



### **Notice Requesting Proposals for Food/Beverage Vendor Company**

The City of San Luis Obispo is requesting sealed proposals for a food and beverage vendor company for the Mission Plaza Café Kiosk.

All firms interested in receiving further correspondence regarding this Request for Proposals (RFP) will be required to complete a free registration using BidNet Direct ([www.bidnetdirect.com/](http://www.bidnetdirect.com/)).

All proposals must be received by the City in a sealed envelope or via BidNet Direct by [DATE] at 3 p.m., when they will then be opened electronically via BidNet Direct on the proposal end date and time.

The preferred method for bid submission is electronic via BidNet Direct. However, if you wish to submit a paper copy, please submit it in a sealed envelope plainly marked "Proposal for Food and Beverage Vendor Company," to the Department of Finance, at 990 Palm Street, San Luis Obispo, CA, 93401, at or before 3pm on [DATE]

Project packages and additional information may be obtained at the City's BidNet Direct website at [www.BidNetDirect.com](http://www.BidNetDirect.com).

For technical help with BidNet Direct please contact BidNet Direct tech support at 800-835-4603.



## TABLE OF CONTENTS

A. INTRODUCTION.....	2
B. SCOPE OF WORK.....	3
C. PROJECT SCHEDULE .....	4
D. PROJECT BUDGET .....	<b>Error! Bookmark not defined.</b>
E. GENERAL TERMS AND CONDITIONS .....	5
F. SPECIAL TERMS AND CONDITIONS.....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
G. FORM OF AGREEMENT .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
H. INSURANCE REQUIREMENTS.....	<b>ERROR! BOOKMARK NOT DEFINED.</b>

DRAFT

## **A. INTRODUCTION**

---

### **Background:**

The City of San Luis Obispo is pleased to offer an opportunity for a well-qualified business entity to operate and maintain a café kiosk that will serve as a vibrant community hub in Mission Plaza. Mission Plaza, owned and operated by the City of San Luis Obispo, is located in the heart of downtown San Luis Obispo and serves as a dynamic center for arts, culture, history and community engagement. The Mission Plaza Enhancement Project is currently under construction and is scheduled to be completed in Fall 2025. The project will feature a new 138 sq ft interior café kiosk and an approximately 885 sq ft outdoor dining area. Mission Plaza hosts between 60 and 90 events per year, attracting attendances between 100 and 3000 per event including:

- Concerts in the Plaza (summer season)
- Holiday in the Plaza
- Children's Day in the Plaza
- Pride in the Plaza
- Marketplace Events
- Awareness Events
- Cultural Events
- Graduations
- Weddings

Proposers must demonstrate the ability to operate a high-quality food and beverage business, clearly articulate achievable plans for an innovative and profitable operation and be in full compliance with applicable laws and regulations.

### **Criteria for Proposal:**

In responding to this request for proposal, the proposer should provide the following:

1. The café kiosk will be constructed by the City to a degree for the selected vendor to then establish additional upgrades for the interior to be fully operational. Please provide details on what types of internal site improvements your establishment will plan for the interior of the café kiosk based on the attached plans. Provide information on the types of improvements needed and an approximate cost for the improvements to operate the service. Include the timeline for design, permits, and construction, as well as the anticipated opening for services.
2. Ability to obtain a business license from the City of San Luis Obispo.
3. Indicate the proposed hours of operation for the food/beverage service to provide community opportunities for food and beverage and activation of the plaza area.
4. Proposer must comply with California Health and Safety Code's regulations for food vendors and San Luis County Health code requirements.
5. There is potential for the operator to be approved for the sale of alcohol. Please provide a description of

alcohol service management in accordance with San Luis Obispo County and Alcohol Beverage Control (ABC) license requirements and regulations.

6. Ability to obtain necessary insurance certificates to cover general liability and alcohol liability, if a license to serve alcohol is planned by the proposer.
7. Ability to meet the qualifications to obtain the appropriate alcohol license (e.g., Type 41) to serve alcohol through Alcohol Beverage Control (ABC).
8. Describe the background and experience of the vendor in providing food and beverage services. Indicate the amount of experience in alcohol sales, if applicable.
9. Provide a sample menu of the types of food that will be served and a price range. Menu may include items for breakfast, lunch, afternoon snacks and dinner which feature options to meet the wide variety of downtown clientele from locals to tourists to special events. Vendor has the ability to determine hours of operation or support during scheduled special events.
10. Describe how the food service areas will be maintained and cleaned and a high degree of customer service attained.
11. Describe how your business will operate sustainably through a commitment to proper waste separation, reusable materials, and potential operations that include less reliance on fossil fuels.
12. Provide three references with direct knowledge of the proposer's ability to provide the service being proposed.
13. The City will consider a long-term lease agreement with the proposer, subject to negotiation of terms agreeable to both parties. Financial compensation for improvements made on site to comply with health and safety regulations may be negotiated as a part of the agreement. Proposals should indicate preliminary terms for the agreement to be given to the City, and length of the agreement.

