

CITY COUNCIL REPORT



Meeting Date: May 7, 2013
 General Plan Element: *Public Services & Facilities*
 General Plan Goal: *Provide services to improve neighborhoods and the lives of Scottsdale residents*

ACTION

Renew the Coffee Café Agreement at the Civic Center Library. Adopt Resolution No. 9369 approving the renewal of the Coffee Café Agreement at the Civic Center Library. The concession is managed by the Southwest Autism Research and Resource Center.

BACKGROUND

Beneficial Beans Café at the Civic Center Library has been operating since July 2012. The café provides coffee drinks, other beverages and light foods to the public visiting the library. Library customers consistently expressed interest in having a coffee café, which led to the agreement with the Southwest Autism and Research Center's (SARRC) to run the café

SARRC is suitable for this operation as they are using this business as a training ground for adults with autism. The Stuttering King bakery and others who roast the coffee beans are adults with autism who have undergone training to supply the café with product. Customer service staff also receives hands-on training in the café alongside neurologically typical adults and coaches.

Three previous coffee cafes at two libraries in Scottsdale have not succeeded because of low business levels. Because Beneficial Beans Café provides training, overall profitability is not the priority for SARRC in maintaining the operation.

ANALYSIS & ASSESSMENT

Community Involvement The public who visits Civic Center Library have supported the Café through their purchases. The café acts as a showpiece for SARRC and has been visited by other autism organizations across the county and Canada as a model community program. SARRC hopes to offer catering to library customers renting meeting rooms at Civic Center Library in the near future.

RESOURCE IMPACTS

Staffing, Workload Impact One staff person is assigned to work with SARRC on any needs. One hour per month of meeting time is required.

Maintenance Requirements HVAC, plumbing and electrical are serviced by City of Scottsdale.

Future Budget Implications If there are issues with the HVAC, plumbing or electrical it is absorbed by the Library budget.

Cost Recovery Options The City of Scottsdale receives a payment of \$1 per month from SARRC.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution No. 9369 approving the renewal of the Coffee Café Agreement at the Civic Center Library.

Description of Option B

Do not adopt Resolution No. 9369 approving the renewal of the Coffee Café Agreement at the Civic Center Library.

RESPONSIBLE DEPARTMENT(S)

Community Services Division, Library Department

STAFF CONTACTS (S)

William B. Murphy, Executive Director, Community Services

APPROVED BY



William B. Murphy, Executive Director, Community Services
(480) 312-7954, bmurphy@scottsdaleaz.gov

4/22/13

Date



Derek Earle, Acting Executive Director, Public Works
(480) 312-2776, dearle@scottsdaleaz.gov

4.22.13

Date

ATTACHMENTS

1. Resolution 9369
2. Agreement 2013-055-COS

RESOLUTION NO. 9369

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE COFFEE CAFÉ AGREEMENT NO. 2013-055-COS AT THE CIVIC CENTER LIBRARY WITH SOUTHWEST AUTISM RESEARCH AND RESOURCE CENTER.

The City wishes to renew the Coffee Café Agreement at the Civic Center Library; and

Beneficial Beans Café at the Civic Center Library has been operating since July, 2012. The café provides coffee drinks, other beverages and light foods to the public visiting the library. The concession is managed by the Southwest Autism Research and Resource Center (SARRC); and

SARRC is suitable for this operation as they are using this business as a training ground for adults with autism.

The City has considered the city expenditure authorized by this Agreement and the direct consideration that the City will receive and finds that there is a clearly identified public purpose for the City's expenditure and that the City will receive direct consideration substantially equal to its expenditure.

BE IT RESOLVED by the Council of the City of Scottsdale as follows:

Section 1. The Mayor of the City of Scottsdale is authorized and directed to execute Coffee Café Agreement No. 2013-055-COS at the Civic Center Library with Southwest Autism Research and Resource Center.

PASSED AND ADOPTED by the Council of the City of Scottsdale this 7th day of May, 2013.


ATTEST:

CITY OF SCOTTSDALE, an
Arizona Municipal Corporation

Carolyn Jagger, City Clerk

W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:



Bruce Washburn, City Attorney

By: Clifford J. Frey
Senior Assistant City Attorney

**COFFEE CAFÉ
CONCESSION AGREEMENT
CIVIC CENTER LIBRARY**

This revocable License Agreement ("Agreement") is entered into this ____ day of May, 2013, between the City of Scottsdale, a municipal corporation, ("City") and Southwest Autism Research and Resource Center, an Arizona non-profit corporation ("Concessionaire").

RECITALS

A. The City of Scottsdale is the owner of certain real property at 3839 N. Drinkwater Boulevard in the City of Scottsdale, Arizona, known as Civic Center Library ("Civic Center"). The property is open for use by the general public.

B. Concessionaire desires to provide a custom-designed, and staffed coffee counter in a designated area ("Coffee Area") at Civic Center, as shown on Exhibit "A", for the purpose of selling hot and cold coffee and related beverages and food items ("Concession Items").

C. The City desires to grant to Concessionaire a 1 year license, renewable each year for 4 additional years to sell Concession Items to persons visiting the Civic Center Library.

D. The City has considered the city expenditure authorized by this Agreement and the direct consideration that the City will receive and finds that there is a clearly identified public purpose for the City's expenditure and that the City will receive direct consideration substantially equal to its expenditure.

IN CONSIDERATION of the covenants and agreements to be kept and performed by the Concessionaire, and for other good and valuable consideration, the City and the Concessionaire agree as follows:

TERMS

1.0. Recitals. The Recitals are incorporated into this Agreement.

2.0. Concession Area.

2.1. Description. The Concession Area includes and is limited to the areas shown on Exhibit "A" to this Agreement. In addition to the Coffee Area, Civic Center will make available for Concessionaire's non-exclusive use a portion of another room ("Preparation/Storage Area") located immediately adjacent to the Coffee Area. Collectively, the Coffee Area and the Preparation/Storage Area will be known in this Agreement as the "Concession Area."

2.2. Reconfiguration. City has the sole discretion to modify the configuration of the Concession Area from time to time during the term of this Agreement. Any relocation of existing improvements required by City's reconfiguration will be at City's expense. City may also, at its sole discretion, regulate, reroute and otherwise alter pedestrian and vehicular traffic access to the Concession Area without Concessionaire's consent. City will use its best efforts to accommodate any new configuration to Concessionaire's needs.

2.3. Condition of Concession Area. Concessionaire has examined, studied and inspected the Concession Area and acknowledges and understands that it is being made available for use in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to its condition or fitness for any use. Concessionaire has inspected the Concession Area and areas adjacent to it, and obtained any information and professional advice that Concessionaire has determined to be necessary.

2.4. Fixtures and Personal Property Included. The Concession Area also includes the personal property owned by City listed on Exhibit "B" ("Personal Property"), attached to this Agreement. City may elect to remove or supplement the Personal Property from time to time, in its sole discretion, but is not obligated to provide any other Personal Property to the Concession Area. The City Personal Property in the Concession Area will be owned at all times by City. Any and all of City's fixtures and Personal Property, from time to time made available to the Concessionaire, will be the responsibility of the City to maintain and keep in good working condition, except that Concessionaire is responsible to perform frequent housekeeping chores during the course of every day and as more specifically described in the "Maintenance" section of this Agreement. Concessionaire will promptly notify City of the need to perform repairs to the fixtures and Personal Property when necessary. The fixtures and Personal Property will be returned to the City at the termination or cancellation of this Agreement in the same condition it was received, reasonable wear and tear excepted. Concessionaire will not remove or alter in any way any fixtures or Personal Property upon the Concession Area, without City's prior written consent. If City Elects to remove any of the Personal Property listed in Exhibit "B" to the Agreement, City must provide Concessionaire 30 days notice of such removal so as not to interrupt Concessionaire's ability to conduct business.

