

# City of Albuquerque

## Request for Proposals

RFP06-013-SV

**“Internet Café or Business Center  
Lease/Concession at the Main Library”**



**Proposal Due Date: 31 May 2006 - NLT 4:00 p.m. (Local Time)**

*The time and date proposals are due shall be strictly observed.*

**Pre-Proposal Conference: 10 May 2006 – 10:00 A.M. (MDT)**

City of Albuquerque  
Department of Finance and Administrative Services  
Purchasing Division  
03/24/06

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## **INTRODUCTION**

The City of Albuquerque, Department of Finance and Administrative Services, Purchasing Division, is requesting proposals from qualified vendors who are interested in providing exclusive operation of an Internet Café or Business Center, for the City of Albuquerque, Cultural Services Department, Albuquerque/Bernalillo County Library System (“ABCLS”), Main Library, located at 501 Copper Ave, NW. ABCLS’s objective is to provide an appealing and compatible food and/or beverage or retail facility to reflect the character, architecture and culture of the downtown library.

## **BACKGROUND AND GENERAL INFORMATION**

The Main Library opened in March of 1975. This three-story facility has approximately 104,577 square feet and is the administrative headquarters of the 16 branch libraries located throughout the city and county. It is also home to the Friends for the Public Library who operate a used bookstore on the lower southeast level. The Main Library is located on Copper Ave between 5th and 6th Street. Renovation of the Main Library started in June 2005 with expected completion by the spring of 2006. The renovation will add a new glass entry structure on the southeast corner of the building. This new entry will create a lobby and retail space and it will extend down into the southeast courtyard. The public will be able to enter the new lobby from the south or the east.

The Internet Café or Business Center will have approximately 1000 square feet on the east side (5th Street) of the library with a separate entrance as well as an internal entrance from the new lobby. The retail space, including a small restroom, office and storage area, is being added as part of this renovation. No interior improvements, furniture or equipment other than those outlined above are included in this space, and all other improvements and up fit must be provided by the vendor. The entity must be capable of identifying and obtaining funding to manage the facility with no assistance or financial support from the City.

No additional parking will be provided at the site for the vendor or any customer. The City will work with the entity to provide parking at existing City-owned and operated parking facilities that are located in the general area of the proposed café or business center. It is estimated that approximately 1,000 to 1,200 people visit the Main Library each day. The Internet Café or Business Center would not have to mirror Library hours.

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**PART 1**  
**INSTRUCTIONS TO OFFERORS**

**1.1 RFP Number and Title:** RFP2006-013-SV, "Internet Café or Business Center Lease/Concession at the Main Library"

**1.2 Proposal Due Date: 31 May 2006 - NLT 4:00 PM (Local Time)**

The time and date proposals are due shall be strictly observed.

**1.2.1 Pre-Proposal Conference/Site Visit:** This is not a mandatory pre-proposal conference; however, attendance by the Offeror or an authorized representative of the Offeror is highly encouraged. Those who choose not to attend shall be responsible for obtaining additional information or addenda on their own.

**1.2.2** The City shall have in attendance key personnel to answer questions or discuss issues that may arise. Questions should be prepared **prior** to the conference and a copy of such questions submitted to the purchasing representative on the day of the conference. **Please submit one hard copy and one electronic copy of the questions.**

**1.2.3 Pre-Proposal Conference Time, Date and Location:**

**Time and Date:** Wednesday, 10 May 2006 - 10:00 AM to 12:00 Noon (MDT)

**Address:** City of Albuquerque/Main Library  
501 Copper Avenue, N.W. Admin. Conference Room 2<sup>nd</sup> Floor  
Albuquerque, New Mexico 87102

**1.3 Purchasing Office:** This RFP is issued on behalf of the City of Albuquerque by the Purchasing Office, which is the sole point of contact during the entire procurement process.

**1.4 Authority:** Chapter 5, Article 5 of the Revised Ordinances of the City of Albuquerque, 1994, (the "Public Purchases Ordinance"). The City Council, pursuant to Article 1 of the Charter of the City of Albuquerque and Article X, Section 6 of the Constitution of New Mexico, has enacted this ordinance as authorized by such provisions and for the purpose of providing maximum local self-government. To that end, it is intended that this ordinance shall govern all purchasing transactions of the City and shall serve to exempt the City from all provisions of the New Mexico Procurement Code, as provided in Section 13-1-98K, NMSA 1978.

**1.5 Acceptance of Offer:** Acceptance of Offer is contingent upon Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the following:

**1.5.1 City Public Purchases Ordinance**

**1.5.2 City Purchasing Rules and Regulations:** City of Albuquerque Purchasing Rules and Regulations: These Rules and Regulations (hereinafter "Regulations") are written to clarify and implement the provisions of the Public Purchases Ordinance. These Regulations

establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of goods, services, and construction, as applicable, under the authority of the Ordinance.

**1.5.3 Civil Rights Compliance:** Acceptance of offer is contingent upon the Offeror's certification and agreement by submittal of its offer, to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Title VII of the U.S. Civil Rights Act of 1964, as amended, and all federal statutes and executive orders, New Mexico statutes and City of Albuquerque ordinances and resolutions relating to the enforcement of civil rights and affirmative action. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City of Albuquerque Human Rights Division, Community Services Department.

**1.5.4 Americans with Disabilities Act Compliance:** Offeror certifies and agrees, by submittal of its offer, to comply and act in accordance with all applicable provisions of the Americans With Disabilities Act of 1990 and Federal regulations promulgated there under.

**1.5.5 Insurance and Bonding Compliance:** Acceptance of offer is contingent upon Offeror's ability to comply with the insurance requirements as stated herein. Please include a copy(s) of such certification or statement of compliance in your proposal.

**1.5.6 Ethics:**

**1.5.6.1 Fair Dealing.** The Offeror warrants that its proposal is submitted and entered into without collusion on the part of the Offeror with any person or firm, without fraud and in good faith. Offeror also warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be offered or given by the Offeror, or any agent or representative of the Offeror to any officer or employee of the City with a view toward securing a recommendation of award or subsequent contract or for securing more favorable treatment with respect to making a recommendation of award.

**1.5.6.2 Conflict of Interest.** The Offeror warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under the contract resulting from this RFP. The Offeror also warrants that, to the best of its knowledge, no officer, agent or employee of the City who shall participate in any decision relating to this RFP and the resulting contract, currently has, or will have in the future, a personal or pecuniary interest in the Offeror's business.

**1.5.7 Participation/Offeror Preparation:** Offeror may not use the consultation or assistance of any person, firm company who has participated in whole or in part in the writing of these specifications or the Scope of Services, for the preparation of its offer or in the management of its business if awarded the contract resulting from this RFP.

**1.5.8 Debarment or Ineligibility Compliance:** By submitting its offer in response to this

RFP, the Offeror certifies that (i) it has not been debarred or otherwise found ineligible to receive funds by any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States; and (ii) should any notice of debarment, suspension, ineligibility or exclusion be received by the Offeror, the Offeror will notify the City immediately.

**1.5.9 Goods Produced Under Decent Working Conditions.** It is the policy of the City not to purchase, lease, or rent goods for use or for resale at City owned enterprises that were produced under sweatshop conditions. The Offeror certifies, by submittal of its offer in response to this solicitation, that the goods offered to the City were produced under decent working conditions. The City defines “under decent working conditions” as production in a factory in which child labor and forced labor are not employed; in which adequate wages and benefits are paid to workers; in which workers are not required to work more than 48 hours per week (or less if a shorter workweek applies); in which employees are free from physical, sexual or verbal harassment; and in which employees can speak freely about working conditions and can participate in and form unions. [*Council Bill No. M-8, Enactment No. 9-1998*]

**1.6 City Contact:** The sole point of contact for this Request for Proposals is the City of Albuquerque Purchasing Division. Contact the following individual(s) regarding this RFP:

- Sandra Vescovi, Contract Section Supervisor, Department of Finance and Administrative Services, Purchasing Division,
- Phone: (505) 768-3341 or E-Mail: [svescovi@cabq.gov](mailto:svescovi@cabq.gov)
- Post Office Box 1293, Albuquerque, New Mexico 87103

**1.7 Contract Management:** The contract resulting from this RFP will be managed by Cultural Services Department, Albuquerque/Bernalillo County Library System Division.

**1.8 Clarification:** Any explanation desired by an Offeror regarding the meaning or interpretation of this Request For Proposals must be requested in writing not less than ten (10) working days prior to the hour and date specified for the receipt of offers to allow sufficient time for a reply to reach Offerors before the submission of their offers. All inquiries must be directed to the Purchasing Office as stated herein. Oral explanations or instructions given before the award of the contract or at any time will not be binding. Any information given to a prospective Offeror concerning this Request For Proposals, will be furnished to all prospective Offerors as an amendment to this Request for Proposals, if such information is necessary to Offerors in submitting offers on this Request For Proposals or if the lack of such information would be prejudicial to uninformed Offerors.

**1.9 Submission of Offers:** The Offeror's sealed proposal must be in the format outlined in Part 2 of this Request for Proposals and mailed or delivered pursuant to the following requirements:

**1.9.1 Envelope preparation.** Offers and modifications thereof shall be enclosed in sealed envelopes and have the following identifying information on the outside:

- Name and address of Offeror
- Closing Date and Time
- Request for Proposals Number
- RFP Title

**1.9.2 Ship, Deliver or Hand Carry Sealed Offers to:** The Office of the City Clerk, City /County Government Center, 11th Floor, One Civic Plaza, Albuquerque, New Mexico 87102. Mark all packages as stated above.

**1.9.3 Mail Sealed Responses to:** Office of the City Clerk, Post Office Box 1293, Albuquerque, New Mexico 87103. (Certified Mail is recommended). The City shall not be responsible for the failure of mailed offers to actually be received by the Office of the City Clerk by 4:00 of the day of closing.

**Note:** The City picks up mail at the post office **once** every morning at 7:00 AM (Local Time). **Note: ALL SEALED PROPOSALS MUST BE RECEIVED BY THE OFFICE OF THE CITY CLERK NO LATER THAN 4:00 PM, LOCAL TIME AS RECORDED IN THE CITY CLERK'S OFFICE.**

**1.9.4 No other methods of offer delivery:** Neither telephone, facsimile, electronic, nor telegraphic offers shall be accepted.

**1.9.5 Proposal Submittal:**

- **Hard Copy: Submit 1 original and 5 copies of the Proposal.**
- **Electronic Copy: Submit 1 original electronic Proposal (Either CD or Diskette)**

**1.9.6 Modification:** Offers may be modified or withdrawn by written notice provided such notice is received prior to the hour and date specified for receipt of offers.

**1.9.7 Failure to Submit Offer:** If no offer is to be submitted, the recipient shall not return the Request For Proposals.

**1.10 Receipt of Proposals:** The only acceptable evidence to establish the time of receipt of proposals at the City Clerk's Office is the time-date stamp of such office on the proposal wrapper or other documentary evidence of receipt maintained by the office.

**1.11 Acknowledgment of Amendments To the Request For Proposals:** Receipt of an amendment to the Request For Proposals by an Offeror must be acknowledged (a) by signing and returning the amendment, or (b) by letter. Such acknowledgment may be submitted with your offer. Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

**1.12 Modifications to Scope of Services:** In the event that sufficient funds do not become available to complete each task in the Scope of Services, the Scope of Services may be amended, based upon the cost breakdown required in the Cost Proposal.

**1.13 Draft Agreement:** A copy of the Draft Agreement to be entered into is attached. Please state that you accept the terms and conditions of the Draft Agreement, or note exceptions.

**1.14 Evaluation period:** The City reserves the right to analyze, examine and interpret any offer for a period of ninety (90) days after the hour and date specified for the receipt of offers.

**1.15 Evaluation Assistance:** The City of Albuquerque, in evaluating proposals, reserves the right to use any assistance deemed advisable, including City contractors and consultants.

**1.16 Rejection and Waiver:** The City reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

**1.17 Debarment of Offeror:** Any proposal received from an Offeror that is, at the time of submitting its proposal or prior to receipt of award of a contract, debarred by or otherwise ineligible to receive funds from any agency of the State of New Mexico, any local public body of the State, or any state of the United States, shall be rejected.

**1.18 Award of Contract:**

**1.18.1 When Award Occurs:** Award of contract occurs when a Purchase Order is issued or other evidence of acceptance by the City is provided to the Offeror. A Recommendation of Award does not constitute award of contract.

**1.18.2 Award:** If a contract is awarded, it shall be awarded to the responsive and responsible Offeror whose offer conforming to the Request for Proposals will be most advantageous to the City as set forth in the Evaluation Criteria.

**1.18.3 Contract Term:** The contract term shall be for a period of five years from the effective date of execution of the contract and/or final execution by the City. This contract term may be extended for an additional five (5) year term by mutual written agreement between the City and the Contractor.

**1.18.4 Type of Contract:** Lease Concession.

**1.18.5 Debarment/Cancellation of Contract:** Upon receipt of notice of debarment of an Offeror awarded a contract as a result of this RFP (the "Contractor"), or other ineligibility of the Contractor to receive funds from any agency of the federal government, the State of New Mexico, any local public body of the State, or any state of the United States, the City shall have the right to cancel the contract with the Contractor resulting from this RFP for cause as provided in accordance with the terms of said contract.

**1.18.6 Graffiti Free:** When required, the Contractor will be required to furnish equipment, facilities, or other items required to complete these services, that are "graffiti free". Failure of Contractor to comply with this requirement may result in cancellation of the contract resulting from this RFP.

**1.18.7 Construction:** The successful Offeror/Contractor will be required to obtain Performance and Materials Payment Bonds for construction in excess of Twenty five thousand dollars (\$25,000) per the following instructions in 1.18.7.1 and the successful Offeror/Contractor will be required to obtain Minimum Wage Rates for construction services in excess of Sixty Thousand Dollars (\$60,000) per the following instructions in 1.18.7.2:

**1.18.7.1 BONDS, PERFORMANCE, AND LABOR AND MATERIAL PAYMENTS:** The successful Offeror will be required to furnish separate surety bonds each in the amount of Two hundred fifty thousand dollars (\$250,000) offered as security for the faithful performance of the contract and for the payment of all labor and materials. These bonds must be furnished prior to or at the time of the issuance of a Purchase Order, but no later than fifteen (15) calendar days after the date of receipt of written notice of award of a contract resulting from this Request. The Offeror must be named as principal on the bonds. No third party performance bonds will be accepted. The sureties on such bonds shall be duly authorized to conduct business in the State of New Mexico and acceptable to the City. Cashier's checks, Letters of Credit, cash or other substitutes will NOT be accepted.

