

## **CITY OF SAN DIEGO CONSENT TO SUBLEASE**

THIS CITY OF SAN DIEGO CONSENT TO SUBLEASE ("Consent") is made by THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), to be effective as of **October 21, 2011** (the "Effective Date"), as follows:

CITY, a California municipal corporation ("City"), as lessor, and SAN DIEGO HISTORICAL SOCIETY, a nonprofit California Corporation ("SDHC"), as lessee, are parties to that certain CITY OF SAN DIEGO AGREEMENT filed in the Office of the San Diego City Clerk as Document No. RR-253882 on March 24, 1981 (the "Master Lease") which sets forth the terms and conditions under which SDHC is authorized to lease a portion of the Casa de Balboa also known as the "Electric Building" in Balboa Park ("Premises").

Section 3.f of the Master Lease provides that SDHC shall appoint a representative to the Building Tenants Committee (EBTC) to provide for building development and management in accordance with Exhibit "D" of the Master Lease. Pursuant to Exhibit "D", SDHC is the EBTC's "Fiscal Agent" for the management of common areas within the Casa de Balboa.

As said Fiscal Agent, SDHC was authorized by the EBTC to negotiate and enter into a Food Services Operation Agreement with MERYO ENTERPRISES dba Garden Rich Organics ("GRO"), relating to certain portions of the common areas of the Casa de Balboa (hereafter referred to as a sublease).

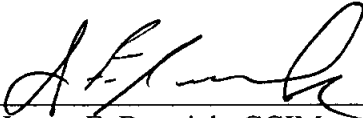
CITY hereby consents to the subleasing of a portion of the Premises to GRO, subject to the following terms and conditions:

- (a) The sublease is subject to, and subordinate to, the Master Lease, as may be amended from time to time, and to this Consent; and
- (b) CITY is not bound by any terms or conditions of the sublease;

- (c) SDHC shall submit documentation evidencing that the Members of the EBTC and GRO agree that said Members of the EBTC and GRO shall, jointly and severally, defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation any injury to the Members of the EBTC's, or GRO's officers, employees, agents, invitees, guests, subtenants or licensees, which arise out of or are in any manner directly or indirectly connected with the subject sublease, GRO's use or operations on the Premises, the condition of the Premises, or from any act or omission of GRO' or any of its employees, agents, invitees, guests or licensees; provided, however, this duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents or employees.

THE CITY OF SAN DIEGO, a California municipal  
corporation

BY:

  
James F. Barwick, CCIM  
Real Estate Assets Director

## **FOOD SERVICES OPERATIONS AGREEMENT**

This FOOD SERVICES OPERATIONS AGREEMENT ("Agreement") is made and effective as of October 21, 2011 (the "Effective Date") by and between the Electric Building Tenants Committee, an association of non-profit entities operating at 1649 El Prado, San Diego, CA 92101, as further defined herein, ("EBTC") and MERYO Enterprises, a California corporation ("Contractor"), collectively referred to as the "Parties" and separately referred to as "Party" who agree to the following:

### **RECITALS**

A. Contractor desires to provide food and beverage services to EBTC and its guests, employees, and invitees; and,

B. EBTC desires Contractor to provide food and beverage services to EBTC and its guests, employees, and invitees.

NOW, THEREFORE, for good and valuable consideration the Parties agree as follows:

### **AGREEMENT**

#### **1. DEFINITIONS.**

1.1. "Agreement" means this Agreement and any attachments hereto, and any modifications that are made in accordance with its terms.

1.2. "Café" shall mean the location where Café Services are provided in the Licensed Premises of the Museum.

1.3. "Café Services" means the provision of food and non-alcoholic beverage service at the Café during the Museum's regular operating hours.

1.4. "Catering Services" means the provision of catering services through the Café and the Café Services at the Museum that may be provided under a separate contract with Contractor for specific events or occasions at the Museum.

1.5. "Contract Administrator" means the current Chair of EBTC, Fiscal Agent, or other such person assigned by EBTC to monitor and enforce Contractor's performance under this Agreement and act as EBTC's agent and manager under this Agreement.

1.6. "EBTC" means the association of non-profit entities known as the Electric Building Tenants Committee comprised of the Balboa Art Conservation Center, San Diego Model Railroad Museum, Museum of Photographic Arts, San Diego Historical Society dba San Diego History Center, and the Committee of One Hundred that occupy portions of the Museum under Memorandums of Agreement with the City of San Diego ("City").

1.7. "Fiscal Agent" means San Diego Historical Society dba San Diego History Center that is the appointed non-profit entity that manages EBTC's fiscal affairs and shall bill and collect from Contractor monthly.

1.8. "Licensed Premises" means the area or portion of the Museum licensed to Contractor pursuant to this Agreement where the Café is located and includes the food preparation area, the dining area, and the three locked storage areas for a total approximate size of 550 square feet. The Licensed Premises are generally depicted on the diagram attached hereto as Exhibit A.

1.9. "Museum" means the buildings and associated ground area known as Casa de Balboa located at 1649 El Prado, San Diego, CA 92101, Balboa Park, and includes the Balboa Art Conservation Center, Model Railroad Museum, Museum of Photographic Arts, San Diego Historical Society dba San Diego History Center and the Committee of One Hundred each of whom have Memorandums of Agreement with the City and are members of EBTC.

1.10. "Trade Fixtures and Supplies" means the food processing, preparation and servicing equipment and other durable goods as well as non-durable goods needed for Café Services and Catering Services owned by Contractor.

## **2. SERVICES.**

2.1. Services. EBTC grants a license to Contractor to build-out the Café at the Licensed Premises to be completed within sixty (60) days after notice to Contractor of the City's approval of this Agreement. EBTC also grants Contractor a license to provide Café Services for a term of three (3) years beginning the first day after the sixty (60) day build-out period expires. Contractor shall exercise commercially diligent efforts to build-out and open the Café and provide Café Services after: (i) this Agreement is fully executed by the Parties; (ii) within sixty (60) days after the City has approved this Agreement; and (iii) the Licensed Premises have been turned over to Contractor to begin the build-out. Contractor shall build out the Café in a professional and workmanlike manner with minimal disruption to Museum and Balboa park guests. Contractor shall be the exclusive provider of Café Services at the Museum.

a. Quality. Contractor shall promptly, diligently and in a thorough, and professional manner provide Café Services consistent with industry standards. Contractor and EBTC agree that the Café shall be operated by Contractor and shall offer fresh, seasonal, food and beverages for patrons to enjoy in-house or taken away. The Café shall offer pastries and bagels, soups and sandwiches, salads, desserts, and a "grab and go" display case with pre-packaged items, hot and cold beverages including coffee, espresso, tea, sodas, and water. Contractor will keep menu items available and reasonably priced. A typical meal with drink may generally range in price from \$7.00 to \$10.00. Contractor shall provide chairs and tables and offer limited seating in the Licensed Premises. Fryers of any kind are not permitted. Music may be played, however, EBTC reserves the right to veto the type of music and music noise level.

2.2. Hours. Contractor shall operate the Café and provide Café Services in substantial conformance with the Museum's hours of Monday through Sunday, 9 a.m. to 5 p.m., subject to EBTC's right to close the Licensed Premises for Museum events under the terms of this Agreement below. The Café shall not be open on the holidays listed on Exhibit B, except with the prior written approval of EBTC. Contractor must operate the Café a minimum of forty five (45) hours per week except for weeks with holidays listed on Exhibit B or closures of the Café by EBTC under this Agreement.

2.3. Approvals. Contractor shall obtain prior written approval from the Contract Administrator regarding substantial changes to Café or Catering Services, and structural

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alterations to the Licensed Premises. The Contract Administrator's approval shall be timely provided and not unreasonably withheld. Contractor shall, in good faith keep the Contract Administrator informed regarding the Contractor's staffing practices, menu items, supplies, logistics, management, cleaning and maintenance upon inquiry from Contract Administrator.

a. The Parties acknowledge that the City must approve this Agreement after the Parties have executed it and that such approval is a condition precedent to the Parties' obligations under this Agreement. None of the Parties hereto shall be held responsible for the City's failure to approve this Agreement, or failure to approve it in a timely manner. The Parties release each other from all claims that arise out of the City's approval process or refusal to approve this Agreement.

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2.4. Licensed Premises. Contractor accepts the Licensed Premises in an "as is" condition without warrant. Acceptance by Contractor of the "as is" condition does not release EBTC from any other express obligations under this Agreement.

2.5. Advertising/Marketing/Promotion. Contractor shall develop, meet and share with EBTC in good faith its plan to advertise, market, and promote the Café to people outside of the Museum on a quarterly basis. Contractor shall provide a link on its website to the Museum's website. Contractor will consult with EBTC regarding banners and signage for the Café. Contractor shall have the right to provide signage and banners for the Café, subject to EBTC's prior written approval regarding design, size, location and maintenance, at Contractor's sole cost. All copy, logo, signage and collateral promotions involving the Café and/or Museum (collectively "Promotional Information") shall be submitted to EBTC for written approval. If, after thirty (30) days, EBTC has failed to approve or reject the Promotional Information, the same shall be deemed approved. If EBTC rejects the Promotional Information, it shall provide a detailed explanation that articulates the reasons for its rejection and how the rejection may be cured. Contractor will list the Café on Contractor's business cards, stationery and letterhead. Contractor shall issue a press release to major media within thirty (30) days of opening the Café with the content to be approved in writing by EBTC prior to release. Contractor and EBTC agree to work in a good faith and collaborative manner to promote and market the Café. Contractor is solely responsible for the costs of advertising and marketing as outlined above except that EBTC may reasonably promote Museum events in the Café at EBTC's sole cost and expense so long as EBTC does not unreasonably interfere with the operation of the Café.

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2.6. Outside Events. The Parties acknowledge that Contractor owns and operates a full service catering business that is separate and distinct from the Café, Café Services and Catering Services referenced in this Agreement. Nothing contained herein shall limit Contractor's operation of the full service catering business outside of the Museum. However, Contractor shall not provide catering services from the Licensed Premises to events or persons outside of the Museum at the Museum.

2.7. Discounts. Contractor shall provide a minimum ten percent (10%) discount to Museum employees and a ten percent (10%) discount to Balboa Park employees and employees of Balboa Park institutions at the Café. Employees of both the Museum and Balboa Park are not entitled to double discounts. Such employees shall be required to present identification or proof of employment as a requirement to receiving such discount.

2.8. EBTC Events. EBTC has the right to close the Licensed Premises during Museum's hours of operation for EBTC events provided EBTC gives Contractor thirty (30) days

advance notice of such events, and such closures shall not exceed thirty (30) days per year. As compensation for any such closures, Contractor will receive a proportional credit towards the License Fee described in paragraph 3.8 for those days that the Café is closed by EBTC for over half of the hours in the day in which Contractor would have been open. For example: if the Café is operated 52 weeks a year, 6 days a week, minus the two Holiday Closure days listed on Exhibit B, the Café would be operating 310 days a year. If EBTC closed the Café for 25 entire days and allowed only 285 days of operation, Contractor would be entitled to reduce the License Fee by the applicable percentage of closure days, here by example, approximately 8%. Therefore, if the minimum due was \$25,000, Contractor would only be required to pay a License Fee of \$23,000. This proportional credit will not apply to days that Contractor contracts to provide Catering Services to EBTC pursuant to a separate contract.

