

AN ORDINANCE ⁿ 99714

CONSENTING TO THE ASSIGNMENT OF ALCOHOL BEVERAGE CONCESSION SERVICE RIGHTS AT THE HENRY B. GONZALEZ CONVENTION CENTER FROM SAN ANTONIO CONCESSIONS, INC. TO RK GROUP d/b/a CATERING BY ROSEMARY, INC. (AS LISTED ON THE ALCOHOLIC BEVERAGE LICENSE).

* * * * *

WHEREAS, Ordinance No. 63090, passed and approved on June 19, 1986, authorized the execution of a Concession License Agreement (the "Agreement") with San Antonio Concessions, Inc. (the "Contractor") for the sale of food, beverage, alcohol, and novelty sales from concession stands at Henry B. Gonzalez Convention Center; and

WHEREAS, the Agreement was amended and restated by Ordinance No. 69539, passed and approved on May 25, 1989; and

WHEREAS, San Antonio Concessions Inc. has expressed a desire to relinquish their interest in alcohol sales at the Convention Center to RK Group d/b/a Catering by Rosemary, Inc. through an Alcohol Beverage Subcontract Agreement; and

WHEREAS, the Agreement requires the City Council of the City of San Antonio to consent to any assignment of duties from Contractor to a third party; and

WHEREAS, the transition of alcoholic beverage concession service rights will ensure that quality services is provided to customers of the Henry B. Gonzalez Convention Center; and

WHEREAS, all terms of the Agreement remain in force and enforceable upon the Contractor; **NOW THEREFORE:**

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

SECTION 1. An assignment of alcohol beverage concession service rights at the Henry B. Gonzalez Convention Center from San Antonio Concessions, Inc. to RK Group d/b/a Catering by Rosemary (as listed on the alcoholic beverage license) is hereby approved. A copy of the Subcontract Agreement between San Antonio Concessions Inc. and RK Group d/b/a Catering by Rosemary is attached to and made a part of this Ordinance as Exhibit "A."

SECTION 2. All remaining terms and conditions of the Concession License Agreement are in effect and enforceable upon San Antonio Concessions Inc.

SECTION 3. This Ordinance shall become effective on and after the tenth (10th) day after passage hereof.

PASSED AND APPROVED this 16th day of September 2004.

M A Y O R

EDWARD D. GARZA

ATTEST:

City Clerk

APPROVED AS TO FORM:

for City Attorney

MEETING OF THE CITY COUNCIL

ALAMODOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE – GENERAL MANAGER
CITY PUBLIC SERVICE – MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
COUNCIL OFFICES
CULTURAL AFFAIRS
CUSTOMER SERVICE/311 SYSTEM
DEVELOPMENT SERVICES
HOUSE NUMBERING
LAND DEVELOPMENT SERVICES
TRAFFIC & DRAINAGE PLAN REVIEW
ECONOMIC DEVELOPMENT
ENVIRONMENTAL SERVICES
SOLID WASTE
EXTERNAL RELATIONS
PUBLIC INFORMATION OFFICE
FINANCE - DIRECTOR
FINANCE – ASSESSOR
FINANCE – CONTROLLER
FINANCE – GRANTS
FINANCE – PUBLIC UTILITIES SUPERVISOR
FINANCE- TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
MAYOR'S OFFICE
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
NEIGHBORHOOD ACTION
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT –NEIGHBORHOOD PLNG; URBAN DESIGN/HISTORIC PRESERVATION
DISABILITY ACCESS OFFICE
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 22

DATE: SEP 16 2004

MOTION: _____

ORDINANCE NUMBER: 99714

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
ROGER O. FLORES JR. District 1		<u> / </u>	
JOEL WILLIAMS District 2			
RON SEGOVIA District 3			
RICHARD PEREZ District 4			
PATTI RADLE District 5			
ENRIQUE M. BARRERA District 6			
JULIAN CASTRO District 7			
ART A. HALL District 8			
CARROLL SCHUBERT District 9			
CHRISTOPHER "CHIP" HAASS District 10			
EDWARD D. GARZA Mayor			

CONSENT AGENDA

ALCOHOLIC BEVERAGE SUBCONTRACT AGREEMENT

This Alcoholic Beverage Subcontract Agreement is entered into between Catering by Rosemary, Inc. ("CBR"), San Antonio Spurs, LLC (the "Spurs") and San Antonio Concessions, Inc. ("SAC") and ARAMARK Sports and Entertainment Services of Texas, Inc (fka ARA Leisure Services of Texas, a Texas corporation) ("ARAMARK").

