

**CONTINUATION OF THE AMENDED AND RESTATED  
CONCESSION AGREEMENT  
AND  
LICENSE FOR FOOD AND BEVERAGE SERVICES  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
ASTABRIK AND EMAD YAHYA DBA THE OASIS CAFE**

This Agreement is made and entered into 6th day of April, 2022, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "City"), and ASTABRIK AND EMAD YAHYA, individuals doing business as THE OASIS CAFE, (hereinafter "Operator").

**RECITALS**

**WHEREAS**, following a competitive Request for Proposal process, on April 15, 2015, City and Operator entered into an agreement entitled "CONCESSION AGREEMENT AND LICENSE FOR FOOD AND BEVERAGE SERVICES BETWEEN THE CITY OF SAN JOSE AND ASTABRIK AND EMAD YAHYA DBA THE OASIS CAFÉ" on September 28, 2015 for food and beverage services for the Almaden Branch Library ("Library") located at 6445 Camden Avenue, San Jose, California for an initial term that was retroactive from July 1, 2015 to June 30, 2017 ("2015 Agreement"); and

**WHEREAS**, the City exercised its option to extend the term of the 2015 agreement for two (2) additional one-year terms ("Option Periods") for the period of July 1, 2017 to June 30, 2018 and July 1, 2018 to June 30, 2019; and

**WHEREAS**, on January 8, 2018 prior to the expiration of the 2015 Agreement, the City issued a Request for Proposals for food and beverage services for eight (8) branch library locations throughout the City including the Almaden Branch Library and no proposals were received. It was then determined that the existing Operator at the Almaden Branch Library best met the needs for food and beverage operations at the Library; and

**WHEREAS**, on July 1, 2019, City and Operator amended and restated the 2015 Agreement to allow Operator to continue to provide food and beverage services at the Library through December 31, 2019 and thereafter, with options to extend on a monthly basis until June 30, 2020;

**WHEREAS**, the City exercised its options to extend the term of the amended and restated 2015 Agreement for the period of January 1, 2020 to January 31, 2020, February 1, 2020 to February 29, 2020 and March 1, 2020 to March 31, 2020. However, on March 17, 2020, food and beverage services closed due to the COVID-19 pandemic; and

**WHEREAS**, on August 27, 2020 March 2, 2020, the City issued a Request for Proposal for food and beverage services specifically at the Almaden Community Center and Branch

Library and all proposals did not meet the RFP requirements. It was then determined that the existing Operator best met the needs for food and beverage operations at Library; and

**WHEREAS**, on October 16, 2020, the City and Operator entered into a new Agreement (“Agreement”) to provide food and beverage services, for six (6) months with options to extend through June 30, 2021; and

**WHEREAS**, following the City and County COVID guidelines, current Operator did not operate since March 20, 2020 and the Agreement has expired; and

**WHEREAS**, the City and Operator desire to continue with the provision of food and beverage services upon adherence to the City and County COVID19 guidelines and the Library’s Behavior Policy and Safety Guidelines.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1. SCOPE OF SERVICES.**

Operator shall operate a coffee bar/mobile espresso cart at the Library, at the location depicted in Attachment A-1 to Exhibit A, “SCOPE OF SERVICES,” (“Premises”) which is attached hereto and incorporated herein. Operator shall perform those services specified in detail in Exhibit A.

**SECTION 2. TERM.**

The term of this Agreement shall be from Date of Execution to one year after the date of execution, inclusive, subject to the provisions of Subsection 12 of this Agreement.

**SECTION 3. CONCESSION FEE.**

Operator agrees to pay City as consideration for the concession privileges granted herein the amount of twenty-five dollars (\$25.00) per month, made payable to the City of San José on or before the first day of each month. If such concession fee is not paid within five (5) days of the due date, Operator shall pay late fees of \$10.00 per day for each day that such payment is not received by the City.

**SECTION 4. INDEPENDENT CONTRACTOR.**

It is understood and agreed that Operator, in the performance of the work and services agreed to be performed by Operator, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Operator shall obtain no rights to retirement benefits or other benefits which accrue to City’s employees, and Operator hereby expressly waives any claim it may have to any such rights.

**SECTION 5. ASSIGNABILITY.**

The parties agree that the expertise and experience of Operator are material considerations for this Agreement. Operator shall not assign or transfer any interest in this Agreement nor the performance of any of Operator's obligations hereunder, without the prior written consent of City, which consent shall not be unreasonably withheld. Any attempt by Operator to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

**SECTION 6. INDEMNIFICATION.**

Operator shall defend, indemnify and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Operator's officers, employees or agents. The acceptance of said services and duties by City shall not operate as a waiver of such right of indemnification.