2.5. Concessionaire's Equipment.

2.5.1. Concession Area. The Concessionaire will provide, at its sole cost and expense, all equipment, supplies and appliances necessary for a coffee café concession in the Concession Area, including but not limited to a safe, coffee cart, concession counter, shelves, concession table, soup cart, POS system/computer, metal table, back room table, drying shelves, ice machine, under the counter refrigerator, Pepsi refrigerator, coffee brewer, espresso brewer, ice tea brewer, 2 coffee grinders, blenders, refrigerator/freezer thermometers, napkin dispenser, paper towel and soap dispensers, broom, broom pan, and carpet sweeper. These supplies and appliances will be entirely contained within Concession Area, with no additional surfaces or equipment required from the City. The coffee cart and the coffee counter must bear the stamp of approval by the National Sanitation Foundation ("NSF"), if applicable, and must comply with Maricopa County Environmental Services Department requirements and any other applicable laws, rules and regulations for the operation of these concession activities. The coffee cart will use a 110 volt electrical outlet provided by the city which will serve as the sole source of power for the coffee cart.

2.5.1.1. It is understood by City that the equipment placed by Concessionaire in the Concession Area is the property of the Concessionaire. City agrees that it will exercise reasonable care to prevent any persons from removing, tampering with, or otherwise damaging the equipment.

2.5.2. Preparation/Storage Area. The Concessionaire, in its sole discretion and at its sole cost and expense, may provide an additional refrigerator for storage of backup perishable Concession Items. Concessionaire will provide shelving, racks, etc. as may be required for the

permitted uses. The City's approval, which may be withheld in its sole discretion, is required before any improvements can be made by Concessionaire to the Preparation/Storage Area or any other portion of the Concession Area.

2.5.2.1. It is understood by Concessionaire that any fixtures required by Concessionaire in order to make the Concession Area comply with any agency other than City (e.g., Maricopa County Environmental Services Department) will be installed by City forces.

2.6. Title. Despite any provision in this Agreement to the contrary, including any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Concessionaire's rights are limited to the Concession Area and Concessionaire's rights in the Concession Area are limited to the Agreement rights created by this Agreement, which creates only a revocable license in the Concession Area. City and Concessionaire do not by this instrument intend to create a lease. Concessionaire has no real property interest in the Concession Area. Concessionaire's sole remedy for any breach or threatened breach of this Agreement by City will be an action for damages. Concessionaire's rights under this Agreement are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to the Concession Area. Concessionaire's rights under this Agreement are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or subsequently having jurisdiction over the Concession Area or Concessionaire's use of the Concession Area.

3.0. Term of Agreement.

3.1. License. City gives to Concessionaire a license in the Concession Area, subject to the following provisions and conditioned upon Concessionaire's full, timely, complete and faithful performance of any and all things to be performed or done under this Agreement by Concessionaire and Concessionaire accepts the license and this Agreement.

3.2. Term. The initial term of this license will be for a period of 1 year, commencing on or before the 10th day of May, 2013. Upon approval of the Contract Administrator and provided the Concessionaire is not in default under the terms and conditions of this Agreement, this license may be extended for a total of 4 additional 1 year terms beyond the initial term.

3.3. Holding Over. In any circumstance where Concessionaire continues to occupy the Concession Area after the expiration of this Agreement, this holding over will not be considered to operate as a renewal or extension of this license and this Agreement will become terminable by City at will without notice.

3.4. Cancellation. In the event of Concessionaire's default under the terms of this Agreement, City will give Concessionaire 10 day's written notice of any event(s) of default. Concessionaire will have 10 days after receipt of the notice to remedy the event(s) of default to City's satisfaction. If Concessionaire does not correct the default to City's satisfaction within 10 days after receipt of notice, City may cancel Concessionaire's services upon giving 30 days written notice. Despite the provisions of this section, if there is any threat to public health, City has the right to cancel the Agreement with any notice considered appropriate under the circumstances.

3.5. Concessionaire and City's Termination Right. Either party has the unilateral right to terminate this Agreement for any reason whatsoever or for no reason at any time upon 30 day's written notice.

4.0. License Payments.

4.1. Use Fees.

4.1.1. The Concessionaire will pay to City \$1.00 per month while conducting the concession activities which are the subject of this Agreement. All payments by Concessionaire to City required by this Agreement for any reason are collectively the "Use Fees".

4.1.2. Use Fees are due and payable to the City not later than the 15th day of each month and includes all Use Fees due to the City as a result of Concessionaire's activities during the month immediately preceding the payment due date. Use Fees must be remitted by check to the City of Scottsdale, 7447 East Indian School Road, Scottsdale, Arizona 85251 ATTN: Accounting Department. The Concessionaire will submit to the City, with the Use Fees, any information relating to the Concession Area operations and revenues that the City may require. At the request of the City, information will be on forms prepared by the City.

4.2. Reports Required.

4.2.1. Concessionaire Report. No later than the 15th day following the end of each month, Concessionaire will provide the Contract Administrator with a report ("Concessionaire Report") detailing the gross monthly receipts of the Concession Area. The Contract Administrator may designate the manner in which the Concessionaire Report will be prepared and may provide a form to be used for the report.

4.2.2. Inspections Reports. Within 5 days of occurrence, Concessionaire will give to Contract Administrator a copy of all reports received as a result of inspection by the Maricopa County Environmental Services Department or any other entity having inspection authority over the Concession Area.

4.3. Utilities. City agrees to be responsible for the cost of electricity necessary to operate all equipment and to maintain in good repair the electrical outlets and facilities from which the equipment operates. Furthermore, City will maintain and pay for plumbing and water usage in the Concession Area.

4.4. Late Charges. Should any installment of the Use Fee not be paid on or before the date due, a 10% late fee will be added to the amount due.

4.5. Use Fee Amounts Cumulative. All amounts payable by Concessionaire under this Agreement or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona will be cumulative and payable in addition to every other payment required under this Agreement, and these amounts will not be credited toward, substituted for, or set off against each other in any manner.

4.6. No Setoffs. All Use Fees must be paid in full directly to City without setoff or deduction of any description. Concessionaire expressly waives any right of setoff.

4.7: Use Restrictions. Concessionaire's use and occupation of the Concession Area will in all respects conform to all and each of the following cumulative provisions:

4.7.1. Permitted Uses. Concessionaire will use the Concession Area solely for the sale of Concession Items as described in this Agreement. Except as otherwise agreed to by the Contract Administrator in writing, Concessionaire will confine service delivery to the Concession Area. Despite the previous sentence, the Concessionaire may provide services to customers who are not Civic Center Library patrons but who wish to purchase Concession Items and then leave Civic Center Library ("To-Go Service"). The storage, preparation and sale of all food and beverages must comply with any and all applicable health regulations. No alcoholic beverages, tobacco products or items in glass containers may be sold. No other use of the Concession Area, except as provided in this subsection 4.7, is permitted.

