YERBA BUENA GARDENS
CB3/CAROUSEL CAFÉ SPACE
750 Howard Street

REQUEST FOR PROPOSALS
FOR
LEASE OF CAFE SPACE

ISSUED: October 4, 2019

DATE FOR TOUR OF PREMISES: Thursday, October 17, 2019 at 2:00 pm

DEADLINE FOR SUBMITTAL: Monday, November 4, 2019 by 11:00 am

at

YERBA BUENA GARDENS CONSERVANCY
5 THIRD STREET, SUITE 610
SAN FRANCISCO, CA 94103

Address Questions to:
Scott Rowitz
Executive Director
Yerba Buena Gardens Conservancy
5 Third Street, Suite 610
San Francisco, CA 94103
415.509.2393
srowitz@ybgconservancy.org
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>II. Summary of Lease Terms and Conditions</td>
<td>1</td>
</tr>
<tr>
<td>III. Proposal Conditions</td>
<td>3</td>
</tr>
<tr>
<td>IV. Terms and Conditions</td>
<td>7</td>
</tr>
<tr>
<td>V. Miscellaneous Requirements</td>
<td>8</td>
</tr>
</tbody>
</table>

**EXHIBITS**

- EXHIBIT A  ENTERPRISE EXPERIENCE QUALIFICATIONS QUESTIONNAIRE
- EXHIBIT B  PLAN OF PREMISES
- EXHIBIT C  INDEMNIFICATION AND INSURANCE REQUIREMENTS
Café Opportunity at Yerba Buena Gardens
REQUEST FOR PROPOSALS FOR CAFE LEASE

I. Introduction

The Yerba Buena Gardens Conservancy (“YBGC” or “Conservancy”) is soliciting proposals for the potential lease of cafe space on “Central Block Three” of the Yerba Buena Gardens (located on the block bounded by Howard Street, Folsom Street, Third Street and Fourth Street) near the Children’s Garden and Historic Carousel. The Yerba Buena Gardens Children’s block has excellent visitor exposure and affords an excellent café service opportunity to interested operators.

The Conservancy intends to select a tenant (“Tenant” or “Operator”) who best meets the criteria set forth in this Request for Proposal (the “RFP”) through the process described below. The Conservancy and Tenant would then enter into a lease agreement (a “Lease”).

The Conservancy is an equal opportunity employer and encourages proposals from woman-owned and minority-owned businesses.

II. Summary of Lease Terms and Conditions

A. Building. The commercial space is located on the south west corner of the Moscone Building on the Gardens Level at the foot of the pedestrian bridge near the Children’s Creativity Museum, Children’s Garden and Historic Carousel in San Francisco, CA 94103, as shown in the attachments to the draft lease.

B. Premises. The commercial space to be leased (the “Premises”) contains approximately 215 rentable square feet of café serving area. The Premises are shown in Exhibit B. Any alterations or improvements to the Premises must be approved in advance by the Conservancy, as the Landlord, pursuant to the terms and conditions of the Lease, and must meet all applicable City, state and federal codes, requirements and regulations.

C. "As Is" Condition. The Conservancy will lease the Premises to Tenant in its “As Is” condition. Tenant shall be solely responsible for investigating and determining the condition of the Premises and any conditional use permits required during both the RFP process and prior to final approval of the Lease. Such inspections shall include, but are not limited to, identifying existing and planned utility connections and determining the suitability of such conditions for any minor improvements to be constructed by Tenant. Any improvements placed within or upon the Premises must be in compliance with the Americans with Disabilities Act and all other applicable government requirements.

D. Lease. Through the RFP process, a Tenant will be selected and will then negotiate a Lease with the Conservancy based on the general form of lease. The finally executed Lease may contain terms and conditions not specifically described or outlined in this RFP. It is the proposers’ responsibility to thoroughly review and understand these terms and conditions and any questions should be directed to YBGC. The final Lease to be negotiated by and between Conservancy and Tenant will be subject to approval by the Conservancy Board of Directors, in the Conservancy’s sole and absolute discretion, and subject to the approval by the City And County of San Francisco Department of Real Estate, Director of Real Estate, pursuant to the terms of the Master Lease.

E. Initial Term. Initial term of the Lease will be three (3) years (“Initial Term”), commencing on the final execution of the Lease. Subject to YBGC’s agreement in its sole discretion, Tenant may be granted a termination right which shall be determined during Lease negotiations.
F. **Extension Options.** Tenant will have two, two-year options to extend the Initial Term (the “Extension Options”, and together with the Initial Term, collectively, the “Term”), which shall be subject to exercise by Tenant in accordance with terms and conditions set forth in the Lease at rental rates to be negotiated by and between Tenant and the Conservancy.