**SECTION 7. BAILEE DISCLAIMER.**

The parties understand and agree that City in no way purports to be a bailee, and is therefore not responsible in any way for any damage to Operator's property or the property of Operator's contractors, agents, employees and invitees.

**SECTION 8. WAIVER OF CLAIMS.**

Operator, as a material part of the consideration to be rendered to City under this Agreement, hereby waives all claims or causes of action against the City, its officers or employees which Operator may now or hereafter have for damages to goods, wares, merchandise or other property in, about or upon the Premises, from any cause or causes arising at any time. In particular, but not by way of limitation, Operator hereby waives any and all claims or causes of action which Operator may now or hereafter have against the City, its officers or employees: (a) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any service or system serving any portion of the Library or the Premises and (b) for any loss, damage to the property of, or injury or damage to Operator, Operator's agents, employees, or volunteers, from any cause or causes arising at any time because of Operator's use or occupancy of the Library or the Premises.

**SECTION 9. INSURANCE REQUIREMENTS.**

Operator agrees to have and maintain the policies set forth in EXHIBIT C, entitled "INSURANCE", which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Operator agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

## **SECTION 10. OPERATOR'S EMPLOYEES.**

Persons employed or contracted for by Operator for conducting Operator's Beverage Service Operations at the Library shall be qualified to perform the duties assigned to them and shall be of good moral character. All employees shall conduct themselves at all times in a businesslike manner, dress in appropriate uniforms, and shall be courteous at all times to patrons.

## **SECTION 11. NONDISCRIMINATION.**

Operator shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in connection with or related to the performance of this Agreement.

## **SECTION 12. TERMINATION.**

- A. City or Operator shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.
- B. City may terminate this Agreement, immediately upon service of written notice, for any material omission or misrepresentation of information required to be submitted to City during the Request for Proposal process for the award of this Concession Agreement.
- B. If Operator fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.
- C. The City Librarian is empowered to terminate this Agreement on behalf of City.

## **SECTION 13. COMPLIANCE WITH LAWS.**

Operator shall comply with all applicable laws, ordinances, codes and regulations (collectively "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

Operator shall comply with the Library's [Behavioral Policy](#) and [Safety Guidelines](#) as well as the [County Covid19 Guidelines](#) related to the COVID pandemic.

Operator shall also comply with City policies related to the COVID pandemic - [Sections 1.3.8 - 9 & 1.3.11 of the City Policy Manual](#)

- o 1.3.8 - [COVID-19 Guidance](#)
- o 1.3.9 - [COVID-19 Guidance - Resuming Onsite Work](#)
- o 1.3.11 - [COVID-19 Prevention Program](#)

Operator shall maintain in effect all applicable permits required for its operations hereunder. Without limiting the generality of the preceding sentences, Operator shall comply with the

provisions of City's Business Tax Ordinance in Chapter 4.76 of the San Jose Municipal Code and the County's Health Permit Procedures.

**SECTION 14. PAYMENT OF TAXES/ POSSESSORY INTEREST TAXES.**

- A. Operator shall pay before delinquency any and all taxes, assessments, fees and other public charges which may be levied, assessed or imposed upon any of Operator's interest, or which may be imposed upon Operator's business, or which may be imposed upon Operator for the privilege of conducting said business at the Library site, or which may be imposed upon any other property of Operator.
- B. Operator recognizes and understands in accepting this Agreement that its interest therein may be subject to a possessory interest tax that the City and County may impose on such interest, and that such tax payment shall not reduce any fees due to City hereunder and any such tax shall be the liability of and be paid by the Operator.

**SECTION 15. OWNERSHIP OF MATERIALS.**

All reports, documents or other materials developed or discovered by Operator or any other person engaged directly or indirectly by Operator to perform the services required hereunder shall be and remain the property of City without restriction or limitation upon their use.

**SECTION 16. WAIVER.**

Operator agrees that waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Operator shall not be deemed to be a waiver of any term or condition of this Agreement.

**SECTION 17. OPERATOR'S BOOKS AND RECORDS.**

- A. Operator shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to the services performed by Operator under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Operator pursuant to this Agreement.
- B. Operator shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an

alternative is mutually agreed upon, the records shall be available at Operator's address indicated for receipt of notices in this Agreement.