4.7.2. Concessionaire is not the City. The Concessionaire, its officers, employees and agents (collectively "Concessionaire") will clearly identify that it is the Concessionaire, rather than the City of Scottsdale, which is providing the Concession Items in the Concession Area. Concessionaire will not represent that it is a part of the City of Scottsdale government, or that it is acting on behalf of the City. Concessionaire may not use the name of the City of Scottsdale, its seal, signs or logos in any advertising, promotional materials, or for any other purpose without the express, written approval of the Contract Administrator having been first obtained.

4.7.3. Items Offered for Sale. Items to be offered for sale, sizes and prices at which they are offered for sale by the Concessionaire are subject to the prior written approval of the Contract Administrator. Price changes may be requested by Concessionaire at least 30 days before they are to take effect. Requests for price changes must be in writing and will become effective only upon the written approval of the Contract Administrator.

4.7.4. Animals. No animals are allowed other than seeing-eye dogs and assistance dogs providing health assistance to disabled persons within the Concession Area.

4.7.5. Hours of Operation. Unless otherwise agreed to by the Parties in writing, Concessionaire's days and hours of operation ("Hours of Operation") will be Tuesday through Thursday, 9:00 a.m. to 6:00 p.m., Friday and Saturday, 10:00 a.m. to 3:00 p.m., Sunday and Monday – closed. In addition, the Concession Area will be closed when the Civic Center Library is closed, despite the aforementioned hours of operation. In addition, each day Concessionaire will be permitted to enter Civic Center one hour before the opening time in order to prepare and set up for the day's business. Concessionaire will not close operations at the Concession Area before the required Hours of Operation, without first obtaining the written permission of the Contract Administrator. The Contract Administrator will notify the Concessionaire 48 hours in advance of all special events or regularly scheduled activities. From time to time the Contract Administrator may invite Concessionaire to provide services at Civic Center events that occur outside the Hours of Operation, which Concessionaire may accept or decline in its sole discretion.

4.7.6. Safeguarding Monies. Concessionaire will be solely responsible for the safekeeping of all monies in the Concession Area and will remove all monies from the Concession Area at the close of each business day. City will not be responsible for the loss of any funds for which the Concessionaire is responsible.

4.7.7. Noise. No sound equipment will be operated by the Concessionaire in the Concession Area. The flat panel TV screen will be placed on "mute" with captions, unless the city

wishes to allow the audio during a news event, at the city's sole discretion. The City shall control what is being telecast on the flat-screen TV at its sole discretion.

City is aware of Concessionaire's operation which will consist of producing hot and cold espresso drinks and smoothies among other menu items and will require the operation of equipment that generates a certain level of noise.

4.8. Concessionaire's Agent. Concessionaire will at all times retain at the Concession Area a qualified, competent and experienced manager ("Concession Manager") to act as Concessionaire's agent to supervise the Concession Area. The Concession Manager will be authorized to represent and act for Concessionaire in Concessionaire's absence, in matters pertaining to all emergencies and the day-to-day operation of the Concession Area. Concessionaire will also identify in writing (with address and 24 hour telephone number) a person who will respond for Concessionaire regarding emergencies outside business hours.

4.9. Access to the Concession Area. Concessionaire will provide a list to the Contract Administrator of Concessionaire's designees and employees who will need access to the Concession Area. Any changes, additions or deletions of Concessionaire's designees allowed access to the Concession Area will be reported to the Contract Administrator, in writing, not less than 10 days before the time that a change, addition or deletion is made. Concessionaire and Concessionaire's employees will be issued identification badges by the City which must be worn, during the Hours of Operation, as well as during preparation and set-up periods. Concessionaire will be given a key(s) to the Storage Area giving Concessionaire or Concessionaire's agent access to the Storage Area.

4.9.1. Concessionaire must secure all Concessionaire's Equipment at the end of Hours of Operation each day.

4.9.2. If City needs to enter the Concession Area for required maintenance, it will give reasonable notice of not less than 24 hours. The City may enter the Concession Area without notice, if necessary, in the event of an emergency. The City will be the sole determiner of whether maintenance is required or an emergency exists within the meaning of this subsection. When the City must enter the Concession Area for emergency purposes, the City will notify the Concession Manager of entry no more than 24 hours after entry.

4.10. Standards of Service. In entering into this Agreement, City and Concessionaire have foremost in mind providing the public with concession services of the highest quality. Concessionaire will operate the Concession Area in a first-class manner, will furnish prompt, clean and courteous service; and will keep the Concession Area attractively maintained, orderly, clean and sanitary at all times, all to the satisfaction of City.

4.11. Conduct at the Concession Area. Concessionaire will not employ any person, or persons, in or about the Concession Area who is unclean, discourteous, inefficient or unkempt in appearance, or who uses profane, obnoxious or rude language, or acts in a loud or boisterous or otherwise improper manner. Concessionaire will also take appropriate measures to insure that its employees are of a suitable character to provide services. Furthermore, Concessionaire will not employ or continue to employ any person performing services under this Agreement who, in the sole discretion of the Contract Administrator, is considered unacceptable for employment in that capacity.

Despite the above, it is understood that the *Beneficial Beans Café* is an entrepreneurial venture of SARRC designed to provide the opportunity for employment for adults with autism spectrum disorders (ASD's). The café will be manned by SARRC staff and adults with ASD's at the library. SARRC has hired and trained an individual with an ASD to become our café manager. All SARRC employees will be highly trained in customer service. The success of *Beneficial Beans Café* will directly benefit the adults with ASD's who have been hired as a result of this social venture. These adults will receive new skills, an opportunity to advance to community-based jobs and increase their income level, together the emotional benefit that derives from meaningful employment.

Autism is a neurological disorder that affects three areas: language and communication, social interaction and repetitive and restrictive interests and behaviors. Each adult that receives vocational training at the café will receive individualized treatment to meet their unique vocational needs. SARRC will make every effort to train our adults with ASD's to meet the libraries basic code of conduct when serving the café customers.

4.12. Training and Safety Requirements. Concessionaire will ensure that all its personnel are trained in all facets of the Concession operations and that all skills are of consistently high quality. Concessionaire will comply with, train and cause its personnel to comply with the minimum safety standards and the emergency action plan attached as Exhibit "C".

4.13. Common Areas. There will be absolutely no activity or storage, however temporary, in the halls, steps, porches or other areas surrounding the Concession Area, with the exception of the Preparation/Storage Area. Concessionaire will immediately clean up any spills or debris caused by Concessionaire or its suppliers or customers. The doors and gates to the Concession Area, if any, will remain closed at all times, except during actual use.

4.14. Delivery Parking. Vehicles making deliveries or providing service to the Concession Area will park only in areas specifically designated by City as delivery areas. Concessionaire will immediately clean up any spills or debris caused by Concessionaire or its suppliers.

4.15. Inspection. City will have access to the Concession Area at all times, and without notice to the Concessionaire, to inspect or show the Concession Area, or exercise City's other rights under this Agreement. Concessionaire will promptly undertake appropriate action to correct any deficiency identified by City during these inspections or otherwise.

4.16. Signs. In accordance with applicable law, Concessionaire will, at its own expense, install a tasteful sign upon the coffee cart identifying Concessionaire's operations, subject to the prior written approval of the City. The location, size and style of the sign upon the coffee cart will be in keeping with the overall aesthetics and utility of the Civic Center Library facilities and grounds, as determined by City, and will be designed and made in a professional manner.

4.16.1. Flyers and other promotional materials will be in strict accordance with the provisions of subsection 4.18. In addition, all written and broadcast promotional materials must first receive the written approval of the Contract Administrator.