## **B. SCOPE OF WORK**

---

Lessee will be responsible for maintaining daily cleaning of the concession kiosk, surrounding area of the kiosk, and outdoor seating area. This includes proper trash disposal and securing outdoor seating area (tables and chairs) on a daily basis. Lessee is responsible for obtaining all relevant City and County health permits and licenses. Lessee will not be responsible for the maintenance of the on-site restrooms but will be required to notify the relevant City staff of any issues related to vandalism, cleanliness or maintenance of the on-site restrooms and outdoor dining area as needed.

Included in the RFP is the opportunity for the proposed Lessee to design and build the interior finishing work of the Kiosk to ensure appropriate operations suitable to the submitted business plan.

City will provide water, 100-amp 120/240v single phase 3-wire panel, no circuits provided, park trash containers and dumpster (see **Exhibit A** for location), maintain pedestrian access areas around the concession area, and service the adjacent restrooms.

City improvements for the café kiosk will include: (refer to [Appendix A](#) for detailed construction plan set)

- 138 square feet interior
- Walls to be open steel stud on 6-inch concrete curb, no drywall or insulation
- Floor to be densified sealed concrete, slope to center floor drain
- Open ceiling to roof. Height at top of wall 11'-4"
- Door hardware
- All fixed windows with coiling counter door at each
- Up to three water connection points
- Floor drain with trap primer at center of floor
- 2 floor sinks
- 35 gallons per minute (GPM) floor mounted grease interceptor
- 1" water service with 3-each ¾" connections at walls.
- Exterior sheet metal serving countertops
- Exterior lighting
- Exterior trash enclosure for sole use by tenant
- No fire sprinklers or fire protection
- No hood ventilation
- Electrical Service: 100 amp 120/240v single phase 3 wire panel
  - ¾" conduit from 4 junction boxes under slab to electric panel. No circuits provided
  - ¾" conduit from 3 junction boxes over head to AT&T panel. No data provided
  - No security or fire alarm

City improvements for the outdoor seating area (885 sf) will include:

- 36" x 36" Dining Height Outdoor Tables
  - initial order of 6 tables and 24 chairs
- Decorative picket fence enclosure: 42" in height
- Trash receptacles

Lessee improvements of interior of concession kiosk will include:

- Vision for workspace layout
- Walls
- Flooring
- Service Windows
- Interior counters
- Storage/ Cabinets
- Appliances
- Gas heaters (portable, non-fixed) are allowed in outdoor seating area

## C. PROJECT SCHEDULE

---

Preliminary Schedule	Tasks
Advertise RFP	<ul style="list-style-type: none"><li>• May 22, 2025</li></ul>
Questions Deadline	<ul style="list-style-type: none"><li>• June 23, 2025</li></ul>
Bid Closed	<ul style="list-style-type: none"><li>• June 26, 2025</li></ul>
Proposal Evaluation	<ul style="list-style-type: none"><li>• Week of July 15, 2025</li></ul>

Interview Finalists	<ul style="list-style-type: none"> <li>• July 21-31, 2025</li> </ul>
Award Contract	<ul style="list-style-type: none"> <li>• August 2025</li> </ul>
TI Schedule	<ul style="list-style-type: none"> <li>• TBD by Vendor and Public Works</li> </ul>

## D. GENERAL TERMS AND CONDITIONS

---

### PROPOSAL REQUIREMENTS

1. **Requirement to Meet All Provisions.** Each individual or firm submitting a proposal (bidder) shall meet all the terms, and conditions of the Request for Proposals (RFP) project package. By virtue of its proposal submittal, the bidder acknowledges agreement with and acceptance of all provisions of the RFP specifications.
2. **Proposal Submittal.** Each proposal must be submitted on the form(s) provided in the specifications and accompanied by any other required submittals or supplemental materials. Proposal documents shall be submitted electronically via BidNet. However, if you can't submit electronically, please send your bid copy in a sealed envelope to the Department of Finance, City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA, 93401. To guard against premature opening, the proposal should be clearly labeled with the proposal title, project number, name of bidder, and date and time of proposal opening. No FAX submittals will be accepted.
3. **Insurance Certificate.** Each proposal must include a certificate of insurance showing:
  - a. The insurance carrier and its A.M. Best rating.
  - b. Scope of coverage and limits.
  - c. Deductibles and self-insured retention.