WHEREAS, the Spurs own 100% of the outstanding capital stock of SAC.

WHEREAS, SAC previously entered into that certain Amended and Restated Concession License Agreement dated May 25, 1989, as amended (the "Arena Concessions Agreement"), with the City of San Antonio ("City"), pursuant to which SAC was granted a license for the operation concessions at the San Antonio Convention Facilities (collectively referred to as the "Convention Facilities").

WHEREAS, SAC, having the right to do so, has granted to ARAMARK the right to manage and operate the food, beverage, novelty and tobacco concession business at the Convention Facilities pursuant to the Arena Concessions Agreement by and through the Agreement relating to the Management of the Concessions at the Convention Facilities in the Alamodome entered into among SAC, ARAMARK and the Spurs on or about November, 1993 (the "ARAMARK Concessions Contract").

WHEREAS, SAC and ARAMARK desire that the alcoholic beverage services to be provided within the Convention Facilities be provided by CBR, as a subcontractor of SAC in accordance with the terms of the Arena Concessions Agreement and this Agreement.

WHEREAS, CBR desires to provide alcoholic beverage services within the Convention Facilities pursuant to the Arena Concessions Agreement and the terms of this Agreement.

NOW, THEREFORE, in consideration of the covenants, representations, warranties and agreements herein contained, the parties do hereby agree as follows:

1. **Termination of ARAMARK Alcoholic Beverage Services.** As of the Effective Date of this Agreement ARAMARK shall no longer be required to provide alcoholic beverage services within the Convention Facilities pursuant to the ARAMARK Concessions Contract.

2. **Term of CBR Alcoholic Beverage Services.** To the extent ARAMARK or SAC determine that alcoholic beverage products and services are required, from time to time in connection with the operations of the Arena Concession Agreement, CBR agrees to provide such products and services, on a basis in a manner which is reasonably comparable to the products and services previously provided to SAC by ARAMARK or on such other basis as is mutually agreeable to SAC and CBR, from the Effective Date of this Agreement and until the end of the current term of the Arena Concessions Agreement in accordance with the terms of this Agreement. The above notwithstanding, in the event CBR does not have its existing catering concession contract extended in the San Antonio Convention Center, and this Agreement is still in effect, CBR may thereafter terminate this Agreement on 60 days prior written notice to SAC.

3. **Alcoholic Beverages Services.** CBR agrees to provide the following alcoholic beverage services that may be required, from time to time at the request of SAC or ARAMARK, in connection with the operations of the Arena Concession Agreement (the "Alcoholic Beverage Services"):

(a) CBR shall hold all alcoholic beverage permits at the Convention Facilities which are necessary or useful to provide the Alcoholic Beverage Services. CBR shall bear all costs and expenses of

obtaining, maintaining and renewing all permits and licenses necessary to provide the alcoholic beverage services in the Convention Facilities

(b) It shall be the sole responsibility of CBR to provide the alcoholic beverage products and services within the Convention Facilities pursuant to the terms and conditions of the Arena Concession of Agreement.

(c) CBR shall undertake all of the responsibilities of the Spurs or SAC as set out under the terms of the Arena Concession Agreement which relate to the sale of alcoholic beverage services or products in a manner which will cause the Spurs and SAC to remain in compliance with the Arena Concession Agreement.

(d) CBR shall provide all of its equipment, fixtures, accessories and inventory for the purpose of providing such alcoholic beverage product and services with the Convention Facilities.

(e) Subject to the term and conditions of the Arena Concessions Agreement and this Agreement, CBR shall have absolute and exclusive direction and control and authority to make all decisions relating to the delivery of such alcoholic beverage services and products within the Convention Facilities, including, without limitation to the selection, purchase, distribution, pricing, possession, transportation and sale of alcoholic beverages, purchased, stored or sold at the Convention Facilities.