4.17. Hazardous Materials. Concessionaire will not produce, dispose, transport, treat, use or store any hazardous waste or materials or toxic substance upon or about the Concession Area or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other

federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). Concessionaire will not use the Concession Area in a manner inconsistent with regulations issued by the Arizona Department of Health Services, or in a manner that would require a permit or approval from the Arizona Department of Health Services or any other governmental agency. Concessionaire will pay, indemnify, defend and hold City harmless against any loss or liability incurred by reason of any Toxic Substance on, or affecting the Concession Area, occurring after the date of this Agreement. Concessionaire will immediately notify City of any Toxic Substance at any time discovered or existing upon the Concession Area. Concessionaire understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Concessionaire will cause any on-site or off-site storage, treatment, transportation, disposal or other handling of Toxic Substance by Concessionaire, in connection with the Concession Area, to be performed by persons, equipment, facilities and other resources, who are at all times properly and lawfully trained, authorized, Agreement and otherwise permitted to perform such services.

4.18. Prohibited Names. Concessionaire will not use in connection with its operations at the Concession Area any name that directly or indirectly refers to or contains any part of City's name or otherwise suggests a connection between City and Concessionaire or Concessionaire's activities. Concessionaire will also not use in connection with its operations at the Concession Area any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

4.19. Name of Business. Concessionaire will operate the business at and from the Concession Area under Concessionaire's name, Beneficial Bean Café, or if City and Concessionaire desire otherwise, any other name City may approve in City's reasonable discretion. Following termination of this Agreement for any reason, City has the exclusive right to use or allow others to use any name used to identify Concessionaire's business at the Concession Area and at other locations within and without the vicinity, so long as City does not use Concessionaire's name as stated at the beginning of this Agreement.

5.0. Improvements and Maintenance. Except as expressly provided in this Agreement, Concessionaire has all responsibilities for improvements to and maintenance of the Concession Area during the term of this Agreement.

5.1. Concessionaire's Improvements. Concessionaire will make no structural or permanent alterations, modifications or additions to the Concession Area, including any relating to utility facilities, without having first received the written consent of City which City may withhold in City's sole and absolute discretion. Any approved alterations, modifications or additions will be accomplished by Concessionaire at its sole cost and expense.

5.2. Maintenance by Concessionaire. Concessionaire will at all times, at its sole expense, be responsible for maintaining its Coffee Café/Cart and the Concession Area in a first-class, sound, clean and attractive manner as determined in City's reasonable discretion, so as to meet sanitary and similar standards for a public food and beverage concession. In addition, Concessionaire will pick up all trash and debris of any description upon the floors, tables and chairs within 20 feet of the Concession Area and along the walkway in front of the public restrooms, whether or not the trash and debris were created by the Concessionaire, or came from products sold by the Concessionaire, so that the area is neat, clean and tidy at all times. All trash and debris will be disposed of in trash containers designated by City. Concessionaire will be responsible for

proper storage and maintenance of its stock. Cleaning and servicing of all Concessionaire Equipment will be the responsibility of the Concessionaire.

5.3. Trash Receptacles.

5.3.1. Concessionaire will provide and use, without limitation, suitable covered receptacles for all trash and other refuse within the Concession Area, including the Preparation/Storage Area. Piling of boxes, cartons, barrels or other items inside or outside the Concession Area is forbidden. The areas in which trash receptacles are stored will be kept clean and free of all trash and debris.

5.3.2. City will provide trash receptacles, placed in the areas within and immediately surrounding the Concession Area, for use by the public.

5.3.3. Concessionaire will empty all trash receptacles, trash and debris which are the subject of this subsection into trash containers provided by and designated by the City and will do so at the end of each business day, or more frequently as needed. Concessionaire will provide liners for all the trash receptacles in the Concession Area and will keep them clean and odor free.

5.4. City Repairs and Maintenance. All other repairs and maintenance of the Concession Area not specifically required under this Agreement will be performed by City at City's convenience.

6.0. Breach by Concessionaire. Concessionaire will comply with, perform and do each performance and thing required of Concessionaire by this Agreement and Concessionaire's failure to do so will be a breach by Concessionaire of this Agreement.

6.1. Events of Default. This entire Agreement is made upon the condition that each and every one of the following events will be considered an "Event of Default" and a material breach by Concessionaire of Concessionaire's material obligations under this Agreement:

6.1.1. If Concessionaire is in arrears in the payment of Use Fees and does not cure any arrearage within 10 days after City has notified Concessionaire in writing of the arrearage.

6.1.2. If Concessionaire abandons the Concession Area or fails to operate the Concession Area for 2 consecutive days within the required hours of operation without a reasonable excuse or 3 non-consecutive days within the required hours of operation within a 7 day period.

6.1.3. If any environmental, health or similar inspector issues any notice of investigation or violation of health, environmental or similar regulations in connection with Concessionaire's use of the Concession Area or determines during any 2 or more consecutive inspections that the same deficiency has been repeated or that the overall operation falls materially below standards for first-rate, well-operated similar facilities in Maricopa County.

6.1.4. If any assignment of any of Concessionaire's property is made for the benefit of creditors.

6.1.5. If any representation or warranty made by Concessionaire in connection with this Agreement, or the negotiations leading to this Agreement, prove to have been false in any material respect when made.

6.1.6. If Concessionaire fails to timely pay any taxes or other amounts herein required to be paid by Concessionaire to City or to any other person.

6.1.7. If Concessionaire fails to obtain or maintain any licenses, permits, or other governmental approvals from City, or any other governmental body, or timely pay any taxes with respect to this Agreement, the Concession Area or Concessionaire's use of the Concession Area.

6.1.8. If Concessionaire fails to or neglects to do or perform or observe any other provisions required on its part to be kept or performed and this failure or neglect to do or perform or observe any of these other provisions continues for a period of 30 days after City has notified Concessionaire in writing of Concessionaire's default. If Concessionaire attempts to remedy the default and the default cannot be cured during the notice period, Concessionaire will not be in default so long as Concessionaire commences a cure during the notice period and diligently pursues the cure to completion, provided the cure must be completed within 60 days.

6.1.9. If Concessionaire persists in a pattern of repeated failure (or neglect) to do or perform or observe any provision of this Agreement.

6.2. City's Remedies. Upon the occurrence of any Event of Default or at any later time, City may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order or repetitively at City's option:

6.2.1. City's right to terminate this Agreement for nonpayment of the Use Fee or for any other Event of Default is specifically provided for and agreed to.

6.2.2. Without demand or notice, enter into and upon the Concession Area and repossess the same, and expel Concessionaire and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being considered guilty of trespass and without prejudice to any other remedy.

6.2.3. Enforce a lien (which is hereby granted to City) upon Concessionaire's property in the Concession Area, securing all of Concessionaire's obligations under this Agreement.

6.2.4. Pay or perform, for Concessionaire's account and at Concessionaire's expense, any or all payments or performances required under this Agreement to be paid or performed by Concessionaire.