**1.18.7.2 Minimum Wage Rates:**

**STATE OF NEW MEXICO - LABOR AND INDUSTRIAL LABOR REQUIREMENTS:**

(a) The minimum wages to be paid the various classes of mechanics and laborers engaged by the CONTRACTOR and Subcontractors for Work under this Contract including any additional, omitted or changed work, shall not be less than the amount as determined and established by the Office of the State Labor and Industrial Commission as provided by Section 13-4-11 NMSA 1978 and in full force and effect, without exception, on the date of the contract and during the lifetime of this

(b) The Contractor and each of his Subcontractors shall pay each of his employees working under this Contract in full, in cash, and not less than once a week, less all legally required deductions or withholdings. When circumstances are such that payment in cash is not feasible or is impractical, payment may be made by check, provided, however, that adequate funds to cover same are on deposit at the bank upon which the checks are drawn, and further that the checks may be cashed without charge, trade requirements or undue inconvenience to the payee.

(c) The minimum wage rates, if any, specified for apprentices shall apply only to persons working with the tools of the trade that they are learning, and under the direct supervision of the journeyman or master mechanics. Except as otherwise required by law, the number of apprentices in each trade or occupation employed by the CONTRACTOR or any Subcontractor shall not exceed the number permitted under the usual practice prevailing between trade unions and Employers Association of the respective trades or occupations.

(d) **Wage Underpayments and Adjustments:** The Contractor agrees that, in case of underpayment of wages to any worker on the project under this Contract, that the

City may withhold out of payments due, an amount sufficient to pay such worker the difference between the wages required to be paid under this Contract and the wages actually paid such worker for the total number of hours worked and that the City may disburse such amount so withheld by it, for and on account of the CONTRACTOR to the employee to which such amount is due. The CONTRACTOR further agrees that the amounts to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the City pursuant to other provisions of this Contract. A copy of the New Mexico State Office of the Labor Commissioner Minimum Wage Rates and Apprentices minimum wage scales in effect at the time of the Contract shall be posted or otherwise made available to the CONTRACTOR'S employees at all times on the job.

**1.18.7.3 Valid New Mexico Contractors License:** The contractor must have a valid New Mexico Contractors License. This must be submitted with the proposal.

**1.19 Cancellation:** This Request for Proposals may be canceled and any and all proposals may be rejected in whole or in part when it is in the best interest of the City.

**1.20 Negotiations:** Negotiations may be conducted with the Offeror(s) recommended for award of contract.

**1.21 City-Furnished Property:** No material, labor, or facilities will be furnished by the City unless otherwise provided for in the Request for Proposals.

**1.22 Proprietary Data:** This Request for Proposals shall be open to public inspection after the recommendation of award of a contract has been signed by the Mayor, except to the extent the Offeror designates trade secrets or other proprietary data to be confidential. Material so designated must be separated from the Offeror's main proposal and each page shall be clearly marked in order to considered confidential and to facilitate public inspection of the non-confidential portion of the proposal. Prices and makes and models or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available regardless of any designation to the contrary. The City of Albuquerque will endeavor to restrict distribution of the material designated as confidential or proprietary to only those individuals involved in the review and analysis of the proposals. Offerors are cautioned that materials designated as confidential may nevertheless be subject to disclosure under the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq, NMSA 1978).

**1.23 Local and Resident Preference:** A preference for local and state businesses is available under the City of Albuquerque Public Purchases Ordinance, for this procurement (Part 6). If a completed Local Preference Certification Form, or a current and correct Resident Preference Number, or evidence to indicate that a company is a manufacturer (if applicable), is not received with the Offeror's response a preference will not be applied for that offer. The Form, the Number, or other evidence will not be accepted after the deadline for receipt of proposals. For those Offerors qualifying for the preference, a 1.05 multiplier will be applied to the total raw score. Only one preference will apply for this procurement. Local Preference supersedes all other preferences.

**1.24 REQUEST FOR PROPOSALS (RFP) PROTEST PROCESS:**



## 1.25 BONDS and INSURANCE:

**1.25.1 General Conditions:** The City will require that the successful Offeror, referred to as the Contractor, procure and maintain at its expense during the term of the contract resulting from the RFP, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations of the Contractor under the contract. Upon execution of the contract and on the renewal of all coverage, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with these insurance requirements. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. The City shall be named an additional insured for all coverages and the coverages afforded shall be primary with respect to operations provided.

**1.25.2 Approval of Insurance:** Even though the Contractor may have been given notice to proceed, it shall not begin any work under the contract resulting from this RFP until the required insurance has been obtained and the proper certificates (or policies) filed with the City. Neither approval nor failure to disapprove certificates, policies, or the insurance by the City shall relieve the Contractor of full responsibility to maintain the required insurance in full force and effect. If part of the contract is sublet, the Contractor shall include any or all subcontractors in its insurance policies, or require the subcontractor to secure insurance to protect itself against all hazards enumerated herein, which are not covered by the Contractor's insurance policies.

**1.25.3 Coverage Required:** The kinds and amounts of insurance required are as follows:

**1.25.3.1 Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$1,000,000	Products Liability/Completed Operations
\$1,000,000	Personal and Advertising Injury
\$ 50,000	Fire Legal
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of the contract resulting from this RFP.

**1.25.3.2 Automobile Liability Insurance.** A comprehensive automobile liability insurance policy with liability limits in amounts not less than \$1,000,000 combined

single limit of liability for bodily injury, including death, and property damage in any one occurrence. The policy must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work.

**1.25.3.3 Workers' Compensation Insurance.** Workers' compensation insurance policy for the Contractor's employees, in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico, (the "Act"). If the Contractor employs fewer than three employees and has determined that it is not subject to the Act, it will certify, in a signed statement, that it is not subject to the Act. The Contractor will notify the City and comply with the Act should it employ three or more persons during the term of the contract resulting from this RFP.

**1.25.3.4 Proposal Material Payment Bonds.** Construction over Twenty - Five Thousand Dollars (\$25,000) will require Performance and Materials Payment Bonds as stated herein.

**1.25.4 Increased Limits:** During the life of the contract the City may require the Contractor to increase the maximum limits of any insurance required herein. In the event that the Contractor is so required to increase the limits of such insurance, an appropriate adjustment in the contract amount will be made.

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**PART 2  
PROPOSAL FORMAT**

**2.1 Technical Proposal Format, Section One**

**2.1.1 Offeror Identification:** State name and address of your organization or office and nature of organization (individual, partnership or corporation, private or public, profit or non-profit). Subcontractors if any must be identified in a similar manner. Include name and telephone number of person(s) in your organization authorized to execute the Draft Agreement. Submit a statement of compliance with all laws stated herein. Submit a statement of agreement of the terms and conditions of the Draft Agreement; state exceptions. Show receipt of Addenda if applicable. Provide a statement or show ability to carry the insurance specified.

**2.1.2 Experience:**

**2.1.2.1 Current Experience.** State relevant experience of the company and person(s) who will be actively engaged in the proposed project, including experience of subcontractors. Submit resumes for the individuals who will be performing the services for the City.

**2.1.2.2 Past Experience.** Describe a minimum of three (3) projects of similar scope and size, which are now complete; state for whom the work was performed, year completed, and a reference person who can be contacted regarding the work. References must be for work performed in the past three to five (3 to 5) years. State relevant experience with other municipalities or government entities.

**2.1.3 Customer Satisfaction:** Discuss fully your proposed approach to maintaining a high degree of customer satisfaction and retention of interest in visiting the venue, while developing maximum gross receipts.

**2.1.4 Minimum Qualifications:** Provide information relative to the following minimum qualifications:

**2.1.4.1** Provide a description of experience in operating a Retail Space servicing a minimum of 150,000 annually. Identify in detail and provide visual media (video, CD or photos – which will be returned upon request) of operation of at least one (1) similar projects by name, subject matter, location, services provided, length of engagement, key personnel, and four (4) references for each. Include reference name, address and telephone number for each of these projects. Sales records expressed as gross and per capita sales for the last three years at each location shall be included. *The City of Albuquerque reserves the right to contact references identified by the Offeror and to reject responses that are deemed by the City to have insufficient experience, or a history of poor past performance.*

**2.1.4.2** Copies of the Offeror’s CPA audited financial statements for the previous three

(3) years and Offeror's parent organization, if applicable, for evaluation. Identify proprietary information.

**2.1.4.3** A credit rating from a major banking institution.

**2.1.4.4** Literature, brochures, etc. providing a full description of facilities operated and any other material that may illustrate operational capacity and ability.

**2.1.4.5** Details of any management and/or employee training programs currently in operation, to include training for front-line employees.

**2.1.4.6** Information regarding operations for which the Offeror's contract was terminated for any reason. Any claims or lawsuits that have been brought against the Offeror as a result of any related services provided within that last five (5) years.

**2.1.4.7** Forms. Submit all forms as indicated herein with your Proposal.

**2.1.4.8** Such other information as the Offeror may deem necessary to ascertain the qualifications of the Offeror.

**2.1.5 Project Design and Compatibility with the ABCLS Main Library.**

Offerors shall submit a floor plan, and building elevations showing any requested exterior signage or exterior modifications. The plans should illustrate compatibility with the Main Library. A materials list is required that specifies major components of the interior, i.e. finishes, colors, sound attention, insulation, carpet and flooring. The City must approve design prior to construction.

**2.1.6** Proposals shall be evaluated on the basis of the Offeror's financial commitment to the Internet Café or Business Center, both current and future. Offers should include a statement of willingness to provide all the required fixed and non-fixed improvements and whatever other improvements are necessary for a successful operation, including interior finishes and signage. A summary and itemized cost should be furnished, designating the investment in fixed and non-fixed improvements. The proposal should also contain a description of equipment and furnishings intended for use, including cash register/point-of-sale equipment. These registers/point-of-sale equipment must be able to allow the City to independently monitor sales, provide monthly reports, annual reports and allow for audit activities.

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**PART 3**  
**SCOPE OF SERVICES**

**3.** Offeror shall, at its own expense, supply, furnish, install and maintain all equipment required to conduct an Internet Café or Business Center at the Main Library.

The subject space available for is comprised of approximately 1000 net interior square feet. The City shall entertain proposals concerning the finishing's out of this space to the Offeror's specifications, which specifications shall be subject to approval of the City. Performance and Materials Payment Bonds will be required from any general contractor in the full amount of approved construction costs. The successful Offeror will be required to construct the improvements based on specifications provided by the successful Offeror, in compliance with City of Albuquerque Land Use Code, and all other local, state and federal laws, rules and regulations. Payment of utilities incurred as of the date of substantial completion of the necessary improvements shall be the responsibility of the contractor.

**3.1** Install, operate, and maintain an Internet Café or Business Center. The contractor will be responsible to provide all fixtures, carpeting, lighting, etc., needed for operations.

**3.1.1** Provide a hygienic retail space (café or business center) environment that will provide quality food and/or beverage products, merchandise or services at reasonable prices. No alcoholic beverages shall be sold or consumed on the premises.

**3.1.2** Employ trained personnel, who shall be clean, courteous, efficient and neat in appearance.

**3.1.3** Maintain the cleanliness of the retail space and all ancillary facilities included in the leasee's space, such as restroom, office, and storage area.

**3.1.4** Maintain the sidewalk areas around the leased space as well as the removal of papers and other garbage generated by leasee's operation.

**3.2** Provide a minimum guarantee annual lease amount to the City and an percent (%) of additional revenue above the minimum guarantee based on the leasee's gross sales. Pay all licenses, permits, franchises, taxes and other charges assessed against Lessor, its operations, or furnishings, equipment, or stock of merchandise and supplies on the leased premises.

**3.3** Selected Offeror must report gross receipts each month to ABCLS.

**3.4** The ABCLS must concur with selected Offeror on the following:

1. Menu or type of merchandise
2. Hours of operation
3. Food or merchandise storage
4. Uniforms and I.D.'s
5. Trash Collection

**3.5 Utility Services:** The City shall not be obligated to provide to the premises any utility services, including but not limited to, air conditioning, heating, water, gas, electricity, light, sewage, telephone, and janitorial. The City will assist or has already made available these services.

**3.5.1 Utility Bills:** The City will pay water, sewage, gas, and electric bills for the retail space based on square footage of the retail space as per Main Library's utility bills. This amount will be invoiced to the lessee on a monthly basis and is to be included in the annual fixed fee monthly lease payment. The lessee will be required to pay telephone/data lines/internet connections, refuse removal and janitorial services and any other services not listed herein.

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**PART 4  
EVALUATION OF OFFERS**

**4.1 Selection Process.** The Mayor of Albuquerque shall name, for the purpose of evaluating the proposals, an Ad Hoc Advisory Committee. On the basis of the evaluation criteria established in this RFP, the committee shall submit to the Mayor a list of qualified firms in the order in which they are recommended. Proposal documentation requirements set forth in this RFP are designed to provide guidance to the Offeror concerning the type of documentation that will be used by the Ad Hoc Advisory Committee. Offerors should be prepared to respond to requests by the Purchasing Office on behalf of the Ad Hoc Advisory Committee for oral presentations, facility surveys, demonstrations or other areas deemed necessary to assist in the detailed evaluation process. Offerors are advised that the City, at its option, may award this request on the basis of the initial offers.

**4.2 Evaluation Criteria.** The following general criteria, not listed in order or significance, will be used by the Ad Hoc Advisory Committee in recommending contract award to the Mayor. The proposal factors will be rated on a scale of **0-1000** with weight relationships as stated below.