- D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Operator's business, City may, by written request by any of the above-name officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Operator, Operator's representatives, or Operator's successor-in-interest.

#### **SECTION 18. CONFLICT OF INTEREST.**

Operator shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. As of the date of entering into this Agreement, Operator's employees assigned to perform services as specified in Exhibit A of this Agreement ("Operator's Assigned Employees") shall not be required to complete and file a Form 700 with City's Clerk. In the event that the City subsequently determines to require Operator's Assigned Employees to complete and file a Form 700 with City's Clerk, City will notify Operator in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). Operator shall cause Operator's Assigned Employees to complete and file the Form 700 with City's Clerk and to submit a copy to Astabrik Yahya, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

#### **SECTION 19. GIFTS.**

- A. Operator acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.
- B. Operator agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.
- C. Operator's offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in SECTION 13 of this Agreement.

#### **SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.**

Operator is familiar with the provisions relating to the disqualification of former officers and employees of City in matters which are connected with former duties or official responsibilities as set forth in the San José Municipal Code ("Revolving Door Ordinance"). Operator shall not utilize either directly or indirectly any officer, employee, or agent of Operator to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 21. NOTICES.**

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City: Kristen van der Molen  
Contracts Analyst  
150 E. San Fernando St. 4<sup>th</sup> Floor  
San José, CA 95112-3580

To Operator: Oasis Café  
6185 Black Oak Lane  
San José, CA 95120

Notices shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 22. GOVERNING LAW.**

City and Operator agree that the law governing this Agreement shall be that of the state of California. Operator further agrees to comply with any applicable local ordinances, standards, policies, and/or rules and regulations as established or implemented by the City of San José, even if such ordinances, standards, policies, or rules and regulations result in the provisions of this Agreement becoming more restrictive than those included within or referenced by this Agreement.

**SECTION 23. VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José , California.

**SECTION 24. ATTACHMENTS.**

The documents forming the entire agreement between the City and the Operator shall consist of this Agreement including the following attachments:

- EXHIBIT A – SCOPE OF SERVICES, including Attachments A-1through A-4
- EXHIBIT B – SOURCE REDUCTION POLICY
- EXHIBIT C –INSURANCE REQUIREMENTS

In the event any discrepancies or inconsistencies between the provisions of the Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written.



**WITNESS THE EXECUTION HEREOF** on the day and year first hereinabove written.

“CITY”



Email: aaron.yu@sanjoseca.gov

AARON YU  
Deputy City Attorney

CITY



Email: sarah.zarate@sanjoseca.gov

By SARAH ZARATE  
Director, City Manager's Office

“OPERATOR”

ASTABRIK AND EMAD YAHYA, individuals doing business



Email: astabrik@yahoo.com

By Name: Astabrik Yahya



Email: emad.yahya@gmail.com

By Name: Emad Yahya  
Title: Owner, Oasis Cafe

## EXHIBIT A

### SCOPE OF SERVICES

#### **A. GENERAL DESCRIPTION.**

City grants to Operator a license to operate a coffee bar/mobile espresso cart on the Library Premises, as depicted in Attachment A-1 of this Exhibit A. Operator shall provide hot and cold beverages, as well as light snacks and pastry food items ("Beverage Service Operation") to Library customers as more particularly described below.

#### **B. OPERATOR SERVICES.**

- (1) Hours of operation. Operator's Beverage Service Operation shall be consistent with the Library's hours of operation and shall be available to Library customers between the hours of 10:00 to 6:00 on Monday through Friday, excluding City-recognized holidays. The City complies with the County's guidelines in the COVID19 environment. The City may alter the hours of operation depending on the approval of the City to resume food and beverage services at City facilities. The City may alter the hours of operation without the need for formal amendment with a written notification to the Operator.
- (2) Specifications. Operator shall provide a beverage service operation according to the Operating Standards attached as Attachment A-2 to this Exhibit A. Either the City or the Operator may cease operations, after consultation with the other party, if it is determined that set up costs and/or operation costs are not feasible when analyzing net profit after expenses.
- (3) Pricing. Operator's price list shall be as set forth in the Attachment A-3 to this Exhibit A. After six months the operator may adjust the pricing at their discretion. City shall have the right to review all prices charged for food and beverages and request reconsideration of prices judged to be excessive. The City must first approve adding any additional menu items. Operator agrees to disclose actual cost of any item(s) reviewed.
- (4) Maintenance. Operator shall comply with all County health standards relating to food service personnel, and the cleanliness and maintenance of kitchen, food service, storage and dining areas. Operator shall maintain the equipment and surrounding area in a state of cleanliness at all times; Operator shall place paper, filters, coffee grounds, food scraps, bottles, cans, paper cups and similar refuse in receptacles located behind the Library. Operator will be responsible for emergency cleanups of areas in and around the beverage service operations.