2.9. Warranties. Contractor warrants the following.

- a. Café and Catering Services will be of a high quality and consistent with this Agreement and industry standards.
- b. EBTC, Contract Administrator, Fiscal Agent and City shall not be responsible for Contractor's separate contractual agreements.
- c. All Trade Fixtures and Supplies provided by Contractor to the Licensed Premises shall be in good working order and consistent with industry standards.
- d. Contractor shall maintain customer service as a top priority and will provide employees who are professional, friendly, neatly dressed and courteous to the public, and the Museum's and Balboa Park's visitors, guests, invitees and employees.
- e. Contractor shall anticipate and resolve problems with Café and Catering Services, and Trade Fixtures and Supplies immediately and alert the Contract Administrator within twenty-four (24) hours of any problems that require coordination or assistance with EBTC or temporary closure of the Licensed Premises.
- f. Contractor shall comply with all state and local regulations relating to the purchase, storage, preparation and distribution of Café and Catering Services and Supplies and shall obtain and maintain at all times an "A" Rating with the San Diego Department of Health. Contractor shall conform with the provisions of the Uniform Food Facilities Law (formerly the California Restaurant Act), CAL-OSHA and other state regulations. Contractor shall provide extermination and pest control services in all food preparation and storage, dining, and seating areas of the Licensed Premises.
- g. Contractor shall obtain and maintain applicable business licenses, health certificates, and insurance coverage necessary for the proper and legal operation of the Café. Contractor shall also follow all rules, regulations and policies of EBTC upon written notice of the same. In the event of any conflict between the two, this Agreement is controlling.

2.10. Contractor Maintenance. Contractor shall provide and pay for the regular, periodic and preventative maintenance and cleaning of all Trade Fixtures and Supplies within the Licensed Premises. Contractor shall dispose of food and debris and clean up upon the daily completion of Café Services, but shall not clean any art works or personal property of the Museum listed on Exhibit C. Cleaning shall consist of daily sweeping and mopping, gum removal, and disinfecting of tables and chairs to Museum and industry standards. A mutually agreed upon schedule of cleaning shall be followed by Contractor.

2.11. EBTC Maintenance. EBTC represents that the Licensed Premises and Café are serviced by a heating, ventilation and air conditioning system ("HVAC"); gas, electric, water, overhead lighting and plumbing utilities ("Utilities"); and common area restrooms ("Restrooms") (all collectively "Basic Services"). EBTC represents that Basic Services are in good working condition as of the Effective Date of this Agreement and will remain in good working condition during the Term and/or Extended Term of this Agreement. EBTC specifically represents that the hot water temperature will at all times be able to get to 100 degrees Fahrenheit in the time interval required by the San Diego Department of Health and that any failure will be timely cured upon notice to EBTC by Contractor. EBTC shall be responsible for the maintenance and repair of these Basic Services necessary to the operation of the Licensed Premises and the architectural elements that make up the Licensed Premises. Contractor shall report any problems to the Contract Administrator immediately.

2.12. Custodian. EBTC shall hire and manage a Museum janitorial person ("Custodian") to maintain Basic Services in the Licensed Premises and Museum. Contractor will pay \$250 a month towards this cost.

2.13. Utilities. Contractor shall pay Contractor's Utilities, which are separately metered and which cost will vary based on Contractor's monthly use, but which EBTC estimates to be approximately \$400.

2.14. Building Maintenance. EBTC shall hire and manage a building maintenance person who shall maintain the building and common areas. Contractor will pay \$316 a month towards this cost.

2.15. Delivery. Contractor shall be responsible for receiving and securing Trade Fixtures and Supplies ordered by Contractor at times and locations that do not disrupt the business of the Museum, and for the security of items received. Contractor shall keep the delivery area neat and clean and comply with the same rules and regulations as the non-exclusive delivery area.

2.16. Trash Removal. Contractor, at its expense, shall remove trash and garbage from the Licensed Premises to the common area trash location(s) at least once a day or as often as may be necessary to ensure safe and sanitary conditions. Fiscal Agent will bill Contractor one-sixth (1/6) of the monthly cost which EBTC estimates to be \$108 based on past tenant use of the Licensed Premises.

2.17. Security. Contractor is responsible for control of the keys obtained from EBTC and the overall security of the Licensed Premises and contributes to the security of the Museum. Overall security includes but is not limited to locking doors, gates and windows, and setting alarms. Contractor shall coordinate access to, and the securing of, the Licensed Premises and access to other parts of the Museum with EBTC's security officers and services. Contractor shall abide by all of EBTC's security policies and procedures. Contractor shall keep confidential and secure EBTC's security policies and procedures, keys and alarms. EBTC shall be held to the same standards set forth in paragraph 2.16 for its own agents and for overseeing that other members of EBTC maintain these same security obligations.

2.18. Relocation of Licensed Premises. EBTC reserves the right to relocate the Licensed Premises to a reasonably alternative location in the Museum. The newly relocated Licensed Premises shall be equally comparable in size, seating, kitchen capacity and public

exposure to the original Licensed Premises, and the terms of this Agreement shall continue to apply.

a. Notice. EBTC shall provide written notice to Contractor at least thirty (30) days prior to the effective date of any relocation ("Relocation Date"). The notice shall include a detailed written description of the proposed relocation and a copy of any plans to Contractor at least sixty days (30) prior to the Relocation Date.

b. Costs. EBTC shall advance and pay for all costs to relocate the Licensed Premises, Trade Fixtures and Supplies and any other pre-existing requirements of the Café for its ongoing operation to the new location in the Museum, including reimbursement of the hourly wages of Contractor's employees who reasonably assist, if needed, with the relocation. All days that the Café remains closed for relocation shall be treated, in all respects, as EBTC Event days pursuant to paragraph 2.8 of this Agreement until the Café can safely and legally provide Café Services again. Failure to reasonably advance all relocation costs to Contractor will operate as a bar to EBTC's ability to relocate the Licensed Premises.

c. Timing. Relocation of the Licensed Premises, Trade Fixtures and Supplies and any other pre-existing requirements shall be completed at a mutually acceptable time convenient for the Parties but no later than the Relocation Date. Prior to relocation, the Parties shall execute an amendment to this Agreement reflecting the new location as Exhibit A only.

2.19. Modification or Changes to Licensed Premises. EBTC reserves the right to modify or change the Basic Services to the Licensed Premises and the architectural elements that make up the Licensed Premises. In no event shall the modification or changes substantially reduce the square footage of the Licensed Premises or present a substantial impediment to the ongoing operation of the Café and Café Services.

a. Notice. EBTC shall provide written notice to Contractor at least thirty (30) days prior to the effective date of any intended modifications or changes ("Modification Date"). The notice shall include a detailed written description of the proposed modifications or changes and a copy of any plans to Contractor at least thirty (30) days prior to the Modification Date.

b. Costs. EBTC shall advance and pay for all costs that arise from the modification or changes to the Licensed Premises that affect the Trade Fixtures and Supplies and any other pre-existing requirements of the Café for its ongoing operation in the Museum, including reimbursement of the hourly wages of Contractor's employees who reasonably assist, if needed, with the modifications or changes to the Café and Café Services. All days that the Café remains closed for modifications or changes shall be treated, in all respects, as EBTC Event days pursuant to paragraph 2.8 of this Agreement until the Café can safely and legally provide Café Services again. Failure to reasonably advance all modifications or change costs to Contractor will operate as a bar to EBTC's ability to modify or change the Licensed Premises.

c. Timing. Modification or changes to the Licensed Premises, Trade Fixtures and Supplies and any other pre-existing requirements shall be completed at a mutually acceptable time convenient for the Parties but no later than the Modification Date.

2.20. Hazardous Materials Compliance. EBTC warrants that the Licensed Premises and Museum are in compliance with all applicable laws affecting public occupancy and all

applicable hazardous substance laws necessary for Contractor's occupancy. If the Licensed Premises becomes out of compliance due to enactment of a new law, rule or regulation, EBTC shall be responsible for all work, cost and expense required to bring the Licensed Premises into compliance. However, Contractor shall solely be responsible for all compliance issues that arise after occupancy has been established that are due to operations inconsistent with the Licensed Premises.

2.21. Grease Trap Agreement. EBTC represents that a grease trap is not needed for the contemplated Café Services and Catering Services described in paragraph 2.1(a). If, however, a grease trap is required by any governmental agency and/or public inspector to obtain any permit necessary to open the Café and provide Café Services and Catering Services consistent with paragraph 2.1(a), then Contractor will pay for the purchase and installation of a grease trap on the condition that the full amount will be reimbursed by EBTC within thirty (30) days after the first year of the three year Term. Any election by Contractor to install a grease trap for food and beverage items not listed in paragraph 2.1(a), shall be done at Contractor's sole expense with no right to offset the License Fee.

2.22. Grease Trap Contractor. If a grease trap is required or needed, Contractor shall solicit a minimum of three (3) bids by licensed contractors to install the grease trap and submit them to the Contract Administrator. If a grease trap is required, EBTC shall have final review and selection of the contractor who will perform the work.

### **3. COMPENSATION.**

3.1. License Fee. As a license fee for the operation of the Café Services and Catering Services from the Café, Contractor shall pay monthly to EBTC through Fiscal Agent eight percent (8%) of monthly gross food and beverage Café Services and Catering Services revenue from the Café up to \$1,000,000 and three percent (3%) of monthly gross food and beverage Café Services and Catering Services revenue from the Café over \$1,000,000, per year beginning the first day after the sixty (60) day build-out period through the remaining three (3) year term, excluding sales tax, returns and charge-backs ("License Fee"). The total License Fee paid to Fiscal Agent by Contractor of monthly gross food and beverage Café Services and Catering Services revenue from the Café shall not be less than \$25,000 annually. If the total License Fee as a percent of monthly gross food and beverage Café Services and Catering Services revenue from the Café are less than \$25,000 per fiscal year, Contractor shall pay the difference to the Fiscal Agent within 30 days of year end for each of the three (3) years, subject to all proportional credits described in paragraph 2.8 and other paragraphs of this Agreement. Contractor shall make all License Fee payments to Fiscal Agent by the tenth (10<sup>th</sup>) day of each month following the prior month-end. A late charge of one hundred dollars (\$100.00) shall automatically be assessed and added on to the next month's License Fee for all fees left unpaid after the tenth (10<sup>th</sup>) day.

3.2. Build-Out. Contractor shall only pay those amounts due under sections 2.13 and 2.16 every thirty days during build-out.

3.3. Payment and Reporting Schedule. Contractor shall submit monthly financial payments and reports to the Fiscal Agent. The financial reports shall verify the business activity and calculations of the License Fee in the form reflected on Exhibit D. In addition, Contractor

shall also submit unaltered monthly and year-to-date profit and loss statement from a generally accepted accounting program such as QuickBooks as well as an unaltered balance sheet from the previous three months.

3.4. Contractor Accounting Records. Contractor shall provide receipts for goods and services sold at the Café. Contractor shall maintain separate gross food and beverage sales generated by Café Services and Catering Services revenue. These records, and records of earnings, receipts, fees, commissions and income for Café Services and any Catering Services revenue obtained from goods and services sold from the Café shall be kept and maintained in accordance with generally accepted accounting principles ("GAAP"); shall be open for inspection by EBTC, Fiscal Agent, or their agents at all reasonable times and upon reasonable prior notice; and shall include prepared and filed Franchise Tax Board sales tax documents. All Franchise Tax Board information shall be maintained in strict confidence by EBTC and shall not be disclosed publically or to any other person. At the termination of this Agreement, Contractor shall maintain such records for not less than eighteen (18) months and shall make them available to EBTC, Fiscal Agent or their agents in accordance with this section.