6.2.5. Abate at Concessionaire's expense any violation of this Agreement.

6.2.6. Pursue at Concessionaire's expense any and all other remedies, legal or equitable, to which City may be entitled.

6.2.7. Refuse, without any liability to Concessionaire, to perform any obligation imposed on City by this Agreement.

6.2.8. Be excused from further performance under this Agreement.

6.2.9. Insist upon Concessionaire's full and faithful performance under this Agreement during the entire remaining term.

6.2.10. Assert or exercise any other right or remedy permitted by law.

6.3. Non-Waiver. Concessionaire acknowledges Concessionaire's unconditional obligation to comply with this Agreement. No failure by City to demand any performance required of Concessionaire under this Agreement, and no acceptance by City of any imperfect or partial performance will excuse the performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by City of the Use Fee or other performances under this Agreement will be considered a compromise or settlement of any claim City may have for additional or further payments or performances. Any waiver by City of any breach of condition or covenant by Concessionaire will not be considered as a continuing waiver and will not operate to bar or prevent the City from declaring a default for any succeeding breach either of the same condition or any other. No statement, bill or notice by City concerning payments or other performances due under this Agreement will excuse Concessionaire from compliance with this Agreement nor estop City (or otherwise impair City's ability) to at any time correct the notice and insist prospectively or retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or section) will be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision being waived and specifically stating the scope of the waiver. **CONCESSIONAIRE EXPRESSLY DISCLAIMS AND WILL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THE PRECEDING SENTENCE.**

6.4. Reimbursement of remedies for City's expenses. Concessionaire will pay to City upon demand any and all amounts expended or incurred by City in performing Concessionaire's obligations.

7.0. Rights at Termination.

7.1. Delivery of Possession. Concessionaire will, at the expiration of the term of this Agreement or upon any sooner termination or cancellation of the Agreement, without demand, peaceably and quietly quit and deliver up the Concession Area to City thoroughly cleaned and in good repair, and in as good order and condition, reasonable use and wear excepted or as the Concession Area may have been placed in better condition by Concessionaire or City.

7.2. Fixtures and Improvements. Upon termination of this Agreement, if the same has not occurred earlier, title to any and all fixtures and structural or permanent improvements placed upon the Concession Area by Concessionaire will automatically vest in City without requirement of any deed, conveyance, or bill of sale. If the City requests any confirming document, however, Concessionaire will execute, acknowledge and deliver the document. Nevertheless, City will have the right to require Concessionaire to remove any items and restore the Concession Area to its previous condition, subject to the provisions of Section 7.1.

8.0. Indemnity. To the fullest extent permitted by law, Concessionaire, its successors, assigns and guarantors, will defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all

allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Concessionaire relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Concessionaire's and Subcontractors or employees.

8.1. Insurance provisions required by this Agreement are separate and independent from the indemnity provisions of this section and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this section will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

9.0. Insurance. Concessionaire agrees to comply with all City ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of Concessionaire, before entering, occupying or using the Concession Area in any way, Concessionaire will purchase and maintain, at Concessionaire's own expense, the required minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B++6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to City. Failure to maintain insurance as specified may result in termination of this Agreement at City's option.

9.1. No Representation of Coverage Adequacy. By requiring insurance, City does not represent that coverage and limits will be adequate to protect Concessionaire. City reserves the right to review any and all of the insurance policies and endorsements cited in this Agreement but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency will not relieve Concessionaire from, nor be construed or considered a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

9.2. Coverage Term. All insurance required will be maintained in full force and effect until all required work or services to be performed are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

9.3. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage will extend, either by keeping coverage in force or purchasing an extended reporting option, for 3 years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the required provisions for the 3 year period.

9.4. Policy Deductibles or Self Insured Retentions. The required policies may provide coverage, which contain deductibles or self insured retention amounts. The deductibles or self insured retention will not be applicable with respect to the policy limits provided to City. Concessionaire will be solely responsible for any deductible or self insured retention amount. City, at its option, may require Concessionaire to secure payment of the deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

9.5. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Concessionaire will execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Coverages required by this Agreement protecting City and Concessionaire. Concessionaire will be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

9.6. Evidence of Insurance.

9.6.1. Before beginning any work or services under this Agreement, Concessionaire will furnish City with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Concessionaire's insurer(s) as evidence that policies are placed with acceptable insurers and provide the required coverage, conditions, and limits of coverage and that this coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies expire during the life of this Agreement, it will be Concessionaire's responsibility to forward renewal Certificates within 10 days after the renewal date containing all the required insurance provisions.

9.6.2. Certificates will contain the specified provisions that follow and will be submitted in the form shown as Exhibit "D" attached, and will include the following:

9.6.2.1. City, its agents, representatives, officers, elected and appointed officials, and employees will be additional insureds under any commercial general liability, auto liability and excess liability insurance procured by Concessionaire.

9.6.2.2. Concessionaire's insurance will be primary insurance as respect the performance of this Agreement.

9.6.2.3. All policies, including Workers' Compensation, if applicable, will waive rights of recovery (subrogation) against City, its agent, representatives, officers, elected and appointed officials, and employees for any claims arising out of work or services performed by Concessionaire under this Agreement.

9.6.2.4. The ACORD form of insurance certificate will be used. The ACORD Certificate of Insurance will contain 30 day advance notice of cancellation provisions. In the ACORD Certificate of Insurance form, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives" will be deleted.

9.7. Required Coverage.

9.7.1. Commercial General Liability. Concessionaire will maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy will cover liability arising from Concession Area, operations, independent contractors, products-completed operations, personal injury and advertising injury.

9.7.2. Vehicle Liability. Concessionaire will maintain Business Automobile Liability insurance with a limit of \$500,000 each accident on Concessionaire's owned, hired, and

non-owned vehicles assigned to or used in the performance of the Concessionaire's work or services under this Agreement.

9.7.3. Worker's Compensation Insurance. Concessionaire will maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Concessionaire's employees engaged in the performance of work or services under this Agreement and will also maintain Employers Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

9.8. Risk of Loss. City is not required to carry any insurance covering or affecting the Concession Area or City's property. Concessionaire assumes the risk of any and all loss, damage or claims to the Concession Area or related to Concessionaire's use of the Concession Area or City's property throughout the term of this Agreement. Concessionaire's obligations to indemnify do not diminish in any way Concessionaire's obligations to insure; and Concessionaire's obligations to insure do not diminish in any way Concessionaire's obligations to indemnify. Concessionaire's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Concessionaire under or connected with this Agreement. Concessionaire will be responsible for any and all damages to its property and equipment used within the scope of this Agreement and will hold harmless and indemnify City regardless of the cause of any damages.

10.0. Condemnation. If any part of the Concession Area is acquired or condemned by eminent domain for any public or quasi-public use or purpose then the term of this Agreement will cease and terminate as of the date of title vesting in the proceeding and Concessionaire will have no claim for the value of any unexpired term of this Agreement. In the event of any taking or condemnation, Concessionaire will not be entitled to any part of the award, as damages or otherwise. City is entitled to receive the full amount of the award or other payment, including relocation expenses, and Concessionaire by this Agreement, assigns to City any rights to any award or payment.

11.0. Damage to or Destruction of Concession Area. If the Concession Area is materially damaged by fire, explosion, the elements, public enemy, or other casualty, City or Concessionaire may elect in its sole discretion to terminate this Agreement.

12.0. Concessionaire's Records. Concessionaire will maintain in a secure place at an office within Maricopa County, Arizona, proper and accurate books, records, ledgers, correspondence, and other papers and repositories of information, relating to all of the business conducted in the Concession Area. The records identified in this section will be maintained for the Concession Area. The City will have the right upon reasonable notice to inspect and copy the records.

12.1. Standards for Financial Records. Concessionaire will maintain a standard, modern system of accounting and will keep and maintain all books and records in accordance with generally accepted accounting principles applied on a consistent basis.