- (5) City policies. During the term of this Agreement, Operator shall adhere to all applicable City policy directives, including but not limited to the COVID19 pandemic environment and City policy regarding source reduction, which is attached as Exhibit B.
- (6) Equipment. Operator shall provide the coffee bar/espresso cart as generally depicted in Attachment A-4 to this Exhibit A. The color, size, and other specific features of the coffee bar/espresso cart shall be determined by mutual agreement of the parties. The coffee bar/espresso cart equipment and furnishings provided by the Operator shall be and shall remain the property of Operator.
- (7) Business Review Meeting. (BRM) Business review meetings will be held every quarter. The objective of the BRM is to present actual performance against standards, review any operational issues and customer feedback. Library and Operator will set timeline for action against issues presented. Operator is responsible to adhere and respond within agreed timeline.

### **C. CITY SERVICES**

- (1) Utilities. City shall furnish:
  - i. 220 AC electrical service (dedicated 20 AMP circuits);
  - ii. 110 volt outlets (2);
  - iii. Trash disposal; recycling
  - iv. Basic sewer connections; and
  - v. Cold domestic water service connections to Beverage Service Operation area.
- (2) Maintenance. Operator shall periodically clean the area where the Beverage Service Operations are performed including the walls, ceiling, floor, and garbage receptacles. Operator shall also empty the garbage receptacles in Beverage Service Operation area at the end of each business day.
- (3) Storage. City to provide storage space for supplies, for the coffee bar/espresso cart to meet County of Santa Clara Health Code requirements. Operator will be responsible for providing movable storage if needed and must be pre-approved by the Library Director.

### **D. OPERATOR REQUIREMENTS.**

The operator will provide the following:

- (1) All necessary professional equipment, including installation to perform the function of the food and beverage area, including, but not limited to, beverage equipment, coolers, and glass display cases;
- (2) Tables and chairs for the seating area beyond that already provided by library if necessary. Library must approve aesthetics and design;
- (3) Hot water via Insta-Hot equipment;
- (4) Final utility connections;

- (5) Additional utility services, professional fees, and installation for such needs beyond that provided by the Library; and
- (6) Signage and menu boards as specified in Exhibit A, Scope of Services, line E.

**E. SIGNS.**

- (1) The prices of all items offered for sale shall be displayed on a sign located at the respective place of sale. Such display of prices shall be done in a manner to be seen clearly and read by customers. The separation of tax and price of each item shall also be clearly indicated.
- (2) Operator shall not install, erect, affix, paint or place any sign, lettering or other advertising device in, on, or about the Premises without the written consent of the Library Director having first been obtained. Operator shall at the option of the Library Director remove any and all signs, lettering or other advertising device, or a replacement thereof, which may be permitted by the Library Director, at Operator's sole cost and expense, upon the expiration or termination of this Agreement.
- (3) Operator shall provide at least one sign approved by the Library Director, easily visible to the public, which states the name, address and telephone number of at least one individual responsible for responding to emergencies and for servicing of complaints and concerns.
- (4) Operator shall provide at least one sign approved by the Library Director, easily visible to the public, which states the hours of operation.

**F. REQUIREMENTS FOR IMPROVEMENTS AND INSTALLATION OF EQUIPMENT**

**(1) Operator's Improvements**

Operator shall be solely responsible for the proper installation for any improvements and installation of additional equipment at its sole cost and expense without any reimbursement from City in accordance with the provisions of this Agreement.

Operator shall be liable for any damage or loss to any portion of the Library which results from the additional Improvements or any work related thereto. If Operator causes the disturbance or damage of any asbestos and asbestos-containing materials, Operator shall be solely responsible for the costs of remedying the disturbance or damage including, without limitation, the removal of any asbestos and asbestos-containing materials.

