



CITY COUNCIL ACTION REPORT

November 26, 2007

TO: Phillip L. Nelson, City Manager

FROM: John M. Lamerato, Assistant City Manager/Finance & Administration
Susan A. Leirstein, Purchasing Director
Cathleen A. Russ, Library Director

SUBJECT: Steamers Café Contract

Background

- The Troy Public Library created space for a café in 1999. Staff wanted to provide a gathering place for groups of all types, as well as to encourage longer visits from patrons by providing a place where they might take a break from their work.
- The café is now viewed by both staff and patrons as a regular service.
- The Francis family has operated Steamers Café at the Troy Public Library for the past two years. The current contract with Mr. Francis terminates on December 31, 2007. (Resolution #2005-12-554a)
- The City of Troy will solicit bids for the operation of the café in July, 2008. Renewing the contract for café with Mr. Francis for one year allows the Francis family an opportunity to plan for the future, allows the library director to consider other options for café management, and allows the café, a popular place within the library, to remain open.

Financial Considerations

- The café space is leased for \$750 per month. If the space is not leased, it will result in a loss of revenue of \$9,000 for 2008.

Legal Considerations

- The contract has been revised to emphasize the service nature of the business, as well as the commitment of the Troy Public Library and the City of Troy to high standards of excellence.

Policy Considerations

- Enhance the livability and safety of the community (Goal I)
- Maintain relevance of public infrastructure to meet changing public needs (Goal V)

November 26, 2007

To: Phillip L. Nelson, City Manager
Re: Steamers Café Contract

Options

- The current contract terminates on December 31, 2007. If a new contract is not approved, the café space will be vacant.
- It is the recommendation of staff that a one year agreement be entered into with Zeyn Francis of 5253 Windmill Drive, Troy, MI 48085, for the operation of the Library's Steamers Café beginning January 1, 2008 and ending on December 31, 2008.

Reviewed and Approved as to Form:

Lori Grigg Bluhm, City Attorney

AGREEMENT FOR THE LIBRARY CAFÉ

THIS AGREEMENT entered into on _____, 2007, 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”;

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 of the fact that the Café Operator is restricted on outside identification signage, and has no direct entrance/exit from the café area, and is limited to the sale of food/beverages, as provided in this Agreement, the City agrees to charge a minimum amount of rent of seven hundred and fifty (\$750.00) dollars per month, which shall be due on or before the first day of each month commencing January 1, 2008. The first and last month’s rent and a \$750.00 security deposit shall be paid to the City by January 1, 2008. The security deposit of \$750.00 may be used by the City for reimbursement of costs to correct any damages caused by the Café Operator during the period of the lease. If the City determines that there are no damages caused by the Café Operator, the City shall return the \$750.00 no later than thirty (30) days after the expiration of the lease. Late rent payments are subject to a 10%-penalty for each month not received by the due date. If the City determines that the Café’ Operator is responsible for any damage to the premises, then the City shall deduct the cost of any repairs necessitated by the Café Operator, and shall return any remaining funds to the Café’ Operator.

The term of the lease shall be for a one (1) year period from January 1, 2008 to December 31, 2008. On December 31, 2008 the lease shall terminate. It is the City's intent to seek proposals for Library Café services for services that would begin on January 1, 2009. The City shall be allowed to show the Library Café space to potential bidders.

The Café Operator shall have the right to terminate the Agreement upon ninety (90) days written notice sent by certified mail as set out in Paragraph 19. The City shall have the right to terminate the Agreement upon thirty (30) days' written notice with or without cause and at the sole discretion of the City.

2. IRREVOCABLE LETTER OF CREDIT: The Café Operator shall provide an irrevocable letter of credit, in favor of the City, in the amount of \$9,000.00. This letter shall be in effect for the period from January 1, 2008 to December 31, 2008.

Rent is due on the first (1st) day of each month. If the rent is not paid by the tenth (10^h) day of the month, the City may give thirty (30) days notice of termination of the Agreement and then can terminate the Agreement and/or shall be allowed to take whatever actions are available under law to collect unpaid rent, including collection against the irrevocable letter of credit. Even if the City chooses not to terminate the Agreement, the City may take action to collect any indebtedness against the irrevocable letter of credit each time a monthly rental payment is not paid by the tenth (10th) day of the month. The City does not waive the right to use this remedy, even when the right is not exercised by the City.

3. USE OF PREMISES AND LIMITATIONS: The Café Operator shall provide a food/beverage service to all users of the Troy Public Library. At no time are the Library Café premises to be used for private gatherings of the Café Operator, his family or his staff without the prior written approval of the City. The items sold or marketed and the operation

hours/schedules are subject to regulation by the City and the Café' Operator shall not make any changes without prior approval of the Library Director or designee.

The Café Operator and staff shall conduct business in such a professional manner as to give quality customer services to users of the Library café. The lack of quality service, lack of supplies, failure to open on time and failure to provide helpful and courteous staff negatively reflects on the reputation of the Library and the City, and therefore any such failure can result in a termination of the Agreement, at the City's discretion, as provided for in Paragraph 1.

The Café Operator must not offer non-food items that are competitive with the items that are offered by the Friends of the Library, and the City has the sole right to make a decision as to whether the non-food items provided by the Café Operator are competitive with Friends of the Library, and therefore are prohibited. The City shall give written notice to the Café Operator when the Library Director or designee determines that the non-food offerings are competitive with the items offered by the Friends of the Library. Upon receipt of such notice, the Café Operator shall have five (5) days to cease the competitive activity or practice that is identified. After receipt of the notification, as set forth above, the Café' Operator's continuation of prohibited activity or practice is a breach of the Agreement, and may result in termination, in the City's discretion.

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

4. COOKING USES 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 use 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 immediately discontinue any unapproved cooking method, when advised to do so by the Library Director or designee. Failure to discontinue the unapproved cooking shall be deemed a breach of the Agreement.

5. **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, which must remain 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 quickly reporting any type of mechanical problem to the Library Director.

6. **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, 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 can request removal of that employee from the Library Café operation, and the Café Operator must remove of the reported employee from the premises and the business operation.

7. **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, repairs 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.

8. **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.

9. **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 at the required level of service. 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 Café' Operator shall obtain City approval in advance for any of Cafe' Operator's equipment that is planned to be used and is not currently being used.

10. **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	9:00 a.m. to 8:00 p.m.
Friday	9:00 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 no greater amount shall be charged than the posted amounts plus tax, if applicable. A detailed printed description of prices shall be available for review by the City at the City's request.

11. **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 by April 1st of each year 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.

12. **ASSIGNMENT OF AGREEMENT/INDEPENDENT CONTRACTOR:** The Café Operator may assign this Agreement to a subsequent buyer of the Café Operator's business, but only with the prior consent of City Council. Prior to City Council approval, the City shall be allowed to inquire into, and purchaser of Café Operator's business shall be required to produce information as may be requested by the City to make reasonable investigations into the prospective Company's ability to successfully fulfill the contract requirements. Café Operator agrees to sign an assignment of the Agreement similar to the Sample assignment attached to this Agreement prior to submittal of the request for assignment to City Council.

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.

13. **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.

14. **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 and may result in immediate termination of the Agreement, at the discretion of the City. The Café Operator is responsible for paying any deductibles that are required under his policies of insurance.

15. **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.

16. **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.

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

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

19. **NOTICE**: All written notices to be given 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.

20. **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.

21. **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 be effected.

22. **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.

WITNESSES:

CAFÉ OPERATOR:

Zeyn Francis

CITY OF TROY, MICHIGAN:

By: Louise Schilling, Mayor

By: Tonni Bartholomew, City Clerk