12.2. Right of Inspection. So long as the same are pertinent to this Agreement or any contemplated transactions and, in any event, for a period extending at least 7 years after termination of this Agreement, Concessionaire will at its expense (i) permit and assist City and its representatives at all reasonable times to inspect, audit and copy, as applicable, the Concession Area, Concessionaire's facilities, activities, computer data, books of account, logs and records, (ii)

cause its employees, agents and accountants to give their full cooperation and assistance in connection with any visits of inspection or financial conferences, (iii) make available any further information concerning its business and affairs as Concessionaire may from time to time reasonably request, and (iv) make available to City reasonable accommodations for City's audit and inspection.

12.3. Financial Records Included. The financial records of Concessionaire subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computerized records, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Agreement or any performance under this Agreement.

12.4. Costs of Audit. If an audit inspection or examination discloses underpayments (of any nature) by Concessionaire to City in excess of 3% of any Use Fees City's actual cost of the audit (based on the amount paid by City, or based on reasonable expenses charged by private auditors and other service providers if the audit is performed by City's employees), inspection or examination, together with late fees, interest, and other amounts payable in connection with any adjustments or payments, will be reimbursed to City by Concessionaire. Any adjustments and payments which must be made as a result of any audit (whether or not performed in-house by City), inspection or examination will be made within a reasonable amount of time (not to exceed 30 days) from presentation of City's findings to Concessionaire.

13.0. Compliance with Law.

13.1. Lawful Operations. Concessionaire will conduct only lawful operations at and from the Concession Area in accordance with all Federal, State, County and City laws, ordinances, regulations or other rules or policies as are now in effect or as may subsequently be adopted or amended. Concessionaire acknowledges that this Agreement does not constitute, and City has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Concessionaire with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Concessionaire, the Concession Area, or Concessionaire's use of the Concession Area. Concessionaire acknowledges that all of Concessionaire's obligations are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Concessionaire. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, Concessionaire expressly repudiates all benefits with respect to performances rendered under this Agreement. Concessionaire further agrees that this Agreement is not intended to diminish any performances to City that would be required of Concessionaire by law if this Agreement had been made between Concessionaire and a private citizen. City has not relinquished any right of condemnation or eminent domain over the Concession Area. This Agreement is not intended in any way to impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Concessionaire or the Concession Area. Concessionaire promises to comply with all applicable laws. City's rights and remedies for breach of any promise supplement and are in addition to and

do not replace all otherwise existing powers of the City of Scottsdale or any other governmental body. Without limiting in any way the generality of the foregoing, Concessionaire will comply with each and every one of the following:

13.2. Government Property License Excise Tax. Concessionaire will be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-6201 *et seq.* or similar laws in force from time to time. Pursuant to A.R.S. § 42-6201, failure by Concessionaire to pay the taxes after notice and an opportunity to cure is an event of default that could result in divesting Concessionaire of any interest in or right of occupancy of the Concession Area.

13.3. Taxes, Liens and Assessments. In addition to all other Use Fees, Concessionaire will pay, when due and as the same become due and payable all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be levied upon or assessed against the Concession Area, the operations, any Use Fees paid or other performances under this Agreement by either party, and all possessory interest in the Concession Area and improvements and other property, whether belonging to City or Concessionaire; and Concessionaire agrees to indemnify, defend and hold harmless City and the Concession Area and the property and all interest and improvements in the Concession Area from any and all taxes and assessments, including any interest, penalties and other expenses which may be imposed, and from any lien or sale or other proceedings to enforce payment. Concessionaire has the right to contest, but not the right to refuse to timely pay, any taxes and assessments. City has the right from time to time to require that all of these payments be made by Concessionaire through City. Concessionaire will pay all sales, transaction privilege, and similar taxes.

14.0. Assignability. This Agreement is not assignable by Concessionaire except in strict compliance with the following:

14.1. Assignments and Subleases Prohibited. Concessionaire will not make or suffer to occur any assignment or sublease of this Agreement or any rights or interests granted by this Agreement without first receiving from City notice of City's consent to the assignment. References in this Agreement to assignments or subleases by Concessionaire will be considered to apply to all of the following transactions, circumstances and conditions:

14.1.1. Any voluntary or involuntary assignment, transfer, pledge, lien or sublease of the Concession Area or any interest.

14.1.2. The use, occupation, management, control or operation of the Concession Area or any part of the Concession Area by others.

14.1.3. Any transfer of corporate stock or any other direct or indirect transfer of any substantial part of the ownership, management or control of Concessionaire or the Concession Area.

14.1.4. Any assignment or subletting by operation of law.

14.1.5. Any assignment for the benefit of creditors, voluntary or involuntary.

14.1.6. Any bankruptcy or reorganization.

14.2. Assignment Remedies. City may, in its sole discretion and in addition to all other remedies available to City under this Agreement or otherwise and in any combination, collect Use Fees from the assignee, sublessee or occupant and apply the net amount collected to the Use Fee required to be paid or void the assignment or sublease, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods will apply to assignments prohibited by this Agreement or to enforcement of this Agreement against an assignee who did not receive City's consent.

14.3. Effect of Assignment. No assignment, transfer, subletting, occupancy or collection is a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Concessionaire, or a release of Concessionaire from the further performance by Concessionaire of the provisions of this Agreement. The consent by City to an assignment or subletting will not relieve Concessionaire from obtaining the consent in writing of City to any further assignment or sublease. Upon assigning, transferring or subletting the Concession Area, Concessionaire will not be released from any liability but will remain fully and personally obligated under this Agreement.

14.4. Enforceability after Assignment. No consent by City to any assignment will expand or modify this Agreement. This Agreement controls any conflict between this Agreement and any assignment consented to by City. This Agreement is enforceable personally and in total against Concessionaire and each successor, partial or total, and regardless of the method of succession, to Concessionaire's interest. Each successor having actual or constructive notice of this Agreement will be considered to have agreed to the preceding sentence.

14.5. Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for. Concessionaire will pay to City the sum of \$500.00 as a transfer fee for legal and administrative expenses related to any request for consent. Without limiting the foregoing in any way, City has the right to impose upon any consent to assignment any conditions or requirements as City may consider appropriate and to refuse to consent to any assignment for any reason or no reason in City's sole and absolute discretion.

14.6. Form of Assignment and Sublease. Any permitted assignment or subletting will be by agreement in form and content acceptable to City. Without limitation, any sublease or assignment will specify and require that in the event of default of Concessionaire under any assignment or sublease, City at City's sole option may succeed to the position of Concessionaire as to any sublessee or assignee of Concessionaire without liability for any previous breaches or performances.

15.0. Miscellaneous.

15.1. Notices. Notices, permissions or consents required or permitted under the terms of this Agreement, will unless otherwise expressly provided, be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

15.2.

If to City: City of Scottsdale
7447 East Indian School Road, Suite 205
Scottsdale, Arizona, 85251
ATTN: Asset Management Coordinator

Copy to: City of Scottsdale
3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
ATTN: City Attorney

If by mail to Concessionaire: Erin M. Dunham
Employment Services Program Coordinator
Southwest Autism Research & Resource Center (SARRC)
2225 N. 16th Street
Phoenix, Arizona 85006
(602) 840-8717
edunham@autismcenter.org

If by hand delivery to Concessionaire: Same as by mail.

or to any other address as may be designated by the respective parties in writing from time to time. In the event of any service by mail, service will be considered complete 48 hours after deposited in the United States mail.