**(2) Approval of Plans and Specifications**

(a) Operator shall not construct any Improvements or make any subsequent alterations or additions to the existing Café Structure and Equipment, without the prior written approval of the Director. Full and complete plans and specifications for additional work, facilities and Improvements and Equipment, and the time required to complete same, shall be submitted to and receive the written approval of Director before work or construction is

commenced. First-class standards of design and construction will be required in connection with all such work, facilities and improvements. All construction must conform with the plans and specifications as approved by Director.

(b) Copies of plans for all improvements or subsequent changes or alterations shall be given to Director for review prior to commencement of construction. Director, after giving his or her final approval, shall return to Operator one (1) approved copy for its records.

#### **(4) General Approvals**

(a) All Improvements, Equipment and fixtures, including the plans and specifications therefore, constructed or installed by Operator, its agents or contractors, shall conform in all respects to applicable statutes, ordinances, building codes and rules and regulations.

(b) Operator shall obtain at its sole cost and expense all governmental reviews and approvals (including any approvals of the Director or any other City official), licenses, and permits which are, or may be, required and are necessary to install the Improvements and/or Equipment and to operate the Café. Operator shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, the governmental approvals, licenses, and permits described herein.

(c) All work shall be performed only by competent contractors duly licensed under the laws of the State of California and shall be performed pursuant to written contracts with such contractors.

(d) The Director's approval shall not be deemed to include the approval of any other City department or governmental or public entity, which Operator may be required to obtain.

#### **(5) Removal**

(a) During the Term, Operator shall not remove the Required Improvements and/or Equipment, in whole or in part, without the Director's prior written consent. The Director may exercise his or her absolute discretion and condition such consent upon the obligation of Operator to replace the same with other improvements or equipment specified in such consent.

(b) The Equipment shall remain the property of Operator and shall be removed upon termination or expiration of this Agreement. Operator shall ascertain from the Director, at least sixty (60) days prior to the Expiration Date, or as soon as possible if this Agreement is terminated earlier, whether City will require Operator to remove any Required Improvements. Any removal shall be at Operator's sole cost and expense. In the event of an early termination of this Agreement by City for cause, the Director shall give notice of removal of Concession Improvements, if removal is required by City. Removal shall occur within thirty (30) days following Operator's receipt of such notice, but in no event later than the Expiration Date or earlier termination date.

(c) In the event Operator fails to remove or expresses an intention not to remove any Required Improvements and/or Equipment required to be removed by the Director pursuant to this Section, City may enter into the designated area and remove such Required Improvements or Equipment at the sole cost and expense of Operator. Operator agrees to promptly reimburse City for all costs and expenses of removal, plus ten percent (10%) thereof for administrative overhead or such percentage as approved and established from time to time by the City Council. The obligation to reimburse City for such expenditures shall survive the termination of this Agreement. Any receipt showing payment by City of expenditures associated with the removal of Required Improvements and/or Equipment shall be prima facie evidence that the amount of such payment was necessary and reasonable and made by City on Operator's behalf.

(d) Operator shall repair at its sole cost and expense any and all damage to the designated area or any part of the Library occasioned by the removal of any Improvements and/or Equipment, or Operator's property from the designated area or any other area of the Library, and shall leave all of the remaining improvements in good and clean condition and repair, ordinary wear and tear excepted, and shall appropriately "cap off" all utility connections. City may also require Operator to remove any and all special equipment and any installations, which are unique to Operator, and Operator shall comply with such requirement.

## **(6) Liens**

Operator shall keep the City facilities and Library free of any liens arising out of the work performed, materials furnished or obligations incurred by Operator in the performance of any construction or installation of Concession Improvements or Equipment. Operator shall notify City at least ten (10) business days prior to the commencement of any work to be performed or materials to be furnished on the designated area which could give rise to any such lien, and City shall have the right to post and keep on the designated area any notices that may be required by law or which City may deem proper for the protection of City from such liens.