3.5. Audit. EBTC, Fiscal Agent or their agents, at EBTC's sole cost and expense, shall have the right to audit and/or inspect Contractor's books and records pertaining to the License Fee with thirty (30) days notice to Contractor. EBTC, Fiscal Agent or their agents may conduct such audit and/or inspection of Contractor's books with EBTC's, Fiscal Agent's or their agents' own employees, or through an accountant or other agent selected by EBTC, Fiscal Agent or their agents or both in combination. EBTC, Fiscal Agent or their agents, upon Contractor's request, shall require any accountant or agent selected by EBTC, Fiscal Agent or their agents, to execute and deliver to Contractor a confidentiality agreement. Contractor agrees to cooperate in good faith with EBTC, Fiscal Agent or their agents, in the conduct of any such audit and/or inspection and to make Contractor's books and records of and relating to the License Fee available to EBTC, Fiscal Agent or their agents at one location. If EBTC's, Fiscal Agent's or their agents' audit and/or inspection shows that Contractor's calculation of License Fee for the audited/inspected calendar year or years (which shall in no event be prior to the two (2) calendar years immediately preceding the most recently completed calendar year) was underpaid then Contractor shall pay the actual amount that was owed within thirty (30) days after being presented with the audit/inspection's results. Contractor shall also pay EBTC's, Fiscal Agent's or their agents' actual reasonable audit/inspection out-of-pocket fees and costs for the audit/inspection if, and only if, the calendar year or years audit reveals that EBTC was underpaid by five (5%) or more. Contractor shall cause the books and records to be made available during normal business hours and EBTC, Fiscal Agent or their agents will have the right to review them in the Museum or another mutually agreeable place. If Contractor disagrees with the results of EBTC's, Fiscal Agent's or their agents' audit, the parties shall refer the matter to a mutually acceptable independent certified public accountant, who shall work in good faith with the Parties to resolve the discrepancy. The fees and costs of such independent audit shall be paid equally by the Parties until such time as a determination is made as to whether or not EBTC was underpaid by five (5%) or more. The prevailing party in any such dispute shall be entitled to recover any audit fees and costs of audit work.

#### 4. CAPITALIZATION.

4.1. Trade Fixtures And Supplies. Contractor shall furnish all Trade Fixtures and Supplies needed for the operation of the Café, Café Services and Catering Services at its own expense.

4.2. Additional Capital. The Parties acknowledge and agree that all Trade Fixtures and Supplies brought to or installed by Contractor at the Licensed Premises are owned by Contractor. Contractor shall provide such additional Trade Fixtures and Supplies that it determines to be required or necessary for Café Services in accordance with the operating standards set forth herein. Such Trade Fixtures and Supplies purchased by Contractor shall remain the property of Contractor and shall be removed by Contractor (and the Licensed Premises shall be restored to the condition prior to such installation) at the end of the Term, Extended Term, expiration or termination of this Agreement.

4.3. Alterations. Upon execution of this Agreement and prior to making any installations or alterations to the Licensed Premises, Contractor shall provide EBTC with written specifications and a diagram of Contractor's installations and alterations. Contractor may make such installations and alterations upon receipt of written approval from EBTC, provided that all such installations or alterations shall be done in a good, workmanlike and lien-free condition by licensed contractors approved by EBTC. Contractor shall indemnify and hold City and EBTC harmless from all costs and liability associated with such installations or alterations. Contractor shall have the right to remove all Trade Fixtures and Supplies installed in the Licensed Premises.

#### 5. LIABILITY INSURANCE.

5.1. General Liability. During the term of this Agreement, Contractor shall obtain and maintain general liability insurance coverage in the amount of not less than two million five hundred thousand dollars (\$2,500,000.00); shall list the City and each EBTC member, EBTC, Fiscal Agent, Contract Administrator, and the City and each EBTC's members', EBTC's Fiscal Agent's, Contract Administrator's and the City's officers, directors, employees and agents, successors and assigns as an additional insured; and provide the City and Contract Administrator with at least thirty (30) days notice prior to cancellation or replacement of coverage. Contractor shall furnish EBTC a certificate of insurance denoting compliance with the provisions herein prior to build-out. Contractor shall report in writing to Contract Administrator any incident that might reasonably result in an insurance claim for Contractor or EBTC no later than forty-eight (48) hours after an incident has occurred.

5.2. Additional Coverage. Contractor shall obtain and keep in full force during the term of this Agreement a Fire Legal Liability or Broad Form Property Damage Liability Endorsement and Business Automobile Liability insurance with the above-mentioned general liability coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence. The Business Automobile Liability insurance shall cover vehicles owned, used, and hired by Contractor. Contractor shall provide proof of such insurance to Contract Administrator prior to build-out.

5.3. Worker's Compensation. Contractor shall maintain Workers Compensation Insurance, Employees Liability Insurance, and insurance in compliance with any statutory requirements pertaining to the compensation of injured employees, covering all Contractor

employees connected with the performance of this Agreement in compliance with the laws of the State of California and provide proof of such insurance to Contract Administrator.

## **6. TAXES.**

6.1. Sales/Use/Tax. Contractor shall pay all applicable sales and use taxes assessed with respect to the sale of food or beverage through Café or Catering Services. Contractor shall hold EBTC harmless against all costs and liability with respect to any sales or use tax assessed with respect to the sale of food or beverage under the terms of this Agreement that arise after the Effective Date. EBTC and Contractor shall each pay their own taxes assessed on the fixtures they own in the Licensed Premises. The payment of such taxes shall not alter the ownership rights of the Parties as set forth in this Agreement.

## **7. PROPRIETARY RIGHTS.**

7.1. License Only. Contractor acknowledges and agrees that this Agreement is a license to use the Licensed Premises and Café and does not constitute a lease or sublease of any interest in the Museum or any part thereof. Contractor also acknowledges that the license granted herein is a non-exclusive license except for the license to operate the Café which shall be exclusive during the Term of this Agreement, with EBTC retaining exclusive possession and control of the Museum. Contractor shall have exclusive use of the Licensed Premises as depicted on Exhibit A during the business hours for the Café and the two (2) hours prior to and one (1) hour after such business hours (hereinafter collectively the "Hours of Operation"). Contractor shall have exclusive use of the walk in closet on the ground floor near the passenger elevator as well as two closets on the main floor that EBTC will designate as storage for Contractor.

## **8. TERM AND TERMINATION.**

8.1. Term. This Agreement is effective on the Effective Date and shall remain in full force for: (i) the sixty (60) day build-out period; and (ii) three (3) years from the first day after the build-out period expires ("Term"). The Term shall be renewable or otherwise extended only upon the written mutual consent of both Parties, provided, however, as a condition precedent no material breach or default has occurred without cure after notice during the Term by Contractor, and Contractor has provided all Café Services and Catering Services in a professional and upscale manner as contemplated herein, then Contractor shall have one (1) option to extend the Term of this Agreement for an additional two (2) years on the same terms and conditions as set forth herein ("Extended Term"). Contractor shall provide written notification of Contractor's decision to begin the Extended Term not less than one hundred and twenty (120) days prior to the expiration of the Term and EBTC shall acknowledge written approval of the Extended Term. If Contractor fails to give written notice one hundred and twenty (120) days prior to expiration of the Term, EBTC shall have the right to seek a new contractor or renegotiate this Agreement. Neither Party shall be obligated to continue the relationship beyond the Extended Term. Upon expiration of the Term or Extended Term, Contractor's tenancy may continue as a month-to-month tenancy with EBTC's written approval. All provisions of this Agreement shall apply to a month-to-month tenancy as equity would dictate.

8.2. Breach or Default. Notwithstanding the foregoing, this Agreement may be terminated for cause by either Party in the event the other Party is in material breach or default hereunder. A Party shall be in material breach or default in the event it incorrectly performs or

fails to perform any provision, covenant or condition of this Agreement and such incorrect performance or failure to perform continues for twenty (20) days after written notice thereof (the "Defaulting Party") from the other Party (the "Electing Party"); provided that if the nature of such material breach or default is such that the same cannot reasonably be cured within a twenty (20) day period, the Defaulting Party shall not be deemed to be in material breach or default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure said material breach or default as soon as possible. Upon the occurrence of a material breach or default, the Electing Party shall have the option to terminate this Agreement. Upon any termination, Contractor shall immediately vacate the Licensed Premises and deliver possession to EBTC. If Contractor fails to so vacate the Licensed Premises and deliver possession to EBTC, then EBTC may, without prejudice to any other remedy which it may have for possession, damages or arrearages, enter and take possession of the Licensed Premises and expel or remove Contractor and any other person who may be occupying the Licensed Premises. Notwithstanding the above, if such material breach or default is disputed and either party submits such matter to arbitration to determine the existence of such material breach or default, neither party shall have the right to terminate this Agreement until a final determination is made by the arbitrator provided however, that if EBTC in good faith and upon reasonable grounds contends that Contractor has engaged in any act or omission that constitutes a material breach or default under the terms of this Agreement and such act or omission, if continued, could cause physical damage to the Museum, the reputation of the Museum, or relates to the health, safety or welfare of Museum patrons or employees, Contractor may be removed or expelled from the Licensed Premises pending the resolution of such matter in arbitration.

8.3. Obligations. In the event of termination or expiration of this Agreement, or the removal or expulsion of Contractor, Contractor shall immediately and no later than fourteen (14) days after actual termination or expiration, remove all Trade Fixtures and Supplies and any other Contractor owned property from the Licensed Premises at Contractor's sole cost and expense. Contractor shall restore the Licensed Premises to substantially the same condition as it was as of the Effective Date, reasonable wear and tear and alterations/improvements approved by EBTC excepted. Any monies due EBTC shall be equitably prorated to the date of termination or expiration and paid in full immediately.

## **9. INDEPENDENT CONTRACTOR.**

9.1. Relationship. It is understood and agreed that no relationship of employer-employee and, or partnership between Contractor and EBTC exists or is created by this Agreement. The Parties are separate legal entities for all intents and purposes, and neither Party shall have the authority to bind the other except as specifically provided herein. Each Party is an independent contractor and shall remain professionally and economically independent of the other. Contractor represents and warrants that it holds or will hold as of the date of opening of the Café, all necessary business licenses to carry out its business.

## **10. INDEMNIFICATION.**

10.1. Contractor Indemnity. Contractor shall indemnify, defend and hold each EBTC member, EBTC, Fiscal Agent, Contract Administrator, and the City and each EBTC's members', EBTC's Fiscal Agent's, Contract Administrator's and the City's officers, directors, employees and agents, successors and assigns harmless from and against any and all claims, demands, actions, causes of action, losses, liabilities judgments, liens, rights, costs and expenses, including

without limitation attorney's fees and costs that may arise directly or indirectly by reason of Contractor's breach or default of this Agreement with the exception that such indemnification shall not extend to any negligent or willful acts or omissions of each EBTC member, EBTC, Fiscal Agent, Contract Administrator, and the City and each EBTC's members', EBTC's Fiscal Agent's, Contract Administrator's and the City's officers, directors, employees and agents, successors and assigns. EBTC and Fiscal Agent shall have no responsibility for any of Contractor's debts, liabilities or other obligations.

10.2. Liens. Contractor agrees that it will pay or cause to be paid all costs for work done by it or caused to be done by it on the Licensed Premises immediately and without delay or default. Contractor shall keep the Licensed Premises and the Museum free and clear of all mechanic's liens and other liens filed or asserted on account of such work, on behalf of EBTC or persons claiming under it (the "Liens"). Contractor agrees to and shall indemnify and hold EBTC, Fiscal Agent, Contract Administrator, and the City free and harmless against any Liens.

10.3. Survival. Any lawsuit in contract or tort must be filed within three (3) years from the date of termination or expiration of the Agreement.

## **11. CONTRACTOR REPRESENTATION AND WARRANTIES**

11.1. Organization and Good Standing. Contractor is a California corporation duly organized, validly existing and in good standing under the laws of the State of California. Contractor shall submit verification to Contract Administrator that it is validly existing and in good standing in California prior to the first day after the sixty (60) day build-out period.

11.2. Compliance with Laws. Contractor is, and at all times has been, in full compliance with all federal, state, local, municipal, foreign, international, and multinational, laws, ordinances, principle of common law, codes, regulations, rules and statutes.

## **12. ARBITRATION**

12.1. Procedure. Any dispute, claim or controversy arising out of or relating to this Agreement or the default, breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Diego County, before one arbitrator who is a retired judge. The arbitration shall be administered by JAMS pursuant to the current Comprehensive Arbitration Rules and Procedures or, in the alternative, JAMS Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The Parties hereby expressly retain all judicial rights to discovery. The judgment of the arbitrator shall be final and binding.

12.2. Allocation of Fees and Costs. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

12.3. NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE AGREEMENT DECIDED BY MUTUAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY ON APPEAL, UNLESS THOSE RIGHTS ARE

SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. EACH PARTY ACKNOWLEDGES THAT AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTOOD THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL BINDING ARBITRATION.