G. **Base Rent.** Tenant will pay monthly Base Rent throughout the Term. Base Rent in the Extension Terms will be adjusted in accordance with the terms and conditions specified in the Lease.

H. **Security Deposit.** Tenant will be required to provide a Security Deposit in the amount of $1,000.00 (One Thousand and no/100 Dollars).

I. **Permitted Use.** All lawful cafe uses will be considered.

J. **Menu.** A varied menu of food and beverage with healthy sustainable options for families is recommended.

K. **Community.** The area in which the Premises is located primarily serves community members, City residents and families. It is adjacent to the Historic Carousel, Children’s Garden, Children's Creativity Museum, Ice Rink, Child Care Center and Bowling Alley, and is at the foot of the new pedestrian bridge in the new Moscone Center South building.

L. **Hours of operation** are expected to be as follows: Daily: 10:00 am to 5:30 pm

Note: The Conservancy shall reserve the right to modify this schedule at any time upon reasonable prior notice.

M. **Services.** The Conservancy shall be responsible for furnishing and Tenant shall be responsible for paying for trash and recycling. Landlord, through Moscone, will pay for Tenant’s reasonable use of electrical, sewer and water, which services are currently available within the Premises. Tenant shall furnish all other services and all FF&E, other than common area FF&E, if any, provided by Conservancy at Conservancy’s election, necessary for Tenant’s operation of the Premises.

N. **Alterations.** The cost of any alterations will be the sole responsibility of Tenant. Alterations must be approved by the Conservancy and must be through only licensed and insured contractors.

O. **Insurance.** Tenant will be required to maintain, at a minimum throughout the Term, insurance in the following coverages and amounts.

1. Worker’s Compensation, with Employer’s Liability limits not less than $1,000,000 each accident;

2. Commercial General Liability Insurance with limits not less than $2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

3. Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

4. Tenant will also be required to meet the Conservancy’s additional insurance and indemnity requirements, which will be included in the Lease and are outlined in Exhibit C. If the general commercial practice in the County and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, Tenant shall, at the Conservancy’s request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

P. **Possessory Interest Taxes.** Tenant will be responsible for paying any possessory interest taxes due in connection with the Lease.
Q. **Conservancy Requirements.** Tenant will be required to comply with all applicable Conservancy requirements including, but not limited to, the Non-Discrimination in Contracts and Benefits Ordinance, the First Source Hiring Ordinance, and the Health Care Accountability Ordinance, as more specifically described in the Lease, the Food Service Waste Reduction Ordinance, the Resource Conservation Ordinance, The City of San Francisco Composting Resolution, and the 75% City Department Landfill Diversion Resolution.

III. **Proposal Conditions**

A. **Minimum Requirements.** Proposals must demonstrate that they meet the minimum requirements listed below in order for the proposal to be considered. The determination of whether the minimum requirements have been met will be based on the materials included in the proposals. The selected Operator must:

1. Have operated/managed a successful retail or restaurant business for a period of at least two years within the last ten years. Success could be measured by gross proceeds sufficient to cover expenses as well as demonstrable business development education and mentorship provided to those employed in such ventures.

2. Demonstrate sufficient financial capacity and experience to operate the proposed business in accordance with the terms of the Lease. In particular, The Conservancy may review financial performance in other projects, in particular, whether a proposer is, and if a proposer’s other projects have been, solvent. The Conservancy reserves the right to request a credit report on, and additional financial information from, each proposer.

3. Be current in the payment of all applicable business tax, possessor interest tax, rentals, and assessments owed by the proposer, as well as current with all necessary filings with the United States Internal Revenue Service and California Franchise Tax Board with respect to non-profit status.

B. **Submittal Requirements.** The RFP must be made in accordance with the specifications set forth below. Any major deviation from these specifications may be cause for rejection of the submittal at the Conservancy’s sole discretion. Proposers must include the following materials in the submission:

1. **Questionnaire.** A completed and signed Enterprise Experience Qualifications Questionnaire included with this RFP as Exhibit A.

2. **Business Plan.** A comprehensive business plan, specific to the proposed use of the Premises, including: proposed staffing, hours of operations as noted, a marketing plan and a financing plan for anticipated start-up costs as well as on-going operations & maintenance expense forecasts.

3. **External Partners & Relationships in Venture.** A detailed list of established external partners or relationships, with financing and educational institutions, pre-employment training organizations, corporate sponsors, mentors, foundations and other sources of grants, government organizations, neighborhood outreach agencies, and counseling services. The list should include key contact information, dates of the relationship, and a thorough description of the relationship and the benefits provided to the venture as a result.

