

AN ORDINANCE 2008-04-03-0272

**APPROVING A CONCESSION CONTRACT WITH JAVANOOK, LLC  
FOR THE PROVISION OF COFFEE SERVICE AT THE CENTRAL  
LIBRARY FOR AN ANNUAL CONCESSION FEE OF \$9,450.00.**

\* \* \* \* \*

**WHEREAS**, on February 25, 2007, the San Antonio Public Library issued a Request for Proposal (RFP) for the provision of coffee service at the Central Library and three branch libraries; and

**WHEREAS**, this service was to be offered to library customers to enhance the experience of those using libraries and to attract new customers to library facilities; and

**WHEREAS**, the provision of this service is rapidly becoming common practice throughout the Country to provide a relaxing and attractive setting, to increase foot traffic in the library and to build a loyal customer base; and

**WHEREAS**, while there was some interest expressed in providing the service, no responses were submitted when the proposals were due on April 2, 2007; and

**WHEREAS**, subsequent discussion with staff with the Purchasing and Contract Services Department indicated that the Library Department could enter into agreement with a contractor to provide this service without an additional RFP process; and

**WHEREAS**, the owner/operator of JavaNOOK, LLC learned of the Library Department's interest in providing this service while attending a Library Board meeting following the close of the RFP process and approached library staff about providing the service; and

**WHEREAS**, the owner/operator of JavaNOOK, LLC has prior experience in restaurant management as well as other retail and consulting businesses; and

**WHEREAS**, after researching the coffee business, discussing the business with other coffee service providers and working with coffee service suppliers, the proposed contractor submitted a proposal based on the elements of the RFP to Library Administration in September 2007; and

**WHEREAS**, the contract and agreement for consideration is based on that proposal submitted by JavaNOOK, LLC; and

**WHEREAS**, under this contract, JavaNOOK, LLC will provide coffee service at the Central Library located at 600 Soledad; and

**WHEREAS**, at the Central library, this service will be provided near the public entry and exit to the building in a window area used for display purposes in the past and on the exterior sidewalk directly in front of the window area; and

**WHEREAS**, this window area was originally designed to be a gift shop and is separate from the main area of the library; and

**WHEREAS**, the space has a separate entrance, is highly visible and provides ample space for the provision of the proposed coffee service; and

**WHEREAS**, JavaNOOK, LLC will be responsible for the conversion and build-out of this area for coffee service including plumbing, lighting, walls, ceilings and the entrance door and will also provide all equipment and furnishings necessary for coffee service; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee, or the Director of the Library Department or his designee, is authorized to execute a concession contract with JavaNOOK, LLC for the provision of coffee service at the Central Library for an annual concession fee of \$9,450.00. A copy of the agreement is attached hereto and incorporated herein for all purposes as Attachment I.

**SECTION 2.** Funds generated by this ordinance will be deposited into Fund 11001000 General Fund, Internal Order 204000000526 CENTRAL-FD 11001000, General Ledger 4401810 Other - Commissions from Contracts.

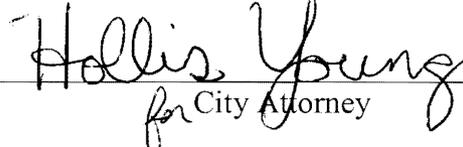
**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

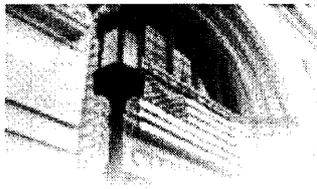
**SECTION 4.** This ordinance shall be effective on and after April 13, 2008.

PASSED AND APPROVED this 3<sup>rd</sup> day of April, 2008.

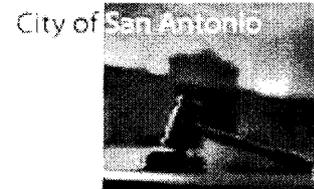
  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney



Request for  
**COUNCIL**  
ACTION



**Agenda Voting Results - 36**

| <b>Name:</b>           | 6, 10, 13, 14, 17, 18, 20, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38A, 38B, 38C   |             |     |     |         |        |        |
|------------------------|--|-------------|-----|-----|---------|--------|--------|
| <b>Date:</b>           | 04/03/2008   |             |     |     |         |        |        |
| <b>Time:</b>           | 10:06:43 AM  |             |     |     |         |        |        |
| <b>Vote Type:</b>      | Motion to Approve  |             |     |     |         |        |        |
| <b>Description:</b>    | An Ordinance approving a concession contract with JavaNOOK, LLC for the provision of coffee service at the Central Library for an annual concession fee of \$9,450.00. [Frances A. Gonzalez, Assistant City Manager; Ramiro S. Salazar, Director, Library] |             |     |     |         |        |        |
| <b>Result:</b>         | Passed   |             |     |     |         |        |        |
| Voter                  | Group  | Not Present | Yea | Nay | Abstain | Motion | Second |
| Phil Hardberger        | Mayor  |             | x   |     |         |        |        |
| Mary Alice P. Cisneros | District 1   |             | x   |     |         |        |        |
| Sheila D. McNeil       | District 2   |             | x   |     |         |        |        |
| Jennifer V. Ramos      | District 3   |             | x   |     |         |        | x      |
| Philip A. Cortez       | District 4   |             | x   |     |         |        |        |
| Lourdes Galvan         | District 5   | x           |     |     |         |        |        |
| Delicia Herrera        | District 6   |             | x   |     |         |        |        |
| Justin Rodriguez       | District 7   |             | x   |     |         |        |        |
| Diane G. Cibrian       | District 8   |             | x   |     |         |        |        |
| Louis E. Rowe          | District 9   |             | x   |     |         | x      |        |
| John G. Clamp          | District 10  |             | x   |     |         |        |        |



CMS or Ordinance Number: CN0040002585

TSLGRS File Code:1000-25

Document Title:  
CONT - Coffee Service at Central Library

**Commencement Date:**  
**4/13/2008**

**Expiration Date:**  
**9/30/2013**

**COFFEE  
CONCESSIONS AGREEMENT**

This Contract is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as the "City"), acting by and through its City Manager; pursuant to Ordinance No. 2008-04-03-0272 dated April 3, 2008, and the JavaNOOK, LLC acting by and through Don Counts (hereinafter referred to as the "Concessionaire"), for the operation of a Coffee Concession (hereinafter referred to as the "Concessions") located within Various San Antonio Public Library facilities, San Antonio, Texas.

In consideration of mutual covenants, terms, conditions, promises and agreements contained herein, the City and the Concessionaire mutually agree to the following:

**I. DEFINITIONS**

- 1.1 "City" shall mean the City of San Antonio, a Texas Municipal Corporation.
- 1.2 "Concessions" shall mean the right and obligation to serve and or sell food and beverages from the Premises and related services, such food and beverages to consist of Coffee and other similar beverages and associated snack foods ordinarily served in a Coffee shop and in no event shall include alcoholic beverages. Concession shall also include novelty items approved in writing by the Director.
- 1.3 "Contract" shall mean this agreement along with any written amendments thereto approved by the parties in accordance with the provisions hereof.
- 1.4 "Contract Year" shall mean, except as set out below for the first Contract Year, that twelve calendar month period beginning October 1 and ending September 30 during the term of this Contract. The above notwithstanding the first Contract Year shall begin on the later of (i) the date as of which this date this Contract is executed by the City and the Concessionaire, or (ii) ten (10) days after passage of an ordinance by the City Council of the City of San Antonio authorizing the execution of this Contract and continuing until the first September 30<sup>th</sup> thereafter.
- 1.5 "Director" shall mean the Director of the Library Department for the City of San Antonio, Texas or his designee, however so designated.
- 1.6 "Premises" shall mean that real property identified in Exhibit B and such other spaces approved for use by future action of the Trustees.
- 1.7 "Trustees" shall mean the San Antonio Public Library Board of Trustees.
- 1.8 "Parties" shall mean the City of San Antonio and JavaNOOK, LLC.

1.10 "Working Day" shall mean each Monday through Friday from 9 AM until 5 PM, or such other hours of operations as have been approved in writing by the Director.

## **II. CONCESSION SERVICES PROVIDED**

2.1 The Concessionaire shall have the right and the obligation, as herein detailed, to operate the Concessions in, on or from the Premises, pursuant to the provisions contained herein.

2.2 The Concessionaire agrees and specifically understands that (i) the rights granted under the terms of this Contract are confined to the Concessionaire's privilege to use the Premises and operate the Concessions as set out herein and (ii) the rights herein granted to the Concessionaire do not grant any ownership interest in the fee estate in the Premises but is a mere agreement to provide the privilege of use to conduct certain acts upon the Premises. Subject to the rights of the Concessionaire set out under the terms of this Contract, the City at all times retains dominion, possession, and control of said Premises, including access thereto.