**4.2.1. Evaluation Factors:**

**0 – 200            Experience and qualifications**

- Number of years of retail experience and type of experience
- Number of years of experience with concept being proposed
- Quality of existing retail facilities (review of photographs submitted by Offeror)
- Professional references, organization of submittal, adherence to RFP instructions
- Financial capability/credit check
- Sales volume
- Financially successful performance of existing stores

**0 – 250            Proposed Capital Investment and Tenant Improvements**

- Creative and innovative design as it relates to the proposed concepts, including their appropriateness for the individual proposed concept
- The quality of design as it relates to the proposed concept, and the City desire to reflect local architecture, culture and themes in the retail facility
- Architectural renderings of the proposed concepts to evaluate the overall design and theme
- Offeror’s proposed Capital Investment

**0 – 250            Management and Operating Plan**

- Level and type of management staff and experience
- Staffing and customer service programs, philosophies and training

- Methods to monitor customer service, e.g., customer comment cards
- Operations plan: delivery and stocking logistics
- Maintenance and repairs of facilities
- Security policies and practices
- Inventory and cash controls

0 – 100      **Marketing Plan**

- Innovative promotional campaigns
- Frequency and quality of marketing efforts
- Overall quality of proposal submission, oral presentation (if applicable)

0 – 100      **Proposed Annual Fixed Fee**  
Appendix A

0 – 100      **Proposed Gross Revenue**  
Appendix A

**4.2.2 Cost Evaluation.** The cost/price evaluation will be performed by the City Purchasing Division or designee. A preliminary cost review will ensure that each Offeror has complied with all cost instructions and requirements. In addition, proposals will be examined to ensure that all proposed elements are priced and clearly presented. Cost proposals that are incomplete or reflect significant inconsistencies or inaccuracies will be scored accordingly or may be rejected by the Ad Hoc Advisory Committee if lacking in information to determine the value/price/cost relative to the services proposed.

**4.2.3 Local Preference.** Local and Resident Preference: A preference for local and state businesses is available under the City of Albuquerque Public Purchases Ordinance, for this procurement. The "LOCAL PREFERENCE CERTIFICATION FORM" and instructions are attached as an Appendix to this Request for Proposals. If a completed Local Preference Certification Form, or a current and correct Resident Business Preference Number is not received with the Offeror's response, a preference will not be applied for that offer. The Form or the Number will not be accepted after the deadline for receipt of proposals. For those Offerors qualifying for the preference, a 1.05 multiplier will be applied to the total raw score. Only one preference will apply for this procurement. Local Preference supersedes all other preferences.

**4.3 Additional Points for Community Involvement.** The City has implemented a program to assist Albuquerque's young adults in finding summer employment with local businesses. The object is to benefit the community by providing meaningful work experiences for young people and assisting businesses to locate summer staffing. This program is called the City's Summer Youth JOBS Initiative. To encourage participation in this program, an additional 50 points will be added to the total composite score of any Offeror who volunteers to do one of the following:

**4.3.1** To hire one or more youth(s) (ages 16 - 21) for a minimum of eight (8) weeks for at

least forty (40) hours per week of employment placement during the period of May 15 to September 1 of each year during the term of its contract with the City, to pay at least a minimum wage to the youth hired, to provide a meaningful work experience for the youth and an understanding of basic employment rules and requirements, to hire the youth through the New Mexico Department of Labor Dial-A-Teen Office, and to follow all applicable laws and regulations regarding the hiring of young adults; or

**4.3.2** To contribute at least Two Thousand Dollars to the City’s Summer Youth JOBS Initiative Fund for each one year period during the term of its contract with the City. The funds will be used to provide employment for youth with other employers.

**4.3.3** An Offeror must certify in a written statement submitted **with** its proposal its willingness to participate in this program and to meet the selected requirements outlined above in order to be eligible for these additional points.

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## **PART 5 - INSTRUCTIONS FOR LOCAL PREFERENCE CERTIFICATION FORM**

- 1. ALL INFORMATION MUST BE PROVIDED.** A 5% local preference is available for this procurement. To qualify for this preference, an Offeror **MUST** complete and submit this Form **WITH ITS OFFER**. If an offer is received without the Form attached, completed, signed and certified, or if the Form is received without the required information, the preference will not be applied. **THE FORM OR A CORRECTED FORM WILL NOT BE ACCEPTED AFTER THE DEADLINE FOR RECEIPT OF BIDS OR PROPOSALS.**
- 2. LOCAL PREFERENCE PRECEDENCE OVER STATE PREFERENCE.** The local preference takes precedence over the State Resident Business Preference and only one of the two preferences will be applied to any one offer. If it is determined that the local preference applies to one or more Offeror in any solicitation, the State Resident Business Preference will not be applied to any offers.
- 3. PHYSICAL LOCATION MUST BE STATED.** To qualify for the local preference, a business must have a location in the Albuquerque Metropolitan Area (Abq. Metro Area). The business location inserted on the form must be a physical location, street address or such. **DO NOT** use a post office box or other postal address.
- 4. ADDITIONAL REQUIREMENT.** To qualify for this preference, the principal Offeror (i.e. the business, **NOT** the individual signing the form) if it is a corporation, must be a New Mexico corporation with its articles of incorporation filed with the New Mexico Public Regulation Commission.
- 5. DEFINITIONS.** The following definitions apply to this preference:

  - The Abq. Metro Area includes all locations within the City of Albuquerque and Bernalillo County, and within any municipality (i.e. incorporated city, town or village) contiguous to the City of Albuquerque and Bernalillo County.
  - A resident of the Abq. Metro Area is a person who occupies a dwelling in the Area and who manifests an intent to maintain that dwelling on a permanent basis.
  - A principal Offeror is a single Offeror; a business which is the prime contractor or one of the prime contractors and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.
- 6. ADDITIONAL DOCUMENTATION.** If requested, a business will be required to provide, within 10 working days of the request, documentation to substantiate the information provided on the form.

9/24/02

# LOCAL PREFERENCE CERTIFICATION FORM

Solicitation No.: RFP2006-013-SV

Business Name: \_\_\_\_\_

Business Location (in Abq. Metro Area): \_\_\_\_\_

## Business Type: **SELECT ONE**

- Corporation -- Indicate state of incorporation.  \_\_\_\_\_
- Partnership -- Indicate "general" or "limited".  \_\_\_\_\_
- Sole Proprietorship (Single Owner with employees)
- Individual (Single Owner/No employees)
- Other - Indicate status.  \_\_\_\_\_

**Additional Information:** (PROVIDE IF BUSINESS IS A CORPORATION)

Date of incorporation in the State of New Mexico:  \_\_\_\_\_

## CERTIFICATION

I hereby certify that the business set out above is the principal Offeror submitting this offer or is one of the principal Offerors jointly submitting this offer (e.g. as a partnership, joint venture). I hereby certify that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and, if requested by the City, will provide, within 10 days of notice, the necessary documents to substantiate the information provided on this form.

**Signature of Authorized Individual:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**YOU MUST RETURN THIS FORM WITH YOUR OFFER**

9/24/02

**PART 6**  
**DRAFT LEASE/CONCESSION AGREEMENT**

**This Concession Lease And Agreement for the Albuquerque/Bernalillo County Library System** (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Albuquerque, New Mexico a municipal corporation, (hereinafter referred to as the "City"), and \_\_\_\_\_ [company name], a \_\_\_\_\_[type of entity] organized under the laws of the State of \_\_\_\_\_ (hereinafter referred to "Tenant"), \_\_\_\_\_[address].

In consideration of the premises, the rent and the mutual obligations contained in the Agreement, City and Tenant agree as follows:

**Section 1. Recitals.**

- A.** City owns and operates the Albuquerque/Bernalillo County Library System ("ABCLS") Main Library, located in the County of Bernalillo, State of New Mexico.
  
- B.** Tenant is licensed or otherwise authorized to conduct the business activities described in this Agreement by all governmental agencies having jurisdiction over Tenant.
  
- C.** City has available space at the Main Library that can be leased and used for sales of food, beverages or merchandise for the convenience of library users.
  
- A.** City issued a Request For Proposals for its Cultural Services Department, RFP2006-013-SV, titled "Internet Café or Business Center Lease/Concession at the Main Library", dated March 24, 2006, attached hereto as **Exhibit A**.
  - a. Tenant submitted its proposal dated \_\_\_\_\_, in response to RFP2006-013-SV, attached hereto as **Exhibit B**.
  
  - b. Tenant's proposal was recommended for award by the ad hoc evaluation committee and approved by the City Council on \_\_\_\_\_ pursuant to EC No.\_\_\_\_\_.
  
  - c. Tenant desires to lease from City certain space at the Main Library, upon terms and conditions stated in this Agreement and is willing and qualified to operate the concessions described herein.

**Section 2. Definitions.**

- A.** "Agreement" means this Lease /Concession and Agreement for the operation of concessions at the Albuquerque/Bernalillo County Library System.

- B.** “**ABCLS**” means the Albuquerque/Bernalillo County Library System.
- C.** “**City**” means the City of Albuquerque, a municipal corporation organized and existing under the laws of the State of New Mexico.
- D.** “**Contract Year**” means each twelve-month period from the date this Agreement is executed by all parties .
- E.** “**Cultural Services Department**” means the City of Albuquerque Cultural Services Department, or its successor agency.
- F.** “**Date of beneficial Occupancy (DBO)**” means the date on which Tenant has opened its store for business to the public or \_\_\_\_\_, 2006, whichever comes first.
- G.** “**Director**” means Director of the Library or such other person designated by the Director of the City’s Cultural Services Department or Chief Administrative Officer to exercise functions with respect to the rights and obligations of City under this Agreement.
- H.** “**Environmental Laws**” shall be interpreted in the broadest sense to include any and all federal, state, local statutes, ordinances, regulations, rules or guidelines now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relate to the protection of human health, safety or environment.
- J.** “**Gross Revenues**” means the total amount of money or the value of other consideration received from selling property or performing services upon, into or out of any part of the Main Library, whether for cash or credit (whether collected or not).

**Specific Instructions.** Gross Revenue includes but are not limited to the following:

- 1) the total amount of money or the value of other consideration received shall be included whether payment is for cash or on credit and whether or not such amount is collected.
- 2) all credit losses, credit charges, or credit deductions incurred by Tenant or imposed on Tenant by reason of Tenant’s acceptance or use of credit cards or other credit or charge arrangements.
- 3) all fees and charges required of Tenant under the terms and conditions of this Agreement. Should such fees be added to customer charges, such additional charges shall also be included in Gross Revenues.

**Specific Exclusions.** Excluded or deducted from Gross Revenues are the following:

1) federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now or hereafter imposed and required to be collected by Tenant directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Tenant to any governmental agency;

- K.** **“Hazardous Substances”** shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminant as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws.
- L.** **“HVAC”** or **“HVAC System”** means the heating, ventilation and air conditioning systems owned and maintained by City on the Premises.
- M.** **“HVAC Air Distribution System”** means the heating, ventilation and air conditioning distribution system installed by Tenant at the Premises.
- N.** **“Main Library”** means the Main Library, located at 501 Copper Ave NW in Albuquerque, as it is now known or designated in the future, as shown in **Exhibit C** attached hereto, and such real property contiguous to the Main Library that may be acquired throughout the Term of this Agreement for use in connection with its operations.
- O.** **“Premises”** means the premises described in Section 3 of this Agreement.
- P.** **“Request for Proposals”** or **“RFP”** means the RFP number 2006-xx-SV, entitled “Internet Café or Business Center Concessions Lease at the Main Library” dated March 20, 2006, under which proposals were requested and under which this Agreement was awarded.
- Q.** **“Retail Space”** is defined as that portion of the Premises assigned to Tenant for retail sales (the space used by Tenant for a café, business center or service). Retail Space includes contiguous storage and office space to support such sales.
- R.** **“Rules and Regulations”** means those Rules and Regulations as described in the General Conditions of this Agreement, Section 22A.
- S.** **“Storage Space”** means that portion of the Premises assigned to Tenant for the storage of Tenant's merchandise and other inventory which is directly related to its operations on the Premises.
- T.** **“Transition Period”** means the time period from the commencement of the Term

of this Agreement (\_\_\_\_\_), and the DBO, during which Tenant's shall make its initial Capital Investment.

**Section 3. Premises.**

**A. Premises.** City, for and in consideration of the rents and payments reserved in this Agreement and each of the covenants, conditions and agreements set forth in this Agreement to be kept and performed by Tenant, hereby leases to Tenant and Tenant hires and take from City upon the conditions, covenants and agreements set forth in this Agreement, all of which Tenant accepts, the Retail and Storage Spaces as described in **Exhibit C** (hereafter "Premises"), consisting of the following:

**B. Acceptance of Premises.** Tenant has inspected the Premises and accepts the Premises in its present condition.

**C. No other Obligation of City.**

**1)** Tenant acknowledges that City has made not representations or warranties concerning the suitability of the Premises fro Tenant's use or for any other use, and that except as expressly provided in this Agreement, City shall have no obligations whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises or any improvements, furnishings, fixtures, trade fixtures or equipment constructed, installed, or used on or in the Premises.

**2)** Tenant hereby confirms that it has made its own investigation of all the costs of doing business under this Agreement, including the cost of constructing Tenant Improvements to the Premises, and the costs of furnishings, fixtures, trade fixtures, signs, inventory and equipment needed to operate from the Premises; that it is relying on its own business judgment concerning its premises for operating on the Premises on a profitable basis, and that City has not made any representations or warranties with respect to such matters.

**3)** City does not warrant the accuracy of any statistics or projections relating to the Main Library and it operations which have been provided to Tenant by City or anyone on it behalf and City shall not be responsible for any inaccuracies in such statistics or their interpretations.

**4)** All statements contained in this Agreement or otherwise made by City or anyone on its behalf concerning any measurement relating to the Premises or any other area of the Main Library are approximate only, and any inaccuracy in such statements of measurements shall not give rise to any claim by Tenant in connection with this Agreement.

**5)** City shall not be liable to Tenant for any loss of business or damages sustained by Tenant as a result of any change in the operation or configuration of, or any change in any procedure governing the use of the Premises, including but not limited to any restriction of access to portions of the Main Library for certain special events.

#### **Section 4. Term**

**A. Term and Effective Date.** Unless sooner terminated as provided herein, the Term of this Agreement shall commence on \_\_\_\_\_, 2006, and expire five (5) years from the date of execution, with an additional five (5) year option to extend the Term by mutual written agreement of the parties. The Effective Date of this Agreement is the date it is signed by City's Chief Administrative Officer.