4. **Financial Statements.** In addition to the financial disclosure authorized in the Enterprise Experience Qualifications Questionnaire, Exhibit A, a proposer must submit audited financial statements of the proposer (personal and/or business, as appropriate), and all subsidiary units and parent organizations for the last five years. Assets shall be stated at book value, or if stated at market value, shall be supported by recent appraisals. If financial statements are unavailable (or unaudited), provide an explanation and at a minimum copies of the last two years of Form 199’s filed with the California Franchise Tax Board and a California R & TC Section 23701 filing.
5. **Improvements.** Describe through informal sketches or other graphic means the intended layout of café on the Premises. Presentation materials should be no larger than 8.5” x 11”.

6. **Sustainable Foods.** Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones. Proposals should clearly articulate how they will incorporate these sustainable food concepts into everyday operations of the café, and provide educational opportunities for both customers and the persons employed by the café, regarding sustainable foods.

7. **Recycling and Resource Conservation.** The Conservancy has set ambitious recycling and composting goals for the Conservancy and maximum participation in the City’s municipal composting program. In addition, the City has a Food Service Waste Reduction Ordinance which, in part, prohibits the use of polystyrene foam disposable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, and the Conservancy’s contractors and lessees. Proposers should clearly describe how they plan on meeting these goals and complying with City law.

8. **Bid Security.** Proposal security in the form of a forfeiture-type bond, a check certified by a responsible bank or a cashier’s check payable to the Conservancy in the amount of $1,000.00 (One Thousand and no/100 Dollars) (“Security”) shall be submitted with the proposal. If the successful proposer fails to or refuses to enter into the Lease within ninety (90) days after award based on the review of all qualified proposals, the Security accompanying the proposal will be forfeited to the Conservancy as liquidated damages. Additionally, if the proposer fails to or refuses to commence operations within the Premises by no later than ninety (90) days, subject to possible completion of tenant improvements, after Lease approval as described in Section II.D, the Security accompanying the proposal will be forfeited to the Conservancy as liquidated damages. The Security will be returned to all unsuccessful proposers within a reasonable period following award of the Lease to the successful proposer, or rejection of all proposals. The Security from the successful proposer shall be applied to and constitute the Security Deposit required under the Lease.

9. **Document Execution.** The Proposal and Enterprise Experience Qualifications Questionnaire must be signed in ink. A corporation shall execute these documents by its duly authorized officers in accordance with its corporate bylaws. A partnership shall execute these documents by its duly authorized partners in accordance with the partnership agreement. A limited liability company shall execute these documents by its duly authorized members or managers in accordance with its operating statement.

   If the proposer’s firm is a joint venture consisting of a combination of any of the above entities, each joint venture shall execute these documents. Anyone signing a proposal as an agent of a firm or entity shall submit legal evidence of his/her authority to do so with the proposal. Where necessary due to the number of signatories, copies of the signature pages of the documents may be executed and submitted by such additional signatories.

10. **Submission of Proposals.** A proposal submitted with incomplete or missing forms, without the required Security, or received after 11:00 am on November 4, 2019, will be deemed non-responsive and will be rejected. After a proposal has been submitted, no modifications to the proposal will be allowed.

Proposals may be mailed but must be received by the Conservancy on Monday, November 4, 2019 at 11:00 am and must be addressed to:
Scott Rowitz  
Executive Director  
Yerba Buena Gardens Conservancy  
5 Third Street, Suite 609  
San Francisco, CA 94103

All proposals, whether mailed or delivered in person, must be in sealed envelopes and clearly marked “Proposal for Café Lease CB3/Carousel”. Proposals sent by facsimile will not be accepted.

C. **Selection Criteria.** Proposals will be evaluated by a panel comprised of representatives of the Conservancy and other parties with relevant experience in commercial leasing, in accordance with the criteria and procedures identified herein. The opportunity to lease the Premises will be awarded to the proposer who best demonstrates a sound business acumen that will most likely lead to a sustainable, successful venture within the Premises. The above criteria will be evaluated on a point basis as outlined below:

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<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Business Plan</td>
<td>10</td>
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<tr>
<td>2. Experience in Café Management</td>
<td>20</td>
</tr>
<tr>
<td>3. Financial Capacity (of organization &amp; partners)</td>
<td>10</td>
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<tr>
<td>4. Menu Design and Integration of Sustainable Food Concepts</td>
<td>30</td>
</tr>
<tr>
<td>5. Quality of External Partnerships (proposed and existing)</td>
<td>20</td>
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<tr>
<td>6. Monthly Base Rent Bid</td>
<td>10</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
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B. **LBE Participation Bonus**

The following bonus points will be in effect for the selection of the pool (to the extent applicable) for any proposers whom are certified by the City’s Contract Monitoring Division as a Local Business Enterprise (“LBE”), or joint venture partners who are certified as a LBE at the time that the proposal is submitted. The application of the bonus points shall be as follows:

1. Two (2) bonus points to a joint venture with a LBE participation that equals or exceeds 35%, but is under 40%;
2. Five (5) bonus points to a joint venture with LBE participation that equals or exceeds 40%; and
3. Ten (10) bonus points to a LBE or a joint venture between or among LBEs.