2.3 Except as set out herein, the Concessions shall be provided by the Concessionaire, in accordance with the provisions hereof, to the general public and to San Antonio Public Library patrons during each Working Day. The Concessionaire shall retain the right to refuse service to any person from time to time based upon reasonable rules and regulations that the Concessionaire may adopt in connection with its operation of the Concessions.

2.4 It is expressly understood and agreed that the Concessionaire is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and not an employee of the City. The Concessionaire shall not be entitled to or receive any benefits provided by the City to the City's employees.

2.5 The Concessionaire shall observe and comply with all City, state and federal laws, regulations, ordinances and codes affecting the Concessionaire's operations pursuant to this Contract.

2.6 It is the current intent of the parties to negotiate an amendment to this Contract to allow for the opening of additional locations at the branch libraries of the San Antonio Public Library System according to terms mutually agreeable to the parties.

## **III. DEFAULTS, TERMINATION AND REMEDIES**

3.1 The following events shall be deemed to be event of default by the Concessionaire (an "Event of Default") under the terms of this Contract:

3.1.1 The Concessionaire fails to timely pay the Concession Fees due the City as provided for in this Contract or Concessionaire shall fail to maintain any insurance coverages required under the term so this agreement and any such failure continues for a period of ten (10) days following receipt of written notice by the Director.

3.1.2 The Concessionaire fails to fulfill in a timely, proper and satisfactory manner its responsibilities under this Contract, or the Concessionaire shall violate any of the covenants or agreements of this Contract in any material respect other than those set out in 3.1.1 and such failure or violation shall continue for a period of thirty (30) days after being notified in writing by the Director, or his designee, of such failure or violation. The above notwithstanding, in the event the Concessionaire is using due diligence to address such deficiency and it is not reasonably capable of being resolved in 30 days a default shall not arise so long as the Concessionaire is diligently pursuing a cure of such deficiency and causes such deficiency to be cured as soon as reasonably practical, provided, however, in the event that the Concessionaire shall require such extra time to cure such deficiency the Concessionaire shall give written notice to the City of the reasons for the delay and an time schedule for completely curing such deficiency prior to the expiration of the original thirty (30) days and provided further that in no event shall the Concessionaire be allowed more than sixty (60) days to cure such deficiency.

3.2 Upon the occurrence of an Event of Default, the City has the right, at its option, to declare this Contract, and all rights and interests created by it, terminated. Upon the City electing to so terminate this Contract, it shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. In the alternative the City, its agents or attorneys have the right, at their option, to resume possession of the Premises applicable and operate the Concessions in accordance with the terms of this Contract without relieving the Concessionaire of any obligation hereunder related to Concession Fees still due and owing in this Contract, or any extension thereof.

3.3 Upon receipt of notice to terminate, the Concessionaire shall cancel, withdraw or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this Contract. To this effect, City shall not be liable to the Concessionaire or the Concessionaire's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination.

3.4 Any termination of this Contract as herein provided, does not relieve the Concessionaire from the payment of any sum or sums that are then due and payable to the City hereunder, or except as otherwise set out herein, (i) any claim for damages then or theretofore accruing against the Concessionaire hereunder, except to the extent they have been satisfied from the City's operation of the Concessions, as set out above, or (ii) any such sum or sums or claim for damages by any remedy provided for by law, or (iii) prevent City from recovering damages from the Concessionaire for any default thereunder.

3.5 Upon expiration or termination of this Contract, the Concessionaire shall quit and peacefully relinquish control of the Premises to the City, and the City, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-

enter the Premises and possess itself thereof, by force, summary proceedings, ejectment or otherwise, and may without liability or obligation remove the Concessionaire and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Premises.

3.6 Upon termination of this Contract in the manner set forth above, the Concessionaire shall promptly remove all personal property of the Concessionaire from the Premises. If any property placed by the Concessionaire upon the Premises is not removed by the Concessionaire within thirty (30) days after expiration or termination of this Contract, then the City may remove same without further notice, or liability or obligation therefor and may dispose of same in any manner the City so chooses. The Concessionaire shall be liable to the City for any expense the City encounters in such removal and proper disposal.

3.7 At the option of the City, the Concessionaire shall promptly remove any fixture identified by the City for removal upon expiration or termination of this Contract. If the Concessionaire fails to remove any such fixtures within a reasonable time period identified by Director, which shall, at a minimum, be thirty (30) days, the City shall have the right to remove such property and the Concessionaire shall be liable to the City for all expenses encountered by the City in such removal.