(f) Subject to the term and conditions of the Arena Concessions Agreement and this Agreement, CBR shall have full authority and discretion with respect to the marketing and methods utilized in providing alcoholic beverage operations at the Convention Facilities, including, without limitation, promotions and pricing.

(g) CBR shall provide all such alcoholic beverage services and products within the Convention Facilities in compliance with all applicable laws.

(h) CBR shall timely pay all governmental taxes and surcharges which may be due and payable in connection with the delivery of the alcoholic beverage products or services under the terms of this Agreement.

4. **Considerations.** As consideration for the Alcoholic Beverage Services to be provided by CBR under the terms of this Agreement, CBR shall be entitled to retain the sales proceeds from its sale or delivery of services of alcoholic beverages under the terms of this Agreement, net of all sums due by the Spurs or SAC to the City in connection with the sales of any such alcoholic products and services as set out under the terms of the Arena Concessions Agreement (the "City Fees"). CBR agrees to remit directly to the City all such City Fees by and on behalf of SAC and the Spurs on a timely basis and in a manner which is in compliance with the Spurs and SAC's obligations under the terms of the Arena Concession Agreement.

5. **Reports.** CBR shall timely files all governmental reports required to be made in connection with the delivery the alcoholic products and services as set out under the terms of this Agreement, including any such reports that may be required by the Spurs or SAC under the terms of the Arena Concession Agreement, and shall deliver to the Spurs and SAC copies of all such reports contemporaneously therewith.

6. **Coordination.** CBR shall use reasonable business efforts to coordinate its delivery of the Alcoholic Beverage Services with ARAMARK's delivery of its concessions services under the terms of the ARAMARK Concessions Contract.

7. **Access and Right to Audit.** SAC and the Spurs retain the right to access the areas of the Convention Facilities, from time to time and, upon reasonable notice shall have the right to inspect the business records of CBR which relate to the Alcoholic Beverage Services.

8. **Insurance.** CBR agrees to, at all times during the terms of this Agreement to carry the level and character of insurance required to be carried by the Spurs, SAC or any of its subcontractors under the terms of the Area Concessions Agreement and shall list the Spurs and SAC as an additional insured under the terms of any such insurance policies.

9. **Miscellaneous.**

(a) This Agreement constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by ARAMARK, Spurs, SAC and CBR.

(b) Any notice or other document required or desired to be given to a party hereto shall be in writing and shall be sent by certified mail, postage prepaid. Any such notice to SAC and Spurs shall be addressed to The San Antonio Spurs, attn. Rick Pych, One SBC Center Parkway, San Antonio, Texas 78219. Any such notice to the City shall be addressed to City Director of Convention Facilities, P O Box 1898, San Antonio, Texas 78285, and to the City Clerk, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966. Any such notice to ARAMARK shall be delivered to ARAMARK, attn. Louie Keefe, One SBC Center Parkway, San Antonio, Texas 78219 .

(c) 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 venturers, or any other similar such relationship, between the parties hereto.

(d) This Agreement contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and supersedes all other agreements, oral or otherwise, regarding the subject matter of this Agreement, none of which shall hereafter be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written.

(e) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns where permitted by this License.

(f) This Agreement 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.

(g) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(h) The parties do not believe that the execution of this Agreement requires the prior approval of the City, however, in the event this Agreement requires the approval of the City or any City official, such as the Director of Convention Services, this Agreement shall become effective after such approvals are obtained.

SEP-15-2004 17:46

215 2383067 P.05/05

Dated effective this ___ date of _____, 2004 (the "Effective Date").

Catering by Rosemary, Inc.

By: _____
Name: _____
Title: _____

San Antonio Spurs, LLC

By: _____
Name: _____
Title: _____

San Antonio Concessions, Inc.

By: _____
Name: _____
Title: _____

ARAMARK Sports and Entertainment Services of Texas, Inc (dba ARA Leisure Services of Texas, a Texas corporation)

By: 
Name: DAVID BECKOW
Title: CAJAS

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
CONVENTION FACILITIES DEPARTMENT**

CONSENT AGENDA
ITEM NO. 22

TO: Mayor and City Council

FROM: Michael J. Sawaya, Convention Facilities Director *mjs*

THROUGH: Terry M. Brechtel, City Manager

COPIES: Roland A. Lozano, Assistant to the City Manager; File

SUBJECT: Assignment of Alcohol Concession Service Rights from San Antonio Concessions Inc. to R. K. Group DBA Catering by Rosemary, Inc.

