

December 13, 2005

To: John Szerlag, City Manager

From: Brian P. Murphy, Assistant City Manager/Services  
Jeanette Bennett, Purchasing Director  
Brian Stoutenburg, Library Director

Subject: **Agenda Item:** Library Café Contract

### **RECOMMENDATION**

It is the recommendation of staff that a new agreement be entered into with Zeyn Francis of 5253 Windmill Drive, Troy, MI 48085, for the operation of the Library Café beginning January 1, 2006 and ending on December 31, 2007. If approved by City Council and agreed to by the Café Operator, the agreement may be extended for any number of two (2) year periods under the same terms and conditions except the rent may be increased.

### **BACKGROUND**

The current Café Operator, Sandy Melki has decided that she can no longer operate the café. She sought out a new operator, Zeyn Francis. They have negotiated a purchase agreement for the equipment and fixtures that are currently owned by Ms. Melki.

Mr. Francis is a Troy resident. His wife has managed the Mideast Pastry store at 15 Mile Rd. and Dequindre for 11 years. She and other family members will operate the café on a daily basis with additional help from a current employee.

There will be continuous operation during the transition from Sandy Melki to Zeyn Francis. The major change in the contract is that the rent will remain at \$500.00 per month for the first year of the contract but increase to \$750.00 for the second year.

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Lori Grigg Bluhm  
City Attorney

Reviewed as to form and legality

**AGREEMENT FOR THE LIBRARY CAFÉ**

THIS AGREEMENT entered into on \_\_\_\_\_, 2005, between the CITY OF TROY, 500 W. Big Beaver Road, Troy, Michigan 48084, a Michigan Municipal corporation, hereinafter referred to as the “City”, and Zeyn Francis, 5253 Windmill Drive, Troy, Michigan, 48085, hereinafter referred to as the “Café Operator”;

WITNESSETH:

In consideration of the City granting the Café Operator the exclusive privilege and right of conducting the sale of food, drinks and other sundry related articles, excluding vending machines, in the City of Troy Library, 510 W. Big Beaver Road, Troy, Michigan 48084, the Café Operator agrees as follows:

1. **RENT AND TERM OF AGREEMENT:** In consideration for the fact that the Café Operator is prohibited from outside identification signage, have no direct entrance/exit from the café area, and is limited to the sale of food/beverages unless set out in this Agreement, the City agrees to charge a minimum amount of rent of five hundred dollars (\$500.00) per month due on or before the first day of each month with the first payment to be prorated from the date of this Agreement to the end of the month indicated as the month in the date of the Agreement. The \$500.00 monthly rent amount shall be in effect through the date of the Agreement to December 31, 2006. The rental rate will be adjusted to \$750.00 per month for the period January 1, 2007 through December 31, 2007 at which time the Agreement shall terminate. The last month’s rent of \$750.00 shall be paid in advance upon occupancy. Late rent payments are subject to a 10% penalty for each month. At the end of the two (2) year term of this Agreement, the City may, at its option, extend the Agreement for any number of two (2) year periods under the same terms and conditions except the amount of

rent may be increased. Café Operator shall have the right to refuse the new rental amount within ten (10) days from the City Council resolution increasing the rental amount. However, Café Operator's refusal of the new rent amount shall mean that the Agreement is terminated and Café Operator shall only continue to operate and pay rent at the \$750.00 per month amount for sixty (60) days from the date of the City Council resolution increasing the rental amount.

Either party shall have the right to terminate the Agreement upon ninety (90) days written notice sent by certified mail as set out in Paragraph 20.

**2. IRREVOCABLE LETTER OF CREDIT:** The Café Operator shall provide an irrevocable letter of credit in favor of the City in the amount of \$6,000.00 in effect for the period from the date of the Agreement to December 31, 2007. If the Agreement is renewed by City Council and accepted by Café Operator as set out in Paragraph 1, by the first date of each year Café Operator shall present to the City an irrevocable letter of credit covering the full year rental amount in advance for each year the Agreement is in effect.

As set out in this Agreement, rent is due on the first (1<sup>st</sup>) day of each month. In addition to the ten (10%) penalty set out in Paragraph 1, if rent is not paid by the tenth (10<sup>h</sup>) day of the month, the City shall be allowed to take whatever actions are available under law to collect unpaid rent, including collection against the irrevocable letter of credit. The City may take action to collect against the irrevocable letter of credit each time a monthly rental payment is not paid by the tenth (10<sup>th</sup>) day of the month. The City's failure, for whatever reason, to use the remedy set out in this Paragraph on one occasion does not preclude the City from the use of this remedy at any other time.

3. **CONTINUOUS OPERATION**: The Café Operator acknowledges that the City expects the continuous operation of the Library Café during the transition of the operation from Sandi Melki and Scott Jackson, individually and jointly, to the Café Operator. Therefore, it is anticipated that Sandi Melki and Scott Jackson, individually and jointly, will be signing the attached Agreement for Assignment and Termination of the Library Café Agreement, at or near the same time that this Agreement is signed by the Café Operator, after which the Café Operator shall immediately open the Library Café for business as usual until such time as the Café Operator can consult with the Library Director regarding his own hours/schedules and other items which must be approved by the City under this Agreement.

4. **USE OF PREMISES AND LIMITATIONS**: The Café Operator shall provide a food/beverage service to all users of the Troy Public Library. The items sold or marketed and the operation hours/schedules are subject to regulation by the City and no changes shall be made without prior approval of the Library Director or designee.

The Café Operator acknowledges that the non-food items he provides must not be competitive with items provided by the Friends of the Library and that the City has the sole right to make a decision that the non-food items provided by the Café Operator are competitive with Friends of the Library and shall be discontinued. The City shall give written notice to the Café Operator when, in its opinion, he is engaging in a competitive activity or practice regarding non-food items. The Café Operator shall have five (5) days from the date of the written notice to cease the activity or practice specified. Continuation of the activity or practice shall be deemed a breach of the Agreement.

Café Operator may sell, upon approval by the Library Director or designee, non-food retail items for marketing/advertising purposes, such as coffee mugs, t-shirts and similar items, bearing marketing/advertising logos.

5. **USE OF PREMISES AND LIMITATIONS:** Due to the fact that there is no exhaust vent in the café area, the Café Operator shall not cook over open flame upon the premises or by use of traditional gas or electric stoves. Instead, food shall be heated by means of microwave, toaster, toaster oven, heating coils, coffee machines and similar methods. The City has the right to order the discontinuance of any type of cooking or heating method which in its sole discretion believes may be a safety hazard to its personnel, the public or to property. The Café Operator shall discontinue use of the cooking method immediately when advised to do so by the Library Director or designee. Failure to do so shall be deemed a breach of the Agreement.

6. **MAINTENANCE OF PREMISES:** The Café Operator is fully responsible for all custodial services in the café area, including but not limited to, the maintenance of the interior of the premises, the counters, the service windows and all areas of the café in a clean and neat manner and in compliance with all City Ordinances, State law and applicable health standards and regulations. The Café Operator shall maintain the trash receptacles in the café area. The Café Operator is responsible for cleaning all equipment and reporting any type of mechanical problem to the Library Director.

7. **CAFÉ OPERATOR'S EMPLOYEES:** The Café Operator shall provide appropriate uniforms and name badges for his employees and shall require that all employees maintain themselves and their uniforms in a clean and neat appearance. The Café Operator is

responsible for all wages, benefits or any other conditions of employment and acknowledges that his employees have no employment relationship with the City.

Since it is difficult for Library patrons to distinguish the Café as a separate operation from the Library, Café employee complaints received by Library staff concerning the service levels or demeanor of Café employees will be discussed with the Café Operator. It is the Café Operator's responsibility to take action to solve the reported employee issues immediately. If the situation continues, the City will request removal of that employee from the Library Café operation and the Café Operator will take the requested action.

8. **INSPECTION AND REPAIR**: The City shall have the right to enter and/or inspect the café area at any reasonable time. The Café Operator will pay the expense of repairs to the premises and the periodic maintenance caused by normal wear and tear of the café area. Structural or other significant changes to the building café area must be approved in advance by the City. The City will make every effort to notify the Café Operator in advance if non-City employees will be entering on the premises at the City's request. Any additions, repair and/or improvement made on the premises by the Café Operator shall become the property of the City.

The City of Troy will provide a list of equipment that is the property of the Café Operator but not specifically located in the Café area such as the water heater, etc. The Café Operator will pay the expense of maintenance and repairs including replacement if needed of this equipment.

9. **NO INTOXICATING LIQUOR**: The Café Operator, his employees and/or agents shall not sell intoxicating liquor or permit and/or knowingly allow intoxicating liquor

to be consumed in the café area. The Café Operator shall be deemed responsible if such conduct occurs.

10. **CAFÉ SUPPLIES/EQUIPMENT AND MODIFICATIONS**: The Café Operator shall provide all necessary equipment, supplies, building modifications and personnel to staff the operation of the café. Building and/or City owned equipment modifications shall be approved in advance by the City and shall become the property of the City at the conclusion or upon termination by either party of this Agreement. Additionally, the City shall approve equipment brought into the café by the Café Operator at the request of the Café Operator in advance of delivery to the Library.

11. **HOURS AND CHANGES IN HOURS AND PRICES**: The operation hours/schedules of the café are subject to regulation by the City and, once established, no changes shall be made without prior approval of the City. Current hours of Library Café operation are as follows:

Monday – Thursday	8:00 a.m. to 8:00 p.m.
Friday	8:00 a.m. to 5:00 p.m.
Saturday	10:00 a.m. to 5:00 p.m.
Sunday	1:00 p.m. to 5:00 p.m.

Prices shall be posted for patrons and a detailed printed description of prices shall be available for review by the City at the conclusion of each year of the Agreement.

12. **RECORDS**: The Café Operator shall keep accurate records of all sales and receipts through the use of computerized/electronic cash registers which provide daily tapes and reports. Those cash registers shall be approved by the City prior to commencement of the

Agreement. The Café Operator shall submit a copy of its monthly Michigan Department of Treasury Sales Tax Return upon request. An annual report, summarizing the monthly reports, shall be submitted to the City within ninety (90) days after the first anniversary date of the Agreement and each year thereafter that the Agreement is in effect. The City shall have the right to inspect the books, record and inventories of the Café Operator at any reasonable time.

13. **ASSIGNMENT OF AGREEMENT/INDEPENDENT CONTRACTOR**: The Café Operator shall have no authority or power to assign, sublet and/or transfer any rights, privileges or interest under this Agreement without prior written consent from the city. The Café Operator acknowledges that he is an independent contractor with no authority to bind the City to any contracts or agreements, written or oral.

14. **COMPLIANCE WITH LAWS**: The Café Operator shall at all times be in compliance with all federal and State Statutes and City ordinances and with all Oakland County Health Department licensing requirements, rules and regulation.

15. **INSURANCE**: The Café Operator shall maintain liability insurance in the amount of one million dollars (\$1,000,000.00) for any actions, claims, liability or damages caused to persons and/or property arising out of the operation and/or maintenance of the food service and café area, in addition to product liability and workers' compensation insurance. All insurance coverage shall be approved by the City. Certificates of Insurance shall comply with the sample form attached hereto. The City shall be named as an additional insured under all policies except workers' compensation. All insurance companies must be licensed and admitted to do business in the State of Michigan. All insurance set out herein shall be maintained for the duration of the Agreement. Failure to maintain coverage or to continue to maintain coverage shall be considered a breach of the Agreement with immediate termination

of the Agreement at the will of the City. The Café Operator is responsible for any deductibles under his policies of insurance.

16. **INDEMNIFY/HOLD HARMLESS**: The Café Operator agrees to indemnify and hold the City harmless for any claims, actions, liabilities or damages arising out of the operation, maintenance or management of the food/beverage service or the café.

17. **REPORTS OF CLAIMS**: Copies of all claims, damage or accident reports received by the Café Operator, his employees and/or agents, whether submitted to any insurance company or not, relating to any damage or accident that occurred or is alleged to have occurred on the premises or by the Café Operator, his employees and/or agents, shall be sent to the City.

18. **PERSONAL PROPERTY TAXES**: The Café Operator shall be liable for any personal property taxes assessed against its equipment or inventory.

19. **UTILITY COSTS**: The City will pay utility costs.

20. **NOTICE**: All written notices to be give under this Agreement shall be mailed by certified mail, return receipt requested, to the other party at their addresses set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days subsequent to mailing.

21. **SECTION HEADINGS**: All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provisions of the Agreement.

22. **SEVERABILITY**: If any provision of this Agreement or the application of such provision at any person, entity or circumstance shall be held invalid, the remainder of this

Agreement, or the application of such provision to persons, entities or circumstances, other than those as to which it is held invalid, shall not effected.

23. **ENTIRE AGREEMENT**: This Agreement constitutes the entire Agreement and any changes thereto shall be in writing signed by both the parties unless otherwise set out in this Agreement.

IN WITNESS WHEREOF, the City and the Café Operator have executed this Agreement.

CAFÉ OPERATOR:

CITY OF TROY, MICHIGAN:

\_\_\_\_\_  
Zeyn Francis

\_\_\_\_\_  
By: Louise Schilling, Mayor

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By: Tonni Bartholomew, City Clerk

**AGREEMENT FOR ASSIGNMENT AND TERMINATION OF AGREEMENT FOR  
LIBRARY CAFÉ**

Sandi Melki and Scott Jackson, individually and jointly, of Clarkston, Michigan, hereby agree, with City Council’s permission, to immediately assign the Agreement for the Library Café and any Addendums and Amendments to that Agreement changing the terms of that Agreement to Zeyn Francis and waive any notice of the acceptance of that assignment by City Council;

Sandi Melki and Scott Jackson, individually and jointly, of Clarkston, Michigan, further hereby agree to immediately terminate the existing Agreement for the Library Café between themselves and the City of Troy and any Addendums and Amendments to that Agreement extending that Agreement and/or changing the terms thereof; and, further, hereby waive any notice of termination under that Agreement, the Addendums and Amendments thereto.

WITNESSES:

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By: Sandi Melki

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By: Scott Jackson

CITY OF TROY, MICHIGAN:

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By: Louise Schilling, Mayor

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By: Tonni Bartholomew, City Clerk