**B. Holding Over.** Holding over by Tenant after the expiration of the Term of this Agreement, whether with or without the consent of City, shall not operate to extend or renew this Agreement. Any such holding over shall be construed as a tenancy from month to month and Tenant shall be bound by all terms and conditions of this Agreement, provided, however, that, at City's option, all rents and fees shall be in an amount equal to one hundred fifty percent (150%) of the rents and fees required in Section 5 of this Agreement. Nothing in this Agreement shall be construed to grant Tenant the right to hold over at any time, and City shall be entitled to exercise any and all remedies at law or in equity to recover possession of the Premises as well as any damages incurred by City.

**Section 5. Fees, Rent and Contributions.** As consideration for the privilege of operating the retail concessions hereunder, Tenant shall pay to City each year, for the full Term of this Agreement, an Annual Fixed Fee, a Percentage Rent applicable to Gross Revenues, and additional fees and contributions as specified below.

#### **A. Fees and Rent.**

**1) Annual Fixed Fee.** Tenant shall pay to the City Each Contract Year an annual fixed fee ("AFF") of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). During the first year of the Term of this Agreement, the AFF shall be prorated for the actual number of months in the year during which the Premises and rights are enjoyed.

The AFF shall be payable in equal monthly installments over the number of months in the Contract Year, in advance and **without invoice**, on the **first day of each calendar month** throughout the Term of this Agreement.

If the commencement or termination of the Term of this Agreement falls on any date other than the first or last day of a calendar month, the AFF for the month shall be prorated according to the number of days in that month during which the Premises and rights were enjoyed.

**2) Percentage Rent.** Immediately upon Tenant's receipt of monies from sales by Tenant, the percentages of the monies belonging to City shall immediately vest in and become the property of City. Tenant shall be responsible as trustee for the monies until the sums are delivered to City.

The Percentage Rent to be applied to the Gross Revenues earned or received by Tenant shall be as follows:

<u>Gross Revenues</u>	<u>Percentages</u>
0 - \$100,000	_____ %
\$100,001 - \$250,000	_____ %
\$250,000 – above	_____ %

**3) Payment of Percentage Rent.** Within **fifteen (15) days** after the beginning of each calendar month during the Term of this Agreement, Tenant shall pay to City the Percentage Rent for the previous month. During the Contract Year, the Contractor shall use \_\_\_\_\_ percent (\_\_\_\_\_%) in calculating the amount of the monthly payment and shall submit it with the Tenant’s Monthly Gross Revenue Report Form identified in Section 6.A below. Within fifteen (15) days after the Contract Year, the Tenant shall determine the Gross Revenues for the Contract Year and the appropriate percentage rate for the Contract Year as set out above. The Tenant shall then pay to the City the difference, if any, between the appropriate percentage rate times the Gross Revenue for the Year and the sum of all monthly installments of Percentage Rent paid during the Contract Year.

**B. Refuse Fee.** Tenant shall pay City for Tenant’s use of City refuse disposal containers. Such fees shall be paid monthly, in advance **without invoice**, and no later than the **first day of each month**. This fee shall be subject to adjustment at the end of each fiscal year by City. If the commencement or termination of the Term of this Agreement falls on any date other than the first or last day of a calendar month, the refuse fee shall be prorated according to the number of days in that month during which the Premises and rights were enjoyed.

Tenant shall, at Tenant’s expense, promptly remove its trash, debris, crates, pallets and abandoned equipment from the Main Library grounds to City-provided dumpster and shall not improperly deposit the same on any portion of the Main Library. City shall be entitled to remove Tenant refuse from the Main Library grounds and charge Tenant a reasonable fee if Tenant fails to remove such refuse within one day after receiving written or verbal notice from City of improper removal or failure to remove.

**C. Miscellaneous Fees.** Office services, such as telephone/data communications, facsimile transmissions, and photocopying provided by City to Tenant and costs of security and personnel identification badges shall be paid to City by Tenant at the time such services or materials are obtained by Tenant. Charges for such items shall be at the rates customarily charged by the City.

**D. Late Payment Charges.** Rents and fees are due and payable in advance on or before the first (1<sup>st</sup>) day of each month, unless otherwise specified above. If rents and fees are not received by the due date each month, Tenant shall pay an interest charge of one and one-half percent (1 ½%) per month (18% annually) for each month or partial month that any payment due is not paid (“hereafter the Past Due Interest Rate”). In addition, Tenant shall pay and administration fee to City of **Fifty Dollars (\$50.00)** if City sends Tenant a Notice to Cure Event of Default for non-payment pursuant to Section 11.A of this Agreement.

**E. Place of Payment.** Tenant shall make any payments of rents, fees or other

charges to the office of the Director or at such other places as may be designated by the City from time to time. Payments shall be made to the order of the “City of Albuquerque”, except that the payment of Percentage Rent shall be made to the order of the “Main Library Special Revenue Account \_\_\_\_\_.”

## **Section 6. Reporting Requirements.**

**A. Monthly Reports.** Within **fifteen (15) days** after the close of each calendar month during the Term of this Agreement, Tenant shall submit to City, on a form approved by the City, information concerning its Gross Revenues, including, but not limited to a statement of its Gross Revenues during the preceding month upon which the Percentage Rent payments required in Section 5 are computed. **Tenant must submit the monthly statement with its payment of Percentage Rent.** Such statement shall be signed by a responsible accounting officer of Tenant. City shall have the right to change the form of the Monthly Statement of Gross Revenues and to require Tenant to submit other information pertaining to Gross Revenues, and Tenant agrees to use such forms and provide such additional information.

Tenant agrees to keep full and accurate books showing all of its Gross Revenues, and City shall have the right to inspect, examine, copy and audit such books and records, including but not limited to Tenant’s federal, state and local tax returns and New Mexico Gross Receipts tax return records as filed with the State of New Mexico, as further provided in **Paragraph C** below. Such books and records shall include separately maintained original records, which shall include: **1)** daily dated cash register tapes, including tapes from temporary registers; **2)** serially numbered sales slips; **3)** Tenant’s bank account statements; **4)** daily and/or weekly transaction reports; and **5)** such other records, if any, which would normally be examined by an independent certified public accountant in performing an examination of Tenant’s Gross Revenues in accordance with Generally Accepted Auditing Standards.

**B. Annual Reporting.** Within ninety (90) days after the end of each Contract Year, Tenant shall transmit to the City a report of its Gross Revenues and Percentage Rents due for the previous calendar year. Such annual reports shall be prepared by a certified public accountant in accordance with Generally Accepted Accounting Principles. If such annual report shall disclose an overpayment or underpayment of rents calculated pursuant to Section 5 of this Agreement, Tenant shall pay to, or be paid or credited by, City for the amount of such overpayment or underpayment, as the case may be. Any payment due shall accompany Tenant’s annual report. Tenant shall take any overpayment credit during the month next following transmittal of its annual report.

**C. Auditing by City.** City shall have the right at any time within three (3) years after receipt of Tenant’s annual report or monthly reports to have the books and records of Tenant audited during reasonable hours by a certified public accountant including but not limited to the City’s Office of Internal Audit, or its successor agency or a private certified public accountant; and, in the event that such audit shows Tenant’s Gross Revenues as reported by said certified statement to be more than one percent (1%) in error detrimental to City, Tenant shall reimburse City for the expense to City of such audit; otherwise, City shall bear the entire cost of such audit. Any additional Percentage Rent found due by such audit shall be paid to City within

thirty (30) days of the Audit and shall bear interest at the Past Due Interest Rate from the date such payment was due until paid; and if Tenant has overpaid such rent, Tenant shall deduct such excess from the rent next falling due, if any, or be paid such excess by City. Tenant shall not be entitled to charge City any interest on such overpayments.

**D. Records.** Tenant shall maintain records of its Gross Revenues for a period of at least three (3) years following the end of each calendar year and such records shall be available to City for audit or review on request during usual office hours. Tenant shall maintain such records at its corporate office and provide them to City in Albuquerque, New Mexico, upon fifteen (15) days written request.

**E. Failure to Record.** In the event Tenant fails to create and/or preserve part or all of the Gross Revenue records required in this Agreement, Tenant shall pay City the Percentage Rent on an estimated amount of Gross Revenues for the time period for which such records were not created or preserved, plus eighteen percent (18%) thereon. The estimate of Gross Revenues shall be made by the City and shall be based on historical sales of tenant or on the sales of other retail businesses situated in similar circumstances as Tenant. Failure of Tenant to create and/or preserve such records shall be a material breach of this Agreement by Tenant.

**Section 7. Use of Premises.** City hereby grants to Tenant an exclusive right to engage in business at the Premises for the purpose of operating an *Internet Café or Business Center* and other commercial activities as defined and regulated by this Agreement. Tenant shall use the Premises for no other purposes.

**A. Tenant's Privileges and Obligations.** Tenant shall have exclusive right to operate \_\_\_\_\_ concessions at the Main Library under the terms of this Agreement.

**B. Merchandising Goals.** It is the mutual intent of the parties hereto that the concessions on the Premises be operated and managed in such a way as to adequately serve visitors at the Main Library and at a reasonable profit. It is the objective of City and Tenant that the retail store maintains a distinctive

**C. Vending Machines.** No amusement or vending machines or other machines operated by coins, tokens, or credit cards shall be installed or maintained in the Premises. This prohibition includes but is not limited to sales by vending machines of 1) all merchandise; 2) cigarettes; 3) newspapers; 4) postage stamps; 5) insurance policies; 6) electronic game devices; 7) electronic video games; 8) entertainment devices; 9) pay televisions; 10) telephones; 11) phone cards; and 12) lottery tickets. No automated teller machines are permitted on the premises.

**D. Storage/Back-Office Space Limitations.** Tenant may use up to, but not more than a reasonable portion of the Retail Space depicted on **Exhibit C** for storage, office or other purposes not directly related to the display and sale of goods to customers unless otherwise approved by the City. Should Tenant require additional space for storage or office purposes, it

may be provided at another location only when such areas are reasonably available.

**E. Public Address/Paging, Video or Audio Systems.** City shall have the right, in its sole discretion, to install one or more public address system speakers on the Premises for announcing Library information. Tenant shall not install any public address, paging, audio or video systems on the Premises without the prior written approval of the Director.

**F. Modification Rights.** The Premises and Tenant's rights and privileges may be modified by the Director, with consent of Tenant, to implement the purpose and intent of this Agreement.

## **Section 8. Parking.**

The City will work with the Tenant to provide parking at existing City-owned and operated parking facilities that are located in the general area of the Premises. No additional parking will be provided at the Main Library for the Tenant or any customers.

## **Section 9. Operation Requirements.**

### **A. Tenant Operating Standards.**

**1) Staffing.** Tenant shall maintain a sufficient number of properly trained personnel to ensure that all customers of Tenant receive prompt and courteous service at all times. All such personnel, while on or about the Premises, shall be polite, clean, appropriately attired, and neat in appearance.

**2) Hours of Operation.** The retail concessions shall be open to the public at all times that the Main Library is open to the public, but the hours do not have to mirror those of the Main Library.

**3) Management.** The operation and maintenance of the Premises shall be under the constant, direct supervision of a trained, qualified, and experienced manager employed by Tenant. Tenant's manager shall be authorized to accept any notice required or allowed by this Agreement, and shall have authority to make all decisions reasonably necessary in the day-to-day operation of the concessions. Tenant's manager shall be available on-site during business hours, provided that a subordinate may be designated as an acting manager during brief absences of the manager. Tenant may employ more than one manager to satisfy the requirements of this Section.

### **4) Payment Processing.**

**a) Customer Receipts.** Receipts shall be properly itemized, shall reflect precisely the actual sale of goods and date of sale, and shall present individual prices, totals, and taxes.

**b) Traveler's Checks, Credit, Charge, and Debit Cards.** Tenant shall

accept traveler's checks and nationally recognized credit or charge cards (e.g., American Express, Discover, MasterCard, VISA), and bank debit cards for any purchase.

**5) Business Conduct.** Tenant shall maintain and conduct its operations in a proper business-like manner so as not to disturb or be offensive to customers at the Main Library. Tenant shall not solicit business anywhere in the Main Library, except in a proper manner within the premises.

**6) Listing of Products.** Tenant shall prepare a complete list indicating items to be offered for sale and prices to be charged for each item. This list shall be subject to the approval by the Director or an authorized representative and, after such approval, will be attached to this Agreement as **Exhibit D**. Additions to the product list shall be requested in advance in writing and shall require the approval of the Director, who shall determine if such additions are consistent with this Agreement. The decision of the Director shall be final. The failure on the part of the Tenant to request such changes shall not relieve it of its obligation to seek such approval from City, nor shall City's failure to notice that an unapproved product is being sold relieve City of its right to require Tenant to **a)** stop selling the product immediately upon receipt of notification, or **b)** demand that Tenant submit a written request to add such product to the approved product list.

Tenant shall sell products only in accordance with the terms of this Agreement. Tenant shall not offer for sale any product or engage in any activity not specifically provided for under the terms of this Agreement. Tenant shall not misrepresent to its customers the quality or grade of products sold, the point of origin, or utilize false or deceptive merchandising terms or advertising.

**7) Merchandise Displays.** Tenant shall utilize attractive merchandising that entices potential customers to purchase their products or goods. Tenant shall develop and implement creative and effective merchandising displays within the Premises; those displays may include without limitation window displays, display cases, promotional displays (for which City approval must be obtained), and attractive packaging. All signage and merchandising displays must be approved by City.

## **B. Sanitation, Hygiene, and Cleanliness.**

**1)** Tenant shall keep the Premises free of debris, trash, graffiti, and hazardous conditions, shall keep public areas around the Premises free of hazardous conditions originating from Tenant's operations, and shall notify City promptly of other hazardous conditions in the public areas outside the Premises.

**2)** Tenant shall provide a complete and proper arrangement for the adequate sanitary handling of all trash and other refuse caused as a result of its operation on the Premises and shall provide for its timely removal to the collection point to be provided by City. Tenant shall take appropriate action to exterminate and prevent the presence of rodents and other vermin. Tenant shall keep all garbage and recyclable materials in durable, fly and rodent-proof,

fireproof containers that are easily cleaned. The containers shall have tight-fitting lids, doors or covers, and shall be kept covered when material is not being deposited in them. Tenant shall clean the containers as necessary to prevent odors. Tenant shall not allow boxes, cartons, barrels, or other similar items to remain within view of public areas. City shall be responsible for handling and removal of trash and other refuse deposited by customers in Main Library.