## **(7) Payment Bonds – Construction**

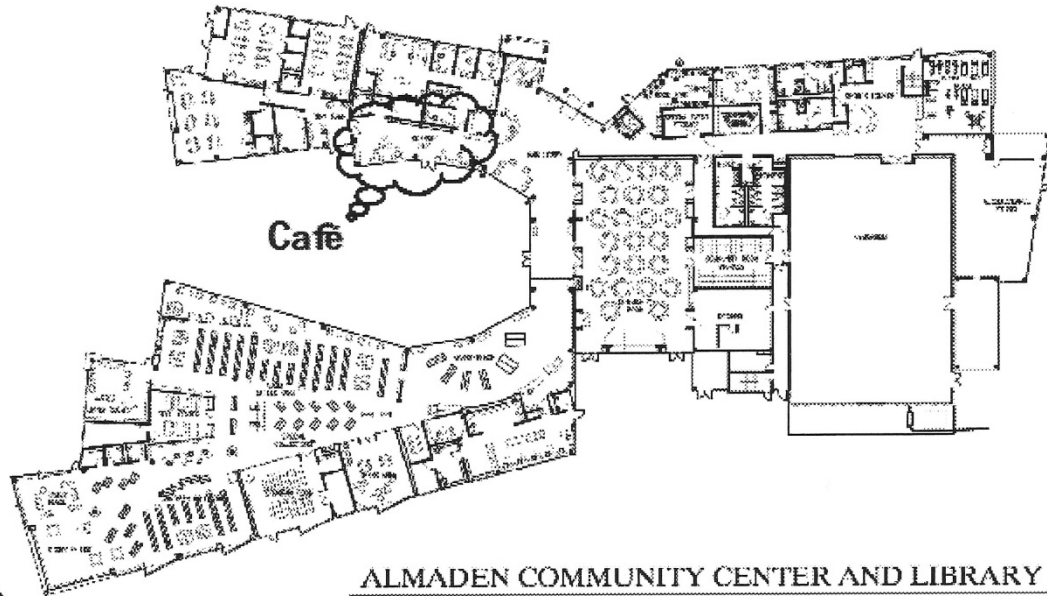
(a) Prior to the commencement of any construction, alteration or repair hereunder, Operator shall ascertain from City's Director of Public Works the necessary performance and payment bonds required by City for such work, and in such amount as may be deemed necessary by the Director of Public Works. Operator shall provide any such required bond or bond at no cost to City. In addition to the specific requirements set forth below, each bond shall be issued by a surety, be in a sum of not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, demolition or repair of the designated area, Concession Improvements and/or Equipment, be satisfactory to and approved by City's Risk Manager and Director, and be approved as to form by the City Attorney for City. Immediately upon completion of any improvement, Operator shall record in the Official Records of the Santa Clara County Recorder, a notice of completion complying with the requirement of California Civil Code Section 3093.

(b) Payment Bond. The payment bond shall guarantee the prompt payment to all persons named in California Civil Code Section 3181, and of amounts due under the

Unemployment Insurance Code, amounts required to be deducted, withheld or paid over to the Employment Development Department from the wage of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code and reasonable attorneys' fees. The payment bond shall protect City from any liens, liability, losses or damages arising there from, and shall name Operator's contractor or contractors as principals and City as obligee.

**ATTACHMENT A-1 TO EXHIBIT A**

**LOCATION ON PREMISES**



**ALMADEN COMMUNITY CENTER AND LIBRARY**  
**FIRST FLOOR PLAN**





## ATTACHMENT A-2 TO EXHIBIT A

### OPERATING STANDARDS

1. **Utilities.** All utilities are paid for by the Library and are included in the rent charged to the operator. A telephone jack has been installed in the coffee area. Operator is responsible for telephone hook-up, ongoing line, and all other phone related charges.
2. **Licensing.** Operator will be responsible for securing and maintaining in full force all licenses required by the Santa Clara County Board of Health and/or other applicable authorities to operate this coffee area. Operator will also be responsible for the total cost of such licenses and renewals.
3. **Maintenance.** Operator is responsible for keeping the coffee area neat, clean, and in good repair. Operator is also responsible for regularly busing the seating area and immediately cleaning up food debris or custodial issues in that area, regardless of who caused the debris or custodial issue. Operator will ensure that receptacles do not become overfilled during public hours. Library janitors will empty trash nightly. Operator will not allow boxes, cartons, barrels or other similar items to remain in view of public areas. Operator may use the janitor's closet, located in the adjoining staff corridor.
4. **Employee Standards.** Service should be timely, attentive and friendly. Food and beverage orders will be taken promptly and in a friendly and courteous manner. Operator to recruit, train, supervise, direct and deploy the optimum number of employees to match the work requirements. Each employee should: (1) be clean, neat, and well-groomed; (2) be free from offensive body odor; (3) be professional, courteous, and friendly to the public; (4) have a thorough health examination before employment at the Library; (5) not wear excessive amounts of jewelry, perfume, or cologne. Each floor has public restrooms that may be used for operator's employees.
5. **Food Quality.** Operator will make efforts to ensure that only the highest quality of food is sold at the Library, including but not limited to:
  - Coffee should be ground on demand from whole beans from a quality roaster, competitive in quality with the best roasters in the Bay Area for a balance of flavor, body, aroma, and acidity. Beans for espresso should be appropriate for industry-recognized professional espresso use. Beans should be roasted on demand and valve packaged. Unopened packages should be used within two months. Opened packages should be used within 10 days.
  - Butter, milk and milk products shall be USDA Grade "A".
  - Pastries shall be fresh daily from a quality baker.