3.8 All rights, options and remedies of the City contained in this Contract shall be cumulative of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Contract. No waiver by the City of a breach of any of the covenants, conditions or restrictions of this Contract shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

All of the above notwithstanding, in no event shall the City or the Concessionaire be liable for any consequential or exemplary damages in connection herewith.

#### **IV. TERM OF CONTRACT**

4.1 Except as otherwise provided for herein, this Contract shall begin immediately upon its execution by the City and the Concessionaire and shall terminate 5 years after commencement of Operations. Any holding over by the Concessionaire with consent of City whether written or implied shall constitute month-to-month concession agreement and either party shall have a right to terminate such agreement with thirty days written notice to the other party.

4.2 In the event that the Concessionaire, with the consent of the City, holds over and remains in possession of any of the Premises after the expiration of this Contract, such holding over shall not be deemed to operate as a renewal or extension of this Contract but shall only create a month-to-month Contract on the same terms, conditions and covenants, including compensation to the City contained in this Contract for the original

term except that such holdover arrangement shall be terminable by either party by giving thirty (30) days written notice to the other party.

## **V. COMPENSATION TO THE CITY**

5.1 As compensation for the concession rights granted to the Concessionaire herein, the Concessionaire agrees to pay to the City, in accordance with paragraph 5.2 hereof, throughout the term of this Contract for each Contract Year a Concession Fee of \$787.50 per month. At such time as any additional locations are added to this agreement, an additional Concession Fee shall be negotiated by the parties.

5.2 The above notwithstanding (i) until the earlier of that date which is 3 months from the Effective Date of this Contract or the date the Concession becomes commercially operational and open to the public, the Concession Fee shall be \$0. The Concessionaire shall give the Director written notice of the day on which the concessions become commercially operational and open to the public, which day shall not be later than 3 months from the effective date of this Contract.

5.3 Concessionaire shall be entitled to a credit against the Concession Fee equal to the lesser of Concessionaire's direct costs in renovating the Central Library Premises or \$20,000, such credit to be taken in equal monthly installments amortized over 3 years. Concessionaire shall not be entitled to take the credit until such time as it has documented its renovation costs to the satisfaction of the Director. Renovation costs shall include only direct costs paid to contractors and architectural or engineering consultants and shall not include the costs of any salaries or overhead of Concessionaire.

5.4 The Concessionaire shall make aforesated payments to City no later than the tenth (10<sup>th</sup>) day of each month for the preceding calendar month. Said payments shall be submitted to:

Fiscal Planning Manager  
San Antonio Public Library, 600 Soledad Street  
San Antonio, Texas 78205-1208

5.5 Accompanying the Monthly Payments to the City shall be a Gross Receipts Report prepared by the Concessionaire in form and content reasonably acceptable to City, reflecting all sales and other data relating to the operations.

## **VI. CONCESSION OPERATIONS**

6.1 The Concessionaire agrees to operate the Concessions during the times set out for each Working Day without cessation except for reasonable and necessary maintenance, including initial finish out contemplated under this Contract, directly related to the concessions operations set forth herein or for public safety reasons; provided, however, that those Concessions not directly affected by such maintenance shall continue to be operated by the Concessionaire or upon request from the Concessionaire with written approval from the Director (the "Approved Cessation").

6.2 The Concessionaire shall install, at its sole cost and expense, and utilize a “point of sale” (POS) software accounting system to handle all transactions authorized under this Contract, including ticket sales, complimentary tickets, discounted tickets, exchanges or barbers, novelty/souvenir and food and beverage transactions (including sales, exchanges and barbers) at each ticket “booth” and/or depot(s) and concession stands. Such system shall correctly and accurately measure, account for and document all Gross Receipts each year, and be capable of generating monthly, quarterly and annual financial reports of all Gross Receipts generated each year.

6.3 The Concessionaire shall operate the Concession within the confines of the Premises.

6.4 The Concessionaire shall supply and maintain, at its own expense (i) any necessary and incidental kitchen and dining room appliances, trade fixtures, equipment and/or paraphernalia reasonably necessary to operate the Concession, including, but not necessarily limited to, chairs and tables. All such property provided by the Concessionaire shall remain the property of the Concessionaire and may be removed by the Concessionaire at termination of this Contract.

6.5 All items sold and distributed by the Concessionaire shall be rendered in a business-like manner. The Concessionaire does not by this Contract have the right to sell any items with the City logo, or any other intellectual property rights of the City.