 *Initials for Contractor*

 *Initials for Contract Administrator*

### 13. NOTICES.

13.1. Method. Any notice that a party is required or may desire to give the other shall be sent thirty (30) days in advance unless otherwise specified in this Agreement, be in writing and may be sent by: (i) personal delivery, or (ii) by deposit in the United States mail, postage paid, registered or certified mail, return receipt requested, or (iii) by overnight delivery using a nationally recognized overnight courier, providing proof of delivery (subject to the right of a party to designate a different address for itself by notice similarly given):

TO:

EBTC  
1649 El Prado, Suite  
San Diego, CA 92101  
Attn: Contract Administrator,  
Facsimile: (619) 814-0166

TO:

MERYO Enterprises  
Attn: Maria Sparks  
1617 La Presa Avenue  
Spring Valley, CA 91977  
Facsimile: (619) 741-8225

WITH COPY TO:

San Diego History Center  
Attn: Fiscal Agent, EBTC  
1649 El Prado Suite 3

San Diego, CA 92101  
Facsimile: (619) 814-0166

13.2. Notice Determination. Any notice given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by United States Post Office, return receipt, or the overnight carrier's proof of delivery, as the case may be. Notices given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8 a.m. and 6 p.m., local time of the recipient, of any business day with delivery made after such hours deemed received the following business day. A party's address may be changed by written notice to the other party effective upon actual receipt of such notice.

#### **14. GENERAL PROVISIONS.**

14.1. Assignment. This Agreement is personal to the original entity specified as Contractor above. Contractor shall not assign any of its rights or obligations under this Agreement and shall not subcontract any Services to be performed hereunder without the prior written consent of EBTC. Subject to the foregoing restriction on assignment by Contractor, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns.

14.2. Jurisdiction. This Agreement shall be governed by the laws of the State of California, without regard to conflicts of law principles.

14.3. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written negotiations and agreements between the Parties with respect to the subject matter hereof. No modification, variation or amendment of this Agreement shall be effective unless made in writing and signed by both Parties.

14.4. Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other, or further exercise of, such right, power, or privilege.

14.5. Severability. In the event that any of the terms, conditions or provisions of this Agreement are held to be illegal, unenforceable or invalid by any court of competent jurisdiction, the remaining terms, conditions or provisions hereof shall remain in full force and effect.

14.6. Café Name. Café is currently called "Café in the Park" a name not owned by the EBTC or Museum. Contractor intends to call the Café "G.R.O. or Garden Rich Organics" and is in the process of acquiring the legal right to use this name. Contractor will possess the legal right to operate the Licensed Premises under this or another fictitious business name prior to opening the Café and will submit proof of the same to EBTC for its approval.

14.7. Attorneys Fees. In the event any party to this Agreement commences any action, including arbitration, legal or otherwise, concerning any aspect of this Agreement or any tort cause of action, including but not limited to the interpretation or enforcement of any of its provisions or because of any alleged dispute, breach, default, or misrepresentation in connection with any aspect or provision of this Agreement, or for a declaration of a party's rights or obligations hereunder, or for any other judicial remedy, the prevailing party shall be entitled to

recover its reasonable attorneys' fees and all other costs and expenses incurred in connection with the action or proceeding, including without limitation expert witness fees, court reporter fees, collection expenses, and the costs of appeal, in addition to any other relief that party may be entitled, whether or not such action proceeds to judgment. The award of attorneys' fees shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, include the full amount of costs, expenses, and attorneys' fees incurred in good faith.

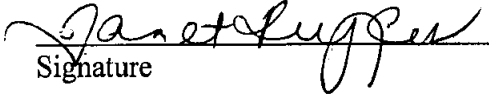
14.8. Authority. The persons signing this Agreement represent and warrant that they have the requisite authority to bind the parties on whose behalf they are signing.

14.9. Exhibits. Each of the Exhibits attached hereto are hereby incorporated herein by this reference.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the date of signature of both Parties ("Effective Date").

**EBTC:**

Balboa Art Conservation Center,  
a 501(c)(3) corporation

  
Signature

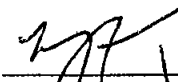
Executive Director

Title

Nov. 1, 2011  
Date

**CONTRACTOR:**

MERYO Enterprises, a California  
corporation

  
Signature  
Name: MARIA SPARKS  
Title: CEO

San Diego Model Railroad Museum, a  
501(c)(3) corporation

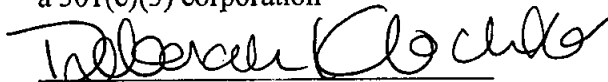
\_\_\_\_\_  
Signature

Executive Director

Title

\_\_\_\_\_  
Date

Museum of Photographic Arts,  
a 501(c)(3) corporation

  
Signature

Executive Director

Title

10/31/11  
Date

San Diego History Center,  
a 501(c)(3) corporation

  
Signature

Executive Director

Title 11/1/11

Date

Committee of One Hundred,  
a 501(c)(3) corporation

Signature

Executive Director

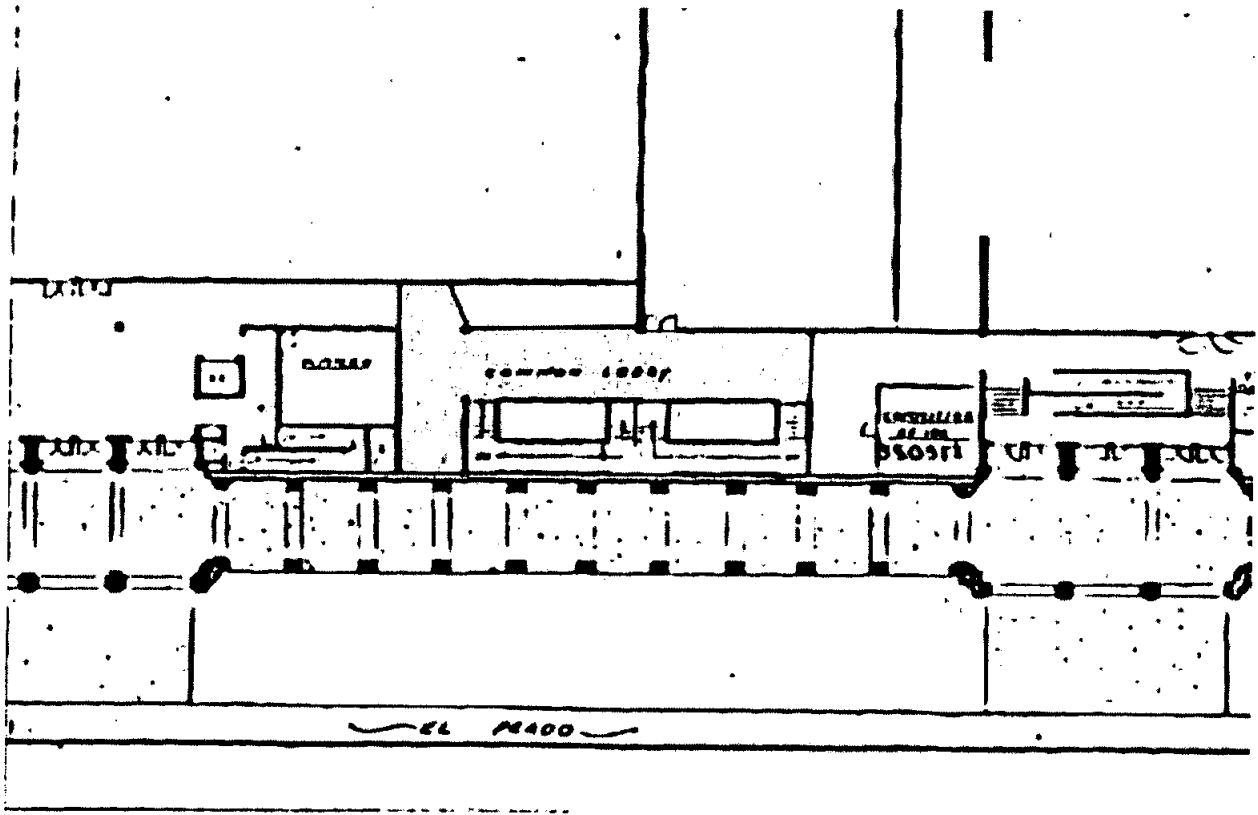
Title

Date

## EXHIBIT A

### LICENSED PREMISES

Licensed premises is the shaded area and is approximately 550 square feet.



**EXHIBIT B**  
**HOLIDAY CLOSURES**

Thanksgiving Day  
Christmas Day

**EXHIBIT C**  
**MAINTENANCE EXCLUSIONS**

**Committee of 100 Exhibition Area to include Display Case and wall displays as reflected on Exhibit A.**

## EXHIBIT D

### INVOICE FORMAT

The below completed invoice; unaltered monthly and year-to-date profit and loss statements; as well as an unaltered balance sheet from the previous three months from a generally accepted accounting program such as QuickBooks.

**Contractor's  
Monthly Financial Report**

|                            | <u>Café</u> | <u>Concessions and<br/>Catering (Bar service)</u> | <u>Monthly<br/>Total</u> | <u>Year to Date<br/>Total</u> |
|----------------------------|-------------|---------------------------------------------------|--------------------------|-------------------------------|
| <u>Gross sales</u>         |             |                                                   |                          |                               |
| Food                       |             |                                                   |                          |                               |
| Non alcoholic<br>beverages |             |                                                   |                          |                               |
| <u>Alcoholic beverages</u> |             |                                                   |                          |                               |
| Total gross sales          |             |                                                   |                          |                               |
| <u>Discounts</u>           |             |                                                   |                          |                               |
| Net café sales             |             |                                                   |                          |                               |
| <u>Cost of goods</u>       |             |                                                   |                          |                               |
| Gross profit               |             |                                                   |                          |                               |
| <u>Expenses</u>            |             |                                                   |                          |                               |
| EBTC license fee           |             |                                                   |                          |                               |
| Advertising                |             |                                                   |                          |                               |
| Auto                       |             |                                                   |                          |                               |
| Entertainment              |             |                                                   |                          |                               |
| Fees                       |             |                                                   |                          |                               |
| Insurance (Liability)      |             |                                                   |                          |                               |
| Linen Service              |             |                                                   |                          |                               |
| Miscellaneous              |             |                                                   |                          |                               |
| Payroll Expenses           |             |                                                   |                          |                               |
| Permits                    |             |                                                   |                          |                               |
| Postage                    |             |                                                   |                          |                               |
| Printing                   |             |                                                   |                          |                               |
| Rentals                    |             |                                                   |                          |                               |
| Repairs and maintenance    |             |                                                   |                          |                               |
| Supplies                   |             |                                                   |                          |                               |
| Taxes                      |             |                                                   |                          |                               |



## CITY OF SAN DIEGO

### LESSEE'S AND SUBLESSEE'S QUESTIONNAIRE FOR ALL LEASES, ASSIGNMENTS AND SUBLEASES OF MORE THAN FIVE YEARS

Before the City of San Diego will process requests to (Sub)Lease, all information requested in this Questionnaire must be completed by the proposed (Sub)Lessee. Even though a proposed Sublessee may complete the Questionnaire, the Questionnaire must be delivered or mailed to the City with a cover letter signed by the City Lessee or proposed Lessee. **THE CITY WILL NOT ACCEPT THE QUESTIONNAIRE, DOCUMENTS, OR OTHER INFORMATION DIRECTLY FROM A SUBLESSEE.**

All information furnished in this Questionnaire must be complete and accurate. Omissions, inaccuracies, or misstatements may cause the rejection and/or subsequent revocation of the City's Lease, consent to Sublease, or consent to Assignment of (Sub)Lease.

In submitting this Questionnaire, the proposed (Sub)Lessee completing the Questionnaire authorizes the City to make any inquiry or investigation it believes necessary to substantiate or supplement the information furnished in the Questionnaire, and authorizes others to release such information to the City.