**6. Deliveries.** Deliveries are to be made before 9:00 a.m. and only through the service entrance on the side of the building. Note: There is no drive-in loading dock. Deliveries need to be carried or hand-trucked into the building through the non-public staff corridors directly to the coffee area. Library will not accept deliveries at the service entrance, nor will they assume responsibility for any products left in the shipping/receiving area.

**7. Liquidated Damages for Failure to Attain Performance Standards.** Failure to comply with any of the Operating Standards can result in liquidated damages of not less than \$50/day, if problems are not addressed within five (5) days of receiving a formal complaint letter from the Library. Termination of the lease agreement can result if the problems persist beyond ten (10) days of written notification.

A. Operator understands and agrees that one of the City's primary goals in granting this Concession is to ensure that the customer service provided to the public using the libraries is of the best caliber and consistent with the Library's desire to provide top quality service to its patrons. Operator further agrees that City will suffer damage if Operator fails to meet these standards and that, due to the nature of certain breaches, the actual damage to the City would be impractical or very difficult to fix.

OPERATOR AND CITY AGREE THAT THE AMOUNTS SET FORTH IN SUBSECTION A, ABOVE, SHALL BE PAID TO CITY AS LIQUIDATED DAMAGES IF OPERATOR BREACHES THE PERFORMANCE STANDARDS SPECIFIED IN SUCH SUBSECTION A. OPERATOR AND CITY ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF A BREACH OF SUCH PERFORMANCE STANDARDS WOULD BE IMPRACTICAL OR VERY DIFFICULT TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, CITY AND OPERATOR ACKNOWLEDGE THAT THE AMOUNTS SET FORTH IN SUBSECTION A OF THIS SECTION 8 HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES IN THE EVENT OF SUCH BREACH.

CITY:

*Sarah Zarate*

Email: sarah.zarate@sanjoseca.gov

*astabrik@yahoo..*

*Emad Yahya*

Email: emad.yahya@gmail.com

### **Procedure for Declaring Performance Standard Breaches.**

- (1) Upon determining the existence of an Operating Standard Breach, the Director will issue a written notice to Operator of the occurrence of such breach and the City's claim for liquidated damages.

- (2) The notice of Operating Standard Breach will become final unless the Director receives from Operator no later than ten (10) calendar days after the date of the notice of Operating Standard Breach, a written statement from Operator, accompanied by Operator's evidence that the breach did not occur. Director shall review such evidence and determine, in his or her reasonable discretion, whether Operator has demonstrated that the breach did not occur.
- (3) The Director will review Operator's evidence as soon as reasonably possible after timely receipt of such evidence.
- (4) The Director shall render a decision sustaining or reversing the determination that a breach occurred and the claim for liquidated damages. A written notice of decision shall be delivered to the Operator.
- (5) If such written evidence is not received by the Director within ten (10) days of the date of the notice of Operating Standard Breach, the Director's determination shall be final and the applicable liquidated damages will be immediately due and payable.
- (6) Upon expiration of the period to deliver evidence or upon Director's determination that a breach occurred after reviewing Operator's evidence as provided above, Operator agrees to immediately pay City the liquidated damages amount. Operator further agrees that Director may, at his option, deduct the amount of such liquidated damages from any deposit or performance guarantee provided by Operator, without further notice to Operator.