**C. Deliveries.** Authorized vendor delivery zones at the Main Library shall be determined by the City and may be changed from time to time because of City construction or operational requirements. All deliveries to the Premises shall be scheduled during non-peak visitor periods. City may issue schedules of acceptable delivery times, which City may adjust from time to time, and from which Tenant shall not deviate without City's prior consent.

**D. Customer Complaints.** In the event any customer submits a written complaint to City (and forwarded to Tenant) or Tenant about Tenant's operations, Tenant shall respond within fifteen (15) days in writing to such complaint and make a good faith effort to explain, resolve and/or rectify the cause of the complaint. Tenant shall provide to City a copy of the complaint and its response thereto.

**E. Hazardous Use.**

**1) Tenant's Activities.** Tenant agrees that nothing shall be done or kept in the Premises and not improvements, changes, alterations, additions, maintenance or repairs shall be made to the Premises with might be unsafe or hazardous to any person or property. Further, Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate, suspend or increase the rate of any fire insurance policy required under this Agreement, or otherwise carried by City, covering the Premises the buildings in which the Premises is located or which, in the opinion of he City may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. If, by reason of any failure by Tenant to comply with the provisions of this Section, after receipt of notice in writing from City, any fire insurance rate on the Premises or in the building in which it is located, shall at any time be higher than it normally would be, then Tenant shall pay City, on demand, that part of all fire insurance premiums paid by City which have been charged because of such violation or failure of Tenant; provided that nothing herein shall preclude Tenant from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

**2) Notice to City and Corrective Action.** In the event Tenant discovers or create a hazardous or potentially hazardous condition in the Premises or the Main Library, Tenant shall give immediate verbal notice to the City and, if necessary, the New Mexico Environment Department. Such hazardous condition shall be corrected as soon as possible by Tenant if the hazardous condition is on the Premises. If the hazardous condition is outside the Premises, City shall correct or cause such condition to be corrected as soon as possible. Regardless of the location of the hazardous condition, Tenant shall close to the public that part of Premises impacted by such condition until it is safe for public use.

**F. Structural, Electrical or System Overloading.** Tenant agrees that nothing shall be done or kept on the Premises and no improvements, changes, alterations, additions, maintenance, or repairs shall be made to the Premises which might impair the structural soundness of the building, result in an overload of utility, plumbing or HVAC systems serving the Main Library or interfere with electric, electronic or other equipment at the Main Library. In the event of violations hereof, Tenant agrees to immediately remedy the violation at Tenant's expense.

**G. Noise, Odors, Vibrations and Annoyance.** Tenant shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Premises or annoy, disturb or be offensive to others at the Main Library, and shall take all reasonable measures, using the most practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations and to maintain the lowest possible sound level in its operations.

**H. Accessibility.** Tenant shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Premises or elsewhere at the Main Library, nor do or permit to be done anything which may interfere with free access and passage in the Premises or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties.

Tenant shall not place any additional lock of any kind upon any window or interior or exterior door in the Premises, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Premises and provide to the City. Upon the expiration or sooner termination of this Agreement, Tenant shall surrender to City any and all keys to the interior or exterior doors on the Premises, whether said keys were furnished to or otherwise procured by Tenant. If any keys furnished to Tenant by City are lost, Tenant shall pay City, on demand, the cost for replacement thereof.

**I. Director's Right to Object.** The Director shall have the right to raise objections to the conditions of the Premises or Tenant practices and conduct, including, but not limited to objections to all matters identified in this Section 9 and to require such conditions or Tenant practice or conduct to be remedied by Tenant.

## **Section 10. Insurance**

**A. General Requirements.** Tenant shall meet the requirements of this Section prior to the commencement of the Term of this Agreement. Tenant shall, at its own cost and expense, procure and maintain in full force and effect during the Term of this Agreement, such insurance as is required in this Agreement. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico and shall be on forms properly filed and approved by the State Superintendent of Insurance. When requested by City, Tenant shall provide to City copies of any or all policies of insurance for the insurance coverage required in this Section. Policies of insurance shall be procured for all insurance required and coverage limits of such policies of insurance shall not be reduced or replaced in part or in whole by self-insurance, including self-

insurance retention amounts, except as provided in Section 10.H.

Tenant shall not violate the terms or prohibitions of insurance policies required to be furnished by Tenant. Tenant shall promptly notify City of any claim or loss exceeding the amount of the deductible under such insurance policies, and certify that proper notice has been given the appropriate insurance carrier.

Tenant shall furnish City with certificates of insurance and shall deliver said certificates to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103. All insurance certificates shall provide that thirty (30) days written notice be given to the Risk Manager before a policy is cancelled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies.

**B. Approval of Insurance.** Even though a “notice to proceed” may have been given, neither Tenant nor any contractors, assignees or other transferees of Tenant shall begin any operations pursuant to this Agreement until the required insurance has been obtained and proper certificates of insurance delivered to the Director. Neither approval nor failure to disapprove insurance certificates of insurance by City shall relieve Tenant or any transferees of full responsibility to maintain the required insurance in full force and effect.

**C. Commercial General Liability and Automobile Liability.** Tenant shall procure and maintain policies of insurance for commercial general liability insurance and vehicle liability insurance for all vehicles used in its operation at the Main Library, as further described below. All such policies of insurance shall have liability limits in amounts not less than **One Million Dollars (\$1,000,000)** single limit liability for bodily injury, including death, and property damage in any one occurrence. Said policies of insurance shall include coverage for premises (if applicable), operations, and Tenant’s contractual liability to City hereunder. Contractual liability coverage shall specifically insure the Indemnification provision of this Agreement. The insurance policies shall contain “products” and “complete operations” coverage (if applicable) and shall not be written on a “claims made” form. The insurance policies shall include coverage for all use of, activities on, or operations with respect to Main Library premises, coverage for the use of all owned, non-owned, hired automobiles, vehicles, and other equipment, both on or off work.

**D. Increased Limits.** If, during the term of this contract, the legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978) to an amount greater than that specified above, City may require Tenant to increase the limits of any insurance required herein to an amount equal to such increased Tort Claims Act maximum limits of liability.

**E. Additional Insured.** City of Albuquerque shall be named as an additional insured on each insurance policy required in this Agreement.

**F. Worker’s Compensation Insurance.** Tenant shall comply with the provisions of the New Mexico Workers’ Compensation Act, the Subsequent Injury Act, and the New Mexico

Occupational Disease Disablement Law. Tenant shall procure and maintain during the term of this Agreement complete Workers' and Employer's Liability Insurance in accordance with New Mexico laws and regulations. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. With respect to Workers' compensation Insurance, if Tenant elects to be self-insured, Tenant shall comply with the applicable requirements of law. If any portion of the work is to be sublet, Tenant shall require the subtenants similarly to provide such coverage (or qualify as a self-insured) for all the latter's employees to be engaged in such work. Tenant hereby covenants and agrees that city, its officers, or employees will not be liable or responsible for any claims or actions occasioned by Tenant's failure to comply with the provisions of this Subparagraph and that the Indemnification provision of this Agreement shall apply to this Paragraph. It is expressly agreed that the employees of Tenant are not City employees for any purpose.

**G. Builders Risk Insurance.** During any period of construction or reconstruction for which Tenant contracts, Tenant shall carry, or shall require its contractor or contractors to carry, a policy of Builders Risk Insurance in an amount sufficient to insure the value of the work.

**H. Self-insurance Retention/Deductibles.** In the event any of the insurance policies required in this Section 10 (except as allowed by New Mexico Law regarding Workers' Compensation) contain a self-insurance retention provision (whether or not in the form of a deductible), for each such amount, Tenant shall post a bond or an irrevocable letter of credit made exclusively for the benefit of City and held by a bank authorized to do business in New Mexico which is acceptable to the City.

**I. Contents Insurance.** Tenant shall be solely responsible for obtaining insurance policies that provide coverage for losses of Tenant owned property. City shall not be required to provide such insurance coverage or be responsible for payment of Tenant's costs for such insurance.

## **Section 11. Termination of Agreement.**

**A. Termination: 15-Day Cure Period.** This Section shall govern Tenant's failure to comply with the following provisions (hereafter "Events of Default"):

- 1) pay fees and rent pursuant to Section 5
- 2) provide the reports required in Section 6, and
- 3) comply with notices from City sent pursuant to Section 9.H.
- 4) provide and maintain insurance pursuant to Section 10

In the event Tenant fails to comply with any or all of the aforementioned sections for a period of fifteen (15) days after receipt from the City of written notice of Events of Default, the City shall be entitled to terminate this Agreement, provided that no notice of termination shall be effective if Tenant shall have fully cured all Events of Default identified in the 15-day notice prior to Tenant's receipt of the notice of termination. Termination of this agreement shall take effect immediately upon Tenant's receipt of the notice of termination unless stated otherwise in the Notice of Termination.

**B. Termination: 30-Day Cure Period.** Except for Events of Default which are governed by Section 12.A above, City shall be entitled to terminate this Agreement in the event of default by Tenant in the performance of any covenant or agreement herein required to be performed by Tenant and the failure of Tenant to remedy such default for a period of thirty (30) days after receipt from City of written notice to remedy the same; provided, however that no notice of termination, as above provided, shall be of any force or effect if Tenant shall have remedied the default prior to Tenant's receipt of City's notice of termination. Termination shall take effect immediately upon Tenant's receipt of the notice of termination, unless stated otherwise in the Notice of Termination.

**C. Other Termination by City.** The City may terminate this Agreement at any time by giving at least one hundred twenty (120) days' notice in writing to Tenant. If the Tenant is terminated by the City as provided herein, the Tenant will be paid its reasonable cost incurred in connection with the termination. If this Agreement is terminated due to the fault of the Tenant, the preceding Section hereof relative to termination shall apply.

**D. City's Non-Waiver.** City's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by Tenant, shall not be deemed a waiver of any rights on the part of City to terminate this Agreement for failure by Tenant to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed by Tenant and shall not be construed to be or act as a waiver by city of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by Tenant.

**E. Termination by Tenant: 30-Day Cure Period.** Tenant shall be entitled to terminate this Agreement in the event of a default by City in the performance of any covenant or agreement herein required to be performed by city and the failure of City to remedy such default for a period of thirty (30) days after receipt from Tenant of written notice to remedy the same; provided, however, that no notice of termination, as above provided, shall be of any force or effect if City shall have remedied the default prior to receipt of Tenant's Notice of Termination.

**F. Termination by Tenant.** Tenant may terminate this Agreement any time that Tenant is not in default in its payments to City hereunder, by giving City sixty (60) days advance written notice to be served as hereinafter provided, upon or after the happening of any one of the following events:

1) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Main Library or any part thereof for Library purposes, and the remaining in force of such injunction for a period of at least ninety (90) days;

2) The inability of Tenant to use, for a period in excess of ninety (90) days, the Library or any of the premises, facilities, rights, licenses, services or privileges lease to Tenant hereunder, because of fire, explosion, earthquake, other casualty, governmental action or acts of God or the public enemy, provided the same is not caused by negligence or willful acts or failure

to act on the part of Tenant.

**G. Tenant's Non-Waiver.** Tenant's performance of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by City, shall not be deemed a waiver of any rights on the part of Tenant to terminate this Agreement for failure by City so to perform, keep or observe any of the terms, covenants or conditions hereof to be performed, kept and observed by City and shall not be construed to be or act as a waiver by Tenant of any subsequent default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by City.

## **Section 12. Tenant Improvements.**

**A. Construction Bonds.** Tenant shall, prior to erecting or placing improvements on the Premises, execute and deliver to City a labor and material payments bond and a performance bond with a good and sufficient surety to be approved by City in a sum equal to the full contractual amount for such improvements, to insure City against any lien or liens that may be filed against the Premises or Library property or Tenant's non-performance under the terms of this Agreement.

**B. Approval of Construction Plans and Specifications.** Tenant shall submit to the City complete plans and specifications for all work, facilities and improvements Tenant makes to the Premises and obtain written approval from the Director prior to beginning construction and installation. Approval by the City shall concern architectural and aesthetic matters, and the City shall be entitled to reject designs submitted and require Tenant to resubmit designs until approval by the City is given. First-class standards of design and construction are required and all Tenant improvements shall conform with all applicable laws. The approval by the City shall not constitute a representation or warrant that Tenant has complied with said laws. In the event the City disapproves any portion of plans and specifications submitted by Tenant, Tenant shall promptly submit necessary modifications and revisions thereof. No substantial changes or alterations shall be made in said plans and specifications after the initial approval by the Director without the advance written approval of the Director. City agrees to act promptly upon requests for approval of plans and specifications, and modifications thereto.

**C. Coordination of Construction.** Tenant shall cooperate with the City in the construction and installation of Tenant Improvements. Tenant agrees that during its construction and installation of Tenant Improvements, extensive construction by City or other tenants may also occur in adjacent areas to the Premises. Tenant agrees to monitor and coordinate the scheduling and construction staging in adjacent areas with Tenant's deliveries and work on Tenant Improvements.

All construction or installation of Tenant Improvements at the Main Library by Tenant shall be accomplished without interfering with users of the Library.

Tenant shall be responsible for obtaining and paying for any temporary utilities needed during construction and installation of Tenant Improvements.

Tenant and its construction contractors and installers shall at all times keep the construction and installation sites and surrounding areas clean, orderly, and safe, free of accumulated construction debris and waste materials, and shall be solely responsible for all construction debris and waste materials to a suitable licensed landfill.

**D. Improvements.** Tenant shall construct and furnish at its sole expense the Tenant Improvements listed and shown in **Exhibit E**. Tenant shall comply with, or cause the construction contractors to comply with, all laws, regulations and rules relating to construction of improvements on the Premises as public property, including without limitation, payment of applicable New Mexico wage rates. Tenant shall design, construct, operate and maintain and be solely responsible for all costs associated with the following: walls, floors, ceilings, furniture, fixtures, finishes, lighting, electrical, gas, telephone, water and other utility extensions into the Premises, floor coverings, wall coverings, window coverings, and all other improvements to the Premises necessary for the business operation required in this Agreement, except currently installed improvements.

**E. Future Improvements.** If additional tenant improvements are proposed during the Term, the parties shall enter into a written amendment to this Agreement setting out, at a minimum, a list of the improvements, the associated costs and a schedule for providing the improvements. The terms of this Agreement with respect to the current Tenant Improvements shall apply to the construction of all said future improvements.

**F. Tenant Improve Schedule.** Tenant shall complete the Tenant Improvements shown in **Exhibit E** within the Transition Period of \_\_\_\_\_ to \_\_\_\_\_, and following the schedule provided in **Exhibit F**, Schedule for Providing Tenant Improvements.

**G. Amount of Tenant Improvements.** Tenant shall provide Tenant Improvements as shown in Exhibit E in an amount of no less than \_\_\_\_\_ Dollars (\$\_\_\_\_\_). No more than fifteen percent (15%) of the foregoing dollar amount shall be for architectural, engineering, construction management and oversight, financing, loan acquisition or lender's fees, intra-company charges, and all other "soft" costs. No less than eighty-five percent (85%) of the foregoing dollar amount shall be for labor and materials of the construction of Tenant Improvements required in this Agreement. Tenant shall provide to City, at City's request, receipted invoices for labor and materials covering all construction and fixtures, including furniture, fixtures, trade fixtures and equipment. Tenant shall provide to City a statement of Tenant Improvement costs within **thirty (30) days** after substantial completion of the construction and installation of Tenant Improvements. In the event Tenant fails to make expenditures on the Tenant Improvements shown in **Exhibit E** within the time allowed in **Exhibit F**, Tenant shall pay City the difference between the amount expended on Tenant Improvements and the amount required above. Such payment shall be made by Tenant to City within thirty (30) days after receipt by Tenant of City's notice for payment.

**H. Failure to Make Tenant Improvements.** In the event Tenant fails to make the Tenant Improvements required in **Exhibit E** within the time required in **Exhibit F** in an amount equal to ninety percent (90%) of the amount required in Paragraph F above, such failure shall be

a material breach of this Agreement, allowing City to terminate this Agreement by giving Tenant fifteen (15) days notice. Tenant shall not be entitled to a cure period and the provisions of Section 11 of this Agreement shall not govern a termination under Section 12. City shall be entitled to take ownership of Tenant Improvements upon termination pursuant to this Section 12 subject to any indebtedness thereon or, solely at City's option, proceed pursuant to Section 14 (Surrender of Premises) of this Agreement.

**I. Schedule of Construction Payment.** Tenant shall provide to City a statement of certified costs which shall include all contractor and/or supplier pay requests for all Tenant Improvements required in **Exhibit E** and evidence of payment thereon within thirty (30) days of such payment. City shall be entitled to audit all such records in the same manner allowed for the audit of reports in Section 6 (Reporting Requirements) of this Agreement.

**J. Delay in Completion.** All construction and installation of all Tenant Improvements must be completed by the date(s) specified in **Exhibit F**. In no event shall the date of opening of the Internet Café or Business Center be later than \_\_\_\_\_ . Completion of Tenant Improvements after those dates shall be subject to assessment of liquidated damages in the amount of **\$1000 per day** payable to City by Tenant. A delay in the completion of any Tenant Improvements beyond the time allowed in **Exhibit F** or other schedule approved in advance in writing by the Director shall not postpone Tenant's obligation to open for business and pay all rents and fees required pursuant to Section 5.

**K. As-Built Drawings.** Tenant shall provide to the City two complete sets of as-built drawings of all Tenant Improvements within sixty (60) days after the substantial completion of such Tenant Improvements. As-built drawings shall be prepared in accordance with City requirements in Auto CAD format. In the event Tenant fails to provide such as-built drawings, City shall be entitled to have such as-built drawings completed and charge Tenant for the cost associated with the preparation of the as-built drawings. Tenant shall, upon the request of the City, inspect the Premises to verify the accuracy of the as-built drawings. All construction and installation of Tenant Improvements shall be subject to inspection by the City and shall be removed and/or replaced at Tenant's expense in the event said construction and/or installation fails to meet the plans and specifications approved by the City.

### **Section 13. Utilities.**

#### **A. HVAC**

**1) City Obligation.** All heating, ventilation and air conditioning service will be provided and maintained for the Premises by City. These services will be brought to the Premises and will not be extended by City beyond such point. Tenant shall be solely responsible for payment of all other utility costs. City shall provide normal and reasonable quantities of central air into the Premises. City shall own and maintain the HVAC air distribution system installed by Tenant pursuant to the provisions below.

**2) Tenant installation of HVAC Air Distribution System.** Tenant shall construct and install all HVAC air distribution systems and associated equipment for the

Premises, if needed. Design of such HVAC air distribution systems shall be approved in advance by the City and shall meet City specifications. The City shall be entitled to inspect throughout construction and installation of Tenant-provided HVAC. Upon acceptance of Tenant-installed HVAC air distribution systems by City, said HVAC air distribution systems shall become the property of and be maintained by City.

**B. Water Service.** City shall furnish water from its central water source in reasonable quantities; provided, that Tenant complies with all water conservation programs in effect or as adopted by City. Tenant shall pay costs associated with excessive water use. City shall pay all remaining charges related to water utility billings.

**C. Electricity and Natural Gas.** To the extent feasible, Tenant shall, at its expense, furnish, install, and maintain an electric meter, and a gas meter, if required, at a location and of a type specified by City, and shall pay all costs for electricity and gas used within the Premises. If not feasible, such costs shall be paid by the City and reimbursed by Tenant. Tenant shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Premises. Any cost incurred by City on behalf of Tenant shall be paid by Tenant within thirty (30) days of being billed by city and shall accrue interest at the Past Due Interest Rate if not paid when due.

**D. Telecommunications.** City will provide access for a wiring system to the Premises that will handle electronic information such as telephone and telecommunications equipment. If required by Tenant, City shall provide, at Tenant's cost, any extension of the wiring through the Main Library to the Premises and connections of any terminals and devices in accordance with City requirements, and Tenant shall pay for telephone or other communication services to the Premises.

**E. Lighting.** Tenant shall, at its expense, furnish, install, and maintain all lighting fixtures and wiring for general illuminating of the Premises, if needed. Levels of illumination and wattage requirements shall be subject to approval by City.

**F. Structural Maintenance.** City shall, at its expense, maintain all structural parts of the Premises, including exterior glass, walls and roof but specifically excluding Tenant Improvements made by Tenant.

**G. Interruption of Services.** Tenant agrees that City shall not be liable for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of City, city is unable to furnish such utility services. City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for rent abatement or operate to release Tenant from any of its obligations hereunder, except as otherwise provide in this Agreement.

#### **Section 14. Surrender of Premises.**

**A. Surrender of Premises.** Tenant covenants and agrees that on expiration of the Term of this Agreement, or earlier termination as hereinafter provided, it will peaceably surrender possession of the Premises in good condition, reasonable wear and tear, act of God, fire, and other casualties excepted, and City shall have the right to take possession of the Premises. City shall not be required to give notice to quit possession at the expiration date of the Term of this Agreement.

**B. Alterations and Improvements Vest With City.** All alterations, Tenant Improvements and fixtures, other than trade fixtures, movable equipment and other personal property shall become part of the realty and title shall vest with City upon completion of the installation or construction of such alterations and/or improvements. Removal of fixtures shall be allowed only pursuant to this Section 14. For purposes of this Section 14, "Movable Equipment" means only such equipment that has not been installed, attached, or affixed to walls, ceilings, floors or been made a part of any utility infrastructure.

**C. Removal of Personal Property.** Tenant shall have the right, fifteen (15) days prior to the expiration or early termination of this Agreement, to remove or dispose of all trade fixtures and Movable Equipment and other personal property placed by it at its expense, in, on, or about the Premise, subject to any valid lien that City may have thereon for unpaid rents or fees, provided, however, that City shall have the right to occupy and use the Premises immediately upon the expiration of the Term of this Agreement. City's occupancy of the Premises, whether by its own staff or by a successor tenant, shall include the right to temporarily relocate Tenant's fixtures, Movable Equipment, and personal property to other locations, on or off the Premises, at Tenant's expense. Tenant shall not be entitled to damages or costs of extra moving expense for City's relocation of such fixtures, Movable Equipment, and personal property, provided, however, that such fixtures, Movable Equipment and personal property remains at the Library. Tenant shall not be entitled to remove non-trade fixtures.

**D. Removal Damages.** In the event Tenant removes its trade fixtures and Movable Equipment and other personal property described in Paragraph C above, Tenant shall repair any damage to the Premises or the Main Library cause by such removal. Removal shall be at Tenant's expense.

**E. Ownership of Fixtures Not Removed.** In the event Tenant fails to remove its property, city shall have the options of 1) removing Tenant property at Tenant's expense, but only in the event Tenant takes possession of such property immediately upon such removal; or 2) taking title to Tenant property in lieu of removal on behalf of Tenant. In the event City takes title to such property, city shall be entitled to all proceeds of sale of such Tenant property as liquidated, damages for the breach of Tenant's covenant to remove.

## **Section 15. Maintenance of Utilities.**

### **A. City's Responsibilities.**

- 1) City shall operate and maintain and keep in good condition and repair the

Main Library and all additions, improvements, facilities and equipment now or hereafter provided by City at or in connection with the Main Library, including but not limited to the buildings containing the Retail and Storage Spaces leased hereunder, except any improvements, facilities, and equipment constructed or installed by Tenant (except that City shall maintain the HVAC air distribution system installed by Tenant, if applicable).

2) City shall at all times maintain the public area of the Main Library in a neat, orderly, sanitary, and presentable condition, and shall keep such area adequately supplied, equipped (including directional signs), furnished and decorated.

3) City shall supply or cause to be supplied appropriate and adequate equipment and maintenance for air conditioning, ventilation, heat, water and sewage facilities for the Main Library buildings and public use areas, adequate illumination, and janitorial service for the Main Library public use areas.

#### **B. Tenant's Responsibilities.**

1) Tenant shall at all times keep its Premises neat, orderly, sanitary, and presentable. Tenant shall pay for all electric power used in its Premises; and shall be responsible for relamping such Premises; Tenant shall furnish its own janitorial service for such Premises and shall cause to be removed at Tenant's own expense from such Premises all waste, garbage, and rubbish, and agrees not to deposit the same in any part of the Main Library, except that Tenant may deposit same temporarily in its Premises or in space designated by City in connection with collection for removal. Tenant shall, at its own expense, transport all refuse from temporary storage to central depositories at locations designated by City.

2) Tenant shall perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and repair of all facilities, personal property, trade fixtures, and equipment located in its Premises, including but not limited to fixtures, interior doors and windows, floor coverings and counters.

#### **Section 16. Damage.**

**A. Substantial or Extensive.** If, by reason of any cause including but not limited to any obligation City may have, other than the negligence or willful misconduct of Tenant, Tenant's Premises or adjacent premises are damaged to such an extent that they are untenable in whole or in substantial part, then:

1) **Substantial Damage.** If the repairs or rebuilding necessary to restore the Premises to its condition prior to the occurrence of the damage can, in the reasonable judgment of City, be completed within ninety (90) consecutive calendar days from the date on which the damage occurred, City shall so notify Tenant, in writing, and shall proceed promptly with such repairs and rebuilding, and in such event, a pro rata abatement of the AFF (Section 5.A.1) shall be allowed only for the period from the date of the occurrence of such damage to the date upon which repairs and rebuilding are completed. Thereafter, the AFF shall be calculated without regard for the period such rent was reduced. This pro rata abatement of the AFF shall be based

only on the reduction of usable square feet in Tenant's Premises due to such damage to the Premises. Percentage Rent for retail sales space shall remain the same.

**2) Extensive Damage.** If such repairs or rebuilding cannot, in the reasonable judgment of City be completed within said ninety (90) consecutive calendar days, City, at its option, to be evidenced by notice in writing to Tenant, may either:

a) proceed promptly with said repairs or rebuilding, in which event abatement of the AFF shall be allowed, as described previously in Paragraph A.1. of this Section, or

b) terminate this Agreement, in which event the rent and fees therefore for which provision is made in Section 5 hereof shall be eliminated from and after the date of the occurrence of the damage. City shall not be deemed in default under this Agreement in the event it elects to terminate. The ninety (90) day repair or rebuilding time shall include the time required for design of repairs or rebuilding, bidding and award of a construction contract pursuant to City procedures, and construction of the repairs or rebuilding.

**3) Tenant's Negligence.** Notwithstanding the above provisions, Tenant shall repair all damages to its Premises or adjacent premises at its sole expense that result from the negligent or intentional act or omission of Tenant, its officers, agents, servants, employees, contractors, subcontractors, licensees, subtenants or invitees, and the rents and fees required in this Agreement shall not be abated. In the event the Premises are destroyed or so damaged and rendered untenable so that they cannot reasonably be repaired with thirty (30) days as a result of the negligent act or omission of Tenant, its officers, agents, servants, employees, contractors, subcontractors, licensees or invitees, the rents and fees payable hereunder shall not abate and City may, at its discretion, require Tenant to complete repair and reconstruction of its Premises or adjacent premises promptly and pay the costs therefore, or City may repair and reconstruct such damaged Premises and Tenant shall be responsible for reimbursing City for the cost and expenses incurred such repair and reconstruction.

**B. Minor Damage.** If all or apportion of the Premises or adjacent premises are partially damaged but not rendered untenable, the same will be repaired with due diligence by City at its own cost and expense subject to the limitations of this Section 16; provided, however, that if the damage is caused by the negligent act or omission of Tenant, its officers, agents, employees, contractors, subcontractors, licensees or invitees, Tenant shall be responsible for reimbursing City for the cost and expense incurred in such repair. In the event of such minor damage, there shall be no abatement of the rents and fees payable by Tenant to City under this Agreement.

**C. Limits of City's Obligations Defined.** In the application of the provision of Paragraphs A and B of this Section 16, City shall in no event be obligated to repair, replace or reconstruct the Premises to an extent greater than its original obligation to provide facilities and service to the Premises as set forth in this Agreement.

**D. Tenant's Damage or Destruction of Improvements.** If, due to Tenant's intentional or negligent act of omission, Tenant's Improvements to the Premises or its

furnishings, fixtures, interior signage, trade fixtures, and equipment, or any part of them be destroyed or damaged, whether or not said damage or destruction is covered by insurance, Tenant shall, at its sole cost and expense, reconstruct all Tenant Improvements to the Premises and replace all furnishings, fixtures, interior signage, trade fixtures and equipment, with all such replacements being of equal quality to those originally installed by Tenant in the Premises, except in the event that the Premises are so damaged that they are untenable and cannot reasonably be repaired within ninety (90) days and city has elected to terminate this Agreement as provided in Paragraph A of this Section 16. If Tenant fails to repair or replace such improvements in accordance with a schedule approved by City, City shall have the right (but not the obligation) to make such repairs and/or replacement and recover from Tenant the cost and expense thereof.

**E. Force Majeure.** Except as expressly provided in this Agreement, neither City nor Tenant shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations, other than payment of rentals, fees and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of the public enemy, weather conditions and the results of nature, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible or which are not within its control.

## **Section 17. Signs.**

**A. Definition of Signs.** For purposes of this Section, signs shall include but not be limited to identification signs, company logos, advertising or promotions for merchandise, photographs, art displays, table tents, brand name logos.

**B. Right to Install.** Tenant shall have the right to install and operate upon or in the Premises, and at Tenant's sole cost and expense, signs containing its name and representing its business. Tenant acknowledges City's desire to maintain a high level of aesthetic quality at the Main Library. Therefore, Tenant covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Premises, it will submit to the Director the size, design, content, and intended location of each and every sign it proposes to install on or within the Premises, and that no sign of any type shall be installed on or within the Premises without the specific prior written approval of the Director as to the size, design, content and location. Notwithstanding any prior written approval, upon written notice from the Director at any time during the Term of this Agreement, Tenant shall install, remove, or modify any signs which the Director deems necessary or unnecessary for identification or information to the public. Failure to require removal of any sign placed on or about the Premises without written permission shall not limit the Director's authority to require removal of any unapproved sign at a later time.

**C. Signs and Fixtures Outside Premises.** Tenant shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Premises without the express prior written approval of the Director.

**D. Disapproval.** The Director may disapprove signs on or outside the Premises including but not limited to signs that do not conform to the architectural style of the Premises required by this Agreement, or advertising promoting a specific product that can be viewed from

locations off the Premises as well as those signs prohibited elsewhere in the Agreement.

**E. Removal of Signs.** Upon the expiration or sooner termination of this Agreement, Tenant shall, if requested by the Director, remove any and all identification signs and similar devices placed by Tenant on or in the Premises. In the event of the failure on the part of Tenant to so remove each and every sign as requested by the Director, the City may perform such work, and upon demand, Tenant shall pay the cost thereof to City.

#### **Section 18. Financial Responsibility.**

**A. Taxes, Licenses and Debts.** Tenant shall promptly pay all taxes and other exactions assessed or assessable and pay all license fees and permit fees applicable to Tenant's operation, and acquire and keep current all licenses, municipal, state or federal, required as the result of Tenant's operations at the Main Library pursuant to this Agreement, and shall not allow any of said taxes, excises or fees to become delinquent. Tenant shall pay promptly when due, all bills debts and obligations incurred by it in connection with its operations or activities on or in the Main Library or the Premises, and will not permit the same to become delinquent.

**B. Liens.** Tenant shall not permit any mortgage, judgment, execution or mechanic's or materialman's or any other lien to become attached to or be foreclosed upon Main Library real property or improvements thereto or thereon, or any part or parcel thereof by reasons of work, labor performed or materials or equipment furnished which will in any way impair the rights of City under this Agreement.

**Section 19. Access.** Subject to applicable city, state, and federal rules and regulations, Tenant shall have for itself and its officers, agents, employees and invitees reasonable rights of access to and from the Premises.

**Section 20. Quiet Enjoyment.** Upon payment of rent and performance of the covenants and agreements by Tenant, and subject to the terms and conditions of this Agreement, Tenant shall peaceably have and enjoy the Premises and all of the rights, privileges and appurtenances granted herein.

**Section 21. Inspection.** City, by its authorized officers, employees, agents, contractors, subcontractors, and other representatives, shall have the right, but not the obligation, at such times as may be reasonable under the circumstances and with as little interruption of Tenant's operations as is reasonably practicable, to enter upon the Premises, accompanied by an authorized Tenant representative, if practicable, for the following purposes:

**A.** to inspect the Premises to determine whether Tenant is in compliance with the terms and conditions of this Agreement, including inspection for safety, fire protection or security purposes.

**B.** upon fifteen (15) days' written or verbal notice, to perform such maintenance, cleaning, or repair of the Premises as City reasonably deems necessary. If Tenant fails to perform its obligations under this Agreement, City shall be entitled to recover the reasonable cost

of such maintenance, cleaning or repair from Tenant, plus fifteen percent (15%) administrative charge from Tenant on the next rent payment date.

**C.** City shall have the right to enter the Premises to show and tour the Premises with prospective tenants for the Premises and government officials, including but not limited to City Officials and tenant selection committee members.

**D.** City shall have the right to enter the Premises to take inventories of Tenant Improvements.

The failure of the City to inspect or monitor or give Tenant notice of a default or a notice of a hazardous or unsafe condition with respect to Tenant's operations under this Agreement shall not release Tenant from its liability to perform its obligations under this Agreement or impose any liability on the City.

## **Section 22. General Conditions.**

### **A. Rules and Regulations.**

1) Tenant shall observe and obey all lawful Rules and Regulations promulgated, from time to time during the Term of this Agreement, by City governing conduct on and operations at the Main Library and use of its facilities.

2) Tenant shall not violate, nor knowingly permit its agents, contractors, or employees acting on Tenant's behalf to violate any such Rules and Regulations.

### **B. Contract Interpretation.**

1) **Severability.** In the event any covenant, condition or provision herein is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable or, if it cannot be so amended without materially altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provisions of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either City or Tenant in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

2) **Waiver.** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.

**3) Gender, Singular/Plural.** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**4) Captions and Section Headings.** The captions, section headings, and table of contents contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.

**5) Entire Agreement.** This Agreement represents the entire contract between the parties and may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.

**6) Relationship of Contract Documents.** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

**7) Exhibits, Certificates, Documents Incorporated and Attachments.** All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the attached exhibits, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms.

**8) Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

**9) Successors.** All covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

**10) Governmental Rights and Powers.** Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by City in the Main Library property, or waiving or limiting City's control over the management, operations or maintenance of property, except as specifically provide in this Agreement, or impairing, exercising or defining governmental rights and the police powers of City.

**11) Cross Reference.** References in the text of this Agreement to articles, sections or exhibits pertain to articles, sections or exhibits of this Agreement, unless otherwise specified.

**12) Relation to other Tenants.** This Agreement is separate and distinct from,

and shall be construed separately from any other agreement between City and any other operation of Tenant at the Main Library. The fact that such other agreement contains provisions which differ from those contained in this Agreement shall have no bearing on the construction of this Agreement.

**13) Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**D. Discrimination Prohibited.**

**1) General:** In the use and occupation of the Library premises, the Tenant shall not discriminate against any person or class of persons by reason of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, physical or mental handicap, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended.

**2) Civil/Human Rights Laws:** In the operation and use of the Library Premises, Tenant shall not on the grounds of race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, or physical or mental handicap, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Title 49 CFR Parts 21, 23 and 26, the Civil Rights Act of 1964, as amended, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, the New Mexico Human Rights Act, and the Albuquerque Human Rights Ordinance. Tenant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, gender, sexual preference, sexual orientation, national origin or ancestry, age, or physical or mental handicap. Such action shall include, but not be limited to: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training; and disciplinary actions and grievances. Tenant agrees to post in conspicuous places available to employees, and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination clause.

**E. Indemnification.** Tenant covenants that it and all of its agents, contractors and employees will use due care and diligence in all of its or their activities and operations at the Library.

**1) General Indemnification.** Tenant agrees to defend, indemnify and hold harmless City and its officers, and employees from and against all suits, actions, claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (including but not limited to consultants' fees, reasonable fees of attorneys, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City because of any injury, including death at any time resulting from bodily injury, damages for care and loss of services, or damage received or sustained by any person, persons or property arising out of or resulting from any negligent act, error, or omission of Tenant, its agents or its employees arising out of the operations of

Tenant or Tenant's performance, purported performance, or non-performance of this Agreement or Tenant's activities at the Main Library.

**2) Environmental Harm - Indemnity.** Without limiting any provisions of this Agreement, Tenant shall also defend, indemnify and hold City and its officers and employees harmless from and against all suits, actions, claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (including but not limited to attorneys' and consultants' fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, brought against City arising out of or in any way related to:

**a)** any actual, threatened or alleged contamination by Hazardous Substances of the Premises or contamination by Hazardous Substances of the Main Library by Tenant or its agents;

**b)** the presence, disposal, release or threatened release of Hazardous Substances by Tenant or its agents at the Main Library that is on, from or affects the soil, air, water, vegetation, buildings, personal property, persons, animals or otherwise;

**c)** any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to Hazardous Substances used or released by Tenant at the Main Library; or

**d)** any violation by Tenant of any hazardous materials laws.

Tenant's obligations and liabilities under this Section shall survive the termination of this Agreement and the transactions contemplated in this Agreement.

**3) Limitations.**

**a)** To the extent, if at all, Section 56-7-1, NMSA 1978, is applicable to this Agreement, the indemnification agreements contained throughout this Agreement shall not extend to or be construed to require Tenant to defend, indemnify and hold harmless City, its officers, and employees from and against liability, claims, damages, losses or expenses, including attorneys fees, arising out of bodily injury to persons or damage to property caused by, resulting from, or arising out of 1) the preparation of approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by City, or the agents or employees or officers of City or 2) the giving or failure to give directions or instructions by City or agents or employees or officers of City where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

**b)** Tenant shall not, however, in any event be required to indemnify or hold harmless City pursuant to this Section with respect to any bodily injury, death or injury to or destruction of property which results from the negligence or willful misconduct of City, its agents, servants, or employees.

**4) Scope of Indemnification.** With respect to any claims, actions, suits,

damages or judgments caused by or resulting from acts, omissions or operations of Tenant, its agents, servants, or employees, Tenant shall

a) investigate or cause the investigation of accidents involving such injuries;

b) negotiate or cause to be negotiated settlement of all claims made as may be deemed expedient by Tenant, and defend, or cause to be defended, suits for damages, even if groundless, false or fraudulent, brought on account of such injuries or damages against City;

c) pay and satisfy judgments finally establishing the liability of City in all actions defended by Tenant pursuant to this Section; and

d) pay, or cause to be paid: 1) all costs taxed against City in any legal proceeding defended or caused to be defended by Tenant as aforesaid; 2) any interest accruing up to the date of payment by Tenant; 3) all premiums charged upon appeal bonds required in such proceedings; and 4) all expenses incurred by City for investigation, negotiation, and defense, including but not limited to expert witnesses' and attorneys' fees incurred, should Tenant fail to provide the defense and indemnification required herein.

**5) Miscellaneous.** City shall, promptly upon receipt, give Tenant every demand, notice, summons, or other process received in any claim or legal proceeding contemplated herein. In the event City fails to give Tenant notice of any such demand, notice, summons, or other process received by City and such failure to give notice results in prejudice to Tenant in the defense of any action or legal proceeding contemplated herein, such failure or delay shall release Tenant of its liability as set forth in this Paragraph insofar as only the particular claim or legal proceeding is concerned, and only to the extent of such prejudice. Nothing in this Subsection shall be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against City. This Section shall not be construed as a waiver of City's immunity. The provisions in this Subsection shall not be construed to prohibit Tenant from seeking contribution or indemnity from any third party which may have caused or contributed to the event for which Tenant indemnified City.

**F. Assignment and Subletting.** Tenant shall not assign, sublet, mortgage or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of City. Such approval shall not be unreasonably withheld, provided, however, that:

1) such approval may be withheld by City in the event the proposed assignment and/or sublease, or other transfer, would result in changes to the nature of the products sold, the manner in which service is provided and/or the configuration of fixtures, furniture and equipment within the Premises as required in this Agreement; and

2) areas of the Premises required to be subleased to local businesses shall be leased to said subtenant at the rates and charges specified in Section 5, and Tenant shall not be

entitled to charge subtenant additional rents and fees except for subtenant's proportional share of common costs such as refuse removal, utilities, custodial services, and Tenant Improvements required in this Agreement.

**G. Construction Inconvenience.** Tenant recognizes that from time to time during the term of this Agreement it will be necessary for City to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair to the Library and its facilities. Such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience or temporarily interrupt Tenant in its operations at the Library. Tenant agrees that no liability shall attach to City, its officers, agents, employees, contractors, subcontractors, and representatives by reasons of such inconveniences or interruptions, and for and in further consideration of the Premises, Tenant waives any right to claim damages or other consideration therefore, except that the rents and fees payable under Section 5 shall abate for such period that total access to the Premises by Tenant, its employees and invitees is denied by reason of construction.

**H. Ethics.**

**1) Conflict of Interest.** Upon execution of this Agreement, or within five (5) days after the acquisition of any interest described in this Section during the term of this Agreement, Tenant shall disclose in writing to City whether any City Councilor, board member, officer or employee of the City has or hereafter acquires any direct, indirect, legal, or beneficial interest in Tenant or in any contract, lease, or agreement between City and Tenant, or in any franchise, concession, right, or privilege of any nature granted by City to Tenant in this Agreement or otherwise.

**2) Fair Dealing.** Tenant covenants and warrants that the only person or firm interested in this Agreement as principal or principals is named in this Agreement and that no other person or firm has any interest in this Agreement, and this Agreement is entered into by Tenant without collusion on the part of Tenant with any person or firm, without fraud and in good faith. Tenant also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be, offered or given by Tenant, or any agent or representative of Tenant, to any officer or employee of City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations with respect to performing this Agreement.

**3) Board of Ethics and Campaign Practices.** Tenant agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the "Board") with any records or information pertaining in any manner to this Agreement, or both, whenever such records or information are within Tenant's custody, are germane to an investigation authorized by the Board, and are requested by the Board. Tenant further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. Tenant agrees to require that all subcontractors employed by Tenant for services performed for this Agreement shall agree to comply with the provisions of this Section. Tenant and its subcontractors shall not be compensated under this Agreement for its time or any costs incurred in complying with this Section.