C. **LBE Certification**

If you are certified as a Local Business Enterprise (LBE) by the San Francisco CMD, attach a copy of your certification letter from the CMD.
D. Grounds for Rejection. Any false, incomplete, or unresponsive statements in connection with a proposal may be cause for its rejection at the Conservancy’s discretion. Any judgment as to the significance of any falsity, incompleteness, or unresponsiveness associated with a proposal shall be the prerogative of the Conservancy and its judgment shall be final. The Conservancy reserves the right to waive minor defects or irregularities in any proposal.

E. Tour of the Premises. It is the sole responsibility of the proposers to attend a tour of the Premises to become familiar with the Premises’ physical conditions and limitations, perform their own independent investigation, and become acquainted with the details requisite to their proposed use of the Premises. To facilitate this process, the Conservancy will conduct a tour of the Premises. If RFP interest is significant, Conservancy may elect to conduct additional tours. Immediately following a tour, the Conservancy will provide proposers with an opportunity to ask questions about the business opportunity and comment on the content of the RFP. All questions, comments or non-substantive suggested changes to the RFP will be noted and taken into consideration by the Conservancy. Following the tour, the Conservancy will issue any necessary addenda to the RFP. Such addenda will be faxed or e-mailed to all proposers present at the tour at the facsimile number and e-mail address provided to the Conservancy. The tour of the Premises will be on Thursday, October 17th at 2:00 pm. The Conservancy will not guarantee full and complete access at any other time, however individual accommodations can be made, with prior request to Scott Rowitz.

F. Selection Process. This RFP will be advertised on the Conservancy’s webpage: ybgconservancy.org. Printed copies of this RFP may be obtained at the Conservancy Office for a fee of $20.00. The submission deadline for proposals is 11:00 am local time on November 4, 2019. The review panel will evaluate each proposal on the basis of the selection criteria set forth above. The Conservancy reserves the right to request clarification or additional information from proposers. It is likely that the Conservancy will require a brief presentation from the highest initially ranked proposers, to include a tasting of the various food and beverage offerings.

G. Award of Lease. After selection of the successful proposer, the right to negotiate a Lease will be awarded with approval of the Lease being subject to approval by the Conservancy Board of Directors and the City and County of San Francisco Department of Real Estate, each in their sole and absolute discretion. If the successful proposer does not execute the Lease or occupy the Premises within ninety (90) days, the Conservancy shall retain the bid security, and the Conservancy shall have the right to enter into the Lease with any other qualified proposer that participated in the RFP process.

IV. Terms and Conditions.

A. Invitation to Submit Proposals; No Obligations by Conservancy to Contract. This RFP is only an invitation to submit proposals and does not commit the Conservancy in any way to enter into a lease agreement. In addition, the issuance of this RFP does not obligate the Conservancy to pay any costs whatsoever incurred by anyone in connection with this RFP, including without limitation, (a) the preparation and presentation of documents, (b) any supplements or modifications of this RFP or (c) discussions with the Conservancy or other party arising out of or relating to this RFP or the subject matter of this RFP.

B. Reservation of Rights by Conservancy. The Conservancy expressly reserves the right at any time and from time to time, and for its own convenience, in its sole discretion, to do any or all of the following:

1. waive or correct any defect or technical error in any proposal or procedure, as part of the RFP or any subsequent negotiation process;
2. reject any and all proposals, without indicating any reason for such rejection;
3. rescind or reissue an RFP;
4. select a tenant by any other means;
5. modify the selection procedure;
6. extend deadlines for accepting proposals, or request amendments to proposals after expiration of deadlines, by mailing such change to each proposer; and
7. determine that no project will be pursued.