Exact name of existing Lessee (always complete):

MERYO Enterprises DBA "GRO Café"

Exact name of proposed Lessee (complete only if applicable):

MERYO Enterprises DBA "GRO Café"

Exact name of existing Sublessee (complete only if applicable):

Exact name of proposed Sublessee (complete only if applicable):

Date this Questionnaire completed: 11-15-2011

The information furnished in and with this Questionnaire is true, complete, and correct to the best of my knowledge.

Signature: [Signature]

Title:

President

Thank you for taking the time to complete the Questionnaire. Lessees may contact Real Estate if they have any questions. Please return the completed Questionnaire, with any additional information or documents to:

REAL ESTATE ASSETS DEPARTMENT  
1200 THIRD AVENUE STE. 1700  
SAN DIEGO, CA 92101  
TEL.: (619) 236-6020 FAX: (619) 236-6706

This Questionnaire contains 15 pages.

### PROPOSED (SUB)LESSEE

1. Name of proposed (Sub)Lessee exactly as it will appear on the actual tenancy document:

MERYO Enterprises DBA "GRO Café"

2. Mailing Address of proposed (Sub)Lessee for purposes of notice or other communication relating to the proposed tenancy:

4760 Mission Gorge Pl., Suite G

San Diego, CA 92120

Telephone No.: 619-253-8311 Fax No.:

E-mail Address: maria@corkandplatter.com

3. Billing Address (*only if different from Mailing Address*):

Telephone No.: Fax No.:

4. Proposed (Sub)Lessee intends to operate as a:

Sole Proprietorship ( ); Partnership ( ); Corporation ( x );

Limited Liability Company ( ); Other

Explain if necessary:

5. Effective date of assignment (complete only if applicable): October 11, 2011

## CORPORATION STATEMENT

If proposed (Sub)Lessee is a corporation, please answer the following:

1. Type of corporation: C ( ) Subchapter S ( x )
2. When incorporated? October 11, 2011
3. Where incorporated? California
4. Is the corporation authorized to do business in California? Yes ( x ) No ( )  
If so, as of what date? October 11, 2011  
—
5. The corporation is held:  
a. Publicly ( ) Privately ( x )  
b. If publicly held, how and where is the stock traded?

- |                                     |                   |               |                    |
|-------------------------------------|-------------------|---------------|--------------------|
| 6. Please list the following:       | <u>Authorized</u> | <u>Issued</u> | <u>Outstanding</u> |
| a. Number of voting shares:         | <u></u>           | <u></u>       | <u></u>            |
| b. Number of nonvoting shares:      | <u></u>           | <u></u>       | <u></u>            |
| c. Number of shareholders:          |                   |               | <u>2</u>           |
| d. Value per share of Common Stock: |                   | Par           | \$ <u></u>         |
|                                     |                   | Book          | \$ <u></u>         |
|                                     |                   | Market        | \$ <u></u>         |

7. Please furnish the name, title, address, and the number of voting and nonvoting shares of stock owned by each officer and, in addition, the same information for each stockholder owning more than 10% of any class of stock.

|                |                            |
|----------------|----------------------------|
| Name:          | Maria Sparks <u></u>       |
| Title:         | President <u></u>          |
| Address:       | 1617 La Presa Ave. <u></u> |
|                | <u></u>                    |
| No. of Shares: | 7000 <u></u>               |

Name: Mayo Osman \_\_\_\_\_  
Title: Vice President \_\_\_\_\_  
Address: 5005 August St. \_\_\_\_\_  
San Diego, CA 92110 \_\_\_\_\_  
No. of Shares: 3000 \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
No. of Shares: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
No. of Shares: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
No. of Shares: \_\_\_\_\_

(Additional page(s) may be added if needed to complete list of stockholders [type proposed (Sub)Lessee name (from page 2) on the top of each page].)

Any partnership, corporation, or LLC owning more than a 10% ownership interest must also complete separate pages 3; or 4 and 5; or 6, as appropriate for each entity (type proposed [Sub]Lessee name [from page 2] on the top of each page for identification purposes). Also, furnish the financial data for such partnership, corporation, or LLC, as required on page 7. If there is an ownership chain of additional partnerships, corporations, or LLCs, the above requirements extend to each such entity having either: (1) a 10% or greater direct, indirect, beneficial ownership, or membership interest in the proposed (Sub)Lessee; or (2) effective control of the proposed (Sub)Lessee, regardless of the percentage of ownership or membership interest.

## **FINANCIAL AND OTHER BACKGROUND INFORMATION**

### **FINANCIAL STATEMENT**

(Sub)Lessee, general partners of (Sub)Lessee, owner-corporations of (Sub)Lessee, members of (Sub)Lessee owning more than a 10% membership interest, and any person or business entity guaranteeing the performance of (Sub)Lessee must attach a complete report, prepared in accordance with good accounting practice, reflecting current financial condition. The report must include a balance sheet and annual income statement. The person or entity covered by the report must be prepared to substantiate all information provided.

### **OTHER INFORMATION**

Each (Sub)Lessee, each general partner of (Sub)Lessee, each owner-corporation of (Sub)Lessee, each member of (Sub)Lessee owning more than a 10% membership interest, any person or business entity guaranteeing the performance of (Sub)Lessee, any person or entity owning more than a 10% interest of (Sub)Lessee, and any guarantor of (Sub)Lessee must answer the following questions:

1. **Surety Information** - Has a surety or bonding company ever been required to perform on the default of any of the individuals or entities?
  - a. Yes ( ) No (x)
  - b. If yes, please attach a statement naming the surety or bonding company, date, amount of bond, and the circumstances surrounding said default and performance.
2. **Bankruptcy Information** - Have any of the individuals or entities ever been adjudicated bankrupt or are any presently a debtor in a pending bankruptcy action?
  - a. Yes ( ) No (x)
  - b. If yes, please give dates, court jurisdiction, and amount of liabilities and assets.
3. **Pending Litigation** - Are any of the individuals or entities presently a party to ANY pending litigation?
  - a. Yes ( ) No (x)
  - b. If yes, please provide detailed information for each action.
4. **Claims, Liens, or Judgments** - Are any of the individuals or entities now subject to any outstanding claims, liens, or judgments?
  - a. Yes ( ) No (x)
  - b. If yes, please provide detailed information for each claim, lien, or judgment.

### **REFERENCES FOR PROPOSED (SUB)LESSEE**

Please list four persons or firms with whom you have conducted business transactions during the past three years. Two of the references must have knowledge of your debt payment history, with at least one being a financial institution. Two of the references must have knowledge of your business experience.

#### **REFERENCE NO. 1**

Name: Roger Kassab\_\_\_\_\_

Firm: Wells Fargo Bank\_\_\_\_\_

Title: Business Manager Bank Associate\_\_\_\_\_

Address: 829 Orange Ave. Coronado, CA 92118\_\_\_\_\_

Telephone: 619-435-2222\_\_\_\_\_

Nature and magnitude of purchase, sale, loan, business, association, etc.:

\_\_\_\_\_ Bank Manager \_\_\_\_\_

\_\_\_\_\_ Financial Institution \_\_\_\_\_

#### **REFERENCE NO. 2**

Name: Ryan Larson\_\_\_\_\_

Firm: Abbey Party Rentals\_\_\_\_\_

Title: Office Manager\_\_\_\_\_

Address: 8860 Production Ave. San Diego, CA 92121\_\_\_\_\_

Telephone: 858-586-7400\_\_\_\_\_

Nature and magnitude of purchase, sale, loan, business, association, etc.:

\_\_\_\_\_ Vendor of said Establishment \_\_\_\_\_

\_\_\_\_\_

**REFERENCE NO. 3**

Name: J.R. \_\_\_\_\_

Firm: Specialty Produce \_\_\_\_\_

Title: Sales Rep \_\_\_\_\_

Address: 1929 Hancock St. San Diego, CA 92110 \_\_\_\_\_

Telephone: 619-295-3172 \_\_\_\_\_

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Vendor

**REFERENCE NO. 4**

Name: Pete Camarda \_\_\_\_\_

Firm: Seaport Meat \_\_\_\_\_

Title: CEO \_\_\_\_\_

Address: 2533 Folex Way Spring Valley, CA 91978 \_\_\_\_\_

Telephone: 619-713-2278 \_\_\_\_\_

Nature and magnitude of purchase, sale, loan, business, association, etc.:

Vendor

**REFERENCE NO. 5**

Name: Jeffrey Strauss

Firm: Pamplermousse Grille

Telephone: 619-985-9572

Mentor/Former Employer/Vendor

### CITY OF SAN DIEGO PERSONAL DESCRIPTION AND RELEASE

PLEASE NOTE: All partners, both general and limited; all stockholders owning more than 10% of any class of stock of corporations; all members of a limited liability company; and sole proprietors requesting to (sub)lease, must each complete this page before the tenancy request can be processed. (You may reproduce and use copies of this page, if necessary.)

The following personal information is required to initiate a credit investigation. The business and personal reputation of principals, partners, and members will be considered in qualifying Lessees or in consenting to Sublessees.

|                               |                                           |
|-------------------------------|-------------------------------------------|
| First, Middle, & Last Name    | <u>Mayo Amanda Osman</u>                  |
| Date of Birth                 | <u>06/14/73</u>                           |
| Place of Birth                | <u>San Diego</u>                          |
| Social Security Number        | <u>571-77-3194</u>                        |
| Driver's License Number/State | <u>CA DL A4870650</u>                     |
| Home Address                  | <u>5005 August St.</u>                    |
|                               | <u>San Diego, CA 92110</u>                |
| Previous Address              | <u>1080 Moonstone Pl.</u>                 |
|                               | <u>Chula Vista, CA</u>                    |
| Home Telephone No.            | <u>619-210-5957</u>                       |
| Employer                      | <u>MERYO Enterprises</u>                  |
| Occupation                    | <u>Business Owner</u>                     |
| Business Address              | <u>4760 Mission Gorge Pl, Ste G 92120</u> |
| Business Telephone No.        | <u>619-253-8311</u>                       |
| Business Fax No.              | <u></u>                                   |

The City is hereby authorized to request a credit report and other information covering my financial and business history.

Date 11/15/11 Signed 

Print or type exact name of proposed (Sub)Lessee from page 2 of Questionnaire:

MERYO Enterprises DBA "GRO Café"

## **METHOD OF OPERATION**

**Please describe your proposed business operation on the property to be (Sub)Leased. Discuss any optional services and uses which you propose to provide.**

Under the direction of MERYO Enterprises, GRO Café will be an ideal environment where visitors of Balboa Park, as well as employees of the Park will be able to relax and enjoy delicious and healthy cuisine while experiencing excellent customer service.

Seasonal menus will be prepared for the café and will include fresh, organic ingredients. Specialty items that cater to certain types of diets (i.e. gluten-free, vegetarian and vegan) will also be incorporated into the menu. We will offer various coffee and tea beverages as well as a variety of "Grab and GRO" items for customers who are on the move.

GRO Café will also be doing its part to help promote environmental awareness and sustainability by using disposable items that are recycled content products and biodegradable products. It is also our goal to develop a composting program which will enable much of the production waste and some of the disposables to be removed and composted offsite.

### **ESTIMATE OF GROSS RECEIPTS**

If this Questionnaire is being completed by a prospective Lessee, please show the best estimate of the average annual gross sales for each significant use or service, and for each significant optional use or service which the Lessee and its Sublessees (if any) plan to conduct on or from the property. (If the Questionnaire is being completed by a Sublessee, only the estimate of the Sublessee's gross sales is required.) This data will be used by the City to analyze the proposed Lease or Sublease Consent application. The time periods shown should not be assumed to necessarily represent the term of a (Sub)Lease that may be granted or consented to by the City.

Average annual gross sales for each proposed significant use during each of the first five operating years:

| Year of Operation | Uses (Identify Each Use) |    |    |    |    |
|-------------------|--------------------------|----|----|----|----|
|                   | GRO Cafe                 |    |    |    |    |
| 1                 | \$480,000                | \$ | \$ | \$ | \$ |
| 2                 | \$530,000                |    |    |    |    |
| 3                 | \$590,000                |    |    |    |    |
| 4                 |                          |    |    |    |    |
| 5                 |                          |    |    |    |    |

Note: Lease is 3 year term

### **EXPERIENCE STATEMENT**

Please describe in detail the duration and extent of your business experience, with special emphasis upon experience with the type of business which you propose to conduct on City property. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

See included resumes and statement of experience.