6.6 The Director reserves the right to make suggestions to the Concessionaire as to modifications to the items sold or otherwise used or distributed in connection with the operations of the Concession. The Concessionaire shall consider (but shall not be bound by) any such suggestions in connection with its operations of those Concessions. The Director reserves the right to prohibit the sale of merchandise if, based upon reasonable discretion it determines that the merchandise is (i) not of the nature of products or concessions appropriate to be sold in a Library Concession, and (ii) is offensive and inappropriate for sale to the public.

## **VII. IMPROVEMENTS BY THE CONCESSIONAIRE**

7.1 The Concessionaire shall not construct, or allow to be constructed (i) any permanent improvements or (ii) non permanent improvements of a material nature, to the Premises or allow to be made any permanent alterations to the structures on the Premises without the prior written approval of (A) the City through the Director and, (B) to the extent required by law, any necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission. All costs and expenses of such approved physical construction, improvements or alterations to the Premises initiated by the Concessionaire, as well as all required permits and licenses for such construction, shall be at the Concessionaire’s sole cost and expense.

7.2 All improvements made on the Premises and/or alterations to permanent structures situated upon the Premises made by the Concessionaire shall become the property of City upon the end of the term of this Contract.

7.3 The City shall not be responsible or liable for, and the Concessionaire covenants that it shall not bind, or attempt to bind, the City for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on or about the Premises.

7.4 The Concessionaire has had full opportunity to examine the Premises. The Concessionaire's use of the Premises for the purposes authorized herein shall be conclusive evidence of its acceptance thereof in good order and satisfactory condition (excepting and excluding any existing environmental conditions), and the Concessionaire hereby accepts the Premises in its present condition as suitable for the purposes for which this Contract prescribes.

7.5 The Concessionaire agrees that no representations respecting the condition of the Premises, and no promises to construct, reconstruct, alter, repair or improve same, either before or after the execution hereof, have been made by the City or its agents to the Concessionaire unless the same are contained herein or made a part hereof by specific reference herein.

#### **VIII. CONCESSION SIGNS**

8.1 Concessionaire shall not place any signs on the premises without the prior written approval of the Director and any necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission. The Director shall be authorized to allow the placement of signs on Library Property outside of the premises, but the placement, installation, and design of such signs shall be in his complete discretion.

#### **IX. UTILITY AND MAINTENANCE RESPONSIBILITIES**

9.1 The Concessionaire will be responsible for maintaining the Premises in good, safe and clean operating condition and repair, reasonable wear, tear, acts of God, or unavoidable accident insured casualty loss, only excepted. The Concessionaire shall not commit or permit any waste to the Premises. The Premises shall be operated in a condition which conforms with all applicable minimum building and property standards as mandated by the City of San Antonio's Building Inspections Department and with all applicable minimum standards mandated by the City's San Antonio Metropolitan Health District. This maintenance shall include any necessary maintenance, repairs, updating or improvements required for the issuance of a Certificate of Occupancy upon the Concessionaire occupying and utilizing the Premises. The Concessionaire also assumes any and all responsibility for the day-to-day cleaning of the Premises. The Concessionaire shall be responsible for the prompt removal and disposal of waste, trash and garbage from those portions of the Premises.

9.2 If the Concessionaire is in default of its maintenance obligations set out above, then the City may, but is not obligated to, make or cause such repairs or maintenance to be made and shall not be responsible to the Concessionaire for any loss or damage that may accrue to the Concessionaire's "business" revenue or operations by reason thereof.

If the City makes or causes such repairs or maintenance to be made, the Concessionaire agrees that it will on demand, pay to the City the reasonable and necessary cost thereof, and if the Concessionaire shall default in such payment, City shall have the remedies provided elsewhere herein for default of indebtedness, costs, or charges due by the Concessionaire to the City.

9.3 The Concessionaire shall furnish and install and maintain in good working order all electric light bulbs, tubes and ballasts. City shall not be liable to the Concessionaire in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of the City. However, any such interruption shall be deemed to be an Approved Cessation of operations approved by the Director.

9.4 The City, the Director and/or his designee shall have access to the Premises during its regular business hours of operation, and at any time in the event of an emergency, for the purpose of inspecting the Premises when deemed by City to be applicable and necessary.

## **X. FIRE AND OTHER DAMAGE**

10.1 In the event all or a portion of the Premises are damaged by fire or other casualty, and the Concessionaire determines that the damage is so extensive that repair or rebuilding is not feasible, the Concessionaire shall notify the City and this Contract shall terminate immediately as to that portion of the Premises. In such event the proceeds from any fire casualty insurance relating to that portion of the Premises shall be paid to the City and Concessionaire in proportion to their respective ownership of the property lost in that casualty.

10.2 In the event the Premises or any portion of the Premises are damaged by fire or other casualty, and the Concessionaire determines that the damage is either (i) not extensive as described in 12.1, above or (ii) is extensive but the Concessionaire elects to rebuild that portion of the Premises damaged by a casualty loss in any case, the Concessionaire shall notify the City within sixty (60) days following the casualty. Thereafter the Concessionaire shall proceed to rebuild the portion of the Premises so damaged as soon as reasonably possible thereafter to a condition which is at least as good as the condition of that portion of the Premises immediately prior to the casualty. In the event the Concessionaire elects to rebuild that portion of the Premises which has been damaged by the casualty loss, the Concessionaire shall be entitled to use all portions of the property/casualty insurance proceeds to pay for such costs. The Concessionaire's performance due hereunder shall abate in such proportion as that part of the Premises thus destroyed or rendered unusable until it has been rebuilt.

10.3 In the event the Premises are partially damaged by fire or other casualty, the Concessionaire's performance hereunder shall abate in such proportion as that part of the Premises which was destroyed or rendered unusable. However, if the Premises shall be so slightly injured by any such casualty as not to be rendered unfit for use, the performance required hereunder shall not cease or be abated during any repair period. In

the event the Concessionaire elects to rebuild that portion of the Premises which has been damaged by the casualty loss, the Concessionaire shall be entitled to use all portions of the property/casualty insurance proceeds to pay for such costs

## **XI. INDEMNIFICATION**

**11.1 THE CONCESSIONAIRE COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE CONCESSIONAIRE'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF THE CONCESSIONAIRE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF THE CONCESSIONAIRE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE CONCESSIONAIRE SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR THE CONCESSIONAIRE KNOWN TO THE CONCESSIONAIRE THAT THE CONCESSIONAIRE REASONABLY ANTICIPATES MAY ADVERSELY IMPACT THE CITY RELATED TO OR ARISING OUT OF THE CONCESSIONAIRE'S ACTIVITIES UNDER THIS CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE CONCESSIONAIRE'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE CONCESSIONAIRE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

| TYPE  | AMOUNTS  |
|---|--|
| 1. Workers' Compensation  | Statutory  |
| 2. Employers' Liability   | \$1,000,000/\$1,000,000/\$1,000,000  |
| 3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>*b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> </ul> | For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage |
| 4. Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired Vehicles</li> </ul>   | <u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence   |
| * if applicable   |  |
|   |  |

D) The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Concessionaire shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Concessionaire shall pay any costs incurred resulting from said changes.

City of San Antonio  
 Attn: Library Department  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

E) Concessionaire agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Concessionaire shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Concessionaire’s performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

G) In addition to any other remedies City may have upon Concessionaire’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Concessionaire to stop work hereunder, and/or withhold any payment(s) which become due, to Concessionaire hereunder until Concessionaire demonstrates compliance with the requirements hereof.

H) Nothing herein contained shall be construed as limiting in any way the extent to which Concessionaire may be held responsible for payments of damages to persons or property resulting from Concessionaire’s or its subcontractors’ performance of the work covered under this Agreement.

I) It is agreed that Concessionaire’s insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement

### **XIII. DESIGNATED PARTIES CONCESSIONAIR’S PRINCIPALS**

13.1 The Director, or his designee, shall be City's principle agent for monitoring the Concessionaire's compliance with this Contract and shall be City’s representative responsible for City’s administration of this Contract.

13.2 Unless written notification by the Concessionaire to the contrary is received and approved by City, Don Counts shall be the Concessionaire's designated representative responsible for the management of all contractual matters pertaining to this Contract.

13.3 Concessionaire acknowledges and agrees that City has selected Concessionaire in part because of the knowledge and experience of Concessionaire's 2 Principals, Don Counts and Nancy Maladecki. Concessionaire covenants and agrees that it shall not change either of the 2 Principals without the prior written approval of the Director and that the 2 Principals shall have primary hands on control of the Concession Operations throughout the term of the Contract.

#### **RECORDS, REPORTS AND AUDIT RIGHTS**

14.1 The Concessionaire, and any assignees, sublessees, sub-licensees or subcontractors shall maintain, in the City of San Antonio, Texas, all books, information and POS records fully and accurately reflecting its operations hereunder in accordance with reasonable accounting principles and standards consistently applied. All such books, information and records, together with any other documentation necessary for verification of the Concessionaire's compliance with the terms of this Contract, shall be made available to Director or any of his authorized representatives, upon request. The City at its sole cost and expense shall have the right as often as may be reasonably necessary to conduct an audit, examine and make excerpts or transcripts from said books, information, POS records and documentation.

14.2 Within sixty (60) days after the end of the Contract Year the Concessionaire shall furnish to City annual financial statements.

#### **XV. TAXES AND LICENSES**

15.1 The Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees and applicable employment taxes which are now or may hereafter be levied upon the Concessionaire, or upon the business conducted on the Premises by the Concessionaire, or upon any of the Concessionaire's property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Concessionaire.

#### **XVI. ASSIGNMENT AND SUBLETTING**

16.1 Any other clause of this Contract to the contrary notwithstanding, the Concessionaire shall not assign, subcontract, sub-license, sublet, transfer or pledge this Contract, or any portion hereof, or any interest in and to same, or any claim arising thereunder, or allow same to be assigned, subcontracted, sub-licensed, sublet, transferred or pledged by operation of law or otherwise, or sublet the Contract or any part thereof, or any interest in and to same, or any claim arising thereunder without the prior, written approval of City pursuant to the passage of an appropriate ordinance by the City Council of the City of San Antonio. Any attempt at unauthorized assignment, subcontract, sub-license, sublease, transfer or pledge shall be void ab initio and shall confer no rights upon

any third person, and any assignment, subcontract, sub-license or subletting, transfer or pledge by the Concessionaire not authorized in compliance with the terms of this paragraph shall constitute grounds for termination of this Contract by City. The above notwithstanding, the Concessionaire shall have the right to assign this Contract to a subsidiary of the Concessionaire provided the subsidiary is 100% owned or controlled by the Concessionaire, the Concessionaire retains full liability for all of the Concessionaires obligations set out herein and the assignee (subsidiary) shall assume all of the Concessionaire's obligations set out herein.

### **THE CONCESSIONAIRE'S EMPLOYEES**

17.1 The Concessionaire shall provide and train, at its sole cost and expense, a sufficient number of employees to comply with its contractual obligations hereunder. Such employees of the Concessionaire shall in no way be construed as City employees nor shall they be entitled to any compensation or benefits from or by the City.

17.2 Prior to beginning operations of the Concessions, the Concessionaire shall develop and thereafter enforce a policy of employee standards for on-the-job conduct, appearance and demeanor. Such standards shall at a minimum provide for a dress code for employees which shall specify that all such employees will wear a uniform indicative of his or her employment.

17.3 Prior to beginning operations of the concessions described herein the Concessionaire shall submit a copy of its "Drug-Free Workplace" plan to City.

### **XVIII. NON - DISCRIMINATION**

18.1 The Concessionaire covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group based on race, color, sex, age, religion, disability, political affiliation, belief, or national origin, directly or indirectly, in employment practices or in admission to the Premises or the concessions described herein, which said discrimination the Concessionaire acknowledges is strictly prohibited.

### **XIX. CONFLICT OF INTEREST**

19.1 The Concessionaire acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

19.2 The Concessionaire warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

### **CHANGES AND AMENDMENTS**

20.1 This Contract, together with the authorizing ordinance and any attached exhibits, constitutes the entire agreement between the parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto unless expressly stated otherwise herein. No amendment, modification or alteration of the terms of this Contract shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto including the passage of an appropriate ordinance by the City Council of the City of San Antonio.

20.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

### **XXI. NOTIFICATION OF ACTION BROUGHT**

21.1 In the event that the Concessionaire receives (i) a claim, demand, suit, notice of proceeding, cause of action or other action made or brought against the Concessionaire which is in writing and of a material adverse nature and which will or is likely to cause the Concessionaire to be unable to fulfill its obligations hereunder, or (ii) relating only to the Concessions, a written claim or service of a lawsuit for any claim which is in excess of \$10,000.00 (hereinafter collectively referred to as "claim"), the Concessionaire shall give written notice thereof to City within ten (10) days after itself being notified. The Concessionaire's notice to City shall state the date and hour of notification to the Concessionaire of the claim; the names and addresses of those instituting or threatening to institute the claim, the basis of the claim; and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Paragraph shall be

delivered either personally or by mail in accordance with Section 27 of this Contract. Failure to notify the City of items in (ii) above shall in no event create a default hereunder.

## **XXII. SEPARABILITY**

22.1 If any clause or provision of this Contract is illegal, invalid or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, effective during the term of this Contract, then and in that event it is the intention of the parties hereto that such illegality, invalidity or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall not be affected thereby be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein, and it is also the intention of the parties to this Contract that in lieu of each clause or provision of this Contract that is illegal, invalid or unenforceable there be added as a part of this Contract a legal, valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

## **NON-WAIVER OF PERFORMANCE**

23.1 No waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of City to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

23.2 No act or omission of City shall in any manner impair or prejudice any right, power, privilege, or remedy available to City hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXIV. NOTICES**

24.1 Notices to City required or appropriate under this Contract shall be deemed sufficient if in writing and mailed, certified mail, return receipt requested, U.S. Mail, postage pre-paid, addressed to the City Clerk, P.O. Box 839966, San Antonio, Texas 78283-3966, and to Library Director, 600 Soledad, San Antonio TX, 78205-1200, or to such other address as may have been designated from time to time in writing by the City Manager of the City of San Antonio. Notices to the Concessionaire shall be deemed sufficient if in writing and mailed, certified mail, return receipt requested, U.S. Mail, postage pre-paid, addressed to the Concessionaire at the address currently on file with the Director or at such other address on file with the City Clerk as the Concessionaire may provide from time to time in writing to City.

## **XXV. PARTIES BOUND**

25.1 The covenants and agreements herein contained shall inure to the benefits of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns, and if there shall be more than one party designated as the Concessionaire in this Contract, they shall each be bound jointly and severally hereunder.

## **APPROVAL OF OR ACTION BY THE CITY**

26.1 Whenever this Contract calls for approval by City or allows for some action by City, unless otherwise stated herein, such approval or action shall be evidenced by the written approval of, or the actions of the Director or Director's designee, unless City Council approval by ordinance is required herein or is required by the City Charter or City Code.

## **XXVII. RELATIONSHIP OF PARTIES**

27.1 It is expressly understood and agreed by both parties hereto that the Concessionaire is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefor, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

27.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships, between the parties hereto. It is understood and agreed that neither the method of computation of license fees, nor any other provision contained herein, nor any acts of the parties hereto create a relationship other than the relationship of the Concessionaire as Licensee of the City.

27.3 Any and all of the employees of the Concessionaire, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of the Concessionaire only and not of City. Any and all claims

that may arise from the Worker's Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Concessionaire.

**XXXVIII. TEXAS LAW TO APPLY**

**28.1 THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

**XXIX. GENDER**

29.1 Words of any gender used in this Contract 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.

**XXX. CAPTIONS**

30.1 The captions contained in this Contract are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Contract.

**XXXI. ENTIRE AGREEMENT**

31.1 This Contract, together with the authorizing ordinance and any attached Exhibits constitutes the entire Contract between the parties hereto respecting the subject matter herein, and any other written or parol agreement with City regarding the subject matter herein is hereby expressly waived and terminated by the Concessionaire. It is understood that the Charter of the City requires that all contracts with the City be in writing and adopted by ordinance. Further, no amendment, modification or alteration of the terms of this Contract shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto and approved by such an ordinance.

IN WITNESS WHEREOF, we have affirmed our signatures this 24<sup>th</sup> day of April, ~~2001~~ 2008

CITY OF SAN ANTONIO, a Texas  
Municipal Corporation

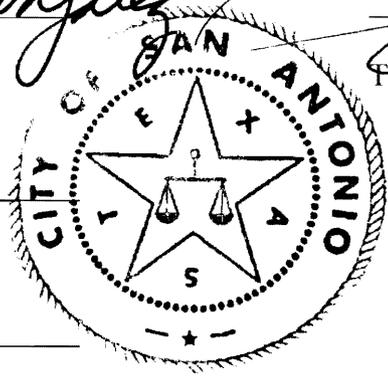
JavaNOOK, LLC.

Francis A. Gonzalez  
Assistant City Manager

[Signature]  
Title: owner

ATTEST:  
[Signature]  
City Clerk  
Approved as to Form:

[Signature]  
CITY ATTORNEY





CMS or Ordinance Number: OR00000200804030272

TSLGRS File Code: 1000-05

Document Title:  
ORD - Coffee Service at Central Library

**Ordinance Date:**  
**4/13/2008**