DATE: September 16, 2004

SUMMARY AND RECOMMENDATIONS

An Ordinance consenting to the assignment of alcoholic beverage concession service rights at the Henry B. González Convention Center from San Antonio Concessions Inc. to R. K. Group DBA Catering by Rosemary, Inc. (as listed on the alcoholic beverage license). All of the provisions relating to alcohol sales and reporting requirements in the Concession License Agreement between the City of San Antonio and San Antonio Concessions authorized by Ordinance No. 63090 and the Amended and Restated Arena Concession License Agreement authorized by Ordinance No. 69539 remain in effect for all parties.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The sale of alcoholic beverages in concession stands is either at the request of the client leasing space or for public events. The RK Group currently provides cash bar sales only at catered events. San Antonio Concessions, Inc. has provided food, beverage, alcohol, and novelty sales from concession stands at the Convention Center, Lila Cockrell Theatre and the former Arena under the Concession License Agreement approved by Ordinance No. 63090, dated June 19, 1986 and the Amended and Restated Arena Concession License Agreement approved by Ordinance No. 69539, dated May 25, 1989.

San Antonio Concessions has expressed their desire to relinquish their interest in alcohol sales at the Convention Center to R. K. Group DBA Catering by Rosemary, Inc. through an Alcoholic Beverage Subcontract Agreement. The term of the Alcoholic Beverage Subcontract Agreement is dependent upon the expiration of the Arena Concession License Agreement, currently September 30, 2006, with no renewal options remaining. In the event The RK Group's Food and Beverage Service Agreement is not renewed RK may terminate the Alcoholic Beverage Subcontract Agreement with San Antonio Concessions with 90 days prior written notice.

Concession alcohol gross sales and commissions since completion of the Convention Center expansion were as follows:

<u>Fiscal Year</u>	<u>Gross Sales</u>	<u>Commissions</u>
2001	\$ 43,248	\$13,018
2002	\$ 33,624	\$10,125
2003	\$ 43,312	\$13,132
2004*	\$ 12,557	\$ 4,395
	\$132,741	\$40,670

* October 1, 2003 – July 31, 2004

POLICY ANALYSIS

The transition of alcoholic beverage concession service rights will ensure quality service is provided to customers of City-owned facilities until the City can determine their best interests with the catering and concession services at the Convention Center and Municipal Auditorium.

FISCAL IMPACT

The City receives a 35% commission of gross sales for alcohol sales at the Convention Center. R. K. Group DBA Catering by Rosemary, Inc. will remit commissions directly to the City. If services continue through the expiration of the Arena Concession License Agreement on September 30, 2006, the subcontract is expected to generate the following gross sales and commissions:

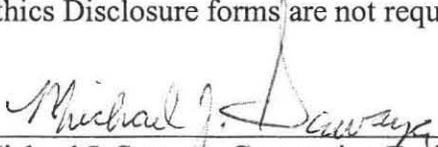
<u>Fiscal Year</u>	<u>Gross Sales</u>	<u>Commissions</u>
2005	\$ 26,250	\$ 9,188
2006	\$ 24,535	\$ 8,583
	\$ 50,785	\$17,771

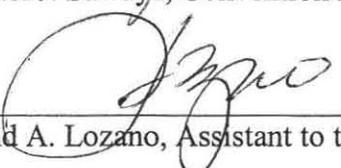
COORDINATION

This item has been coordinated with the City Attorney's Office.

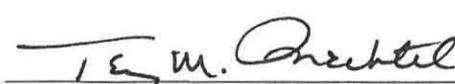
SUPPLEMENTARY COMMENTS

Ethics Disclosure forms are not required for this activity.


 Michael J. Sawaya, Convention Facilities Director


 Roland A. Lozano, Assistant to the City Manager

Approved:


 Terry M. Brechtel
 City Manager