C. **Proposer Certification.** By submitting a proposal, the proposer certifies to the Conservancy that (i) the only persons or parties interested in the proposal as principals are those named therein; (ii) the proposal is tendered without collusion with any other person, including partnerships, firms and corporations; (iii) the proposer has not paid nor agreed to pay and will not pay or agree to pay any fee or commission, or any other thing of value contingent on the award of a lease agreement for the Premises to any Conservancy employee or official, or to any contracting consultant hired by the Conservancy for purposes of this project, or to any agent of the Conservancy; (iv) if the proposal is accepted, proposer will execute a Lease for the Premises on or before the deadline specified by the Conservancy; and (v) the proposer understands and accepts all conditions and requirements contained in this RFP.

D. **The Conservancy-City Lease.** The Conservancy leases Yerba Buena Gardens, including the Premises, pursuant to a lease agreement effective as of June 30, 2019, between the Conservancy and the City and County of San Francisco (the “Master Lease”). The Lease for the Premises shall be subject to all the terms and provisions of the Master Lease applicable to the Tenant’s use of the Premises.

E. **Sunshine Ordinance.** This RFP is subject to the City and County of San Francisco’s Sunshine Ordinance. NOTICE REGARDING REGULATIONS FOR PUBLIC RECORDS, CHAPTER 67.24(e) OF THE SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE):

"Contracts, Bids and Proposals. Contracts, Respondents' bids, responses to requests for proposals and all other records of communications between the [Conservancy] and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or an organization's net worth or other proprietary financial data submitted for Proposal for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and Respondents shall be advised that information provided which is covered by this subdivision (of the ordinance) will be made available to the public upon request."

Proposers must mark any net worth or other proprietary financial data in submissions and subsequent requests for information as part of the award process, as "CONFIDENTIAL" OR "PROPRIETARY" if the proposer wants such data to remain undisclosed if they are not awarded a contract. The Conservancy shall not in any way be liable or responsible for the disclosure of any such records including, without limitation; those so marked if disclosure is deemed to be required by law or by an order of the court.

The Conservancy will not under any circumstances be responsible for any claims, damages, liabilities or losses incurred by a proposer or any other person or entity because of the release of such financial information.

F. **Return of Materials.** The Conservancy will not return documents or any information submitted in connection with a proposal hereto unless the proposer has properly designated financial portions of the proposal as confidential at the time of submittal in accordance with the terms above and has then clearly requested that such information be returned, and provided that the Conservancy is legally permitted to return such documents.
G. **Right to Disqualify.** The Conservancy reserves the right to disqualify any proposer to this RFP on the basis of any real or apparent conflict of interest that is disclosed by the proposals submitted or other data available to the Conservancy. This disqualification is at the sole discretion of the Conservancy.

H. **Lease Approvals.** The Lease will require the approval of the Conservancy Board of Directors, in the Conservancy’s sole and absolute discretion, and the Lease is also subject to the approval by the City and County of San Francisco Department of Real Estate, Director of Real Estate, pursuant to the terms of the Master Lease. As part of the approval process, the successful proposer may be required, at its sole expense, to prepare and provide documents or exhibits and make presentations associated with the Lease as required by such bodies prior to the execution of the Lease.

V. **Miscellaneous Requirements.**

A. All proposers shall comply with the conditions, requirements, and specifications contained herein, with any departure constituting sufficient cause for rejection of the proposal, subject to Conservancy’s discretion.

B. No proposal will be accepted from any person, firm, partnership, corporation or other entity that is in arrears upon any obligation to the Conservancy or that otherwise may be deemed irresponsible, unreliable or unqualified by the Conservancy.

C. Only one proposal will be accepted from any one person, firm, partnership, corporation or affiliated entities; however, several alternatives may be included in one submittal.

D. All proposals must be firm for a minimum period of ninety (90) days following the opening of the proposals.

E. The information presented in this RFP is provided solely for the convenience of the proposers and other interested parties. It is the responsibility of the proposers and other interested parties to assure themselves that the information contained in this RFP is accurate and complete. The Conservancy or their advisors provide no assurances pertaining to the accuracy of the information in this RFP.

F. The proposer shall not obtain by its proposal to this RFP, any claim against the Conservancy, or any Conservancy property, by reason of any or all of the following: any aspect of this RFP, the selection process or any part thereof, any informalities of defects in the selection process, the rejection of any offer or all such offers, the acceptance of any offer, entering into any lease, the failure to enter into such lease, any statement, representations, acts or omissions of the Conservancy, the exercise of any discretion set forth in or concerning any of the foregoing; and any other matters arising out of all or any of the foregoing.

Questions regarding this RFP may be directed to Scott Rowitz at (415) 509-2393.
Proposer acknowledges receipt of this RFP, and Exhibits A through C, and hereby submits the attached proposal for consideration under the terms and conditions outlined herein.

Authorized Signatory(ies) for proposer, dated this ___ of ____________, 2019:

__________________________________
By: ________________________________
As: ________________________________________
For: ________________________________________

__________________________________
By: ________________________________
As: ________________________________________
For: ________________________________________

__________________________________
By: ________________________________
As: ________________________________________
For: ________________________________________

Monthly base rent bid by proposer: $ _____________
Exhibit A

Enterprise Experience and Qualifications Questionnaire

Name of Respondent: ______________________________________________

Telephone No.: ______________ Fax No.: _____________________________

Email Address: ___________________________________________________

Mailing Address: _________________________________________________

Type of Entity (corporation, joint venture, etc.): ______________________

Full Name, Title and Contact Information for all principal personnel of Respondent:

Name: ______________________________ Title: _________________________
Address: _________________________________________________________

Name: ______________________________ Title: _________________________
Address: _________________________________________________________

Name: ______________________________ Title: _________________________
Address: _________________________________________________________

Name: ______________________________ Title: _________________________
Address: _________________________________________________________

Name: ______________________________ Title: _________________________
Address: _________________________________________________________

I. Respondent’s Financial Information (attach separate sheets):

a) In addition to audited financial statements requested in the RFQ, annual reports, financial
ratings, and other supportive information indicating the financial condition of the
Respondent, all subsidiary units and the parent organization, for the last five years.

b) Names, addresses and telephone numbers of banks, financial and lending institutions and
individuals who have provided financial assistance to the Respondent or who have
participated financially in any of the Respondent’s major projects during the past five
years.

c) Properly certified statements by the appropriate officer or other individual attesting to the
accuracy of and completeness of all financial information submitted.
II. Respondent’s Team Qualifications & Experience (attach separate sheets)

a) Names, addresses, telephone, facsimile numbers and e-mail addresses of all Respondent team members and entities, including a project organization chart indicating key personnel, responsibilities, and relationships within the Respondent’s organization and the designated lead for project coordination.

b) Names and qualifications of all members of Respondent’s Board of Directors if applicable.

c) Names and qualifications of members of Respondent’s staff who Respondent currently believes will be involved with the project.

d) Names, employers, addresses, and qualifications of all known professional consultants to be used on the project (California state and local licenses for professionals and contractors will be required as mandated by law). In addition, identify the expected role for each professional consultant (i.e. – designer, planner, public relations, business consultant, career counselor, etc.).

e) Name and address of Respondent’s insurance carrier and description of Respondent’s proposed insurance coverage for the project (such coverage must comply with YBGC requirements).

f) Completed non-collusion affidavit form and corporate certificate form.

III. Litigation Information (attach separate sheets)

Each Respondent shall provide a complete description of the status and resolution of any pending or prior litigation (within the past five years) involving the activities of any of Respondent’s staff, team members, or team members’ staff, to the extent that the subject matter of the litigation is material to the evaluation of the submittal. Examples of litigation issues material in this instance include, but are not limited to, fraud and breach of contract.
Exhibit B

Plan of Premises and Common Area

[See Attached]
Exhibit C

Indemnification and Insurance Requirements

INDEMNIFICATION

1. Indemnification.

Subject to Section 4 below, Tenant/Operator shall indemnify, defend, and hold harmless (“Indemnify”) the City and County of San Francisco (“City”), including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City (collectively, the “Indemnified Parties”) from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City’s interest therein, arising in connection with Tenant/Operator’s use of or operation on the Premises, including without limitation, the occurrence or existence of any of the following: (i) any accident, injury to, or death of persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to, or death of persons or loss of or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Tenant/Operator or any of Tenant/Operator’s Agents or Invitees; (iii) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises, or any part thereof by Tenant/Operator or any of Tenant/Operator’s Agents or Invitees; (iv) any use, non-use, possession, occupation, operation, maintenance, management, or condition of property near or around the Premises by Tenant/Operator or any of Tenant/Operator’s Agents or Invitees; (v) any design, construction or structural defect relating to any improvements constructed by or on behalf of Tenant/Operator, and any other matters relating to the condition of the Premises caused by Tenant/Operator or any of its Agents or Invitees; (vi) any failure on the part of Tenant/Operator or its Agents, as applicable, to perform or comply with any of the terms of this Agreement or with applicable Laws; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant/Operator or any of its Agents or Invitees; and (viii) any civil rights actions with respect to the Premises due to Tenant/Operator’s operation of the Premises other than in accordance with this Agreement. Notwithstanding the foregoing, however, Tenant/Operator shall not be required to Indemnify the Indemnified Parties (i) in the event that any indemnification required hereunder is held to be void or otherwise unenforceable under any applicable Laws or (ii) against Losses to the extent, and only to such extent, caused by the gross negligence or willful misconduct of the Indemnified Party being so indemnified, or caused by third party claims arising from the condition or use of the Premises prior to the effective date of the Agreement, and to the extent not arising from the negligence or willful misconduct of Tenant/Operator or any of its Agents or Invitees. If any action, suit, or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant/Operator is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant/Operator of such action, suit, or proceeding. Tenant/Operator may, and upon the request of such Indemnified Party will, at Tenant/Operator’s sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant/Operator and reasonably approved by such Indemnified Party in writing.