The purpose of this submittal is to generally assess the adequacy of the bidder's insurance coverage during proposal evaluation; as discussed under paragraph 12 below, endorsements are not required until contract award. The City's insurance requirements are detailed in Section E.

- 4.
5. **Proposal Withdrawal and Opening.** A bidder may withdraw its proposal, without prejudice prior to the time specified for the proposal opening, by submitting a written request to the Director of Finance for its withdrawal, in which event the proposal will be returned to the bidder unopened. No proposal received after the time specified or at any place other than that stated in the "Notice Inviting Bids/Requesting Proposals" will be considered. All proposals will be opened and declared publicly. Bidders or their representatives are invited to be present at the opening of the proposals.
6. **Submittal of One Proposal Only.** No individual or business entity of any kind shall be allowed to make or file, or to be interested as the primary submitter in more than one proposal, except an alternative proposal when specifically requested; however, an individual or business entity that has submitted a sub-proposal to a bidder submitting a proposal, or who has quoted prices on materials to such bidder, is not thereby disqualified from submitting a sub-proposal or from quoting prices to other bidders submitting proposals.

7. **Communications.** All timely requests for information submitted in writing will receive a written response from the City. Telephone communications with City staff are not encouraged but will be permitted. However, any such oral communication shall not be binding on the City.

#### **CONTRACT AWARD AND EXECUTION**

8. **Proposal Retention and Award.** The City reserves the right to retain all proposals for a period of 60 days for examination and comparison. The City also reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations. See the "special terms and conditions" in Section C of these specifications for proposal evaluation and contract award criteria.
9. **Competency and Responsibility of Bidder.** The City reserves full discretion to determine the competence and responsibility, professionally and/or financially, of bidders. Bidders will provide, in a timely manner, all information that the City deems necessary to make such a decision.
10. **Contract Requirement.** The bidder to whom award is made (Lessee) shall execute a written contract/vendor lease agreement with the City within ten (10) calendar days after notice of the award. The contract shall be made in substantially the same form adopted by the City and incorporated in these specifications.

#### **CONTRACT PERFORMANCE**

1. The City's contract terms and conditions that Lessee will be expected to execute and be bound by are attached hereto as Exhibit B.

## E. SPECIAL TERMS AND CONDITIONS

---

1. **Contract Award.** Subject to the reservations set forth in Paragraph 9 of Section D (General Terms and Conditions) of these specifications, the contract will be awarded to the most qualified and appropriate business entity to fulfil the needs of service.
2. **Sales Tax Reimbursement.** For sales occurring within the City of San Luis Obispo, the City receives sales tax revenues. Therefore, for bids from retail firms located in the City at the time of proposal closing for which sales tax is allocated to the City, 1% of the taxable amount of the bid will be deducted from the proposal by the City in calculating and determining the lowest responsible, responsive proposer.
3. **Labor Actions.** In the event that the successful proposer is experiencing a labor action at the time of contract award (or if its suppliers or subLessees are experiencing such a labor action), the City reserves the right to declare said proposer is no longer the lowest responsible, responsive proposer and to accept the next acceptable low proposal from a proposer that is not experiencing a labor action, and to declare it to be the lowest responsible, responsive proposer.
4. **Failure to Accept Contract.** The following will occur if the proposer to whom the award is made (Lessee) fails to enter into the contract: the award will be annulled; any bid security will be forfeited in accordance with the special terms and conditions if a proposer's bond or security is required; and an award may be made to the next lowest responsible, responsive proposer who shall fulfill every stipulation as if it were the party to whom the first award was made.
5. **Contract Extension.** The term of the contract may be extended by mutual consent for an additional two-years, and annually thereafter, for a total of four years.
6. **Non-Exclusive Contract.** The City reserves the right to purchase the items listed in the Detail Proposal Submittal Form, as well as any supplemental items, from other vendors during the contract term.
7. **Delivery.** Prices quoted for all supplies or equipment to be provided under the terms and conditions of this RFP package shall include delivery charges, to be delivered F.O.B. San Luis Obispo by the successful proposer and received by the City within 90 days after authorization to proceed by the City.
8. **Start and Completion of Work.** Work on this project shall begin immediately after contract execution and shall be completed within 90 calendar days thereafter, unless otherwise negotiated with City by mutual agreement.
9. **Change in Work.** The City reserves the right to change quantities of any item after contract award. If the total quantity of any changed item varies by 25% or less, there shall be no change in the agreed upon unit price for that item. Unit pricing for any quantity changes per item in excess of 25% shall be subject to negotiation with the Lessee.



10. **Submittal of References.** Each proposer shall submit a statement of qualifications and references on the form provided in the RFP package.
11. **Statement of Contract Disqualifications.** Each proposer shall submit a statement regarding any past governmental agency bidding or contract disqualifications on the form provided in the RFP package.

DRAFT

## PROPOSAL CONTENT

1. **Proposal Content.** Your proposal must include the following information:

### ***Submittal Forms***

- a. Proposal submittal summary.
- b. Certificate of insurance.
- c. References from at least three landlords, property owners, etc. for whom you have provided similar services.

### ***Qualifications***

- d. Experience of your business and those of employees in offering the relevant services to the Scope of Services outlined and described in the request.
- e. Experience and qualifications of the individuals who would be assigned to this concession, including any sub-Lessee, with their corollary experience highlighted and specific roles in this concessionaire clearly described.
- f. Statement and explanation of any instances where your business has been removed from a previous restaurant location.

### ***Work Program***

- g. Detailed business plan for operating a kiosk/concessionaire and providing services at the Mission Plaza kiosk. Describe how your business will work with Special Events held in Mission Plaza, including, for example, whether your business will support the events or close operations during the events
- h. If alcohol sale is proposed, provide alcohol service management plan.
- i. Detailed operation plan and service schedule.
- j. Estimated daily and weekly hours of operation.
- k. Detailed budget by service including Lessee Improvements and lease payments.
- l. Timeline for implementation.
- m. Services or data to be provided by the City.
- n. Services and deliverables provided by the Lessee.
- o. Description of assumptions critical to development of the response which may impact cost or scope

### ***Requested Changes to Terms and Conditions***

- p. ***The City desires to begin work soon after selecting the preferred Lessee and expects the Lessee to execute the City's lease and lease and all of the terms therein, as set forth in Exhibit B.*** To expedite the contracting process, each submittal shall include requested redlined changes to terms and conditions, if necessary. Please be advised that Lessee's requested changes to the City's terms and conditions will be considered by City staff when scoring and determining the competency and responsibility of the proposer.

### ***Proposal Length***

- q. Proposal length should only be as long as required to be responsive to the RFP, including attachments and supplemental materials.

2. **Proposal Evaluation and Selection.** Proposals will be evaluated by a review committee and evaluated on the following criteria:

- a. Understanding of the work required by the City.
- b. Quality, clarity and responsiveness of the proposal.
- c. Demonstrated competence and professional qualifications necessary for successfully performing the work required by the City.
- d. Recent team experience in successfully performing similar services.
- e. Creativity of the proposed approach in completing the work.
- f. Value
- g. References.
- h. Background and experience of the specific individuals managing and assigned to this project.  
Information about how your company mitigates the environmental impact of its services, such as greenhouse gas emissions, amount of waste generated, water and energy use, or other areas related to your products and services.

As reflected above, contract award will not be based solely on price, but on a combination of factors as determined to be in the best interest of the City. After evaluating the proposals and discussing them further with the finalists or the tentatively selected Lessee, the City reserves the right to further negotiate the proposed work and/or method and amount of compensation.

- 3. **Ownership of Materials.** All original drawings, plan documents and other materials prepared by or in possession of the Lessee as part of the work or services under these specifications shall become the permanent property of the City and shall be delivered to the City upon demand.
- 4. **Release of Reports and Information.** Any reports, information, data, or other material given to, prepared by or assembled by the Lessee as part of the work or services under these specifications shall be the property of the City and shall not be made available to any individual or organization by the Lessee without the prior written approval of the City.
- 5. **Copies of Reports and Information.** If the City requests additional copies of reports, drawings, specifications, or any other material in addition to what the Lessee is required to furnish in limited quantities as part of the work or services under these specifications, the Lessee shall provide such additional copies as are requested, and City shall compensate the Lessee for the costs of duplicating of such copies at the Lessee's direct expense.
- 6. **Required Deliverable Products.** The Lessee will be required to provide:
  - a. One electronic submission - digital-ready original .pdf of all final documents. If you wish to file a paper copy, please submit in sealed envelope to the address provided in the RFP.