**I. Approvals, Consents and Notices.**

1) All notices, consents, and approvals required by this Agreement shall be in writing and shall be given by registered or certified mail by depositing the same in the U.S. mail in the continental United States, postage prepaid, return receipt requested, or by personal delivery, or by facsimile transmission to the "TAX" number given below, provided that the completed transmission is electronically verified. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices shall be delivered as follows:

**City:** Director of Albuquerque/Bernalillo County Library System  
Albuquerque /Bernalillo County Library System  
Cultural Services Department

**Certified Mail:** P.O. Box 1293  
Albuquerque, New Mexico 87103

**Personal Delivery:** 501 Copper Avenue NW  
Albuquerque, New Mexico 87102

**Telephone:** (505) 768-5100

**FAX Transmission:** (505) 768-5191

**E-Mail Address:**

**Tenant:**

**Tenant Official:**

**Title:**

**Certified Mail:**

**Personal Delivery:**

**Telephone:**

**FAX Transmission:**

**E-Mail Address:**

2) If notice, consent or approval is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

3) The effective date of such notice, consent or approval shall be the date of the receipt as shown by the U.S. Postal Service Return Receipt, or the date personal delivery is certified, or the date of electronic verification of the facsimile transmission, unless provided otherwise in this Agreement.

**J. Non-liability of City.** City shall not in any event be liable for any acts or omissions of Tenant, or its agents, servants, employees, or independent contractors, or for any condition

resulting from the operations or activities of Tenant, Tenant's agents, servants, employees, or independent contractors either to Tenant or to any other person.

**K. No Partnership or Agency.** Nothing contained in this Agreement is intended or shall be construed in any respect to create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture or association or to make Tenant the general representative or agent of City for any purpose whatsoever.

**L. Forum Selection.** Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall only be brought in the Second Judicial District Court located in Bernalillo County, New Mexico or in the United States District Court located in Albuquerque, New Mexico. The parties irrevocably admit themselves to and consent to, the jurisdiction of either or both of said courts. The provisions of this Section shall survive the termination of this Agreement.

**M. Compliance with Law.**

1) Tenant shall not use the Library or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the Term of this Agreement, comply with all applicable regulations, ordinances, and laws of any City, County, or State government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Premises.

2) At all times during the Term of this Agreement, Tenant shall, in connection with its activities and operations at the Library:

a) Comply with and conform to all present and future statutes and ordinances, and regulations promulgated thereunder, of all Federal, State, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly. Tenant or Tenant's operations and activities under this Agreement. Tenant shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101) and federal regulations promulgated thereunder (28 C.F.R. Parts 35, 36, and 37).

b) Make, at its own expense, all non-structural improvements, repairs, and alterations to its Premises (subject to prior written approval of the Director of Aviation), equipment, and personal property that are required to comply with or conform to any of such statutes and ordinances.

c) Be and remain an independent contractor with respect to all installations, construction, and services performed by or on behalf of Tenant.

3) Compliance with Environmental Laws. In connection with its operations or any other activity at the Library, Tenant shall at all times and in all respects comply with all

federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws" or Environmental Laws) applicable to the Premises and Tenant's operations at the Library relating to industrial hygiene and environmental protection of the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any oil, petroleum products, flammable explosives, PCBS, asbestos, formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitations, any "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances" or "regulated substance" under any such laws, ordinances or regulations (collectively, "Hazardous Materials"). Upon expiration or earlier termination of the Term of this Agreement, Tenant shall cause all Hazardous Materials introduced to the Premises by Tenant or its agents or invitees to be removed from the Premises and transported for use, storage, or disposal in accordance and compliance with all applicable Hazardous Materials Laws.

**N. Generally Accepted Accounting Principles.** Whenever any report or disclosure referred to in this Agreement consists, either in whole or in part, of actual, year-end financial information, said financial information shall be prepared in accordance with generally accepted accounting principles consistently applied, if applicable.

**O. Patents and Trademarks.** Tenant represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Agreement. Tenant agrees to defend, indemnify and hold harmless City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Tenant under this Agreement.

**P. Administration of Agreement.** The Director of the Library, or such other person designated by the Director of the City's Cultural Services Department or Chief Administrative Officer, shall administer this Agreement for City.

**Q. Approval of Agreement.** This Agreement shall not become effective or binding until signed by City's Chief Administrative Officer.

**R. Savings.** City and Tenant acknowledge that they have thoroughly read this Agreement, including all exhibits thereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. City and Tenant further acknowledge that this Agreement is the result of extensive negotiations between them and that this Agreement shall not be construed against either party by reason of that party's preparation of all or part of this Agreement.

**Section 22. Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

**Section 23. Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and

regulations of the City of Albuquerque.

**Section 24. Approval Required.** This Agreement shall not become effective or binding until approved by the City's Chief Administrative Officer.

**IN WITNESS WHEREOF**, the City and the Contractor have executed this Agreement as of the date first above written.

**CITY OF ALBUQUERQUE**

**CONTRACTOR:**

**Approved By:**

**By:** \_\_\_\_\_

\_\_\_\_\_  
**Bruce J. Perlman, Ph.D. (Date)**  
**Chief Administrative Officer**

**Title:** \_\_\_\_\_

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

\_\_\_\_\_  
**Velia Silva, Director (Date)**  
**Cultural Services Department**

**Fed Tax ID No:** \_\_\_\_\_

**State Tax ID No:** \_\_\_\_\_

**EXHIBIT A**  
**CITY OF ALBUQUERQUE REQUEST FOR PROPOSALS**

**EXHIBIT B**  
**OFFEROR'S PROPOSAL**

## APPENDICES

<b>Appendix A</b>	Proposed Revenues to the City	A-1
<b>Appendix B</b>	Floor Plan	B-1
<b>Appendix C</b>	Bond Forms	C-1
<b>Appendix D</b>	Labor Rates	D-1

**APPENDIX A**

**PROPOSED REVENUES TO THE CITY**

**PROPOSED ANNUAL FIXED FEE**

(To be paid monthly as specified)

\_\_\_\_\_ (In Dollars)

**PROPOSED GROSS REVENUE**

**Gross Revenues**

**Percentages**

0 - \$100,000

\_\_\_\_\_ %

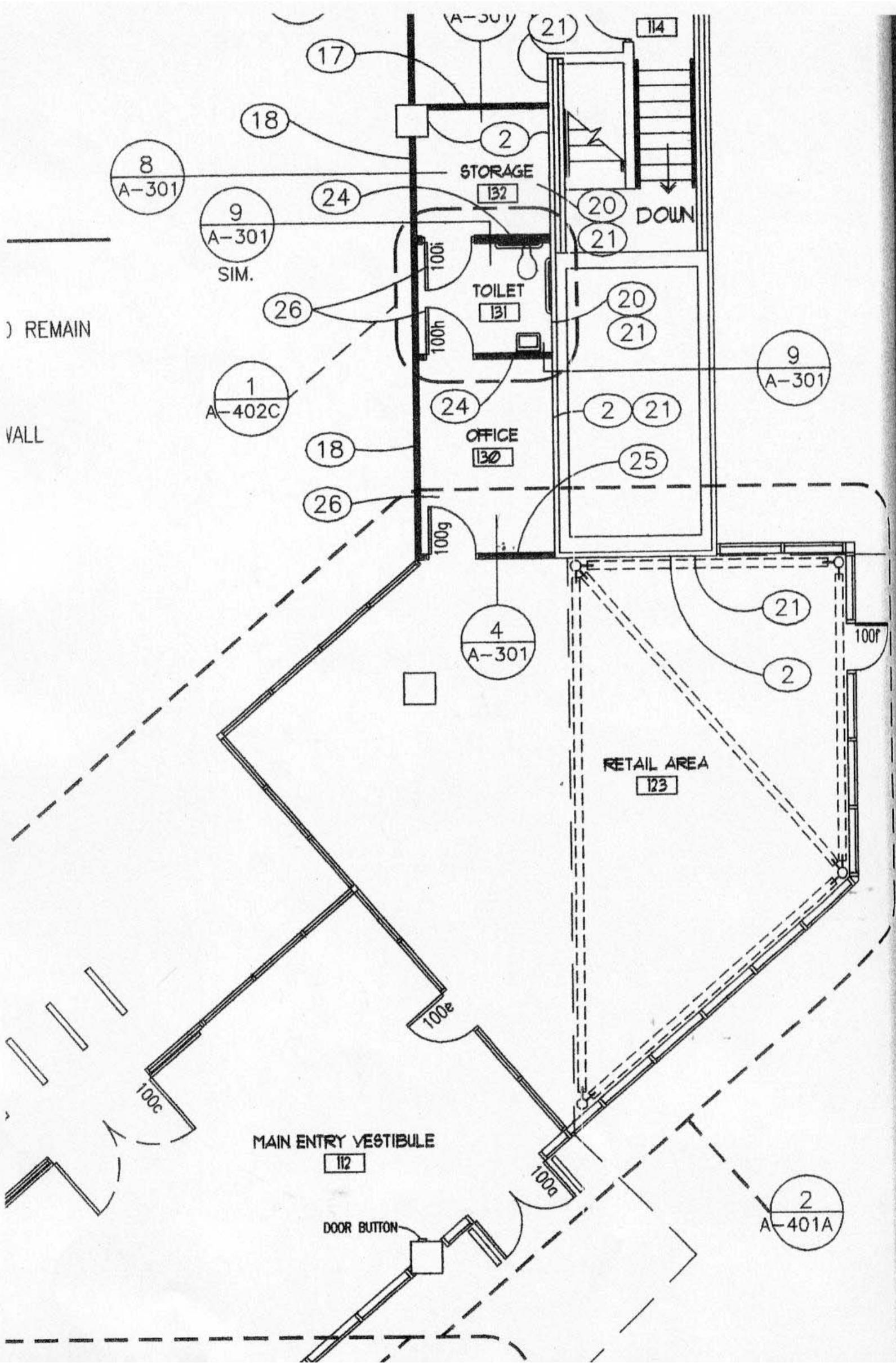
\$100,001 - \$250,000

\_\_\_\_\_ %

\$250,001 – above

\_\_\_\_\_ %

**APPENDIX B**  
**FLOOR PLAN**



**APPENDIX C**

**Performance Bond**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_ as Principal, hereinafter called the Contractor, and \_\_\_\_\_, a Corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to do business in the State of New Mexico, as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Albuquerque, New Mexico, as Oblige, hereinafter called the OWNER, in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment whereof the CONTRACTOR and Surety firmly bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the CONTRACTOR shall by written agreement enter into a contract with the OWNER described as follows, \_\_\_\_\_ (City Request for Bid No. \_\_\_\_\_, dated \_\_\_\_\_, titled, \_\_\_\_\_), which Contract shall by reference be made a part hereof and is hereinafter referred as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if CONTRACTOR shall faithfully perform and complete said Contract according to its terms and comply with all requirements of law, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the OWNER.

The Surety hereby consents to progress payments to the Contractor and acknowledges that such payments shall not preclude the OWNER from showing the true character and quality of materials furnished or services rendered or from recovering from the CONTRACTOR or Surety such damages as the OWNER may sustain by reason of Deficiency in quantity or quality of materials or services furnished with respect to which a progress payment was made.

Whenever the CONTRACTOR shall be and is declared by the OWNER to be, in default under the Contract, the OWNER having performed its obligations there under; the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for submission to the OWNER for completing the Contract in accordance with its terms and conditions and, upon determination by the

OWNER and Surety of the lowest responsive and responsible Bidder, arrange for a contract between such Bidder and OWNER and make the available as the work progresses (even though there should be default or succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price." As used in this paragraph shall mean the total amount payable by the OWNER to the CONTRACTOR under the Contract and any amendments thereto, less the amount properly paid by the OWNER to the CONTRACTOR.

The Surety acknowledges that the Contract may contain express guarantees and agrees that said guarantees, if any are covered by the Surety's obligation hereunder.

Any suit under this bond must be instituted before the expiration of three years from the date on which final payment under the Contract falls due, except that, with respect to express guarantees of a longer term, a suit thereon must be initiated within six months following the expiration of said express guarantees, if any.

Right of action with respect to any express guarantees, if any, in the Contract shall accrue following completion and formal acceptance of the work under the Contract.

No right of action shall accrue on this bond to or for the use of any persons or corporation other than the OWNER named herein or its successors or assigns.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
Principal (Typed/Printed Name)

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

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

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
Surety (Typed/Printed Name)

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

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

Claims or Notice given to Surety pursuant to this Bond shall be sent to the following mailing address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Labor and Material Payment Bond**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_ as Principal, hereinafter called the Contractor, and \_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_ and authorized to do business in the State of New Mexico, as Surety, hereinafter called the Surety, are held and firmly bound unto the City of Albuquerque, New Mexico, as Obligee, hereinafter called the OWNER in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the payment whereof the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has submitted a Bid in response to RFB No \_\_\_\_\_, dated \_\_\_\_\_, entitled \_\_\_\_\_, and shall by written agreement enter into a contract with the City described as follows: \_\_\_\_\_ which contract shall by reference be made a part hereof and is hereinafter referred to as the Contract.

NOW, THEREFORE, the condition of this obligation is such that, if the Contractor shall pay as they become due, all just claims for labor performed and materials and supplies furnished upon or the work under said Contract, whether said labor be performed and materials and supplies be furnished under the original Contract or any contract there under, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

The right to sue on this bond accrues only to the OWNER and the parties to whom Sections 13-4-20 NMSA 1978, as amended, grant such right; and any such right shall be exercised only in accordance with the provisions and limitations of said statutes.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Contractor \_\_\_\_\_  
(Typed/Printed Name)

ATTEST: By: \_\_\_\_\_

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

Surety: \_\_\_\_\_  
(Typed/Printed Name)

ATTEST: By: \_\_\_\_\_

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

Claims or Notice given to Surety pursuant to this Bond shall be sent to the following mailing address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

This Bond is issued simultaneously with the Performance Bond in favor of the City for the faithful performance of the Contract.

## **APPENDIX D**

### **Wage Rates**