2. Immediate Obligation to Defend.

Tenant/Operator specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 1, even if such allegation is or may be groundless, fraudulent, or false, and such obligation arises at the time such claim is tendered to
Tenant/Operator by an Indemnified Party and continues at all times thereafter; provided, however, that in the event of a final judgment or arbitration decision determining that all or a portion of the claim fell outside the scope of the indemnity, City shall reimburse Tenant/Operator for that portion of costs, fees, and expenses expended by Tenant/Operator hereunder that was determined to be outside the scope of this indemnity. Notwithstanding the foregoing, in the event of a final judgment or arbitration decision determining that no Indemnified Party is entitled to the indemnification provided in Section 1 above, and provided that the provision of the defense of such Indemnified Party is not provided by any policy of insurance that Tenant/Operator is required to carry under the terms of this Agreement (or would not have been provided but for Tenant/Operator’s default in its obligations to maintain such insurance), then City shall reimburse Tenant/Operator for the actual out-of-pocket expenses incurred by Tenant/Operator in connection with the defense of the Indemnified Party following Tenant/Operator’s notification of such amounts owed, which notification shall be accompanied by detailed paid statements supporting such amounts.

3. **Defense.**

Tenant/Operator shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant/Operator’s own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant/Operator shall fail, however, in City’s reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use the City Attorney or hire outside counsel, at Tenant/Operator’s sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Tenant/Operator of an invoice therefor.

4. **Not Limited by Insurance.**

None of the other provisions of this Agreement shall limit the Tenant/Operator indemnity obligations under this Agreement.

5. **Survival.**

Tenant/Operator’s indemnity obligations under this Agreement shall survive the expiration or sooner termination of this Agreement.

6. **Definitions.**

As used herein, the term “Loss” or “Losses” means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards, and costs and expenses, (including, without limitation, attorneys’ fees and costs and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise. Notwithstanding anything to the contrary contained herein, in no event shall Losses include or shall a party be liable for any indirect, special, consequential, or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits, or loss of goodwill) regardless of whether such party has been informed of the possibility of such damages or is negligent. It is understood and agreed that for purposes of this Agreement, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the limitation set forth in the preceding sentence.
As used herein, the term “Invites” means the customers, patrons, invitees, guests, permittees, contractors, and subcontractors of Tenant/Operator.

As used herein, the term “Agents” means the members, officers, directors, commissioners, employees, agents and contractors of Tenant/Operator or other person or entity, and their respective heirs, legal representatives, successors and assigns.

INSURANCE

Property and Liability Coverage.

As used herein, terms such as “necessary,” “require,” “required,” “specify,” “acceptable,” “satisfactory,” “approval,” “approved,” and words of similar import are deemed to be qualified by the words “reasonable” or “reasonably,” as the context may be. As used herein, “commercially reasonably available” means commercially reasonably available at a commercially reasonable cost.

(a) Tenant/Operator Insurance Requirements. Tenant/Operator shall, at no cost to City, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant/Operator (A) is in possession of the Premises or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Commercial General Liability Insurance. Tenant/Operator shall maintain “Commercial General Liability” insurance policies with coverage at least as broad as ISO form CG 00 01 04 13, insuring against liability for bodily injury (including death), property damage, personal and advertising liability, and the products-completed operations hazard, and with “insured contract” coverage as to the indemnity in Section 21.1 and as to any other indemnity of City by Tenant/Operator, with respect to occurrences upon the Premises (including the Improvements), and, to the extent commercially reasonably available, operations incidental or necessary thereto, such insurance to afford protection in the following amounts: (A) during construction in an amount not less than Five Million Dollars ($5,000,000) each occurrence, affording coverage for the risks of independent contractors, explosion, collapse, underground (XCU), with an umbrella policy of Ten Million Dollars ($10,000,000); (B) from and after Completion in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) general aggregate, with an umbrella policy of Two Million Dollars ($2,000,000) (the “Umbrella Policy”); (C) if Tenant/Operator has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the premises, or is selling or distributing food products on the Premises, then from and after Completion, liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (D) Tenant/Operator shall require any Tenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Tenant/Operator’s policies.
(ii) **Workers’ Compensation Insurance.** During any period in which Tenant/Operator has employees as defined in the California Labor Code, Tenant/Operator shall maintain policies of workers’ compensation insurance, including employer’s liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars ($1,000,000) each accident (except that such insurance in excess of One Million Dollars ($1,000,000) each accident may be covered by a so-called “umbrella” or “excess coverage” policy, covering all persons employed by Tenant/Operator in connection with the use, operation, and maintenance of the Premises and the Improvements.

(iii) **Business Automobile Insurance.** Tenant/Operator shall maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Tenant/Operator’s use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than One Million Dollars ($1,000,000) each accident.

(iv) **Environmental Liability Insurance.** During the course of any Hazardous Materials Remediation activities, Tenant/Operator shall maintain, or require by written contract that its remediation contractor or remediation consultant shall maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(v) **Professional Liability.** Tenant/Operator shall require by written contract that professionals it engages maintain professional liability (errors and omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and Two Million Dollars ($2,000,000) in the aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant/Operator’s activities under this Agreement, with a deductible or self-insured retention reasonably approved by City (such approval not to be unreasonably withheld, conditioned, or delayed), with such insurance to be maintained during any period for which such professional services are being performed and for five (5) years following the completion of any such professional services.

(vi) **Other Insurance.** Tenant/Operator shall obtain such other insurance as is reasonably requested by City’s Risk Manager and memorialized in a mutually-agreed amendment to this Agreement and as is customary for a comparable civic and cultural center in the San Francisco Bay area.

(b) **General Requirements.** All insurance required under this Agreement:

(i) As to liability insurance, shall name as additional insureds the following: “THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE YERBA BUENA GARDENS CONSERVANCY AND ITS DIRECTORS, EMPLOYEES AND AGENTS.” Tenant/Operator shall use commercially reasonable efforts to cause such additional insured endorsements to be issued on Forms CG 2037 04 13 and CG 2010 04 13.
(ii) Shall be carried under a valid and enforceable policy or policies issued by insurers that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to issue such insurance within the State of California including, but not limited to, non-admitted insurers;

(iii) Shall be evaluated by City for adequacy not less frequently than every five (5) years. Following consultation with Tenant/Operator, City may, upon not less than ninety (90) days prior written notice, require Tenant/Operator to increase the insurance limits for all or any of its umbrella liability policies if in the reasonable judgment of the City’s Risk Manager it would be commercially reasonable to do so, when compared with facilities similar to the Premises in the San Francisco Bay area, to maintain limits substantially greater than the amounts carried by Tenant/Operator with respect to risks associated with use of the Premises. If the City’s Risk Manager determines that insurance limits required under this Section may be decreased in light of commercial practice in the San Francisco Bay area and the risks associated with use of the Premises, City shall notify Tenant/Operator of such determination, and Tenant/Operator shall have the right to decrease the umbrella liability insurance required under this Agreement accordingly. In any such event, Tenant/Operator shall promptly deliver to City a certificate evidencing such new insurance limits and meeting all other requirements under this Agreement with respect thereto.

(iv) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that except with respect to policy limits, the insurance applies separately to each insured against whom suit is brought (separation of insureds);

(v) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages paid by the policies required by Sections 22.1(b)(i) and (ii);

(vi) Shall be subject to the approval of City, which approval shall be limited to whether or not such insurance meets the terms of this Agreement and shall not be unreasonably withheld, conditioned or delayed; and

(vii) Except for professional liability insurance which shall be maintained in accordance with Section 22.1(a)(v), if any of the insurance required hereunder is provided under a claims-made form of policy, Tenant/Operator shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Agreement, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Agreement.

(c) Certificates of Insurance; Right of to Maintain Insurance. Tenant/Operator shall furnish City certificates with respect to the policies required under Section 22.1(a), together with (if City so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. Tenant/Operator shall provide City with thirty (30) days’ prior written notice of cancellation for
any reason or intended non-renewal, and shall provide City with notice of reduction in coverage limits within thirty (30) days of Tenant/Operator’s knowledge of such event. If at any time Tenant/Operator fails to maintain the insurance required pursuant to Section 22.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days’ written notice to Tenant/Operator and opportunity to cure, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within thirty (30) days following demand, Tenant/Operator shall reimburse City for all reasonable premiums so paid by City, together with all reasonable costs and expenses in connection therewith and interest thereon at the Default Rate.

**Release and Waiver.**

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 22.1(a)(i), (ii) or (v) to the extent that such losses and damages are paid by an insurer.