 2; ☐ 3; ☐ 4; ☐ 5; ☐ 6;

Or, ☐ _____ No Addendum/Addenda Were Received (**check and initial**).

2 PROPOSER'S SIGNATURE

No proposal shall be accepted which has not been signed in ink in the appropriate space below:

By signing below, the submission of a proposal shall be deemed a representation and certification by the Proposer that they have investigated all aspects of the RFP, that they are aware of the applicable facts pertaining to the RFP process, its procedures and requirements, and they have read and understand the RFP. No request for modification of the proposal shall be considered after its submission on the grounds that the Proposer was not fully informed as to any fact or condition.

Attachment A – Proposer Information continued...

1. If Proposer is **INDIVIDUAL**, sign here

Date: _____
Proposer's Signature

Proposer's typed name and title

2. If Proposer is **PARTNERSHIP** or **JOINT VENTURE**; at least two (2) Partners shall sign here:

Partnership or Joint Venture Name (type or print)

Date: _____
Member of the Partnership or Joint Venture signature

Date: _____
Member of the Partnership or Joint Venture signature

3. If Proposer is a **CORPORATION**, the duly authorized officer shall sign as follows:

The undersigned certify that he/she is respectively:

Signature and _____
Title

Of the corporation named below; that they are designated to sign the Proposal Cost Form by resolution (attach a certified copy, with corporate seal, if applicable, notarized as to its authenticity or Secretary's certificate of authorization) for and on behalf of the below named CORPORATION, and that they are authorized to execute same for and on behalf of said CORPORATION.

Corporation Name (type or print)

By: _____ Date: _____

Title: _____

Attachment B Scope of Work

Mitchell Park Library & Community Center Café

Project Description

The City of Palo Alto is currently under construction on the new Mitchell Park Library & Community Center at 4050 Middlefield Rd. Planned in the construction is an approximately 540 square foot café space, including plumbing and electrical connections, some counter space, and fixtured appliances. The City is seeking the professional services of a qualified vendor to operate the café, offering a variety of healthy food and drink options, and a clean and safe environment that compliments the overall look and feel of the Mitchell Park Library & Community Center. The vendor would be responsible for all non-fixtured appliances, furniture, etc, and for staffing and running the entire café operations. The café vendor should be prepared to open the café concurrently with the opening of the Library & Community Center, which is scheduled for August, 2012.

Vendors submitting a proposal should include their proposed terms, including any additional plans for use of the unattached catering kitchen for food preparation.

Technical Specifications of Café Space:

(type of power, finishes, fixtured equipment, plumbing connections, etc)

Additional Services:

The City will allow consideration for additional services as part of the scope. These could include a catering services agreement for City or other events using the Library or Community Center, programming for Community Services, or other. If the vendor wishes to provide these services as part of their proposal, they should specify whether they are optional or must be included in the final agreement.

Attachment C

LEASE AGREEMENT
BETWEEN
CITY OF PALO ALTO
AND
(Awarded Company)

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Attachment C

LEASE AGREEMENT

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LEASE AGREEMENT

BETWEEN CITY OF PALO ALTO AND *tbd*

This lease agreement (herein "Lease") is made and entered into this ____ day of _____, 2011, by and between the City of Palo Alto, a California chartered municipal corporation (herein "City") and _____ (herein "Lessee"). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease." The City Manager serves as Contract Administrator for this Lease on behalf of the City Council.

RECITALS

- A. These recitals are a substantive portion of this Lease.
- B. City and Lessee desire to lease the Premises to provide for the operation and maintenance of a café serving primarily the public and customers using the Mitchell Park Library and Community Center (the Center) and surrounding Park area. The Mitchell Park Community Center will be home to the City of Palo Alto Teen Center. The Café is expected to provide a welcoming and supportive environment for the teen community particularly during non-school hours.
- C. Customer service is very important to the City of Palo Alto. The City of Palo Alto expects a customer service philosophy and specific strategies for achieving results for high level of customer satisfaction in areas such as friendliness of staff, prompt service and a welcoming atmosphere at the Café

Now, therefore, in consideration of these recitals and the following covenants, terms, and conditions, Lessee and City mutually agree as follows:

LEASE PROVISIONS

1. PREMISES.

City hereby leases to Lessee, certain real property located in the City of Palo Alto, County of Santa Clara, State of California, commonly known as the Palo Alto Mitchell Park Library and Community Center Cafe (herein the "Property") and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property consists of approximately five hundred and thirty-three (533) square feet of the Palo Alto Mitchell Park Library and Community Center facility (cafe,) **except** for the Inventory of City owned Fixtures set forth in Exhibit B (a draft of which is currently attached) attached hereto and incorporated herein by

reference. Unless specifically provided, Lessee accepts the Property “as-is” on the date of execution of this Lease.

2. **TERM.**

2.1 Original Term. The term of this Lease shall be year-to-year for a maximum term of three years, commencing on ("Delivery Date"). Lessee shall, at the expiration of the term of this lease, or upon its earlier termination, surrender the Property in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear.

2.2 Termination. City or Lessee may terminate this Lease upon one-hundred twenty (120) days written notice.

3. **RENT.**

3.1 Monthly Rent. The Monthly Rent to be paid by Lessee shall be in the amount of six hundred fifty dollars (\$650.00) per month without deduction or offset. Rent shall be payable on the first day of each and every month commencing on the Delivery Date, at a place (or places) as may be designated in writing from time to time by City.

3.3 Late Charge. Lessee acknowledges late payment of rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Therefore, if City does not receive any installment of rent due from Lessee within ten (10) days after the date such rent is due, Lessee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City, including termination of this lease.

3.4 Rent Payment Procedures. Lessee's obligation to pay rent shall commence upon the commencement of this Lease. If the term commences or terminates on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month. Rent payments shall be delivered to City's Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. The designated place of payment may be changed at any time by City upon ten (10) days' written notice to Lessee. Lessee specifically agrees that acceptance of any late or incorrect rentals submitted by Lessee shall not constitute an acquiescence or waiver by City and shall not prevent City from enforcing Section 3.3 (Late Charge) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any non-monetary breach. Payments shall be effective upon receipt. City may apply any payment received from

Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments.

3.5 Partial Payment. The receipt by City of a partial payment of any amount due to City endorsed as payment in full will be deemed to be a partial payment only. City may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

4. **SECURITY DEPOSIT.**

4.1 Security Deposit. Upon execution of this Lease, Lessee shall deliver to City an amount of five thousand dollars (\$5,000.00) as a security deposit. City may use these funds as are reasonably necessary to remedy any Lessee default(s) in the payment of rent, to repair damages caused by Lessee, or expenses incurred to clean the Property upon termination of tenancy. If any portion of the security deposit is used towards rent or damages at City's sole discretion, Lessee agrees to reinstate the total security deposit upon receipt of ten (10) days written notice.

4.2 Return of Security Deposit. The balance of security deposit, if any, shall be mailed to Lessee's last known address within thirty (30) days of surrender of Property.

5. **USE OF PROPERTY.**

5.1 Required Uses. Throughout the term of this Lease, Lessee shall provide the following uses, services and activities ("Required Uses"):

Lessee is hereby authorized to and shall conduct in the Premises a food and beverage service, in order to provide for the needs of the public and those persons utilizing the Mitchell Park Library and Community Center and surrounding park users

5.2 Optional Uses. Subject to the prior written approval of the city Manager or designee, which approval shall be within the sole discretion of the City Manager or designee, Lessee may also use the demised Premises to provide additional services and uses which are ancillary to and compatible with the required services and uses set forth above. Examples of such ancillary services and uses may include, but are not limited to, the following:

A. Vending machines, including games and convenience items.

Lessee may, at its cost, place an identification sign on or beneath the existing community center sign on the building itself and may place advertisements in newspapers, magazines

or on radio. If, in the opinion of the City Manager, based upon his or her sole discretion, the number of non-Center users is adversely affecting access to the facilities and services by the public, Lessee agrees that upon 30 days' written notice from the City Manager, advertising shall cease or be modified to eliminate such adverse effect. The signs shall be approved by Lessee in accordance with this Lease and applicable City of Palo Alto processes including the Architectural Review Board and Site and Design review prior to installation.

5.3 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Premises, or permit or allow the Premises to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the City Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises. Lessee will not use Property in a manner that increases the risk of fire, cost of fire insurance or improvements thereon. No unreasonable sign or placard shall be painted, inscribed or placed in or on said Property; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Property. No bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Property except for the parking lot. No repair, overhaul or modification of any motor vehicle shall take place on the Property or the street in front of said Property. Lessee, at his/her expense, shall keep the Property in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the roof, sidewalks and underground plumbing, which is not the fault of Lessee.

5.4 Condition, Use of Premises. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 5.1.

5.5 Operating Requirements

Lessee shall continuously use the Premises for the uses specified in this Lease during all usual business hours and on all such days as comparable businesses in the area or as are customary for the Required Uses. Minimum hours for food service are 10a.m. to 5 p.m.. Lessee shall use only such space within the Premises for non-sales or services uses as is reasonably required for Lessee's required or approved uses of the Premises.

Lessee shall at all times maintain a written schedule setting forth the operating hours and operating procedures for each required and permitted use provided on or from the

Premises. A schedule of prices charged for all goods and/or services related to the required and permitted uses of this Lease shall also be maintained and individual merchandise must be clearly priced. Lessee agrees that when alternate forms of packaging are available, only items packaged in the manner most compatible with the goals of reducing litter and preserving the environment shall be sold.

Upon written request, Lessee shall furnish the City Manager a copy of the schedules and procedures. Should the City Manager decide that any part of these schedules or procedures is not justified with regard to fairly satisfying the needs of the public, Lessee, upon written notice from the City Manager, shall modify these schedules or procedures to the satisfaction of the City Manager. Prior to issuing such a notice, the City Manager shall personally review and confer with Lessee or its representative.

Primary consideration shall be given to the public's benefit in implementing this Section. All prices charged for goods and/or services supplied to the public on or from the Premises shall be fair and reasonable, based upon the following considerations:

- A. The degree of public service involved in the sale of the goods and/or services;
- B. The market prices charged by other competing and/or comparable businesses; and
- C. The reasonableness of the profit margin as related industry-wide.

Lessee's failure to comply with the provisions of this Section shall constitute a material breach of this Lease.

Lessee agrees that it will operate and manage the services and facilities offered in a competent and efficient manner at least comparable to other well-managed operations of a similar type.

Lessee shall at all times retain active, qualified, competent, and experienced personnel to supervise Lessee's operation and to represent and act for Lessee. Lessee shall require its attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Lessee shall not allow any person(s) in or about the Premises who shall use offensive language and/or act in a boisterous or otherwise improper manner. Lessee shall maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public.

6. **HAZARDOUS MATERIALS.**

6.4 Hazardous Materials Defined. The term ☐Hazardous Material(s)☐ shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of

□hazardous substances,□ □hazardous waste,□ □hazardous chemical substance or mixture,□ □imminently hazardous chemical substance or mixture,” “toxic substances,” □hazardous air pollutant,□ □toxic pollutant□ or □solid waste□ in the (a) CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) Proposition 65, Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos, (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and, (vii) radioactive materials and waste.

6.2. Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by Lessee, its agents, employees, contractors or invitees.

6.3 Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that: (i) any anticipated use of the Premises by Lessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority, or Hazardous Materials Laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the Premises.

6.4 Assignment and Subletting. It shall not be unreasonable for City to withhold its consent to an assignment or subletting to such proposed assignee or sublessee if: (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for any purpose; (ii) the proposed assignee or sublessee has been required by any prior landlord, lender, or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question; or, (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material.

6.5 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect, and hold Landlord harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, caused, or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Premises by Lessee, Lessee's agents, employees, licensees, or invitees or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sublessees, assignees, contractors, or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term.

6.6 City's Right to Perform Tests. At any time prior to the expiration of the Lease Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil.

7. UTILITIES AND OPERATING EXPENSES.

Lessee shall be responsible for ensuring that all refuse, compost, garbage, recycling and any other refuse pickup and disposal is placed regularly within the designated trash and recycling area. Should Lessee generate more refuse, garbage or recycling that requires additional service, Lessee shall be solely responsible for the cost of that additional

service. City shall pay for and provide gas, water, wastewater, and electric utility and refuse services. Should Lessee, and or City, determine that a security alarm system, or any additional security monitoring service, is necessary for the security of the Café area, Lessee shall bear the cost of having such an alarm installed and maintained at its sole cost and expense.

8. **TAXES.**

8.1 Real Property Taxes Defined. The term “real property taxes” as used herein shall mean all taxes, assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy assessments, which are levied or assessed against or with respect to: (i) value, occupancy, use or possession of the Premises and/or the Improvements; (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises; or, (iii) use of the Premises, Improvements public utilities or energy within the Premises. The term “real property taxes” shall also mean all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the Improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes or charges now or hereafter imposed upon City as a result of this Lease, and all costs and fees (including attorneys’ fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If any real property taxes are based upon property or rents unrelated to the Premises and/or the Improvements, then only that part of such tax that is fairly allocable to the Premises and/or the Improvements, as determined by City, on the basis of the assessor’s worksheets or other available information, shall be included within the meaning of the term “real property taxes.”

8.2 Payment of Real Property Taxes. Lessee shall pay Lessee’s share of all real property taxes (as defined in Section 8.1 above) which become due and payable to City on or before the later of ten (10) days prior to the delinquency thereof or three (3) days after the date on which Lessee receives a copy of the tax bill and notice of City’s determination hereunder. Lessee’s liability to pay real property taxes shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Lease term at the commencement or expiration of the Lease.

8.3 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

8.4 Personal Property Taxes. Lessee shall pay before delinquent, or if requested by City, reimburse City for, any and all taxes, fees, and assessments associated with the Property, the personal property contained in the premises and other taxes, fees, and assessments regarding any activities which take place at the Property. Lessee recognizes and

understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that City or County may impose on such interest and that such tax payment shall not reduce any rent due City hereunder and any such tax shall be the liability of and be paid by Lessee.

9. **MAINTENANCE.**

City and Lessee Responsibilities. Lessee at Lessee's expense, shall perform all maintenance and repairs of the Premises, including plumbing and electrical systems, all interior painting, and maintenance of doors and locks, carpeting and floor coverings and replacement of broken windows with City approval on job specifications, if such breakage is caused from within the demised Premises. Lessee is responsible to keep and maintain in good working condition all items owned and furnished by City listed in Exhibit B (Inventory of Cafe Equipment (to be established and written upon final completion of the project by City). Lessee shall keep the Premises and all improvements thereto in first-class order, repair, and condition, and shall keep the Premises in a safe, clean, wholesome, and sanitary condition to the complete satisfaction of City, and in compliance with all applicable laws, throughout the term of this Lease. In addition, Lessee shall maintain, at Lessee's expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of a first-class business of the type to be conducted pursuant to this Lease. Equipment to be maintained per manufacturer's guidelines. Lessee is also responsible for lamp and ballast replacement, exhaust hood fire suppression system maintenance and inspections, exhaust hood filter/duct cleaning, and grease trap cleaning. City will maintain all lock hardware. hereby agrees to specifically comply with City's Sewer Use Ordinance Chapter 16.09 with special attention to the maintenance of the grease control device as required under Palo Alto Municipal Code Section 16.09.075 Food Service Establishments. Should City be required to maintain, repair or replace the grease control device including exhaust hood filters and ducts due to non compliance by Lessee, all costs associated with the maintenance, repair or replacement shall be at the sole cost and expense of Lessee.

City shall be responsible for the maintenance and repair of the structure located on the Premises and main support systems not exclusively serving the Premises, including roof repair, electrical system repair, exterior painting and structural repairs City shall maintain the HVAC units and boiler serving the Premises and replacement of broken windows if such breakage is caused from outside of the Premises.

9.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair. Lessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the City Manager in the City Manager's sole discretion) after demand by the City, City shall have the right, but not the

obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse City for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by City shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this Section.

9.3 Maintenance of Common Areas. City shall maintain or cause to be maintained, including repair and replacement as necessary, the following common areas serving the Premises and other premises: public restrooms, exterior walkways, parking lot and landscaping.

10. ALTERATIONS BY LESSEE

10.1 Lessee shall not make any additional alterations or improvements, beyond those described below in 10.2, to the Premises without obtaining the prior written consent of the City Manager. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Premises, provided such fixtures and installation have been reviewed and approved by the City Manager.

10.2 Lessee Improvements, including plumbing and electrical. The Cafe vendor is responsible for all Lessee improvements associated with design and installation of display cases. Vendor shall use the overall library and community center design as a "guideline" in designing display cases to insure the design is complimentary to the surrounding design elements already in place. The vendor shall employ a professional designer. All designs and specifications are subject to City or other appropriate governmental approval, such as the Santa Clara County Health Department.

The City is responsible for providing the minimum plumbing and electrical requirements necessary for operating a cafe capable of providing the proposed menu items listed and shown on sheet FS1.0 (Exhibit B), as follows; pre-made sandwiches, dry pastries and cookies, coffee drinks, blended smoothies, bottled drinks, filtered water. Vendor will provide any plumbing and electrical modifications that are required over and above those already provided by the City. The vendor shall employ a professional designer. All designs and specifications are subject to City or other appropriate governmental approval, especially those necessary to meet Santa Clara County Health Department regulations.

11. HOLD HARMLESS/INDEMNIFICATION.

12.1 Indemnification. To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City shall

become legally liable arising from Lessee's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease. Lessee shall give City immediate notice of any claim or liability hereby indemnified against. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive the expiration of or early termination of the Lease Term.

12.2 Waiver of Claims. Lessee waives any claims against City for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the City Property, from any cause whatsoever, except to the extent caused by City's active negligence or willful misconduct.

13. **DAMAGE, DESTRUCTION AND TERMINATION.**

13.1 Nontermination and Nonabatement. Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease. City and Lessee waive the provisions of any statutes which relate to termination of a lease when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

13.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, inability to obtain materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee (financial inability excepted), shall excuse the performance by Lessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

13.3 Restoration of Premises by Lessee.

13.3.1 Destruction Due to Risk Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

A. Minor Loss. If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section 20 (Insurance), and the total amount of loss does not exceed twenty thousand dollars (\$20,000), Lessee shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Lessee for the sole purpose of making the restoration of the Premises in accordance with this Lease.

B. Major Loss- Insurance Trustee. If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section 20 (Insurance), and the total amount of loss exceeds the amount set forth in paragraph (1), Lessee shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to an institutional lender or title company as may be jointly selected by the parties ("the Insurance Trustee").

13.3.2 Destruction Due to Risk Not Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ten percent (10%) of the then replacement value of the Premises totally or partially destroyed, Lessee can elect to terminate this Lease by giving notice to City within sixty (60) days after determining the restoration cost and replacement value. If Lessee elects to terminate this Lease, City, within thirty (30) days after receiving Lessee's notice to terminate, can elect to pay to Lessee, at the time City notifies Lessee of its election, the difference between ten percent (10%) of the replacement value of the Premises and the actual cost of restoration, in which case Lessee shall restore the Premises. On City's making its election to contribute, each party shall deposit immediately the amount of its contribution with such institutional lender or title company as may be jointly selected by the parties ("the Insurance Trustee"). If the Destruction does not exceed ten percent (10%) of the then replacement value of the Premises, Lessee shall immediately deposit the cost of restoration with the Insurance Trustee as provided in Exhibit (c). This Lease shall terminate if Lessee elects to terminate this Lease and City does not elect to contribute toward the cost of restoration as provided in this section.

If the Premises are destroyed from a risk not covered by the insurance described in Section 20 (Insurance), and Lessee has the obligation to restore the Premises as provided in subsection (B), both parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Lessee as construction progresses, for payment of the cost of Restoration. A 10% retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Premises are free of all mechanics' liens and lienable claims.

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Lessee showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Lessee, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund. Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this section.

If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration Lessee shall deposit the amount of the deficiency with the Insurance Trustee within fifteen (15) days after request by the Insurance Trustee indicating the amount of the deficiency. Any undisbursed funds after compliance with the provisions of this section shall be delivered to City to the extent of City's contribution to the fund, and the balance, if any, shall be paid to Lessee. All actual costs and charges of the Insurance Trustee shall be paid by Lessee.

If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, City shall substitute a new trustee in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

13.3.3 Procedure for Restoring Premises. When Lessee is obligated to restore the premises within sixty (60) days Lessee at its cost shall prepare final plans, specifications, and working drawings complying with applicable Laws that will be necessary for restoration of the Premises. The plans,

specifications, and working drawings must be approved by City. City shall have thirty (30) days after receipt of the plans and specifications and working drawings to either approve or disapprove the plans, specifications, and working drawings and return them to Lessee. If City disapproves the plans, specifications, and working drawings, City shall notify Lessee of its objections and City's proposed solution to each objection. Lessee acknowledges that the plans, specifications, and working drawings shall be subject to approval of the appropriate governmental bodies and that they will be prepared in such a manner as to obtain that approval.

The restoration shall be accomplished as follows:

A. Lessee shall complete the restoration within 60 working days after final plans and specifications and working drawings have been approved by the appropriate governmental bodies and all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Lessee's reasonable control).

B. Lessee shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section 20 (Insurance). Such insurance shall contain waiver of subrogation clauses in favor of City and Lessee in accordance with the Provisions of Exhibit B.

C. Lessee shall notify City of the date of commencement of the restoration at least ten (10) days before commencement of the restoration to enable City to post and record notices of nonresponsibility. The contractor retained by Lessee shall not commence construction until a completion bond and a labor and materials bond have been delivered to City to insure completion of the construction.

D. Lessee shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Premises.

E. On completion of the restoration Lessee shall immediately record a notice of completion in the county in which the Premises are located.

F. The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this section.

14. **SIGNS.**

Lessee shall not place, construct, maintain, or allow any signs upon the Premises or on the adjacent sidewalk or courtyard without prior written consent of City.

15. **ASSIGNMENT AND SUBLETTING.**

15.1 City's Consent Required. Lessee shall not assign this lease, nor any interest therein, and shall not sublet or encumber the Property or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Property, or any portion thereof, without the prior written consent of City. This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by City to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Lessee may have the Property delivered to a subsidiary company of Lessee, but such arrangement shall in no way alter Lessee's responsibilities hereunder with respect to the Property. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. City may assign any of its rights hereunder without notice to Lessee.

15.2 No Release of Lessee. No subletting or assignment as approved by City shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations by Lessee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, City may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

16. **DEFAULTS; REMEDIES.**

16.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease, by Lessee:

16.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code section 1951.3;

16.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as provided in this Lease, where such failure shall continue for a period of three (3) business days after written notice thereof from City to Lessee. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

16.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from City to

Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

16.2 Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

16.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including but not limited to: the cost of recovering possession of the Premises and Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

16.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover rent and other payments as they become due hereunder.

16.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California. City shall have all remedies provided by law and equity.

16.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179,

and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

16.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of City be deemed to have been transferred to City. City shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the City shall have no need to account for such property.

17. **INTEREST ON PAST-DUE OBLIGATIONS.**

Except as expressly provided herein, any amount due City when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

18. **HOLDING OVER.**

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option term hereof, such occupancy shall be a holdover tenancy from month to month with all the obligations of this Lease applicable to Lessee. Nothing contained in this Lease shall give to Lessee the right to occupy the Property after the expiration of the term, or upon an earlier termination for breach.

19. **CITY'S ACCESS.**

19.1 Access for Inspection. City and City's agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements, or additions to the Premises as City may deem necessary. However, City and City's agents shall have the right to enter the Premises at any time for emergency situations that may involve property damage such as flooding. City may at any time place on or about the Premises any ordinary "For Sale" signs and City may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

19.2 Security Measures. City shall have the right to require a reasonable security system, device, operation, or plan be installed and implemented to protect the Premises or the Improvements. Should City, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of any security system, device, operation or plan and the installation and implementation thereof. Lessee shall obtain City's prior approval before installing, implementing or changing any City approved security system, device, operation or plan.

19.3 New Locks. Lessee may install new locks on all exterior doors. Lessee shall advise City of such action and shall provide City with keys to said locks. Lessee shall also deliver to City the old locks with keys. Upon termination, Lessee shall leave new locks that shall become the property of City. Lessee may not install their own locks. City will maintain all lock hardware and rekey locks as required. City may charge for excess key request.

20. INSURANCE.

Lessee's responsibility for the Property begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to City as set forth in Exhibit C attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit C. Lessee also agrees to secure renter's liability insurance.

Lessee shall deposit with the City Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy City that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with City during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, City may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.

City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, the City Manager may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. City's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The City Manager shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with City incorporating such changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of City.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full

and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Premises.

21. **INTENTIONALLY OMITTED.**

22. **EMINENT DOMAIN.**

22.1 If all or any part of the Premises (or the building in which the Premises are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the Premises by the condemning public entity.

22.2 If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the Premises. If the condemnation of a part of the Premises substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, Lessee may:

A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or

B. Continue to occupy the remaining Premises and thereby continue to be bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue in possession of the remainder of the Premises, the monthly rent shall be reduced in proportion to the diminution in value of the Premises.

C. Lessee shall provide City with written notice advising City of Lessee's choice within thirty (30) days of possession of the part condemned by the condemning public entity.

22.3 City shall be entitled to and shall receive all compensation related to the condemnation, except that Lessee shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any Lessee-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach; and (b) any amount specifically designated as a moving allowance or as compensation for Lessee's personal property. Lessee shall have no claim against Landlord for the value of any unexpired term of this Lease.

23. **POST-ACQUISITION TENANCY.**

Lessee hereby acknowledges that Lessee was not an occupant of the Premises at the time the Premises were acquired by City. Lessee further understands and agrees that as a post-acquisition Lessee, Lessee is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

25. **NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.**

No official or employee of City shall be personally liable for any default or liability under this agreement.

26. **NON-DISCRIMINATION**

26.1 Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Premises, it shall not discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Lessee acknowledges that is familiar with the provisions set forth in Section 2.30.510 of the Palo Alto Municipal Code relating to nondiscrimination in employment and Section 9.73 of the Palo Alto Municipal Code relating to City policy against arbitrary discrimination.

26.2 Human Rights Policy. In connection with all activities that are conducted upon the Premises, Lessee agrees to accept and enforce the statements of policy set forth in Section 9.73.010 which provides: "It is the policy of the City of Palo Alto to affirm, support and protect the human rights of every person within its jurisdiction. These rights include, but are not limited to, equal economic, political, and educational opportunity; equal accommodations in all business establishments in the city; and equal service and protection by all public agencies of the city."

27. **INDEPENDENT CONTRACTOR.**

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

28. **CONFLICT OF INTEREST.**

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Lessee warrants and covenants that no official or employee of City nor any business entity in which any official or employee of City is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to City. In the event that City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee upon request of City shall immediately terminate such employment. Violation of this provision

constitutes a serious breach of this Lease and City may terminate this Lease as a result of such violation.

29. **MEMORANDUM OF LEASE.**

Following execution of this Lease, either party, at its sole expense, shall be entitled to record a Memorandum of Lease in the official records of Santa Clara County. Upon termination or expiration of this Lease, Lessee shall execute and record a quitclaim deed as to its leasehold interest.

30. **ESTOPPEL CERTIFICATE.**

Lessee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing: (i) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the City Property.

31. **LIENS.**

Lessee agrees at its sole cost and expense to keep the Property free and clear of any and all claims, levies, liens, encumbrances or attachments.

32. **VACATING.**

Upon termination of the tenancy, Lessee shall completely vacate the Property, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed on the inventory to City in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow City to inspect the Property to verify the condition of the Property and its contents.

33. **ABANDONMENT.**

Lessee's absence from the Property for three (3) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Property. Such abandonment will be deemed cause for immediate termination without notice. City shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to City.

34. **NOTICES.**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Palo Alto
Attention: Real Property Manager Donna Hartman
250 Hamilton Avenue
Palo Alto, CA 94301
Donna.Hartman@CityofPaloAlto.org

And to Lessee addressed as follows:

Name: Address:

Phone:

Email:

Cell phone:

Notices may be served upon Lessee in person, by first class mail, or by certified mail whether or not said mailing is accepted by Lessee. If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall be used for service of process.

35. **TIME.**

Time shall be of the essence in this Lease.

36. **AMENDMENTS.**

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

37. **SIGNING AUTHORITY.**

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

38. **CAPTIONS.**

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

39. **SURRENDER OF LEASE NOT MERGER.**

The voluntary or other surrender of this lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or

subtenancies, or may, at the option of City, operate as an assignment of any and all such subleases or subtenancies.

40. **INTEGRATED DOCUMENT.**

This Lease, including any exhibits attached hereto, embodies the entire agreement between City and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City. All agreements with City are subject to approval of the City Council before City shall be bound thereby.

41. **WAIVER.**

Waiver by City of one or more conditions of performance or any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by City shall not preclude City from exercising the same or any and all other remedies, rights, options and privileges hereunder and City's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which City may have, shall not be construed as a waiver.

42. **INTERPRETATIONS.**

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

43. **SEVERABILITY CLAUSE.**

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

44. **GOVERNING LAW.**

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

45. **VENUE.**

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

46. **COMPLIANCE WITH LAWS.**

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease. Lessee hereby agrees to specifically comply with maintenance of the grease control device as required under Palo Alto Municipal Code Section 16.09.075 Food Service Establishments.

47. **BROKERS.**

Each party represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

48. **LIMITATION OF LEASEHOLD**

This Lease and the rights and privileges granted Lessee in and to the Premises are subject to all covenants, conditions, restrictions, and physical encumbrances, including those which are set out in The Golf Course Master Plan approved by the City Council on May 15, 1995. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Lessee of rights in the Premises which exceed those owned by City.

49. **TERMINATION OF PRIOR AGREEMENTS**

This Lease supersedes any and all prior leases entered into by City for use of the Premises. All such prior leases or agreements are null and void.

50. **ATTACHMENTS TO LEASE.**

The following exhibits are attached to and made a part of this Agreement:

“A” – Description of Subject Property

“B” – Inventory of Fixtures (Sheet FS1.0 currently provided, subject to change as items are built out)

“C” – Standard Insurance Requirements

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY:

LESSEE:

CITY OF PALO ALTO (LESSOR)