15.3. Contract Administrator. The Contract Administrator for the City, as used in this Agreement, will be the Library Support Services Senior Manager or designee, if any. The Contract Administrator will monitor the performance of the Agreement, coordinate as necessary with Concessionaire, oversee schedules, review monthly Concessionaire Reports, approve amendments to the Agreement and all documents related to the Permitted uses, and generally be responsible for overseeing its performance on behalf of the City. The Contract Administrator may employ the services of any other City staff members as may be considered appropriate for the effective administration of this Agreement. The Contract Administrator will be the operational and administrative representative of the City in dealings with the Concessionaire.

15.4. Time of Essence. Time is of the essence of each and every provision of this Agreement.

15.5. Additional Indemnity. In addition to all other indemnities and other obligations of Concessionaire, Concessionaire agrees to hold City harmless from, to defend City against, and to indemnify City from all fines, claims, damages, and suits, including attorneys' fees and court costs, arising from any act or omission on the part of Concessionaire, its employees, sub-contractors, or agents, in the use of the Concession Area or the prosecution of any operations under this Agreement or from any failure to comply with any and all of Concessionaire's obligations under this Agreement.

15.6. Invalid Provisions. In the event any term, condition, covenant, stipulation, agreement or provision of this Agreement is held to be invalid or unenforceable for any reason, the

invalidity of any term, condition, covenant, stipulation, agreement or provision will in no way affect any other term, condition, covenant, stipulation, agreement or provision of this Agreement.

15.7. Section Headings. The section headings are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

15.8. Attorneys' Fees. In the event any action or suit or proceeding is brought by City to collect the Use Fee due or to become due under this Agreement or to take possession of the Concession Area or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any of City's rights or remedies under this Agreement, Concessionaire agrees to pay City all costs of any action or suit and all expenses of any action or suit together with such sum as the Court may adjudge reasonable as attorneys' fees to be allowed in the suit, action or proceeding.

15.9. No Third Party Beneficiaries. No person or entity is a third party beneficiary to this Agreement.

15.10. Exhibits. All exhibits are incorporated into this Agreement by this reference.

15.11. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.

15.12. Further Assurances. Concessionaire agrees to do any further acts and things and to execute and deliver any additional agreements and instruments as City may reasonably require to consummate, evidence, confirm or carry out this Agreement.

15.13. Construction. Whenever the context of this Agreement requires, the singular includes the plural, and the masculine includes the feminine. This Agreement will be construed according to its plain meaning and neither for nor against any party. Concessionaire acknowledges that the Use Fee payable under this Agreement was negotiated in light of the plain meaning of this Agreement and this Agreement will be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Concessionaire.

15.14. Survival of Liability. All obligations of Concessionaire under this Agreement and all warranties and indemnities of Concessionaire under this Agreement will survive termination of this Agreement for any reason.

15.15. Choice of Law. This Agreement is governed by the laws of the State of Arizona.

15.16. Recording. This Agreement will not be recorded.

The rest of this page left blank intentionally.

EXECUTED as of the date first given above.


Southwest Autism Research & Resource Center
An Arizona non-profit corporation

CITY OF SCOTTSDALE,
An Arizona municipal corporation

By: _____
Jeri Kendle, President


By: _____
W.J. "Jim" Lane, Mayor

By: _____
Carolyn Jagger, City Clerk

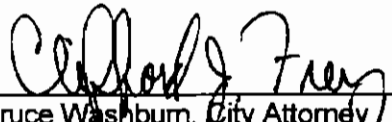
By:  _____
Bill Murphy, Executive Director
Community Services Department

REVIEWED BY:

 _____
Edward M. Howard,
Risk Management Director

 _____
Maria Muiser,
Asset Management Coordinator

APPROVED AS TO FORM:

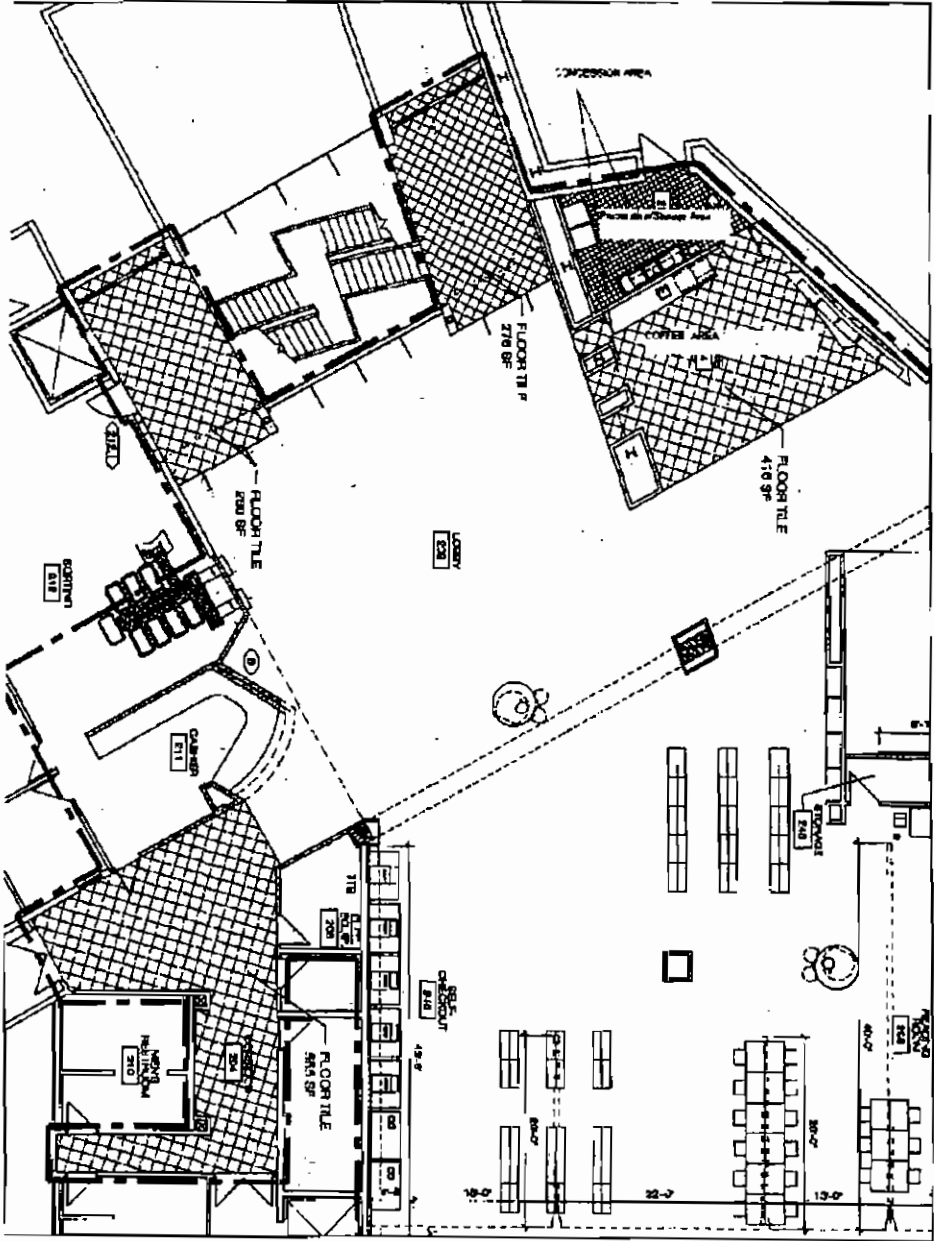
 _____
Bruce Washburn, City Attorney

By: Clifford J. Frey
Senior Assistant City Attorney

Table of Exhibits

<u>Exhibit</u>	<u>Section</u>	<u>Description</u>
A	2.1	Site plan of Concession Area
B	2.4	City's Personal Property
C	4.12	Training/Safety Plan
D	10.6.2	Sample Insurance Certificate

Exhibit A
Site Plan of Concession Area



DATE: 1/22/11
 DRAWN BY: JMS
 SCALE: AS SHOWN

CITY OF SCOTTSDALE
 CMC CENTER LIBRARY RENOVATIONS
 3535 NORTH DRINKWATER BOULEVARD
 SCOTTSDALE, AZ 85251



Exhibit B
City's Personal Property

- Refrigerator (Preparation/Storage Area)
- Freezer (Preparation/Storage Area)
- Sink (Preparation/Storage Area)
- Flat-screen TV
- 3 bistro tables
- 9 bistro chairs
- 3 15-gallon brushed stainless trash receptacles

Exhibit C - Training/Safety Plan

EVACUATION PLAN

Civic Center Library
Main Level

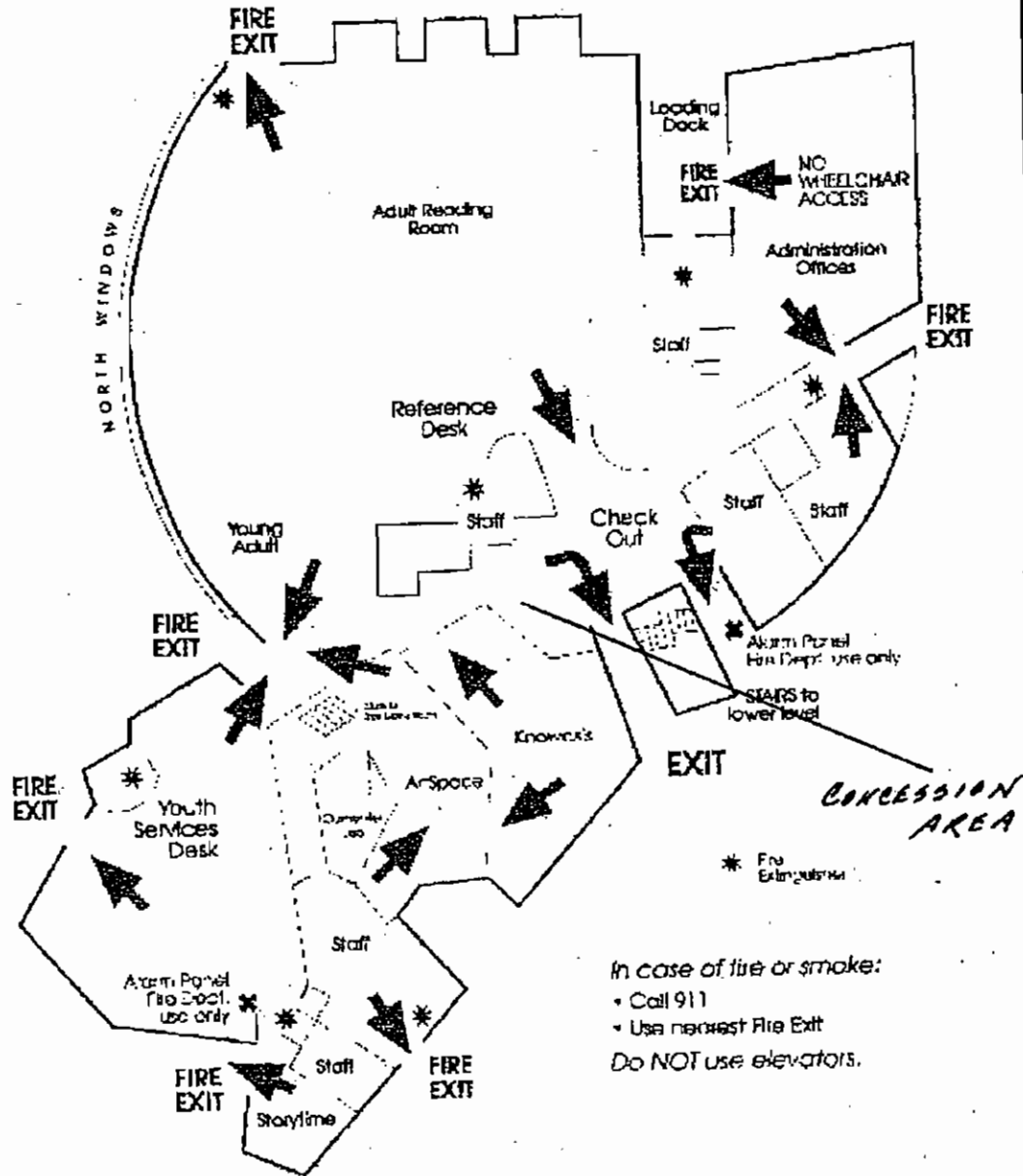


EXHIBIT D

SAMPLE CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

ACORD tm

PRODUCER:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY

A

COMPANY

B

COMPANY

C

COMPANY

D

INSURED:

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Co it	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTI VE DATE (mm/dd/y y)	POLICY EXPIRATI ON DATE (mm/dd/y y)	LIMITS	
	<input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> GENERAL LIAB. <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & <input type="checkbox"/> CONTRACTORS PROT.				GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS COMP/OR AGG	\$ 2,000,000
					PERSONAL & ADV INJURY	\$
					EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (any one fire)	\$
					MED EXP (Any one person)	\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED <input type="checkbox"/> AUTOS <input type="checkbox"/> SCHEDULED <input type="checkbox"/> AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED <input type="checkbox"/> AUTOS				EACH OCCURRENCE	\$ 500,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY EA ACCIDENT	\$
					OTHER THAN AUTO ONLY	\$
					EACH ACCIDENT	\$

					AGGREGATE	\$
<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN <input type="checkbox"/> UMBRELLA FORM					EACH OCCURRENCE	\$
					AGGREGATE	\$
						\$
WORKERS COMPENSATION AND EMPLOYER'S LIABILITY THE PROPRIETOR / <input type="checkbox"/> INCL PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> EXCL					<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
					EL EACH ACCIDENT	\$ 100,000
					EL DISEASE POLICY LIMIT	\$ 500,000
					EL DISEASE EA EMPLOYEE	\$ 100,000
Other:						\$

Description of Operations/Locations/Vehicles/Special Items:

City of Scottsdale, its representatives, agents and employees, is an Additional Insured under Commercial General Liability ISO Form CG 00 01 07 98 or equivalent, Auto Liability ISO Form CA 00 01 07 97 or equivalent, and Excess Liability follow form to underlying coverage. All cited insurance will be primary coverage. All cited insurance except Professional Liability will waive rights of recovery (subrogation) against City of Scottsdale. No policy will be canceled or materially changed without 30 days advance written notice. Certificate not valid unless signed by authorized representative of insurance company. **APPLICABLE CONTRACT NUMBER:**
LOCATION: Civic Center Library, 3839 N. Drinkwater Boulevard, Scottsdale, AZ 85251

CERTIFICATE HOLDER:

City of Scottsdale
 Attn: Robin Rodgers
 7447 East Indian School Road, Suite 205
 Scottsdale, AZ 85251

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMES TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE WILL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS, OR REPRESENTATIVES.

 AUTHORIZED REPRESENTATIVE

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