# MARIA SPARKS

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1617 La Presa Avenue, Spring Valley, Ca. 91977  
(h) 619-741-8225 (c) 619-227-8186 (f) 619-741-8225  
email: irsme\_mer@hotmail.com

## EXPERIENCE

- MERYO Enterprises

October 2011 - Present

*President*

CEO of company that umbrellas Cork and Platter and GRO café, both offering healthy farm-to-table fare. Specializing in high end private parties and corporate events for groups from 10 to 500. WMBE owned and operated (Women and Minority Business Enterprise), allowing the ability to offer clients tax benefits for utilizing the company

Clients include SDG&E, Epsilon Systems, LUXE Magazine, Dr. and Barbara Mc Coll, Balboa Park, City of San Diego, Lena Evans.

- Cork and Platter

January 2007 - Present

*CEO/Catering chef*

CEO of catering company that offers healthy farm-to-table fare. Specializing in high end private parties and corporate events for groups from 10 to 500. WMBE owned and operated (Women and Minority Business Enterprise), allowing the ability to offer clients tax benefits for utilizing the company

Clients include SDG&E, Epsilon Systems, LUXE Magazine, Dr. and Barbara Mc Coll, Lena Evans.

- Pamplemousse Grille

Nov 97 - Present

Jeffrey Strauss

858-792-9090

*Catering chef*

Coordinator for particular courses during each off-site catered event. Act as sole chef for smaller events. Cater for parties as small as 10 and as large as 650

Clients include Moores (Padres'), Spanos (Chargers'), Jenny Craig, Tim Conway, Vince Van Patten, Humane Society, Las Patronas

**Contract work**

- Fox Studios

Aug.05 - Dec.05

Leslie Frankenheimer/ Jeff Hite

310-922-3130

*Food Stylist/ Set Designer*

Worked on the set of the television series *Kitchen Confidential*. Shot 24 episodes on and off the set of Fox Studios in Los Angeles, Ca. Responsible for daily planning of food props, menu planning, inventory, ordering, stylizing food and execution of each scene's food requirements

**Contract work**

- Girard Gourmet

Nov.97-Aug.05

Diana Goedhuys (pronounced-Good house)

858-454-3325

*Director of event coordinating/ catering manager/ bartender/ server*

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Client relationship was established from booking events, menu planning and food preparation, to logistics and service during installation of event. Assisted with front-end customer service, book keeping and overseeing on-site catering for both restaurants (also owners of The Mission Hills Café). Clients include Governor Gray Davis; Suzie Spanos, Athenaeum, Museum of Contemporary Art, Mengei Museum

- 
- Ski Kings Inc. Jan.96-Jan.02  
Greg Nawrocki/ Bob Jacobson 630-653-7210/708-205-5654  
*Personal chef*  
Taking care of clients' personal needs; coordinating events; planning, purchasing and preparing meals; coordinating logistics for one week each year. Responsible for 20+ clients and any guests the clients' invited. Ability to change and adapt menus at the last minute was a priority. Also catered to special dietary needs, food allergies and favorite dish requests.  
**Contract work**
  - Four Square Productions Sept.98-Sept.99  
Peter Warnick 619-874-1900  
*Production caterer/ Craft Services*  
Head of catering and craft services for staff and talent for various television productions, eg. Direct T.V. Clients include Jim Laslavic  
**Contract work**
  - Dizzino Photography Jul.98-Oct.98  
Tony Dizzino 626-799-9969  
*Production caterer/ Craft Services*  
Head of catering and craft services for various sports-related photo shoots including Met-RX, Triathlete Magazine, GT bikes, etc.  
**Contract work.**
  - Discovery Channel Eco- Challenge Apr.96-Sept.97  
Mark Burnett (Contact assistant Amanda Harrell) 310-600-4676  
*Head Chef/ Supervisor-large scale, multi-sport endurance racing company.*  
Hired staff, created menus, devised logistics for four mobile camps with only 3 months for preparation to source local wholesalers, equipment rental companies, and to hire a staff of 12, in Cairns, Australia, with no prior contacts.  
The staff created take-away food and beverage packages to last 2-3 days for camera crews, journalists, P.C.'s (check point people), and media. As well, 24-hour catering and craft services were readily available with at least one hot menu item per mealtime. This facilitated event and production staff, camera crew, P.C. people, volunteers, leg coordinators plus their staff, and most important, the competitors, totaling over 400 people for a two week period.
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- Whistler Mountain Ski Corporation Nov.95-May.97  
*Employee Relations/ server/ bartender*  
 Gord Ahrens/ Danae Johnson 604-932-3210  
 Coordinator for employee relations.  
 Responsible for hiring entire staff of Whistler Mountain for seasonal, as well as full time employment.  
 Responsibilities include screening ( 1<sup>st</sup> interview), interviewing, reference checking, hiring, filing databases with a core group of 10 team members.

- Citta' Bistro Oct.90-Apr.97  
 Dave Keen 604-932-4177  
*Event Coordinator for a multi-sport restaurant event (Citta' Challenge).*  
 Participated in event logistics, sponsorship proposals, and Competitor Relations for 5 years.  
 In addition, acted as pastry chef for 2 years, and served as one of the senior food and beverage servers for 6 years. Responsibilities included training, bartending when needed, and customer service.

## EDUCATION

Forest Hills Collegiate – Toronto, Ont.  
 High School Diploma – Honors  
 University of Toronto – Toronto, Ont.  
 Major – Genetics Minor – English Literature  
 Mesa College – San Diego, CA.  
 Associate of Science Degree - Honor Student - Interior Design  
 Associate of Science Degree - Honor Student - Architecture  
 Woodbury School of Architecture – San Diego, CA.

## SKILLS/ CERTIFICATIONS

Computer Ability: Microsoft Word, Microsoft Excel, Power point  
 AutoCAD, ArchiCAD, Photoshop, ACT, Outlook,  
 Languages: English, Conversational Spanish, French and Minimal Japanese.  
 Other Abilities: Occupational First Aid  
 Food and Beverage Apprenticeship, British Columbia  
 Manager's Food Handler Certification, California  
 ASID 2002-2003 Board Member – Hospitality Co-chair  
 ASID 2003-2004 Board Member – Resource Chair  
 ASID 2004-2005 Board Member – Resource Chair  
 Mesa College Associated Students 2003 – 2004 Board member – Senator

## AWARDS

Employee of the Year ( American Express Recognition Award)  
2002/2003/2004/2005 Honors Student  
2002/2003/2004/2005 Deans List  
ASID Design Competition – 1<sup>st</sup> prize (Housing)  
ASID Design Competition – 1<sup>st</sup> prize (Color & Lighting)  
ASID Design Competition – 1<sup>st</sup> prize (Int112B)  
ASID Design Competition – 2<sup>nd</sup> prize (Int112B)

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## REFERENCES

### PERSONAL

|                  |              |
|------------------|--------------|
| Mayo Osman       | 619-210-5957 |
| Gayle Shadendorf | 619-997-6580 |
| Kim Werdenberg   | 619-296-9166 |

### PROFESSIONAL

|                 |              |
|-----------------|--------------|
| Barbara Slavin  | 858-459-9430 |
| Gabrielle Bravo | 415-516-2930 |
| Steve Norton    | 619-818-2970 |

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# Mayo A. Osman

5005 August St. ♦ San Diego, CA 92110 ♦ (619) 210-5957 ♦ mosman@san.rr.com

## Profile

I am a former business owner with over 8 years of experience, to include management, sales, accounting, human resources and government contracting. Having recently sold the business, I am seeking the opportunity to assist in the growth and development of a promising enterprise. With youthful energy and a strong work ethic, I believe that I have the determination and focus to successfully master a multitude of tasks while assisting a company in the realization of its goals.

## Skills Summary

- |                          |                           |                      |
|--------------------------|---------------------------|----------------------|
| ♦ Self Starter           | ♦ Front-Office Operations | ♦ Customer Service   |
| ♦ General Office Skills  | ♦ Marketing & Sales       | ♦ Payroll Management |
| ♦ Written Correspondence | ♦ Accounting/Bookkeeping  | ♦ Human Resources    |
| ♦ Computer Proficient    |                           | ♦ Tradeshow Support  |

## Professional Experience

### BUSINESS CO-OWNER – MERYO ENTERPRISES

PRESENT

- ♦ Manage accounts payable/receivable
- ♦ Human Resources – Payroll, OSHA Compliance, EDD, employee files
- ♦ Assist in design, maintenance and distribution of marketing materials
- ♦ Assist in maintaining current and developing new customer relations

### BUSINESS CO-OWNER – TACTICAL ASSAULT GEAR

2001-2009

- ♦ Sales – Retail Location: Advertising, Inventory, Customer Service/Internet: Retrieving & processing orders, packaging and shipping/Dealer Sales: provided quotes and lead times, created incentive programs
- ♦ Accounting – Accounts receivable/payable
- ♦ Human Resources – Payroll, OSHA Compliance, EDD, employee files
- ♦ Government Contracting – GSA Schedule, DoD Email Professional Experience, continued

### PRESCHOOL TEACHER – ST. DAVID'S PRESCHOOL

1998-2000

- ♦ Maintained consistent curriculum infused with projects designed to aid in child development.
- ♦ Incorporated tasks to encourage the children in the development of healthy behaviors and aid in their ability to make educated choices.
- ♦ Assisted other teachers in enhancing their own curriculums to achieve maximum results in the early childhood development and education process.

### RECEPTIONIST/ADMINISTRATIVE ASSISTANT – SO. CAL. A/C DISTRIB.

1995-1998

- ♦ Operated multi-line phone system while providing administrative support for 8 person sales staff.
- ♦ Assisted executive secretary with review of reports from corporate headquarters.
- ♦ Maintained and distributed educational literature and schematics to encourage improved basis of product knowledge and technical support for customers and sales team.

## Education

BA in Psychology – San Diego State University

1999

Taejon Romanik Myers has been in the business of serving smiles for as long as he can remember. He brings a diverse knowledge and experience of superb customer service, a love for culinary excitement, and a flare for friendly neighborhood intimacy to the GRO Cafe. He spent five years as head bartender and staff lead at the Metropolitan Cafe and Wine Bar in Baltimore, Maryland before coming to San Diego where for the last two years he has managed events of all shapes and sizes for Festivities Catering. As Staff Manager for the GRO Cafe he looks forward to working closely with new friends and friendly faces , helping to build lasting relationships within the community.

### CAFE IN THE PARK LEASE

1. **Parties:** This lease, executed in duplicate at San Diego, California, this 1st day of Sept. '07 by and between the Electric Building Tenants Committee, lessor, and Roger Angeli, DBA Café in the Park, Lessee.
2. **Premises:** The lessor hereby leases to lessee, and the lessee hires from the lessor, for the purposes of operating therein a café, and for no other purpose, those certain premises with the appurtenances, situated in the Casa de Balboa, 1649 El Prado, Balboa Park, San Diego, 92101, in the state of California, and more particularly described as follows, to wit: the east portion of the middle lobby as described in exhibit "A" incorporated herein by reference.
3. **Term:** The term shall be for three years, commencing on the first day of September 1<sup>st</sup>, 2007 and ending on the thirty first day of August, 2010.
4. **Rent:** Lessee promises to pay rent in the amount and manner herein specified. The sum of 7% of the gross sales, calculated on income and expense statements submitted for the previous month by Roger Angeli, shall be the rent. Rent to be paid in lawful money of the United States of America, which the lessee agrees to pay the lessor, without deduction or offset, prior notice or demand at such place or places as may be designated from time to time by lessor, in installments as follows: the fifteenth day of the month following for the rental period of the previous month.  
Lessee agrees that a late charge of \$23 per day will be charged for rent which is not paid by the close of business on the fifteenth of each month when the rent is due, unless the fifteenth falls on a weekend, in which case the rent will be due the following Monday.
5. **Taxes:** Lessee shall pay prior to delinquency all taxes upon the trade fixtures, furnishings, equipment and other personal property of lease contained in the premises.
6. **Utilities:** utility charges, including light, water and fuel shall be borne by lessor.
7. **Alterations and additions:** Lessee will not, without the lessor's prior consent, make alterations, improvements or additions in or about the premises. This does not preclude the lessee from hanging pictures or other decorations in the immediate food prep area of the premises, but the lessor must give prior approval for decorations, wall colors and furnishing colors if the are to be other than neutral.
8. **Hold Harmless:** Lessee shall have business insurance in force during the entire term of this lease with the lessor listed as an additional insured, in order to protect the lessor from the liability of loss imposed by law or damages on account of bodily injury, including death, suffered or alleged to suffered by any person or persons whomever, resulting directly or indirectly from the activities of the lessee.  
Lessee shall indemnify and hold harmless from and against all claims arising from lessee's use of or occupancy of the premises or from conduct of its business or from any activity, work, or things which may be permitted or suffered by lessee in or about the premises including all damages, costs, attorney's fees, expenses and liabilities incurred in the defense of any claim or action or hereby assumes all risk of damage to property or injury to person in or about premises.
9. **Assignment and subletting:** Lessee shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of lessee's interest in this

## **REQUEST FOR PROPOSAL**

### **CASA DE BALBOA - CAFÉ IN THE PARK**

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#### **I. Introduction**

##### **A. Background and description of facility**

1. The tenants of Casa de Balboa with permission from the City of San Diego (filed in the Office of the City Clerk) and in accordance with the Operating Agreements between the City of San Diego and each tenant, hereby solicit proposals for café and concession services by a sublessor. The museum is located at 1649 El Prado in Balboa Park in San Diego, CA.
2. The Casa de Balboa building houses five cultural institutions – The San Diego History Center, the Museum of Photographic Arts, the San Diego Model Railroad Museum, the Committee of 100, and the Balboa Art Conservation Center. The three museums within the building have a combined exhibition space of 36,575 sq ft and present exhibitions from their own collections as well as loaned exhibitions from other institutions. Museum attendance averages of 328,588 annually drawing local and international audiences.
3. The tenants of the Casa de Balboa building have been charged by the City of San Diego to provide for the development and efficient management and operation of the building in accordance with operating agreements. This is accomplished through the Electric Building Tenants Committee (EBTC).
4. The EBTC is currently in the process of soliciting an operator (Operator) for the Café in the Park, in the east portion of the middle lobby on the Main Level of the building between the San Diego History Museum and the Museum of Photographic Arts as of September 1, 2010. The café is a coffee shop style establishment with a light kitchen.
5. The dining area of the café consists of a casual seating area. The kitchen/prep area is approximately 240 sq ft, dining area is approximately 265 sq ft, and storage area is approximately 45 sq ft. A diagram of the space is listed in Exhibit A.
6. Current café service consists of patrons placing and paying for their orders at the counter, and collecting orders once their name or number are called.
7. The café consists of a service counter, light commercial kitchen, and storage spaces. Possible appliances include refrigerators, toaster, espresso machine, microwave, and freezer.

##### **B. Submission of Proposals and Deadline for Proposals**

1. Submit four (4) copies of your proposal in its entirety. The proposal must be signed by an authorized representative of the company submitting the proposal, enclosed in a sealed envelope addressed to the following, and received by the EBTC no later than 5:00 p.m. on **June 30, 2010**:

Aurora Sandoval  
EBTC, Chair  
c/o San Diego History Center  
1649 El Prado, Suite 3  
San Diego, CA 92101

2. Proposals must be submitted by mail or personal delivery. Proposals may not be submitted by facsimile transmission or other telecommunication or electronic means.

## II. Café Operations Proposal

### A. Proposer's Responsibilities

1. Each proposer must appoint an individual with authority to represent the proposer for this RFP. Include the following information in your letter of intent to propose: Name of Proposer Representative, Title, Name of Company, Address, Telephone Number, Fax Number and Email Address.
2. The responsibility for determining and obtaining the full extent of all information needed to respond to the Request for Proposal (RFP) rests with the proposer. Whether delivered by mail or by personal delivery, the proposer assumes the responsibility for having the proposal deposited on time at the location specified above. Only proposals received by the correct time and date will be opened. Proposals should be typed and as concise as possible.
3. All proposals and accompanying documentation shall become the property of the EBTC.
4. Failure to submit a proposal by the deadline specified may result in rejection of the proposal. Submission of a proposal constitutes your acceptance of the procedures, evaluation criteria and other instruction of this request for proposal. Time extensions will not be granted. You may withdraw your proposal at anytime.

### B. Proposer's Walk- through Inspection

1. The EBTC will hold a pre-submittal meeting for all interested parties. This will include two hosted walk-through inspections of the facilities at the designated times and dates below. It is strongly recommended that all Proposers attend one of the walk-through inspections listed. An effort will be made to record and share with all persons receiving this request for proposal the questions and answers discussed during the walk-through. Except as provided herein, questions asked of the EBTC must be in writing and responses will be shared with all persons attending or receiving this proposal.

#### Walk-Through Dates:

Wednesday, April 21, 2010 (9am, 11am, 1pm and 3pm)

Thursday, April 29, 2010 (9am, 11am, 1pm and 3pm)

### C. Proposer's Questions

1. All questions concerning the RFP shall be raised prior to deadlines contained herein. All questions must be in writing and should be addressed to Aurora Sandoval, EBTC Chair, c/o San Diego History Center, 1649 El Prado, San Diego, CA 92101 or may be faxed to 619-232-6297 or emailed to [aurora.sandoval@sandiegohistory.org](mailto:aurora.sandoval@sandiegohistory.org).

#### **D. EBTC's Responsibilities**

1. EBTC reserves the right to change the submission deadline or to issue amendments to the RFP at any time or to cancel or reissue the RFP at any time without penalty. EBTC reserves the right to reject any and all proposals and to waive minor irregularities.
2. EBTC is not liable for any costs incurred by the proposer including but not limited to the costs for the preparation of the RFP and attendance at any conference or pre-submittal meeting.
3. EBTC will not be responsible for any error or omission in information provided, nor for the failure by proposer to determine the full extent of the effort necessary to provide the requested services.

#### **III. Purpose and Terms of Contract**

- A. EBTC is interested in entering into a contract with a retail food and beverage company, team, or individual who would assume the Café and beverage operations.
- B. The EBTC will continue as the exclusive lessee of the City of San Diego and maintain the real property.
- C. The contract term shall be for a minimum of three (3) years, or a mutually agreeable shorter term, with EBTC having the option of renewing the contract for a maximum of two (2) additional years.
- D. The contract will include a fee to the Operator of 8% of gross sales paid to the EBTC on a monthly basis, with documentation of gross sales provided.

#### **IV. Café Operation and Operator Requirements**

##### **A. Primary Function**

1. Operator must obtain and keep current all applicable licenses from the State of California and the City of San Diego necessary to run an indoor food service facility.
2. Operator must demonstrate a minimum of three (3) years of food service management in an equivalent or similar restaurant operation.
3. Operator must provide all necessary staff to prepare and provide the approved menu selections and who adhere to current Health Department regulations and standards. All merchandise and supplies necessary for the production of the menu must be kept stocked at all times.

##### **B. Equipment**

1. Operator shall be responsible for the maintenance of all kitchen equipment whether supplied by the EBTC or Operator. These include all cooking production equipment, fixtures and furniture within the restaurant.
2. All equipment will be inventoried and in acceptable operating condition when Operator commences operation.

3. During the term of the contract, all items shall be kept clean, fully operational and show no signs of visual or structural damage.

C. Janitorial

1. Operator shall maintain and be responsible for all daily maintenance of all areas of the Café, including the seating area. This will include daily sweeping, mopping, gum removal, table, chair, and surface cleanliness to the standards of EBTC.
2. Trash must be taken out promptly and never left in the public aisles. Trash cans must be emptied daily before closing.

D. Security

1. Operator will abide by the EBTC's general security procedures, including locking responsibilities which will require food service staff to be available for closing.

E. Financial System, Records & Audit

1. Operator shall keep and maintain all required financial records of any and all earnings, receipts, fees, commissions and income whatsoever growing out of the operation of the café and catering and any other activity conducted thereon in accordance with generally accepted accounting principles (GAAP).
2. Operator shall assure adequate internal controls in compliance with State laws and city regulations and the safeguarding of EBTC assets.
3. Operator will make all financial records available for inspection by EBTC at any time at the request of EBTC.
4. Operator shall provide receipts to customers for all goods and services sold in the café.
5. The EBTC reserves the right to review and summon financials at anytime; including requesting Franchise Tax Board sales tax prepared and filed documents.

F. Customer Service

1. Operator shall maintain customer service as a top priority. Operator must provide café employees who are professional, friendly, well dressed and courteous to all members of the general public. The employee must maintain a neat appearance, exercise good public relations skills, respond to customer complaints and questions, have good wait person manners and conduct themselves in a high standard that is acceptable to EBTC.
2. Operator shall maintain a good working relationship with the EBTC and the tenants of the building.

G. Restaurant Expectations

1. Operator shall provide food and beverage sales to the public during most museum operating hours. General hours of operation shall be a minimum of 50 hours per week with allowable hours between 9 am and 5 pm Monday through Sunday with the exception of holidays listed in Exhibit A.

2. EBTC wishes to provide healthy, fresh food. The following represents typical daily food service offerings:
  - (a) Hot and cold beverages including coffees, teas, water, sodas etc.
  - (b) Hot and cold food
    - (i) Pastries and bagels
    - (ii) Soups and salads
    - (iii) Sandwiches
    - (iv) Desserts
3. Fryers of any kind are not allowed.
4. Pricing: EBTC is committed to a pricing policy that maintains a competitive and reasonable dining and/or group rate. A typical meal including beverage should range from \$7.00 to \$10.00. Food vendors in the park traditionally provide a 10% discount for park employees. Other promotions such as frequent buyer cards are at the discretion of the vendor.
5. The EBTC will look favorably on proposals that are operating in a green and environmental conscious manner. Preference will be given to proposals that include the use of energy rated equipment. This includes providing receptacles for recycling, using compostable to-go containers, not using plastic bags, and not using Styrofoam, all of which must be approved in advance by the EBTC.
6. Music is not allowed.
7. Operator is expected to have an "A" rating with the San Diego Department of Health.
8. Public Opportunity: The museums within the building enjoy a good reputation with its visitors, as well as the general public. It is important to maintain and expand existing relationships, as well as build new ones, through the provision of a high level of public service, as well as affordable quality food and beverage service.
9. Operator is responsible for making sure aesthetic changes to the space are approved by the EBTC first.
- H. Taxes: Operator shall pay and keep current all Federal, State and City taxes applicable to the café and catering operations, including any applicable property taxes.
- I. Sub-leasing: Operator will be prohibited from transferring ownership or sub-leasing a food service concession or any portion of the food and beverage agreement without written approval from EBTC.
- J. Performance Agreement: Operator will be required to provide a deposit or other acceptable security assuring the faithful performance of the contract.
- K. Insurance: Operator will be required to carry and provide all business and liability insurance, associated with the total concession agreement, facility use and operation as specified in the contract with EBTC. The City requires a policy with a minimum of 2 million dollars.

L. Advertising and Signage:

1. Operator is expected to develop a marketing plan, which will be reviewed by EBTC. Operator agrees to advertise and promote the café actively and on a regular basis.
2. Operator is solely responsible for advertising agreements, contracts and signage costs and schedules associated with the promotion of the business. All copy, logo development, signage and collateral will be approved by EBTC prior to publication.

M. Name of Café

1. The name of the café is currently the Cafe in the Park. The EBTC will keep this name as an option and can be used upon approval by the EBTC
2. Naming is open for discussion; however the EBTC maintains control of all naming rights for the café and reserves the right to change the name at its discretion.

