



**CITY OF PACIFIC GROVE**  
**REQUEST FOR PROPOSALS**  
*Food and Beverage Concession Services*  
**Lover's Point Snack Bar**



RFP Release Date:	March 19, 2024
Pre-Proposal Conference:	April 5, 2024 – 3:00pm at Lover’s Point Snack Bar
RFP Due Date:	April 24, 2024, Time 2:00 pm (PDT)
City Contact Person for the RFP:	Lori Frati, Finance Manager City of Pacific Grove 300 Forest Avenue Pacific Grove, CA 93950 (831) 648-3133   <a href="mailto:lfrati@cityofpacificgrove.org">lfrati@cityofpacificgrove.org</a>

## Table of Contents

Introduction .....	4
Overview of the City, Lover’s Point Beach, and the Snack Bar .....	4-5
Definitions.....	5
A. Objective of the Request for Proposals .....	6
B. Vendor Required Information .....	6-7
C. Anticipated Schedule .....	7
D. SCOPE OF SERVICES .....	8
D.1 Personnel Requirements .....	8
D.2 Operations .....	8
D.3 Food and Beverage Services .....	9
D.4 Recordkeeping .....	9
D.5 Fixtures, Furnishings and Equipment .....	10
D.6 Improvements, Maintenance and Repairs .....	10
D.7 Financial Operating Fees to City .....	10
E. Response Requirements and Format .....	10
E.1 Submittal Requirements .....	10
E.1.1 Cover Letter .....	10-11
E.1.2 Proposal Items .....	11-12
F. Evaluation Process .....	12
F.1 Review of Proposals for Responsiveness.....	12
F.2 Evaluation Criteria .....	12
F.3 Mandatory Pre-Proposal Meeting/Site Visit.....	13
F.4 Contract Coordination/Questions .....	13
G. Proposal Submittal.....	13-14
Attachment A: Property Description.....	15
Attachment B: List of City Owned Equipment.....	16
Attachment C: Sample Lease Agreement.....	17
Attachment D: Proposer’s Signature Page.....	43

## ATTACHMENTS

- A. \*\*\*\*Property Description\*\*\*\*
- B. \*\*\*\*List of City-owned Food and Beverage Equipment and Furnishings\*\*\*\*
- C. \*\*\*\*Sample Lease Agreement Template\*\*\*\*
- D. \*\*\*\*Proposers Signature Page\*\*\*\*

### Introduction

The City of Pacific Grove (hereinafter referred to as “the City”) is soliciting proposals for the lease of a small Food and Beverage Concession Stand (hereinafter referred to as “the Snack Bar”) located at Lover's Point Beach. The City is seeking an innovative and experienced business operator who can provide high-quality food, beverages, and snacks to local residents and visitors at this iconic waterfront location. The Snack Bar benefits from foot traffic from the coastal recreation trail, Lover’s Point Beach, and the adjacent park, while also being visible from Ocean View Boulevard. The successful respondent will be responsible for providing food and beverages, as well as operating and maintaining concession facilities (kitchen, beverage, and snack bar).

The proposing individual or company shall demonstrate the ability to perform in this type of business, clearly articulate achievable plans for operation, and document compliance with appropriate laws and regulations. The selected concessionaire shall demonstrate the ability to implement a concession program that will meet or exceed the objectives of the City of Pacific Grove as well as incorporate innovative ideas that are appropriate for this concession.

The primary goals of the City with respect to the operation of the Snack Bar are: (1) to develop a service-oriented and responsive food service program, which places customer satisfaction, facility cleanliness, consistent food quality, and revenue growth as its priorities; (2) Maintain stated operating hours, with the exception of times that there is inclement weather (3) Maintain a positive relationship with the City, with the goal of ensuring the City receives adequate and appropriate compensation for the use of public property.

### Overview of the City, Lover’s Point Beach, and the Snack Bar

Pacific Grove, a community of over 15,000 people, is a Monterey County city located on the northern edge of the Monterey Peninsula and is situated adjacent to Monterey, Pebble Beach, Carmel-By-The-Sea, and the Pacific Ocean. Along with pristine natural beauty and year-round mild climate, Pacific Grove offers unparalleled quality of life to its residents and visitors alike. Each year, Pacific Grove draws millions of visitors to enjoy local parks, coastline, and beaches, and visit the area’s well-known landmarks including the Point Pinos Lighthouse and Monarch Butterfly sanctuaries or to stay at the historic Asilomar Conference Grounds.

The Snack Bar is situated at Lover's Point Beach, a popular destination for residents and tourists alike, offering breathtaking ocean views and a family-friendly atmosphere. The facility and location includes the following amenities:

- Food preparation and service areas
- Outdoor seating areas
- Bathroom facilities (shared with the public beach area)

The Snack Bar is owned by the City and operated through a concessionaire agreement for food and beverage services. The Snack Bar is approximately **300 SF** and consists of a food preparation area and an outdoor patio. There is nearby seating available to customers and to the public.

<b>Definitions</b>
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The following words and expressions used in this Request for Proposal shall be construed as follows, except when it is clear from the context that another meaning is intended:

1. The word “Tenant” to mean the successful Proposer that receives an award of a contract from the City as a result of this RFP.
2. The word “City” to mean the City of Pacific Grove, a California municipal corporation.
3. The word “Proposer” to mean the person, firm, entity or organization submitting a response to this RFP.
4. The word “Solicitation” to mean this Request for Proposals (RFP) document, and all associated addenda and attachments.
5. The word “Subcontractor” to mean any person, firm, entity or organization, other than the employees of the Tenant, who contracts with the Tenant to furnish labor, or labor and materials, in connection with the Services to the City, whether directly or indirectly, on behalf of the Tenant.
6. The word “Services” to mean all matters and things that will be required to be done by the Tenant in accordance with the Scope of Services and the terms and conditions of this Solicitation.
7. The words “Gross Income” ,“Gross Revenues” or “Gross Sales” are defined as all income resulting from the full sales price at which all beverages, food stuffs, and other such goods, specialty contracted services, wares and merchandise are sold at any time during the term of the agreement by tenant, its employees or agents in, licensees and concessionaires upon, or from the premises (walk-up window, or portable concession stands, when the food and beverage items so sold are prepared at or off the premises). Gross sales shall exclude credit card service charges that are not included in the sale price to customers.
8. The word “Premises” shall mean the snack bar’s physical location.
9. The word “Agreement” or “Lease” to mean the intended executed contract negotiated between the City and the successful Proposer.

## A. Objective of the Request for Proposals

The objective of this Request for Proposals is to award an initial five (5) year Lease (hereinafter "Lease"), with up to one (1) five (5) year renewal option exercisable at the City's sole discretion. The renewal option of the Lease may be advanced prior to the five (5) year termination date depending upon how well the Tenant has been able to demonstrate the following: (1) successful provision of superior service and above average quality food and beverage item; (2) consistent cleanliness and maintenance of the premises; (3) staffing to support the stated hours of operation (4) level of investment in tenant improvements and/or equipment; (5) level of patron satisfaction, and (6) the proposed level of revenue to the City.

The City desires a tenant that will accomplish the following:

1. Provide food, beverage and snack services that meet or exceed the needs and expectations of the general public;
2. Maximize patronage and revenues through featured menu items, service, ambiance, and marketing;
3. Provide outstanding professional service at reasonable prices
4. Maintain agreed upon hours of operation and appropriate staffing levels.
5. Assess, provide, and install all necessary furnishings, tenant improvements, and equipment in order to create an attractive and inviting concession;
6. Display awareness of the needs of the community and the various constituencies that this concession serves;
7. Reach out to the community to increase the current usage of the concession through effective marketing and advertising with particular emphasis on electronic marketing and communication with customers (i.e., social media); and
8. Work in unison with the City to ensure the best experience for members of the general public.
9. Provide the option for customers to pay for food and beverages with credit cards.

## B. Vendor Required Information

Background information regarding your company and your plans for the Snack Bar should include, but not be limited to, the following:

1. The duration and extent of experience in the operation of restaurant and snack bar facilities.
2. Description of your company's proposed business approach including operational and marketing strategies; staffing plans; customer service plans; facility maintenance plans; and any other pertinent information that would enable the City to assess your proposal.
3. Your proposed plans for advertising, marketing, and promoting the Snack Bar.

4. Proposed types of menus and general pricing and service level targets.
5. A three-year financial pro-forma outlining anticipated revenues and expenses for the concession.
6. The name of the person(s) who will be responsible for your company's operation at the restaurant along with his/her experience.
7. Your plans, if any, for facility refurbishment or improvements to the restaurant operations or facilities.
8. Plan for hiring/retaining/terminating employees of the current concessionaire, if applicable.
9. Your proposed financial terms for the lease/concession of the facility, including, but not limited to, base and/or percentage rental rates based on gross revenue.
10. Statement as to whether the Proposer will or will not accept credit cards.
11. Any other information that will enable City of Pacific Grove to make an objective decision.

**C. Anticipated Schedule**

The anticipated schedule for this Solicitation is as follows:	
March 19	Release of RFP
April 5	Pre-Proposal Meeting and Site Visit
April 9	Deadline for Submitting Questions
April 15	Necessary Addendums Issued
April 24	Proposal Deadline
April 29 – May 5	Proposals Reviewed / Interviewed Conducted
May 6 – May 13	Contract Negotiations and Finalization
May 15	City Council Award of Contract
June 1	Contract Commencement
<i>**These dates are tentative and may be subject to change</i>	

Proposers are requested to submit any questions in writing no later than April 24, 2024 to Lori Frati, Finance Manager, [lfrati@cityofpacificgrove.org](mailto:lfrati@cityofpacificgrove.org). No telephone inquiries will be accepted. All answers will

be responded to in writing. The City reserves the right to include questions and responses in the form of written addendums, as it deems necessary.

<b>D. SCOPE OF SERVICES</b>
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The selected Proposer will:

1. Have demonstrated experience in the development and provision of food and beverage service
2. Possess the knowledge and ability to meet the legal requirements that are involved in this type of operation, including obtaining all necessary permits/licenses necessary for the provision of services.
3. Demonstrate adequate financial strength to replace equipment, furniture & fixtures, sustain operations and provide reasonable working capital.
4. Comply with all applicable rules and regulations adopted by the City, and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to selected Proposer's operations of the restaurant.
5. Be in full operation to provide food and beverage service no later than a certain time period negotiated between the City and Contractor following the date of the contract award. The City reserves the right to extend this time frame if necessary.
6. Provide business and marketing plans for the Snack Bar and the food and beverage services prior to operations.

**D.1 Personnel Requirements**

The selected Proposer shall:

1. Employ or have demonstrated experience in the management of this type of operation.
2. Proposer shall provide sufficient employees in order to provide outstanding service and maintain agreed upon hours of operation. The selected Proposer shall ensure that employees are appropriately attired on a consistent basis, including wearing name tags.
3. Comply with the requirements set forth in the Immigration Reform and Control Act of 1986 (8 USC 1101-1525), including but not limited to verifying the eligibility for employment of all agents and employees.
4. Comply with the State of California minimum wage requirements.

**D.2 Operations**

The selected Proposer shall:



1. Submit a schedule of intended hours of operation to the City prior to contract approval. The City may negotiate an alternative hours of operation to provide the best service to the public. The final schedule will be incorporated into the Lease.
2. Attend and participate in all meetings when requested by the City.
3. Pay for all utilities, including gas, electricity, routine pest control services, security services, garbage, Cable TV/satellite music services and Wi-Fi and Internet access.
4. Provide a waste recycle plan, including food recycling. Provide compostable take-out containers and beverage cups.
5. Provide a dedicated website and professional email address.
6. Pay, before delinquency, all taxes, licenses, assessments and fees assessed or levied for operation of the Snack Bar.

### **D.3 Food and Beverage Services**

The selected Proposer shall:

1. Provide a menu and staff resources to ensure a high-level of service and quality to the public. At a minimum, it is expected that the Proposer provide quickly prepared or pre-prepared food and snack items. Proposers may submit recommendations for additional services as part of the proposal with the understanding that the final determination will be made during negotiations. Style of menu and general range of prices may be subject to approval by the City.
2. Maintain all foodservice areas and equipment in a safe and sanitary manner.
3. Provide employee training and protect the City brand. Although the food and beverage Snack Bar management and staff are not employed by the City, they do represent the City of Pacific Grove. This representation must uphold the highest customer service standards possible.

### **D.4 Recordkeeping**

The City desires that all sales be recorded by means of a computerized point of sale system (POS). The City, may at its option, provide a POS system for use by the successful operator for auditing purposes. Any system or sales records shall be available to the City for audit purposes at any given time. The City shall be provided a monthly summary report of gross sales no later than 15 days after the end of the preceding month. Annual financial information should be provided no later than 90 days after the close of business year.

The successful proposer shall maintain permanent bookkeeping and accounting records at a specified location. Such records and accounts, including any sales tax reports that may be required to be furnished to any governmental authority, shall be made available at all reasonable times to the inspection of the City or City's authorized auditor or authorized representative, with prior notice and during business hours.

An annual financial statement prepared by a licensed certified public accountant (CPA) shall be submitted to the City no less than 120 days after the close of the business year.

#### D.5 Fixtures, Furnishings and Equipment

The selected proposer shall be responsible for all cleaning, maintenance, repairs, and replacement (if necessary) of all City-owned equipment and furnishings as listed in Attachment B for use in connection with the Premises. Additional personal property listed in Attachment C, owned by current Tenant, may also be available for use in connection with the Premises.

#### D.6 Improvements, Maintenance and Repairs

The City will provide the premises in as-is condition. The selected Proposer shall be responsible for:

1. All maintenance of interior areas and surfaces of the premises, including custodial services; all exterior areas where food and beverage may be served; all fixtures, furnishings and equipment, whether provided by the City or the lessee; all plumbing, electrical, flooring, walls, ceilings, interior doors; maintenance of all storage areas. The selected proposer will be required to submit a schedule for both routine maintenance services, e.g. disposal and trash removal services, etc. as well as interval maintenance services, e.g. cleaning, etc.
2. Any alterations, upgrades or capital improvements to the premises must first be submitted to the City for approval. All improvements made to the premises will remain upon termination of the agreement.

#### D.7 Financial Operating Fees to City

Proposers shall submit a proposed percentage-based rental payment stated as a percentage of gross income with a guaranteed monthly rent component.

### E. RESPONSE REQUIREMENTS AND FORMAT

#### E.1 Submittal Requirements

Proposers should carefully follow the format and instructions outlined herein. All documents and information must be fully completed and signed as required. The proposal shall be written in sufficient detail to permit the City to conduct a meaningful evaluation of the proposed services.

All Proposals must contain the following:

##### E.1.1 Cover Letter

Proposers are to include a cover letter indicating the contact information for the entity proposing. Include at a minimum:

1. Key names, including title and position;
2. Name of business entity and its legal designation, i.e. corporation, limited partnership, sole proprietor, etc.

3. Complete mailing addresses;
4. Contact information (telephone, fax and email addresses and cell numbers as appropriate);
5. A statement that the proposing entity confirms its acknowledgement and acceptance of the terms and conditions set forth herein, without exceptions.

#### E.1.2 Proposal Items

Proposers are to submit complete, detailed responses to all of the Proposal Items.

1. Background and Experience
  - a. Ownership description, including company information, organizational chart (if applicable), current and past experience in similar operations.
  - b. Proof of insurance coverage or statement of ability to acquire insurance for the site upon execution of the agreement.
2. Proposed Operating Business Plan
  - a. Proposed staffing and management structure; customer service plan, including how complaints will be handled and any anticipated use of customer service research tools, such as secret shopper, etc.; marketing strategies; and plan for hiring/retaining/terminating staff; staff training plan
  - b. Sample menu, including price points; sample of items to be sold at the snack bar; proposed additional services or amenities;
  - c. Proposed hours and days of operation
  - d. Proposed point of sale equipment, and plan to accept or not accept credit card transactions
3. Proposed Financial Business Plan
  - a. Three (3) year pro forma, accounting controls, point of sale system to be used
  - b. Evidence of financial stability and ability to meet lease requirements
4. Ongoing Refurbishment, Improvements and Maintenance
  - a. Plans for routine facility maintenance; proposed plans to implement and fund any necessary repairs, improvements, preventive maintenance, replacement, or upgrades, etc. during the term of the Lease; plan for improvements, if envisioned
5. Proposed Community Service
  - a. List any plans for being active within the community or supporting local non-profit organizations
6. Proposed Rent Payment
  - a. Proposed percentage-based rental payments stated as a percentage of gross income, to include a minimum guaranteed monthly payment
7. References

- a. List three persons or firms with whom you have conducted business transactions during the past three years, to include at least two who have knowledge of your financial history and at least one that must have knowledge of the services you are providing

8. Proposer may include any suggested modifications to the proposed scope of services

**F. EVALUATION PROCESS**

**F.1 Review of Proposals for Responsiveness**

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this solicitation. A responsive proposal is one which follows the requirements of this solicitation, includes all documentation, is submitted in the format outlined, is of timely submission, and has the appropriate signatures. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

**F.2 Evaluation Criteria**

Proposals will be evaluated by an Evaluation/Selection Committee which will evaluate and rank proposals on the criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate City staff and may include other members, including non-affiliated food and beverage operators and/or restaurant lease specialists with the appropriate experience and/or knowledge. The criteria are itemized with their respective weights as shown below:

Criteria	Weighted Percentage
<b>Technical Criteria</b>	<b>50%</b>
1. Proposer’s experience and qualifications related to providing the type of services requested in the proposal	20%
2. Proposer’s past performance/history related to providing food and beverage services	10%
3. Relevant experience and qualifications of key personnel	10%
4. Proposers understanding of the goals and their proposed approach to providing the services requested in this solicitation, including credit card acceptance	10%
<b>Financial Criteria</b>	<b>30%</b>
1. Proposer’s financial information and capacity to adequately capitalize the operation	15%
2. Proposer’s rent payment proposal	15%
<b>Other Criteria</b>	<b>20%</b>
1. Proposer’s approach to marketing and community engagement	5%

2. Familiarity with region (e.g. local conditions, demographics, seasonality, clientele, etc)	5%
3. Proposer's approach to exceeding customer service expectations/responsiveness	5%
4. Completeness of the proposal	5%

Upon completion of the criteria evaluation indicated above, the City may choose to conduct oral interviews with the highest scoring Proposer(s). Proposer(s) selected will be provided a list of questions and topics to cover in advance of the interviews. The City may also require finalist proposers to provide additional financial documentation including but not limited to credit reports, loan commitment letters, bank statements, etc.

**F.3 Mandatory Pre-Proposal Meeting/Site Visit**

A mandatory pre-proposal conference/site visit will be held on April 5, 2024 at 3:00 p.m. at the Lover's Point Snack Bar. The purpose of the meeting is to clarify the contents of this RFP and to discuss the City's objectives with respect to the Snack Bar. A site walk through the facilities will take place at the conclusion of the meeting. All prospective Proposers are required to attend. It is highly recommended that prospective Proposers read the complete RFP prior to the conference and familiarize themselves with the document in order to maximize the benefits of the conference.

**F.4 Contract Coordination/Questions**

Proposers are requested to submit any questions in writing no later than April 9, 2024 to Lori Frati, Finance Manager, lfrati@cityofpacificgrove.org. The City will issue questions and responses in the form of written addendums to all representatives who attended the Pre-Proposal meeting. Oral inquires will not be accepted.

Other than the contact identified in the proposal, prospective respondents shall not approach City employees during the period of this RFP about any matters related to this RFP or any qualifications listed.

**G. Proposal Submittal**

Provide four (4) bound copies and one (1) electronic copy on a thumb drive no later than April 25, 2024 by 2:00 p.m. The original copy must be signed by a representative authorized to bind the company. Proposals submitted by facsimile or email or those submitted after the date and time will not be considered.

The complete proposal package shall be placed in a sealed envelope or box labeled "Proposal for Lover's Point Snack Bar Concession" and clearly identified with the name and address of the Proposer on the outside.

Deliver completed proposals to:

City of Pacific Grove  
Attn: City Clerk  
300 Forest Avenue  
Pacific Grove, CA 93950

The City may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the responses received as a result of this process.

The City reserves the right to request and evaluate additional information, including background and financial standing from any respondent after the submission deadline as the City deems necessary.

The City of Pacific Grove reserves the right to verify the information received in the proposal and perform any investigations to determine the ability of the Proposer to perform under this RFP. If a proposer knowingly and willfully submits false information or data, the City reserves the right to reject that proposal. If it is determined that an Agreement was awarded as a result of false statements or other data submitted in response to this RFP, the City of Pacific Grove reserves the right to terminate the Agreement.

All proposals submitted in response to this RFP become the property of the City of Pacific Grove. Information in the proposal, unless specified as trade protected, may be subject to public review. Proprietary information submitted in response to this RFP will be handled in accordance with the California Public Records Act.

Any submitted proposal shall in its entirety, remain a valid proposal for twelve (12) months after the proposal submission date.

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsive.

The complete RFP package is also available at <https://www.cityofpacificgrove.org/doing-business/bids-rfps>

## ATTACHMENT A

### Property Description







**ATTACHMENT C**  
Sample Lease Agreement

**CITY OF PACIFIC GROVE LEASE**

**ADDRESS**

**LANDLORD:**

**TENANT:**

1. BASIC LEASE PROVISIONS.

1.1 EFFECTIVE DATE OF LEASE:

1.2 LANDLORD:

1.3 TENANT:

1.4 PREMISES:

1.5 TERM COMMENCEMENT DATE

1.6 TERM EXPIRATION DATE

1.7 MONTHLY RENT:

1.8 UTILITIES

1.9 ADDRESS FOR LANDLORD  
NOTICES:

1.10 ADDRESS FOR TENANT  
NOTICES:

1.11 PERMITTED USE:

1.12 DEPOSIT:

1.13 EXECUTION AMOUNT:

1.14 PARKING:

1.15 LEASE ELEMENTS:

This Lease is comprised of the Basic Lease Provisions contained here in Section 1, the provisions of this Lease, and the following Attachments and Exhibits:

**Exhibit A** – Rules and Regulations

**Exhibit B** – List of Furnishings

**Exhibit C** – Insurance Certificate

## 2. LEASE.

**2.1 Agreement to Lease.** CITY hereby leases to Tenant, and Tenant leases from CITY, the Premises on the following terms and conditions. CITY and Tenant understand this Lease is comprised of the Basic Lease Provisions contained in Article 1 above, the following provisions of this Lease, and any Attachments and Exhibits attached hereto.

**2.2 Premises.** The Premises consists of the area specified in Section 1.4 of the Basic Lease Provisions.

**2.3 Permitted Use.** Tenant may use the Premises only for the Permitted Use as set forth in Section 1.10 above. No other persons shall use or occupy the Premises without CITY's prior written consent. Tenant shall not commit or permit any unlawful act in or about the Premises or permit use of the Premises for any purpose or in any manner that (i) is unsafe, (ii) could constitute a nuisance, (iii) may annoy, obstruct, or interfere with the peaceful enjoyment of the public, or (iv) violate any laws of regulation. Tenant shall not use any portion of the Common Areas, the sidewalk, or the parking lot for sales, auctions, or special events of any kind without prior written consent from CITY.

**2.3.1** City retains the right to book events at the Premises (for itself or third parties) as long as the events do not conflict with an event previously booked by TENANT. The CITY shall coordinate the scheduling of its event booking through TENANT. TENANT shall maintain the master event booking calendar which the CITY may reference. TENANT and CITY agree to use their best efforts to prevent the booking of conflicting events. The CITY's booking of events shall not unreasonably interfere with TENANT's use and TENANT shall remain the exclusive Food Service provider for the Premises and Property.

**2.3.2** CITY may charge a room rental fee for events it books at the Premises. CITY will consult with TENANT before it charges a room rental fee to receive guidance from TENANT as to Food Services TENANT may wish to sell in conjunction with the event that CITY desires to book. CITY will not seek to charge room rental fees that unreasonably interfere with the TENANT's ability to sell Food Service. All room rental fees charged by the City will be split 50-50 between CITY and TENANT.

**2.3.3** CITY-booked events that do not include Food Service shall be limited to a total of only four such events per year. CITY will be responsible for security, premises liability, and post event cleanup for all such events.

**2.3.4** TENANT shall have the exclusive right to provide food and beverages at the golf course during the term of the lease except that incidental food and beverage may be brought to the course as part of a CITY sponsored or CITY approved event including, but not limited to the annual Employees Golf Tournament or charity golf tournaments that benefit CITY services or programs. In no case shall the number of events for which food and beverage may be brought onto the course exceed four (4) per calendar year. All such events shall be approved by the Golf Course Superintendent (Superintendent) and CITY.

## 2.4 Operations.

**2.4.1 Hours of Operation.** TENANT agrees to open to the public for business every day (except Christmas Day) of the year, no later than thirty (30) minutes before the first scheduled tee time and shall remain open throughout the day and shall close no sooner than dusk. Any shortening of these hours of operation for reasons such as inclement weather shall be subject to the prior approval of the CITY. TENANT may extend these hours to the fullest extent allowable under applicable ordinances. CITY understands that TENANT may seek necessary use permits or ordinance changes in order to allow TENANT to provide nighttime food and beverage service for special events, but CITY shall retain full discretion respecting any such change. The hours of operation shall be posted at the location and any TENANT website that is primarily used for the restaurant.

**2.4.2 Special Events and Golf Related Service.** TENANT and CITY shall work together to book food and beverage service for golf related events. TENANT shall determine the appropriateness of the food and beverage service for all golf related service and special events, with due consideration given to reasonable advice or requests of the CITY. TENANT shall maintain the master calendar for the food and beverage facility in order to maximize the utility of the facility.

**2.4.3 General method of operation.** TENANT shall operate the business on the Property continuously during the entire term of this Lease with such due diligence and efficiency as will reasonably produce the maximum return to TENANT. The business will be operated taking into account the golf course location and consideration will be given to the advice and requests of the golf course Superintendent.

**2.4.4 Management.** A manager shall be present during all times the facility is open for business.

**2.4.5 Quality and price control.** Food and beverage shall be of high quality and sold at prices comparable to those prevailing for similar services and facilities at similar golf courses. The menu and price schedules are subject to CITY approval which shall not be unreasonably withheld. A quick service lunch menu and a "grab and go" lunch menu shall also be provided.

**2.4.6 Licenses and permits.** TENANT shall obtain all permits and licenses required by the laws of any federal, state, or other governmental agency to allow TENANT to meet the obligations under this Lease. TENANT shall maintain a liquor license. All permits and licenses shall be maintained in TENANT's name. TENANT shall pay, at TENANT's own expense, all charges and fees incidental to the lawful conduct of the services, and keep fully informed on all existing Federal, State and local laws, ordinances, and regulations which in any manner affect the fulfillment of this agreement. TENANT shall pay, when due, all taxes and assessments levied upon the Premises and personal property situated in the Premises. TENANT recognizes and understands that this Lease may create a real property possessory interest tax that may subject the TENANT to real property truces. Nonpayment of taxes may result in TENANT being in default under section 13.

**2.4.7 Restaurant Name.** The restaurant name shall be "Point Pinos Grill." Any change to this

name shall require the advance written approval of CITY. This name shall attach to the premises and be exclusively available to CITY and any successor restaurant operator, upon termination of the Lease.

**2.4.8 Health and Sanitation.** TENANT shall insure that all its employees are neatly attired in clean and appropriate uniforms whenever on duty. The CITY requires that all TENANT's employees engaged in the preparation, handling, serving, and storage of food meet both State and Local Health Department requirements and the CITY'S health requirements for such activity.

**2.5 Premises Rules.** Tenant shall use the Premises in compliance with all Rules and Regulations provided in **Exhibit A** attached hereto and incorporated herein.

### 3. TERM.

**3.1 Term.** The term of this Lease shall be as described in Sections 1.5, unless sooner terminated or extended as otherwise provided in this Lease (the "Term").

**3.2 Early Occupancy.** At CITY's sole option, and upon written approval by CITY, CITY may permit Tenant to occupy the Premises prior to the Commencement Date. All Base Rent for early occupancy shall be prorated and subject to the terms identified in Section 4.1.

**3.3 Holdover.** If Tenant remains in possession of any part of the Premises after the Expiration Date, CITY may, at CITY's option, (i) treat Tenant as a trespasser, or (ii) treat such holding over as a month-to-month tenancy upon the same provisions as this Lease, including, but not limited to Section 9.1, except that, in either event, the Base Rent during such tenancy shall be one hundred thirty percent (130%) of the Base Rent in effect immediately prior to the Expiration Date (a "Hold Over Tenant"). No holding over by Tenant, whether with or without consent of CITY, shall operate to extend this Lease. **IN ORDER FOR TENANT TO RENEW THIS LEASE AT THE EXPIRATION OF THE TERM AND FOR TENANT NOT TO BE CONSIDERED A "HOLD OVER TENANT" WITH AN AUTOMATIC INCREASE IN MONTHLY BASE RENT BY 130%, TENANT MUST NOTIFY CITY OF ITS DESIRE TO EXTEND OR NOT TO EXTEND THE TERM OF THE LEASE IN WRITING AT LEAST SIXTY (60) DAYS PRIOR TO THE EXPIRATION OF THE TERM. IF TENANT NOTIFIES CITY THAT IT DESIRES TO EXTEND THE TERM, AND THE CITY IS WILLING TO DO SO, CITY AND TENANT SHALL AGREE ON THE TERMS AND CONDITIONS OF RENEWAL AND EXECUTE AN AMENDMENT TO THE LEASE.**

### 4. RENT AND UTILITIES.

**4.1 Rent.** TENANT shall pay Rent in the amount of \_\_\_\_\_ of TENANT's monthly gross sales on or by the fifteenth (15<sup>th</sup>) day of the following month at CITY's address designated herein. TENANT shall provide to CITY a monthly gross sales report along with payment of Rent.

**4.1.1 Gross Sales Defined.** Gross sales shall include the full sale price at which all beverages, food stuffs, catering services and other such goods, room rental fees charged by TENANT,

specialty contracted services, wares and merchandise are sold at any time during the term of the Agreement by TENANT, its employees or agents in, licensees and concessionaires upon, or from the premises (restaurant, banquet and meeting rooms, walk-up window, or portable concession stands, when the food and beverage items so sold are prepared at or off the premises). Gross sales shall exclude credit card service charges that are not included in the sale price to customers.

**4.2 Utilities.** During the Term, TENANT shall pay when due, directly to the utility suppliers, the cost of all utilities including gas, electricity, routine pest control services, security services, garbage, Cable TV/satellite music services and Wi-Fi and Internet access. Tenant shall not consume water in excess of that usually furnished or supplied for reasonable and normal drinking and lavatory use in connection with an office environment. CITY shall not be liable to Tenant for injury, damage, loss of Tenant's business or profits, from any failure, interruption, rationing or other curtailment in the supply of electric, gas, water or other utilities from whatever cause.

**Late Charges and Interest Rate.** If CITY does not receive Rent or any other payment due from Tenant on or before 4:59p.m. of the fifth (5<sup>th</sup>) day from the Due Date, Tenant shall pay to CITY a late charge equal ten percent (10%) of such past due Rent or other payment ("Late Charge"). Tenant agrees that this Late Charge represents a fair and reasonable estimate of the cost CITY will incur by reason of Tenant's late payment. Accepting any Late Charge shall not constitute a waiver by CITY of Tenant's default with respect to any overdue amount nor prevent CITY from exercising any other rights or remedies available to CITY. If any installment of Monthly Base Rent or any other amount payable by Tenant hereunder is not received by CITY by the Due Date, it shall bear interest at the Interest Rate until paid. All interest, and any late charges imposed pursuant to this Section, shall be considered additional Rent due from Tenant to CITY under the terms of this Lease. The Interest Rate is Ten Percent (10%) per annum. In the event of a Rent payment by check which is returned for insufficient funds, Tenant will also be charged a "Returned Check Charge" of \$100.00 as additional Rent.

## 5. SECURITY DEPOSIT.

Due to the short-term nature of this Agreement, Tenant shall not be required to deposit any sums with CITY as security for Tenant's performance of its obligations under this Lease. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and agrees that the provisions of this Article 5 shall govern the treatment of Tenant's Security Deposit in all respects for this Lease.

## 6. USAGE AND COMPLIANCE.

**6.1** Tenant shall use the Premises in compliance with all applicable local, State, and Federal laws. Tenant agrees that that it will not use or store any Hazardous Materials on the Premises without first obtaining written consent from CITY. The term "**Hazardous Material**" shall mean any flammable items, explosives, radioactive materials, oil, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "**hazardous substances**," "**hazardous wastes**," "**hazardous materials**" or "**toxic substances**" now or subsequently regulated under any applicable federal, state or local laws or regulations. If Tenant desires to use or

keep Hazardous Materials at the Premises, Tenant must obtain CITY's prior written consent and execute and deliver to CITY a Hazardous Materials Disclosure Certificate. Tenant shall provide CITY with prompt written notice of any release of Hazardous Materials at the Premises.

**6.2 Suitability of Premises.** Tenant acknowledges that neither CITY nor any of its representatives has made any representation or warranty with respect to the Premises with respect to the suitability or fitness of the same for the conduct of Tenant's business or for any other purpose.

**6.3 Sewer Damage.** Tenant agrees not to discharge any harmful or dangerous chemicals into the sewer system, whether it be inside the Premises area or inside the main system leading from the Premises to the main sewer line. Should Tenant discharge any harmful chemicals into the sewer system, Tenant shall be fully responsible for the cost and repair of such damage. CITY reserves the right to select an expert of its choosing to inspect any damage at Tenant's cost. Tenant shall not be responsible for cost of expert if it is determined such damage is not caused by Tenant. Tenant accepts responsibility for any damage if the following conditions exist: (i) the damage to the sewer system is determined to be due to the chemicals used in the operation of Tenant's business; or (ii) the damage exists only in the designated portion of the sewer system connecting to the Premises.

**6.4 Tenant's Covenant.** Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions:

*That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises herein leased.*

**6.5 Observance of Law.** Tenant, at Tenant's own expense, shall procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant shall, at its sole cost and expense, upon written notice from CITY, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or of any certificate of occupancy. Tenant shall promptly comply, at its sole cost and expense, with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereinafter be imposed, which shall by reason of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or CITY with respect to Tenant's use or occupation.

**6.6 Pest Control.** Tenant, at Tenant's cost, shall at all times keep the Premises free of pests, including the obligation to maintain a pest control service contract with a licensed pest control operator. If Tenant fails to promptly and fully comply with this Section, CITY shall have the right, but not the

obligation, to enter the Premises to perform such spraying or inspections at Tenant's expense. Performance of such work by CITY shall not constitute a waiver of Tenant's default in failing to do the same nor shall it entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Rent. Tenant shall reimburse CITY for any cost incurred by CITY' pursuant to this Section upon demand therefor.

**6.7 Recycling Program.** Tenant, at Tenant's cost, shall participate in any and all recycling programs in which CITY is obligated to participate by law or if Tenant is otherwise required to do so pursuant to any federal, state or local law, rule or regulation.

## 7. TAXES.

Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Premises. CITY shall pay, prior to delinquency, all general real estate taxes, and installments of special assessments coming due during the Lease term on the Premises.

**7.1 Records and Accounting.** Tenant shall keep proper records and accounts of the gross sales. Such records and accounts, including any sales tax reports that Tenant is required to furnish to any governmental authority, shall be open at all reasonable times to the inspection of CITY or CITY'S auditor or authorized representative, with prior notice and during business hours.

**7.2** Monthly accounting of gross sales shall be compiled and furnished to CITY and attached to the payment of Monthly Gross Sales Rent as described in Section 4.1.

**7.3** Tenant shall provide to CITY annual compiled financial statements of Tenant's business at the premises. The annual financial statements shall be compiled by a Certified Public Accountant and are due to CITY within three (3) months after the end of each twelve (12) month operating period.

**7.4** CITY may require audit of Tenant's gross sales by a third-party professional auditor.

## 8. INDEMNIFICATION AND EXCULPATION.

**8.1 Tenant's Assumption of Risk and Waiver.** Except to the extent such matter is not covered by the insurance required to be maintained by Tenant under this Lease or except to the extent such matter is attributable to the gross negligence or willful misconduct of CITY or CITY's agents, contractors, officers or employees, CITY shall not be liable to Tenant, or any of Tenant's Parties, as hereinafter defined, for:

(i) any damage to property of Tenant, or of others, located in, on or about the Premises, (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, personal injury, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, (iv) any such damage caused by other tenants or persons in the Premises, occupants of any other portions of the Property, or the public, or caused by operations in construction of any private, public or quasi-public work, or (v) any interruption of utilities and services. CITY shall in no event be liable to Tenant for any



consequential damages or for loss of business, revenue, income or profits and Tenant hereby waives any and all claims for any such damages. Notwithstanding anything to the contrary contained in this Section, all property of Tenant and Tenant's Parties kept or stored on the Premises, whether leased or owned by any such parties, shall be so kept or stored at the sole risk of Tenant and Tenant shall hold CITY harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. "**Tenant Parties**" includes Tenant, Tenant's employees, members, partners, shareholders, agents and invitees.

**8.2 Tenant's Indemnification.** Subject to the Waiver of Subrogation provisions contained in Section 9.4 below, Tenant shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Lease, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with Tenant's performance of this Lease, except to the extent that such claims, liabilities, or losses result from, in whole or in part, the negligence, unlawful or wrongful acts of the CITY. "Tenant's performance" includes Tenant's action or inaction and the action or inaction of Tenant's officers, employees, agents and subcontractors.

## 9. INSURANCE.

### 9.1 Tenant's Insurance.

Insurance Coverage Requirements: Without limiting Tenant's duty to indemnify, Tenant shall maintain in effect throughout the term of this Lease a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, no less broad than Insurance Services Office (ISO) CG 00 01, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Products and Completed Operations, with a minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If Tenant maintains higher limits than the specified minimum limits, CITY requires and shall be entitled to coverage for the higher limits maintained by Tenant.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Lease, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if Tenant employs others in the performance of this Lease, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

**9.2. Other Insurance Requirements.** All insurance required by this Lease shall be with a company acceptable to the City and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Lease, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Tenant completes its performance of services under this Lease.

Tenant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Tenant shall forthwith obtain and submit proof of substitute insurance. Should Tenant fail to immediately procure other insurance, as specified, to substitute for any canceled policy, CITY may procure such insurance at Tenant's sole cost and expense.

Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the TENANT's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Tenant's insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

The general liability policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

Tenant shall provide to City an endorsement that the issuer waives the right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

Prior to the execution of this Lease by CITY, Tenant shall file certificates of insurance with CITY's Lease Administrator, showing Tenant has in effect the insurance required by this Lease. Tenant shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Lease, which shall continue in full force and effect.

Tenant shall at all times during the Term maintain in force the insurance coverage required under this Lease and shall send, without demand by CITY, annual certificates to City's Lease Administrator. If the certificate is not received by the expiration date, City shall notify TENANT and TENANT shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by TENANT to maintain such insurance is a default of this Lease which entitles City, at its sole discretion, to terminate this Lease immediately.

**9.3 CITY's Insurance.** During the Term, CITY shall maintain property insurance written on a Standard Form (formerly known as "all risk") basis covering the Premises, (excluding, however, Tenant's furniture,

equipment and other personal property) against damage by fire and standard extended coverage perils and with vandalism and malicious mischief endorsements, rental loss coverage, and such additional coverage as CITY deems appropriate. At CITY's option, all such insurance may be carried under any blanket or umbrella policies that CITY has in force for other buildings and projects. In addition, at CITY's option, CITY may elect to self-insure all or any part of such required insurance coverage. CITY may, but shall not be obligated to, carry any other form or forms of insurance as CITY may reasonably determine is advisable.

**9.4 Waiver of Subrogation.** CITY and Tenant hereby mutually waive their respective rights of recovery against each other for any loss to the Premises or its contents resulting from actions on or with respect to the Premises insured by fire, extended coverage or any other insurance existing for the benefit of the respective parties and each party agrees to apply to their insurers to obtain similar waivers from such insurers. Each party shall obtain any special endorsements required by such party's insurer to evidence compliance with the aforementioned waiver.

## 10. CONDITION; MAINTENANCE AND REPAIRS.

**10.1 Beginning Condition.** On the Commencement Date, Tenant shall accept the Premises in its "AS IS" condition. Tenant acknowledges that it has inspected the Premises and agrees that the Premises are suitable for Tenant's intended use and Tenant agrees that it is not relying on any warranty or representation made by CITY or its officers concerning the use of the Premises or the Property. CITY does not represent or warrant that the Premises or the Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, or other matters that may relate to Tenant's intended use.

### 10.2 Maintenance During the Lease.

**10.2.1 Tenant's Maintenance Obligations.** During the Term of this Lease, Tenant, at its expense, shall keep and timely maintain the interior of the Premises, including, without limitation, restrooms, lighting, dock doors, levelers, shelters, seals and bumpers (if any), all doors, electrical, sprinkler, and plumbing systems, windows, and floors in a clean, good, safe condition and repair. Tenant shall provide interior/exterior window cleaning services. Tenant shall arrange and pay for its own security system, telecommunication systems, and any and all other services that Tenant desires. If damage to the Premises results from Tenant's carelessness, negligence or improper use or that of its employees or agents, CITY may (i) require Tenant to repair such damage at Tenant's expense, or (ii) undertake such repairs on behalf of Tenant. Tenant shall pay CITY for all costs incurred by CITY in making such repairs within ten (10) days after receiving a statement from CITY indicating the amount due.

**10.2.2 Timely Maintenance.** Tenant shall arrange and pay for its own janitorial service and trash removal. Tenant shall provide timely maintenance services for all restrooms located in the Premises, including the maintenance of fixtures, providing supplies, and custodial care at least three times per day or more as needed.

**10.2.3 Maintenance and Repair of Equipment and Fixtures.** Tenant shall maintain and repair if necessary, the equipment and fixtures identified in **Exhibit B**, whether provided initially by Tenant or CITY. Tenant shall maintain these items in in a clean, good, safe condition and repair.

**10.2.4 (a)** If any equipment purchased by the CITY fails to operate properly, Tenant shall notify CITY and attempt to have the equipment repaired or replaced under a warranty, if one exists. If no such warranty exists, the cost to repair the equipment shall be split evenly between the CITY and the Tenant, except for the repair to equipment caused by any act, omission or negligence of Tenant, or its responsible employees, agents, invitees, licensees or sub-Tenants, in which case, the Tenant shall be solely responsible for the cost of repair.

**(b)** The CITY and Tenant shall evenly split the costs to replace fixtures and equipment initially provided by CITY, except for the replacement of equipment or fixtures caused by any act, omission, or negligence of Tenant, or its responsible employees, agents, invitees, licensees, or sub-Tenants, in which case, the Tenant shall be solely responsible for the cost of replacement. All equipment and fixtures shall remain the property of CITY.

**(c)** Before replacing any fixtures or equipment purchased by CITY, Tenant shall obtain CITY'S approval of the replacement item and brand. If it notes any deficiencies in the repair or maintenance, CITY shall send written notice of the deficiency to Tenant. Tenant shall repair or maintain the noted item(s) within a reasonable time as stated in the notice. If Tenant fails to do so, CITY may perform the necessary maintenance or repairs and require reimbursement from Tenant.

**10.2.5 Premises Décor and Improvements.**

**(a)** Tenant shall be responsible, at its sole cost, for any alterations or capital improvements to the interior of the Premises. Tenant hereby waives all right to make repairs at the expense of CITY. All such repairs and/or modifications or additions of a permanent nature to the facilities shall be approved, in writing, by CITY prior to implementation by Tenant.

**(b)** Tenant shall make no changes in or alterations or additions to or remove any part of any portion of the building, grounds, equipment, or artwork, trophies and memorabilia belonging to CITY or to add interior decorations, including signs, without prior written consent from CITY. Any approved changes to the buildings or grounds, which are built-in and permanently affixed to the structure, shall become the property of CITY unless previously agreed upon by the parties in writing.

**10.2.6 CITY Maintenance Obligations.**

**(a)** CITY shall repair and maintain in good condition, the exterior of the premises, including exterior walls, roof, heating and air conditioning systems, painting, doors, parking lot surfacing, lighting and landscaping, except for any damage caused by any act, omission, or negligence of Tenant, or its responsible employees, agents, invitees, licensees or sub-Tenants. For the purpose of this agreement, the term "exterior" as used

herein shall be construed to mean that portion of the premises that begins from the exterior walls of the building outward, including the lawns, planters, patios, and parking lot.

(b) CITY shall repair and replace any plumbing fixtures located within the public restrooms at the Premises. Any infrastructure repair or replacement to plumbing and electrical located within the walls, ceiling or floors which are caused by age, act of nature or other sources originating from the exterior, will be the responsibility of the CITY. CITY shall not be responsible to replace plumbing fixtures damaged by Tenant, its employees, or agents.

(c) CITY shall provide TENANT with written notice at least 30 days before it begins substantial repairs or modifications to the golf course, Clubhouse Complex, or parking lot, which would have the effect of impairing the TENANT's business.

**10.3 Condition Upon Surrender.** Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to CITY broom clean, and, subject to reasonable wear and tear, in the condition which Tenant shall have been required to maintain the Premises under this Lease with the heating, ventilation, plumbing, electrical, lighting, man doors, dock doors, levelers, shelters, seals and bumpers (if any), windows and floors serving the Premises in good operating condition. Tenant shall repair all damage to the Premises caused by the installation or removal of its trade fixtures and other property of Tenant. Tenant shall restore the Premises to the same condition or better as existed immediately prior to the installation of any item removed.

## **11. ALTERATIONS AND SIGNS**

**11.1 Alterations.** Tenant shall not construct any leasehold improvements or make any other alterations to the Premises without CITY's prior written consent. At the end of the Term, CITY may require Tenant to (i) remove any leasehold improvements, or other alterations made by Tenant, and (ii) restore the Premises to its condition, existing on the Commencement Date, normal wear and tear excepted. If Tenant fails to perform, CITY may do so, and Tenant shall pay CITY for all costs so incurred by CITY within ten (10) Business Days after receiving a statement from CITY indicating the amount due.

**11.2 Signs.** Pursuant to the CITY's consent, Tenant shall have the right to place on the Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. CITY may refuse consent to any proposed signage that is in CITY's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Premises or use of any other tenant. CITY shall assist and cooperate with Tenant in obtaining any necessary permission from authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Premises resulting from the removal of signs installed by Tenant.

## **12. ENTRY BY CITY.**

CITY and its employees and agents shall have the right to enter the Premises to inspect, supply any service required by CITY, post notices of non-responsibility, and/or to alter, improve or repair the

Premises or any other portion of the Property. In exercising such entry rights, CITY shall endeavor to minimize, to the extent reasonably practicable, the interference with Tenant's business, and shall provide Tenant with reasonable advance notice (oral or written) of such entry (except in emergency situations and for scheduled services). For each of the foregoing purposes, CITY shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes (if any), and CITY shall have the means which CITY may deem proper to open said doors in an emergency in order to obtain entry to the Premises.

### **13. DEFAULT AND REMEDIES.**

**13.1 Tenant's Default.** The occurrence of any one (1) or more of the following events shall constitute a "Default" under this Lease by Tenant:

- a) Tenant's failure to pay the Base Monthly Rent including additional rent or any other payment due under this Lease by the date such amount is due where such failure continues for three (3) business days after Tenants receipt of CITY's notice that Rent was not received,
- b) The abandonment of the Premises by Tenant;
- c) Tenant's failure to observe and perform any other required provision of this Lease, where such failure continues for thirty (30) days after written notice from CITY;
- d) Tenant's making of any general assignment for the benefit of creditors;
- e) The filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed after the filing);
- f) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days;
- g) The attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or
- h) The occurrence of any other event described as a default elsewhere in this Lease or any amendment thereto regardless of whether such event is defined as a material default and breach of this Lease.

**13.2 CITY Remedies Upon Tenant Default.** In the event of a Tenant Default, CITY, at its option, may do one or more of the following:

- a) Terminate this Lease and recover all damages caused by Tenant's breach;
- b) Pursuant to summary process, repossess the Premises, with or without terminating the Lease, and relet the Premises at such amount as CITY deems reasonable;
- c) Declare the entire remaining Base Rent and Additional Rent immediately due and payable;
- d) Bring action for recovery of all amounts due from Tenant; or
- e) Pursue any other remedies available to CITY under this Lease, at law or in equity (including, without limitation, to the extent the Premises are located in California, the remedies of Civil Code Section 1951.4 and any successor statute or similar Law, which provides that CITY may continue this Lease in effect following Tenant's breach and abandonment and collect rent as it

falls due, if Tenant has the right to sublet or assign, subject to reasonable limitations).

**13.3 Costs Upon Default and Litigation.** Tenant shall pay to CITY as Additional Rent all the expenses incurred by CITY in connection with any Default by Tenant hereunder or the exercise of any remedy by reason of any Default by Tenant hereunder, including reasonable attorneys' fees and expenses.

**13.4 CITY Default.** If CITY fails to perform an obligation of CITY hereunder on or before (a) thirty (30) days after Tenant gives written notice that such obligation has not been performed when due, or (b) if such obligation cannot be reasonably performed in such thirty (30) day period, then such longer period as is reasonably required so long as CITY is delinquent in pursuing to cure such obligation. Until such time, CITY shall not be deemed in Default, and Tenant shall have no remedy against CITY for such failure. If CITY is deemed in Default, Tenant's sole remedies are to (i) seek specific performance or injunctive relief, (ii) file suit against CITY seeking damages directly resulting from such default, or (iii) seek a declaratory judgment.

#### **14. ABANDONED PROPERTY.**

If Tenant leaves any personal property in or about the Premises after the Expiration Date or the earlier termination of this Lease, at CITY's option, (i) such property shall become the sole property of CITY without any liability to account for the proceeds from CITY's disposition, if any, of the property, or (ii) CITY may remove, store, destroy, sell, discard or otherwise dispose of the property. In such event, Tenant shall reimburse CITY for all expenses incurred by CITY in such disposition.

#### **15. PARKING.**

During the Term, Tenant shall be entitled to utilize the number and type of parking spaces specified in Section 1.12 of the Basic Lease Provisions within the parking areas for the Property as designated by CITY from time to time. CITY shall at all times have the right to establish and modify the nature and extent of the parking areas for Premises. In addition, CITY may, in its discretion, designate any unreserved parking spaces as reserved parking. Tenant shall not use more parking spaces than its allotment and shall not use any parking spaces specifically assigned by CITY to other tenants, if any, or for such other uses such as visitor, handicapped or other special purpose parking.

#### **16. CASUALTY.**

**16.1 CITY's Rights and Obligations.** If the Premises or the Building is damaged by fire or other casualty not caused by the negligence or willful misconduct of Tenant ("**Casualty**") to an extent not exceeding twenty-five percent (25%) of the full replacement cost thereof, and CITY's contractor estimates in writing delivered to the parties that the damage thereto is such that the Premises may be repaired, reconstructed or restored to substantially its condition immediately prior to such Casualty within one hundred twenty (120) days from the date of such Casualty, and CITY will receive insurance proceeds sufficient to cover the costs of such repairs, reconstruction and restoration (including proceeds from Tenant and/or Tenant's insurance which Tenant is required to deliver to CITY pursuant to this Lease), then CITY shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If, however, the Premises or the Building is damaged to an extent exceeding twenty-five percent (25%) of the full replacement cost

thereof, or CITY's contractor estimates that such work of repair, reconstruction and restoration will require longer than one hundred twenty (120) days to complete from the date of Casualty, or CITY will not receive insurance proceeds (and/or proceeds from Tenant, as applicable) sufficient to cover the costs of such repairs, reconstruction and restoration, then CITY may elect to either: (i) repair, reconstruct and restore the portion of the Premises or Building damaged by such Casualty, in which case this Lease shall continue in full force and effect; or (ii) terminate this Lease effective as of the date which is thirty (30) days after Tenant's receipt of CITY's election to so terminate. Under any of the conditions of this Section, CITY shall give written notice to Tenant of its intention to repair or terminate within the later of sixty (60) days after the occurrence of such Casualty, or fifteen (15) days after CITY's receipt of the estimate from CITY's contractor or, as applicable, thirty (30) days after CITY receives approval from CITY's Mortgagee to rebuild.

**16.2 Tenant's Termination Right.** In the event of any damage or destruction which (i) is not caused by Tenant or any of the Tenant Parties, (ii) materially affects Tenant's use and enjoyment of the Premises and (iii) Tenant's possession and use of the Premises cannot be restored by CITY within one hundred twenty (120) days for reasons other than delays caused by Tenant or any of Tenant's Parties, Tenant shall have the right to terminate this Lease upon written notice to CITY given within thirty (30) days after the expiration of said 120-day period.

**17. CONDEMNATION.**

If any legally, constituted authority condemns the Premises or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and CITY and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

**18. NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to CITY and Tenant at the addresses listed below:

FOR CITY:	FOR TENANT:
<hr/> <p style="text-align: center;">City of Pacific Grove 300 Forest Avenue Pacific Grove, CA 93950</p> <hr/> <p style="text-align: center;">Address</p> <hr/> <p style="text-align: center;">Phone</p>	<hr/> <hr/> <hr/> <hr/>



## **19.ASSIGNMENT AND SUBLETTING.**

**Consent Required.** Tenant may not assign this Lease or sublet the Premises in whole or in part without CITY's prior written consent. An assignment of this Lease or subletting of the Premises in whole or in part without CITY's prior written consent is voidable by CITY. If Tenant assigns this Lease or sublets any part of the Premises, Tenant will remain liable for all of Tenant's obligations under this Lease regardless if the assignment or sublease is made with or without the consent of CITY. If Tenant seeks to assign this Lease or sublet any part of the Premises, then at least thirty (30) days prior to the proposed assignment or sublease, Tenant shall deliver to CITY written notice setting forth the terms and conditions of the assignment or sublease and the identity of the proposed assignee or sublessee. CITY will then notify Tenant of its election to do one of the following: (i) consent to the proposed assignment or sublease subject to such conditions as CITY may impose in providing such consent; (ii) refuse such consent; or (iii) terminate this Lease as to all or such portion of the Premises which is proposed to be sublet or assigned and recapture all or such portion of the Premises for reletting by CITY.

## **20.GENERAL PROVISIONS.**

**20.1 Governing Law.** This Lease shall be governed by, and construed pursuant to, the laws of the State of California. Venue for any litigation between the parties hereto concerning this Lease or the occupancy of the Premises shall be initiated in Monterey County, California. Tenant shall comply with all governmental and quasi-governmental laws, ordinances and regulations applicable to the Premises, and all rules and regulations adopted pursuant thereto and all covenants, conditions and restrictions applicable to and/or of record against the Buildings and/or the Site (individually, a "Law" and collectively, the "Laws").

**20.2 Successors and Assigns.** Subject to the provisions of Article 19, above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no options or other rights which are expressly made personal to the original Tenant hereunder or in any Rider attached hereto shall be assignable to or exercisable by anyone other than the original Tenant under this Lease.

**20.3 No Merger.** The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of CITY, either (i) terminate all or any existing subleases, or (ii) operate as an assignment to CITY of Tenant's interest under any or all such subleases.

**20.4 Waiver.** Any waiver of any terms and conditions of this Lease must be in writing and signed by CITY and Tenant. A waiver of any of the terms and conditions of this Lease shall not be construed as a waiver of any other terms or conditions in this Lease.

**20.5 Headings.** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

**20.6 Time.** Time is of the essence with respect to performance of every provision of this Lease in

which time or performance is a factor.

**20.7 Payments and Notices.** All Rent and other sums payable by Tenant to CITY hereunder shall be paid to CITY at the address designated in the Basic Lease Provisions, or to such other persons and/or at such other places as CITY may hereafter designate in writing.

**20.8 Prior Agreements; Amendments.** This Lease, including the Summary and all Exhibits attached hereto, contains all of the covenants, provisions, agreements, conditions and understandings between CITY and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

**20.9 Accord and Satisfaction.** No payment by Tenant or receipt by CITY of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and CITY may accept such check or payment without prejudice to CITY's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

**20.10 Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, without limitation, failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, terrorism, bioterrorism, fire, earthquake, inclement weather including rain, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, "**Force Majeure Delay(s)**"), then performance of such act shall be excused for the period of such Force Majeure Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not apply to nor operate to excuse Tenant from the payment of Base Rent, or any other payments strictly in accordance with the terms of this Lease.

**20.11 Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original binding on the parties hereto.

**20.12 Authority.** Any individual executing this Lease on behalf of CITY or Tenant represents and warrants hereby that he or she has the requisite authority to enter into this Lease on behalf of such party and bind the party to the terms and conditions of this Lease.

**20.13 Joint and Several Liability.** If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

**20.14 Waste.** TENANT shall not commit, or allow to be committed, any waste, damage, or nuisance on the Premises.

**20.15 Liens.** TENANT shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligation incurred by TENANT.

**20.16 Claims.** TENANT shall notify CITY, in writing, by the end of the next non-holiday weekday, of any occurrences at the Premises which involve any injury to person or property including a full description of the facts and with a map or plat attached, of the place, circumstances, nature and results, and names and addresses of persons involved. TENANT will promptly provide CITY with copies of any claims for damage of any sort, including complaints in any court actions involving such claims. Likewise, if CITY is involved in any claims that affect the Premises or affect the TENANT's use of the Premises, CITY shall promptly notify TENANT in writing.

**This space is left blank, intentionally.**

SAMPLE DRAFT LEASE

IN WITNESS WHEREOF, CITY and Tenant have executed this Lease as of the day and year written below.

**CITY OF PACIFIC GROVE**

**TENANT**

By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
Name of Business

Date: \_\_\_\_\_

Approved as to Form

By: \_\_\_\_\_  
Name and Title

By: \_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to  
Fiscal Provisions<sup>a</sup>

By: \_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO,  
or Asst. Treasurer)

By: \_\_\_\_\_  
Finance

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

City Lease Number: \_\_\_\_\_.

SAMPLE DRAFT LEASE

<sup>a</sup> Approval by Finance necessary only if financial questions or issues raised in the City's approval of agreement.

## EXHIBIT A

### RULES AND REGULATIONS

1. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, escalators or stairways of the Building. The halls, passages, exits, and entrances are not for the general public, and CITY shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of CITY would be prejudicial to the safety, character, reputation and interests of the Building and its tenants; provided, that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant and no employee, invitee, agent, licensee or contractor of Tenant shall go upon or be entitled to use any portion of the roof of the Building unless authorized by the City.
2. CITY will furnish Tenant, free of charge, two keys to each door lock in the Premises. CITY may impose a reasonable charge for any additional keys. Tenant may not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door or window of its Premises. Tenant, upon termination of its tenancy, shall deliver to CITY the keys of all doors which have been furnished to, or otherwise procured by Tenant, and, in the event of loss of any keys, shall pay CITY the cost of replacing the same or of changing the lock or locks opened by such lost key if CITY shall deem it necessary to make such change.
3. IT cables and equipment, telephone lines and security systems shall not be installed in the Premises except with the approval and under the direction of CITY.
4. No furniture or equipment of any kind shall be brought into the Building without prior notice to CITY and all moving of the same into or out of the Building shall be done at such time and in such manner as CITY shall designate. Deliveries during normal office hours shall be limited to normal office supplies and other small items. No deliveries shall be made which impede or interfere with other tenants or the operation of the Building.
5. Tenant shall not use or keep in the Premises any hazardous materials, kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of food service equipment. Tenant shall not use the Premises in a manner offensive or objectionable to CITY or other occupants of the Project by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any animals.
6. CITY reserves the right to exclude from the Building between the hours of 7:00 p.m. and 6:00 a.m., or such other hours as may be established from time to time by CITY, and on legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. CITY shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to CITY for all acts of such persons.
7. Tenant shall close and lock all doors of its Premises and entirely shut off all water faucets or other water apparatus, and, except with regard to Tenant's computers and other equipment which reasonably require electricity on a 24-hour basis, all electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by CITY for noncompliance with this rule.
8. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed.

9. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets, or any other goods or merchandise to the general public in or on the Premises.
10. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.
11. Except as expressly permitted in the Lease, Tenant shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or plaster, or in any way deface the Premises or any part thereof, except to install normal wall hangings. Tenant shall repair any damage resulting from noncompliance under this rule.
12. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in and around the Project or the Buildings are expressly prohibited, and each tenant shall cooperate to prevent same.
13. CITY reserves the right to exclude or expel from the Buildings any person who, in CITY's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Project.
14. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by CITY.
15. The Premises shall not be used for (a) the storage, use, or sale of marijuana, (b) any repair, servicing, or storage of vehicles or (c) lodging or for manufacturing of any kind.
16. Tenant shall not use in any space any hand trucks except those equipped with rubber tires and side guards, or such other material-handling equipment as CITY may approve.
17. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time to time by CITY, and Tenant also shall provide CITY with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security regulations. Tenant shall cooperate fully with CITY in all matters concerning fire and other emergency procedures.
18. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.
19. CITY may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by CITY shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other such tenant, nor prevent CITY from thereafter enforcing any such Rules and Regulations against any and all of the tenants in the Building.
20. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Buildings.
21. CITY reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Buildings and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.
22. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees or guests.

23. Tenant shall not without CITY's consent, which may be given or withheld in CITY's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Premises or the Buildings.

24. **EXCEPT WITH THE PRIOR WRITTEN PERMISSION OF CITY, NO OVERNIGHT PARKING IS PERMITTED AT THE PREMISES. A VIOLATION SHALL CONSTITUTE A DEFAULT HEREUNDER AND A DAILY FEE OF (\$100) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.**

25. **SMOKING IS NOT PERMITTED ON THE PROPERTY EXCEPT IN SPECIFIC AREAS DESIGNATED BY CITY SHALL CONSTITUTE A DEFAULT HEREUNDER AS ALSO A FEE OF (\$50) SHALL BE CHARGED AS RENT FOR EACH VIOLATION**



**Exhibit B**

List of Equipment and Furnishings

SAMPLE DRAFT LEASE

**Exhibit C**

Insurance Certificates

SAMPLE DRAFT LEASE

**ATTACHMENT D**

Proposers Signature Page (to be returned with Proposal)

I have read the Request for Proposal for said concession. I am familiar with the terms and conditions specified in these documents and if selected, I am prepared to provide all services as required.

If there is more than one partner, all partners shall be required to sign.

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Name (Print)	Title
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Signature	Date
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Name (Print)	Title
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Signature	Date
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Name (Print)	Title
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Signature	Date
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Attach additional pages if necessary