- b. Corresponding computer files compatible with the following programs whenever possible unless otherwise directed by the project manager:

Word Processing:	MS Word
Spreadsheets:	MS Excel
Desktop Publishing:	InDesign
Virtual Models:	Sketch Up
Digital Maps:	Geodatabase shape files in State Plan Coordinate System as specified by City GIS staff

- c. City staff will review any documents or materials provided by the Lessee and, where necessary, the Lessee will be required to respond to staff comments and make such changes as deemed appropriate.

#### **ALTERNATIVE PROPOSALS**

7. **Alternative Proposals.** The proposer may submit an alternative proposal (or proposals) that it believes will also meet the City's project objectives but in a different way. In this case, the proposer must provide an analysis of the advantages and disadvantages of each of the alternative and discuss under what circumstances the City would prefer one alternative to the other(s).
8. **Attendance at Meetings and Hearings.** As part of the work scope and included in the contract price is attendance by the Lessee at up to [number] public meetings to present and discuss its findings and recommendations. Lessee shall attend as many "working" meetings with staff as necessary in performing work-scope tasks.
9. **Accuracy of Specifications.** The specifications for this project are believed by the City to be accurate and to contain no affirmative misrepresentation or any concealment of fact. Bidders are cautioned to undertake an independent analysis of any test results in the specifications, as City does not guaranty the accuracy of its interpretation of test results contained in the specifications package. In preparing its proposal, the bidder and all subLessees named in its proposal shall bear sole responsibility for proposal preparation errors resulting from any misstatements or omissions in the plans and specifications that could easily have been ascertained by examining either the project site or accurate test data in the City's possession. Although the effect of ambiguities or defects in the plans and specifications will be as determined by law, any patent ambiguity or defect shall give rise to a duty of bidder to inquire prior to proposal submittal. Failure to so inquire shall cause any such ambiguity or defect to be construed against the bidder. An ambiguity or defect shall be considered patent if it is of such a nature that the bidder, assuming reasonable skill, ability and diligence on its part, knew or should have known of the existence of the ambiguity or defect. Furthermore, failure of the bidder or subLessees to notify City in writing of specification or plan defects or ambiguities prior to proposal submittal shall waive any right to assert said defects or ambiguities subsequent to submittal of the proposal.

To the extent that these specifications constitute performance specifications, the City shall not be liable for costs incurred by the successful bidder to achieve the project's objective or standard beyond the amounts provided there for in the proposal.

In the event that, after awarding the contract, any dispute arises as a result of any actual or alleged

ambiguity or defect in the plans and/or specifications, or any other matter whatsoever, Lessee shall immediately notify the City in writing, and the Lessee and all subLessees shall continue to perform, irrespective of whether or not the ambiguity or defect is major, material, minor or trivial, and irrespective of whether or not a change order, time extension, or additional compensation has been granted by City. Failure to provide the hereinbefore described written notice within one (1) working day of Lessee's becoming aware of the facts giving rise to the dispute shall constitute a waiver of the right to assert the causative role of the defect or ambiguity in the plans or specifications concerning the dispute.

DRAFT

**I: PROPOSAL SUBMITTAL FORM - SAMPLE**

---

The undersigned declares that she or he:

- Has carefully examined the RFP which is hereby made a part of this proposal.
- Is thoroughly familiar with its contents.
- Is authorized to represent the proposing firm.
- Agrees to perform the work as set forth in this proposal.

q Certificate of insurance attached; insurance company's A.M. Best rating: \_\_\_\_\_.

<b><i>Firm Name and Address</i></b>	
<i>Contact</i>	<i>Phone</i>

***Signature of Authorized Representative***

	<i>Date</i>
--	-------------

## REFERENCES

Number of years engaged in providing the services included within the scope of the specifications under the present business name: \_\_\_\_\_.

Describe fully the last three contracts performed by your firm that demonstrate your ability to provide the services included with the scope of the specifications. Attach additional pages if required. The City reserves the right to contact each of the references listed for additional information regarding your firm's qualifications.

### Reference No. 1:

Agency Name	
Contact Name	
Telephone & Email	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	

### Reference No. 2:

Agency Name	
Contact Name	
Telephone & Email	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	

<b>Reference No. 3</b>	
Agency Name	
Contact Name	
Telephone & Email	
Street Address	
City, State, Zip Code	
Description of services provided including contract amount, when provided and project outcome	



## STATEMENT OF PAST CONTRACT DISQUALIFICATIONS

The proposer shall state whether it or any of its officers or employees who have a proprietary interest in it, has ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of the violation of law, a safety regulation, or for any other reason, including but not limited to financial difficulties, project delays, or disputes regarding work or product quality, and if so to explain the circumstances.

■ ***Do you have any disqualification as described in the above paragraph to declare?***

Yes q

No q

■ *If yes, explain the circumstances.*

[illegible]

Executed on \_\_\_ at \_\_\_\_ under penalty of perjury of the laws of the State of California, that the foregoing is true and correct.

---

Signature of Authorized Proposer Representative

**CITY OF SAN LUIS OBISPO**  
**AGREEMENT FOR PURCHASES OF SERVICES**

This Agreement is made and entered into in the City of San Luis Obispo on \_\_\_\_\_, by and between the City of San Luis Obispo, a municipal corporation, hereinafter referred to as City, and \_\_\_\_\_, hereinafter referred to as Lessee.

**WITNESSETH:**

WHEREAS, on [date], City requested proposals for [\_\_\_\_\_], [Remove if no RFP and use 2<sup>nd</sup> sentence below.]

WHEREAS, the City wishes to [\_\_\_\_\_]; and

WHEREAS, [\_\_\_\_\_] is qualified to perform this type of service and has submitted a proposal to do so which has been accepted by City.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM.** The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, for two (2) years.
2. **INCORPORATION BY REFERENCE.** City Request for Proposals / Qualifications for Food and Beverage Services and Lessee's proposal are hereby incorporated in and made a part of this Agreement, attached as Exhibit A. The City's standard terms and conditions are attached as Exhibit B. The City's insurance requirements are hereby incorporated in and made part of this Agreement, attached as Exhibit C. To the extent that there are any conflicts between the Lessee's fees and scope of work and the City's terms and conditions as stated herein, the City's terms and conditions shall prevail unless specifically agreed otherwise in writing signed by both Parties.
3. **CITY'S OBLIGATIONS.** City will make available the kiosk space specific to the improvements stated in Section B, where noted, "City improvements for the café kiosk will include: (refer to **Appendix A** for detailed construction plan set)" and "City improvements for the outdoor seating area will include:".
4. **LESSEE'S/LESSEE'S OBLIGATIONS.** For and in consideration of the agreements hereinbefore mentioned to be made and performed by City, Lessee agrees with City to do everything required by **sections 1 – 3 of Lessee proposal** set forth in Exhibit B.
5. **AMENDMENTS.** Any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Manager.
6. **COMPLETE AGREEMENT.** This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral ~~agreement, understanding or representation not reduced to writing and specifically incorporated~~

herein shall be of any force or effect, nor shall any such oral agreement, understanding or representation be binding upon the parties hereto.

7. **GOVERNING LAW.** Any action arising out of this Agreement shall be brought in the Superior Court of San Luis Obispo County, California, regardless of where else venue may lie. The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.
8. **NOTICE.** All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

**City**

City of San Luis Obispo  
990 Palm Street  
San Luis Obispo, CA 93401  
**Attn:**

**Lessee**

9. **AUTHORITY TO EXECUTE AGREEMENT.** Both City and Lessee do covenant that everyone executing this agreement on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

CITY OF SAN LUIS OBISPO:

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

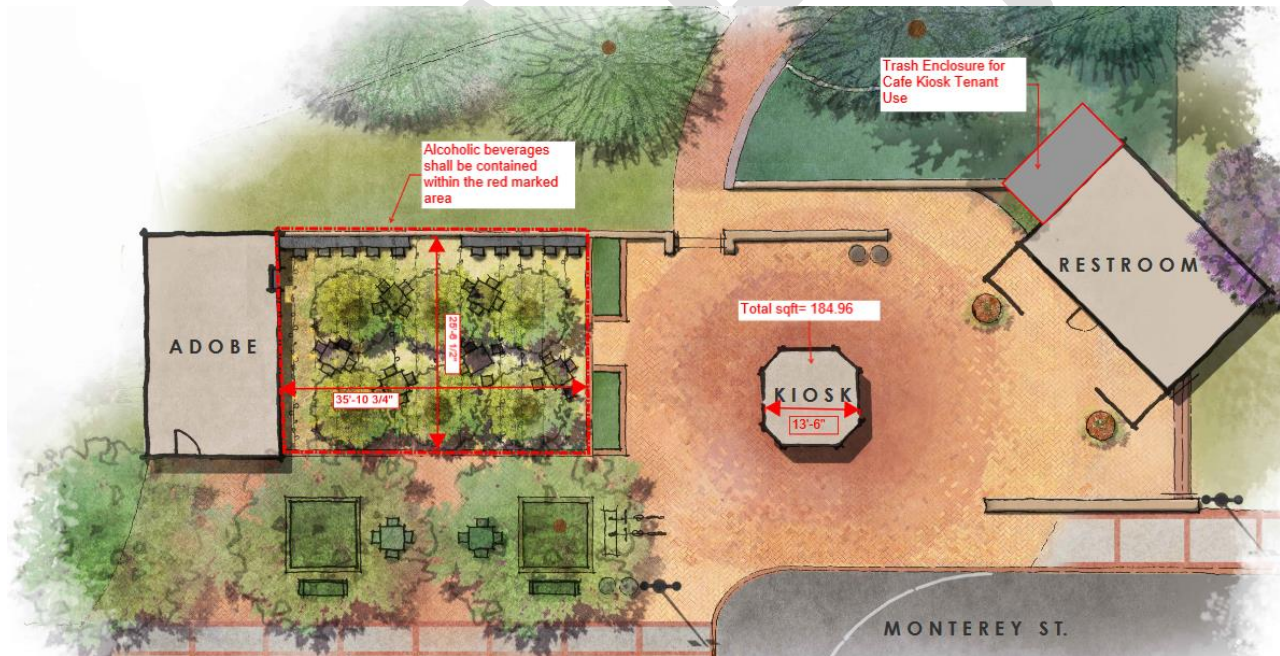
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

LESSEE:

By: \_\_\_\_\_  
Name of CAO / President  
Its: CAO / President

## EXHIBIT A



## EXHIBIT B

### GENERAL TERMS AND CONDITIONS

1. **Business License & Tax.** The Contractor must have a valid City of San Luis Obispo business license & tax certificate before execution of the contract. Additional information regarding the City's business tax program may be obtained by calling (805) 781-7134.
2. **Ability to Perform.** The Contractor warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with all federal, state, county, city, and special district laws, ordinances, and regulations.
3. **Laws to be Observed.** The Contractor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work.
4. **Payment of Taxes.** The contract prices shall include full compensation for all taxes that the Contractor is required to pay.
5. **Permits and Licenses.** The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary.
6. **Safety Provisions.** The Contractor shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.
7. **Public and Employee Safety.** Whenever the Contractor's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.
8. **Preservation of City Property.** The Contractor shall provide and install suitable safeguards, approved by the City, to protect City property from injury or damage. If City property is injured or damaged resulting from the Contractor's operations, it shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor began work.
9. **Immigration Act of 1986.** The Contractor warrants on behalf of itself and all

subcontractors engaged for the performance of this work that only persons authorized to work in the United State pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

10. **Non-Discrimination.** In the performance of this work, the Contractor agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.

11. **Work Delays.** Should the Contractor be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Contractor. In the event that there is insufficient time to grant such extensions prior to the completion date of the contract, the City may, at the time of acceptance of the work, waive liquidated damages that may have accrued for failure to complete on time, due to any of the above, after hearing evidence as to the reasons for such delay, and making a finding as to the causes of same.

12. **Inspection.** The Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of the Contractor are being performed in accordance with the requirements and intentions of this contract. All work done, and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill its contract requirements.

13. **Interests of Contractor.** The Contractor covenants that it presently has no interest, and shall not acquire any interest—direct, indirect or otherwise—that would conflict in any manner or degree with the performance of the work hereunder. The Contractor further covenants that, in the performance of this work, no subcontractor or person having such an interest shall be employed. The Contractor certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance of the work hereunder, the Contractor shall at all times be deemed an independent Contractor and not an agent or employee of the City.

14. **Hold Harmless and Indemnification.**

(a) **Non-design, non-construction Professional Services:** To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Consultant's performance or Consultant's failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

---

**(b) Non-design, construction Professional Services:** To the extent the Scope of Services involve a "construction contract" as that phrase is used in Civil Code Section 2783, this paragraph shall apply in place of paragraph A. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), Consultant shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, volunteers, and agents ("City Indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the Consultant's performance or Consultant's failure to perform its obligations under this Agreement or out of the operations conducted by Consultant, except for such loss or damage arising from the active negligence, sole negligence or willful misconduct of the City. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims.