V. Café Proposal Requirements

- A. Proposals are to be prepared on standard 8 1/2"x11" paper. Foldouts containing charts and oversize exhibits are permissible. Proposals in response to this RFP must include all of the information listed below.

1. Cover Letter signed by the proposer representative authorized to make contractual obligations
2. Table of Contents
3. Executive Summary: A high level overview of your approach and the distinguishing characteristic of your proposal.

4. Proposer background information

- (a) Name and address of legal entity submitting the proposal *Cafe in the Park*
- (b) Name and address of principal officers and all owners of 10% or more of the proposer *X*
- (c) Legal status of proposer organization, i.e. corporations, partnership, sole proprietorship *proprietorship*
- (d) Description of proposing organization including size, longevity, client base, areas of specialization and expertise, and any other pertinent information in such a manner that the proposal evaluation may reasonably formulate an opinion about the stability and financial strength of the organization *Resume*
- (e) Disclosure of any and all judgments, pending or expected litigation or any other real or potential financial reversals which might materially affect the viability or stability of the proposing organization or warrant that no such condition is known to exist. *None extensive sued for any food*
- (f) Description of ownership of proposing entity.
- (g) The EBTC will look favorably on proposals that provide a drawing/ diagram of how they intend to use the space including energy efficient appliances. *Libells energy efficient water heat energy*

5. Contract Performance: If the proposer has had a contract terminated during the past five years, all such incidents must be described. Submit full details of all terminations experienced by the proposer during the past five years including other party's name, address and telephone number. Present the Proposer's position in the matter. If no such terminations for default have been experienced by the proposer in the past five years, the proposer must warrant such. *low water meter*

6. Reference List: EBTC may, at its option, contact any of the references listed below or other known clients of yours for references.

1. A representative list of current and former clients for whom you have provided professional food service in a restaurant setting or catered event

- (1) Name and address of client(s) and nature of business
- (2) Contact persons and phone numbers
- (3) Size of operations
- (4) Number of years of service with client

b) Current banking reference, including

- (1) Name of financial institution *union*
- (2) Contact person(s) and phone numbers *carlen*
- (3) Number of years affiliated. *5 yrs*

*Moffett Field*  
*Bruce Jenn*  
*Xochitl - Ke*  
*John Rothli*  
*Schools*  
*mapa*

7. A description of your experience for the last five years as it is related to the operation of food service. Please include specifics regarding name, location, operation, and size activity level, etc. and any other relevant information.
8. A detailed description of how you would provide café and catering services for EBTC. Include your staffing levels, customer service philosophy and experience. Discuss your concepts and ideas. Provide some examples of Menus you envision, include presentation and pricing kitchen requirements, etc.
9. Describe your cash handling procedures, including shift changes, opening and closing, preparation of deposits, etc. Describe the types of internal control procedures you would institute for safeguarding EBTC assets.
10. Resumes of principal persons, such as the manager, chef, financial manager proposed to be involved in the operation of the café. *Fony, Chris, Betty*
11. Security of Performance Agreement: Describe the guaranty or other security the proposer is willing to commit to in order to ensure its performance under the contract including the amount and other relevant information.

#### VI. Optional Information

A. In addition to the foregoing, EBTC will also consider the following:

1. A detailed description of proposed capital improvement alternatives, if any, including any impacts of proposed improvements on future contract.

2. Copies of your restaurant financial statement reports for the past five years. The report should include a balance sheet and income statement. Also include any other standard reports you have utilized in the past such as revenue and expense budgets or comprehensive activity reports on food service.
3. Present information of importance not otherwise provided for in the required proposal format.

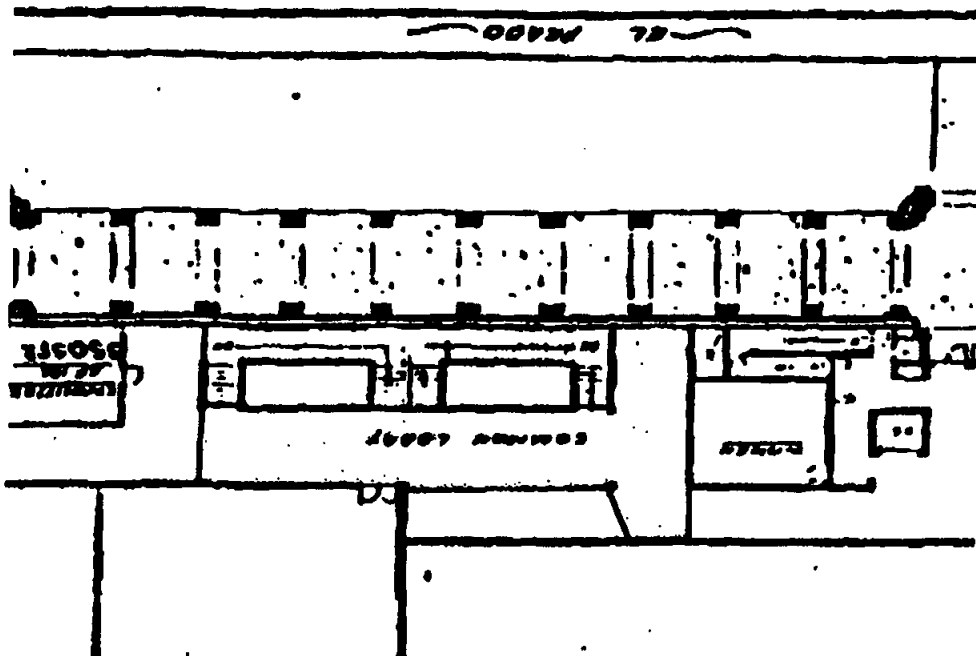
#### VII. Selection Process

- A. **Deadline for Proposals:** All proposals must be received by the EBTC no later than 5:00 p.m. on **June 30, 2010**.
- B. **Committee Review:** A select committee will review Operator qualifications and rank them using the following general factors, as well as other information contained in the respective proposals:
- C. All proposals will be reviewed to determine compliance with the requirements as specified in the RFP. Only proposals which in the opinion of the review committee, meet the requirements of the RFP, will be further evaluated.
- D. Proposals that pass the preliminary review will be evaluated on how well the proposal meets the needs of EBTC. It is important that the responses be clear and complete so that the evaluators can adequately understand all aspects of the proposal.
- E. The proposer's submitting the top proposals shall make a presentation to the review committee. This presentation should cover at a minimum all points submitted. As part of the presentation, EBTC reserves the right to request additional financial information.
- F. The EBTC will negotiate a contract with the selected proposer. If unable to negotiate a contract deemed satisfactory, the EBTC may terminate the process or attempt to negotiate with another proposer.

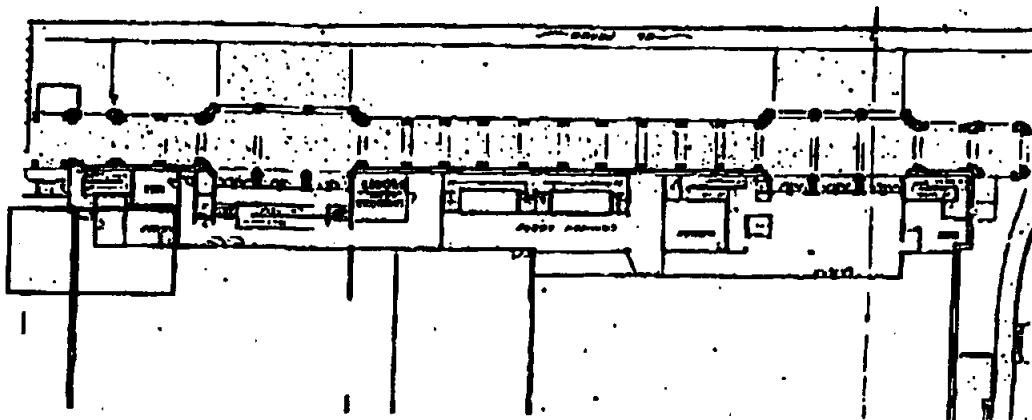
- VIII. The award of a contract by EBTC to the successful proposer will be notice of acceptance. The award of a contract will bind the proposer to furnish the service in accordance with the information herein, responses to questions, the proposer's proposal, other representations made, as well as all other terms and condition of the contract in its final form.

2. Holiday closings  
a. Thanksgiving and Christmas

Casa de Balboa lobby- magnified to Café space



Casa de Balboa lobby



1. Diagram of Café space

Exhibit A

lease or in the premises without lessor's prior written consent which consent shall not be unreasonably withheld.

10. **Default:** It is agreed between the parties hereto that if any rent shall be due and unpaid, or if lessee shall default and breach any other covenant or provision of the lease, the the lessor, after giving proper notice as required by law, may re-enter the premises and remove all property, holding the same at the cost of and for the account of the lessee in the manner allowed by law. The lessor, at his or her option, either may maintain the lease in full force and recover the rent and other charges as they become due or, in the alternative, terminate this lease. In addition, the lessor may recover all rentals and any other damages and pursue any other rights and remedies which the lessor may have against the lessee by reason of such defaults as provided by law.
11. **Surrender:** On the last day of the term of this lease, lessee shall surrender premises to lessor in good condition, broom clean, ordinary wear and tear and damage by the elements excepted. In addition, lessee will return the middle lobby to the condition it was in before it was occupied as a café. This includes, but is not limited to all electrical, water, and gas lines capped off in a safe and professional manner. It also includes removing all furniture and fixtures that were brought onto premises for the use of the lessee. Lessor agrees to restore the floor covering as its responsibility.
12. **Holding Over:** If lessee, with the lessor's consent, remains in the possession of the premises after expiration or terminations of the terms of this lease, such possession by lessee shall be deemed to be a tenancy from month-to-month at a pro-rata rental in the amount of rental for July in the year the lease expires and all the provisions of this lease applicable in the regular tenancy period also apply to such a month-to-month tenancy.
13. **Waivers:** No waiver by the lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by lessee of the same provision.
14. **Notices:** Whenever under this lease a provision is made for any demand, notice or declaration of any kind, it shall be in writing and served either personally or sent by registered or certified United States mail, postage prepaid address at the addresses as set forth below.  
To the Lessor at: Electric Building Tenants Committee  
C/O San Diego Model Railroad Museum  
1649 El Prado  
San Diego, CA 92101  
To the Lessee at: Roger Angeli  
Café in the Park  
635 Vista way  
Chula Vista, CA 91910
15. **Time** is of the essence of this lease.
16. **Storage space:** 1) The lessee will have the use of the walk in closet on the ground floor near the passenger elevator. 2) The lessee may use the two closets on the main floor for storage.
17. **Operation:** The café will be open minimum of 30 hours a week all year round; any fewer hours would have to have prior approval by the lessor. Café must be completely secured, and employees gone before the building closes (normally at 5:00pm). Trash must be taken out

promptly and not left in the public aisles. Trash cans must be emptied daily before closing. Consistent lack of products to sell shall be considered grounds for termination contract. Lessee must be reasonably available to contact in case of emergency. There shall be no fried food prepared on the premises. Lessee shall make certain premises are kept clean and insect and vermin free.

EBTC must approve any decoration scheme in advance of installation. Lessee's decorating colors must harmonize with the colors used by the museums in the middle lobby. Lessee agrees to keep drapes and decorative wall hangings, etc. reasonably dust free and replace them when the are noticeably faded, torn or soiled. Any operational concerns by either party will be submitted to the other for resolution with a reasonably time frame for correction. If the difference is unresolved, either party has the right based on the above. To terminate the lease with a sixty (60) day written notice.

18. **Deposit:** Lessee's initial security deposit of \$500 may be refunded in whole or part at the end of the lease when all of lessee's furniture and fixtures are removed, and when all rents have been paid in full.

Agent of the Lessor & Lessee hereby agree to the above stated conditions:

Lessor John R. Rotsart John Rotsart, Building Manager

Date: 11 Sept, 07

Lessee Roger H. Angell Roger Angell, owner, Café in the Park

Date: 1-2-08