By: _____
City Manager or Designee

By: _____

By: _____
Senior Asst. City Attorney

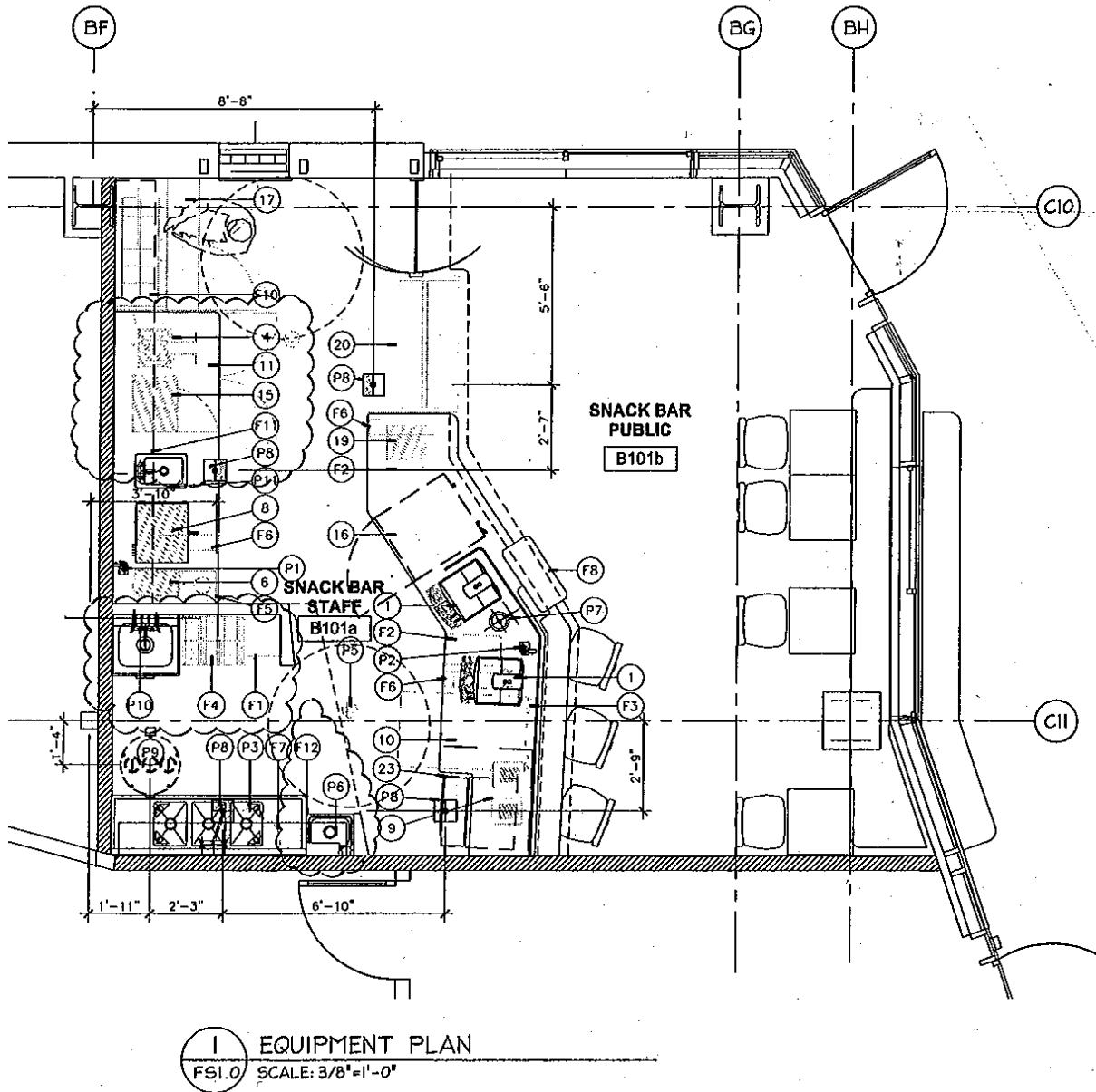
By: _____
Community Services

By: _____
Administrative Services

LEASE AGREEMENT

BETWEEN
CITY OF PALO ALTO
AND
TBD
EXHIBIT A

DESCRIPTION OF SUBJECT PROPERTY



**LEASE AGREEMENT
BY AND BETWEEN
CITY OF PALO ALTO, CALIFORNIA
AND
*TBD***

EXHIBIT B

**INVENTORY OF FIXTURES
(to be provided upon completion of the build out by City and Lessee)**

**LEASE AGREEMENT
BY AND BETWEEN
CITY OF PALO ALTO, CALIFORNIA
AND
TBD**

**EXHIBIT C
STANDARD INSURANCE REQUIREMENTS**

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
- 4) Property insurance against all risks of loss to any Lessee improvements or betterments

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

<u>POLICY</u>	<u>MINIMUM</u>	<u>LIMITS</u>	<u>OF</u>
<u>LIABILITY</u>			
(1) Commercial General Liability		\$1,000,000 per each occurrence for bodily injury, personal injury and property damage	
(2) Automobile Liability	\$ 1,000,000	Combined Single Limit	

Including Owned, Hired and
Non-Owned Automobiles

(3) Workers' Compensation Employers Liability	Statutory \$1,000,000 per accident for bodily injury or disease
--	--

(4) Lessee's Property Insurance

Lessee shall procure and maintain property insurance coverage for:

- (a) all office furniture, trade fixture, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Lessee;
- (b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

- (a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable City of Palo Alto, including earthquake sprinkler leakage.
- (b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

2. Include a waiver of all rights of subrogation against the City and the members of the City Council and elective or appointive officers or employees, and each party shall indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.
3. Name the City of Palo Alto as a loss payee on the property policy.
4. Provide that the City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Lessee agrees to promptly pay to City as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-:VII.

END OF SECTION

EXHIBIT D INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
NO	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

- I. INSURANCE COVERAGE MUST INCLUDE:
 - A. A PROVISION FOR A WRITTEN THIRTY DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
 - B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
 - C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY'S PRIOR APPROVAL.
- II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO
“ADDITIONAL INSURED”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE ISSUING COMPANY SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

NOTICES SHALL BE MAILED TO:

**PURCHASING AND
CONTRACT ADMINISTRATION
CITY OF PALO ALTO
P.O. BOX 10250
PALO ALTO, CA 9430**