**(c) Design Professional Services:** In the event Consultant is a "design professional", and the Scope of Services require Consultant to provide "design professional services" as those phrases are used in Civil Code Section 2782.8, this paragraph shall apply in place of paragraphs A or B. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8) Consultant shall indemnify, defend and hold harmless the City and its elected officials, officers, employees, volunteers and agents ("City Indemnitees"), from and against all claims, damages, injuries, losses, and expenses including costs, attorney fees, expert consultant and expert witness fees arising out of, pertaining to or relating to, the negligence, recklessness or willful misconduct of Consultant, except to the extent caused by the sole negligence, active negligence or willful misconduct of the City. Negligence, recklessness or willful misconduct of any subcontractor employed by Consultant shall be conclusively deemed to be the negligence, recklessness or willful misconduct of Consultant unless adequately corrected by Consultant. In the event the City Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this Agreement, the Consultant shall provide a defense to the City Indemnitees or at the City's option, reimburse the City Indemnitees their costs of defense, including reasonable legal fees, incurred in defense of such claims. In no event shall the cost to defend charged to Consultant



under this paragraph exceed Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs.

- (d) The review, acceptance or approval of the Consultant's work or work product by any indemnified party shall not affect, relieve or reduce the Consultant's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance. Contractor's indemnification obligations under this section extend to any claims arising out of or related to the negligence, recklessness, or willful misconduct of any sub-consultants/ subcontractors.

15. **Contract Assignment.** The Contractor shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.

16. **Safe Harbor.** Contractor/Consultant's duties and services under this agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Contractor pursuant to this agreement."

17. **Termination for Convenience.** The City may terminate all or part of this Agreement for any or no reason at any time by giving 30 days written notice to Contractor. Should the City terminate this Agreement for convenience, the City shall be liable as follows: (a) for standard or off-the-shelf products, a reasonable restocking charge not to exceed ten (10) percent of the total purchase price; (b) for custom products, the less of a reasonable price for the raw materials, components work in progress and any finished units on hand or the price per unit reflected on this Agreement. For termination of any services pursuant to this Agreement, the City's liability will be the lesser of a reasonable price for the services rendered prior to termination, or the price for the services reflected on this Agreement. Upon termination notice from the City, Contractor must, unless otherwise directed, cease work and follow the City's directions as to work in progress and finished goods.

18. **Termination.** If, during the term of the contract, the City determines that the Contractor is not faithfully abiding by any term or condition contained herein, the City may notify the Contractor in writing of such defect or failure to perform. This notice must give the Contractor a 10 (ten) calendar day notice of time thereafter in which to perform said work or cure the deficiency.

If the Contractor has not performed the work or cured the deficiency within the ten days specified in the notice, such shall constitute a breach of the contract and the City may terminate the contract immediately by written notice to the Contractor to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under the contract except, however, any and all



obligations of the Contractor's surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the terminations thereof.

In said event, the Contractor shall be entitled to the reasonable value of its services performed from the beginning date in which the breach occurs up to the day it received the City's Notice of Termination, minus any offset from such payment representing the City's damages from such breach. "Reasonable value" includes fees or charges for goods or services as of the last milestone or task satisfactorily delivered or completed by the Contractor as may be set forth in the Agreement payment schedule; compensation for any other work, services or goods performed or provided by the Contractor shall be based solely on the City's assessment of the value of the work-in-progress in completing the overall work scope.

The City reserves the right to delay any such payment until completion or confirmed abandonment of the project, as may be determined in the City's sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall the Contractor be entitled to receive in excess of the compensation quoted in its proposal

## EXHIBIT C - INSURANCE REQUIREMENTS

### *Facility Use – Concessions*

The Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Lessee, its agents, representatives, employees or subLessees.

**Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

**Minimum Limits of Insurance.** Lessee shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If alcohol is sold, coverage must include full liquor liability.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

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

**Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, official, employees, agents or volunteers.
2. For any claims related to this project, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. The Lessee's insurance shall apply separately to each insured against whom claim is made or

suit is brought, except with respect to the limits of the insurer's liability.

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

**Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**Verification of Coverage.** Lessee shall furnish the City with a certificate of insurance showing required coverage. Original endorsements effecting general liability and automobile liability coverage are also required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences.

**SubLessees.** Lessee shall include all subLessees as insured under its policies or shall furnish separate certificates and endorsements for each subLessee. All coverages for subLessees shall be subject to all of the requirements stated herein.