**ATTACHMENT A-3 TO EXHIBIT A**

**PRICING/MENU**

**Coffee & Espresso**

**Caffè Latte**

S \$2.75 M \$3.25 L \$3.75

**Cappuccino**

S \$2.75 M \$3.25 L \$3.75

**Caffè Americano**

S \$2.00 M \$2.50 L \$3.25

**Vanilla Latte**

S \$3.25 M \$3.75 L \$4.25

**Caramel Macchiato**

S \$3.50 M \$4.00 L \$4.50

**Caffè Mocha**

S \$3.00 M \$3.50 L \$4.00

**White Chocolate Mocha**

S \$3.50 M \$4.00 L \$4.50

**Star Cream Delight**

S \$3.75 M \$4.25 L \$4.75

**Monkey Mocha**

S \$3.75 M \$4.25 L \$4.75

**Turkish Coffee**

\$2.50

**Espresso**

Single \$1.80 Double \$2.40

**Tea & Classics**

**Tea (Green, White, Black, Passion and more)**

S \$2.75 M \$3.25 L \$3.75

**Hot Chocolate**

S \$2.50 M \$3.00 L \$3.50

**Chai Tea Latte**

S \$3.25 M \$3.75 L \$4.25

**Steamed Milk**

S \$2.25 M \$2.75 L \$3.25

**Frappuccino**

**Mocha**

S \$3.50 M \$4.00 L \$4.50

**Low Carb Mocha**

S \$3.75 M \$4.25 L \$4.75

**Caramel Macchiato**

S \$3.50 M \$4.00 L \$4.50

**Low Carb Vanilla**

S \$3.75 M \$4.25 L \$4.75

**Cookies n' Cream**

S \$3.50 M \$4.00 L \$4.50

**Vanilla Bean**

S \$3.25 M \$3.75 L \$3.75

**Caramel**

S \$3.25 M \$3.75 L \$4.25

**Coffee Toffee**

S \$3.25 M \$3.75 L \$4.25

## **Slushies & Italian Soda**

**Strawberry, Cherry, Kiwi, Mango, Lime, Peach**

S \$2.50    M \$3.00    L \$3.50

## **Boba Tea Drinks**

16oz \$4.25

**Choice of Green (Jasmine), Black (Asam) or Passion Tea**

Milk Tea

Taro Milk Tea

Thai milk Tea

Coffee Milk Tea

Matcha Green Tea

Honeydew Tea

Mango Tea

Lychee Tea

Strawberry Tea

Passionfruit Tea

Add-on Topping:

Tapioca, Lychee or Rainbow Jelly

## **Fruit Smoothies**

Small            \$3.50

Medium          \$4.00

Large            \$4.50

Strawberry Bomb

Strawberry Banana

Extreme Peach

Mango

Wild Berry

**ATTACHMENT A-4 TO EXHIBIT A**

**EQUIPMENT**

1. Cold Food Display, 4 ft, Industrial (Deli style)
2. Vertical Cold Beverage Display, Industrial
3. Espresso Machines, Industrial
4. Coffee Grinder, Industrial
5. Ice Machine
6. Toaster Oven, Industrial
7. Microwave Oven, Industrial
8. Bakery Display
9. Freezer, Industrial
10. Refrigerator
11. Register
12. Blender, Industrial
13. Three-compartment Sink
14. Hand-wash Sink
15. Ice Cream Display Freezer, Industrial
16. Coffee Cart

**EXHIBIT B**

**SOURCE REDUCTION POLICY**

For the City Policy regarding Source Reduction, go to:

<http://www.sanjoseca.gov/DocumentCenter/View/3862>

**<https://www.sanjoseca.gov/home/showdocument?id=1268>**

## EXHIBIT C

### INSURANCE REQUIREMENTS

OPERATOR, at OPERATOR's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Property hereunder by OPERATOR, its officers, employees, agents or contractors.

#### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.
4. Property insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, personal property, or stored items on or behalf of, by or through OPERATOR at the Library.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

#### B. Minimum Limits of Insurance

OPERATOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.



4. Property: Not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through OPERATOR at the Library

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

- a. CITY, its officers, employees, and agents are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, OPERATOR; products and completed operations of OPERATOR; premises owned, leased or used by OPERATOR; and automobiles owned, leased, hired or borrowed by OPERATOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, and agents.
- b. OPERATOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, and agents. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents shall be excess of OPERATOR's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by OPERATOR shall not affect coverage provided CITY, its officers, employees, or agents.
- d. Coverage shall state that OPERATOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, and agents.

2. Property and Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, and agents.

### 3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

#### E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

#### F. **Verification of Coverage**

OPERATOR shall furnish CITY with certificates of insurance and endorsements affecting coverage required by this Agreement. The certificates and copies of endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov):

Certificate Holder  
City of San José – Finance Department  
Risk Management Division  
200 East Santa Clara St., 14th Floor  
San José, CA 95113-1905

#### G. **Contractors**

OPERATOR shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor.