

AN ORDINANCE 2006-04-06-0458

APPROVING A SHORT TERM CONCESSION AGREEMENT WITH CATERING BY NICK D/B/A S. A. CAFÉ, LLC. TO OPERATE FOOD AND BEVERAGE CONCESSIONS AT THE FOLLOWING GOLF FACILITIES: BRACKENRIDGE, WILLOW SPRINGS, MISSION DEL LAGO, RIVERSIDE, CEDAR CREEK, AND OLMOS BASIN.

* * * * *

WHEREAS, Polanco and Company LLC d/b/a KGK 44, Inc. entered into a 10 year concession contract at City golf course facilities in 2002; and

WHEREAS, in February 2006, the contract with Polanco and Company d/b/a KGK 44, Inc. was terminated due to non-payment of the monthly concession fee.; and

WHEREAS, Catering by Nick d/b/a S. A. Café, LLC. was authorized to begin operating immediately under a temporary agreement to avoid a gap in service; and

WHEREAS, the City Council of the City of San Antonio now wishes to authorize a short term concession agreement with Catering by Nick D/B/A S. A. Café, LLC. to operate throughout the time period required for the City to conduct a Request for Proposal (RFP) process and select a new long term concessionaire; NOW THEREFORE:

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

Section 1. The City Manager or her designee is hereby authorized to execute a short term concession agreement with Catering by Nick D/B/A S. A. Café, LLC. to operate the City's golf course food and beverage concession operations at the Brackenridge, Willow Springs, Mission Del Lago, Riverside, Cedar Creek and Olmos Basin golf facilities. A copy of said Concession agreement is attached hereto as Attachment I and incorporated herein for all purposes as if set out fully.

Section 2. Commissions generated by the Concession agreement will be deposited into Fund 29090000, Golf Fund, General Ledger 4407200, Svc Charge - Concessions - Food & Beverage, and the appropriate internal order as listed below.

- 226000000004-Riverside
- 226000000058-Willow Springs
- 226000000007-Brackenridge
- 226000000009-Cedar Creek
- 226000000030-Mission Del Lago
- 226000000034-Olmos Basin

Section 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

Section 4. This ordinance shall become effective on and after April 16, 2006.

PASSED AND APPROVED this 6th day of April, 2006.



M A Y O R
PHIL HARDBERGER

Attest: 
City Clerk

Approved As To Form: 
for City Attorney

Agenda Voting Results

Name: 23.

Date: 04/06/06

Time: 03:00:51 PM

Vote Type: Multiple selection

Description: An Ordinance approving a short term concession agreement with Catering by Nick d/b/a S. A. Café, to operate food and beverage concessions at the following golf facilities: Brackenridge, Willow Springs, Mission del Lago, Riverside, Cedar Creek, and Olmos Basin. [Presented by Malcolm Matthews, Director, Parks and Recreation; Frances A. Gonzalez, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4	Not present			
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9	Not present			
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

GOLF COURSE FOOD AND BEVERAGE SERVICE AGREEMENT

This Agreement is entered into by and between the CITY OF SAN ANTONIO (hereinafter called "City"), acting by and through its City Manager; pursuant to Ordinance No. _____ dated _____, and S. A. Café, LLC. (hereinafter called "Concessionaire"), for the operation of a food and beverage service to be located at each Municipal Golf Course (hereinafter called "Golf Course"): Brackenridge Golf Course, Cedar Creek Golf Course, Mission del Lago Golf Course, Olmos Basin Golf Course, Riverside Golf Course, and Willow Springs Golf Course. This agreement is pursuant to the following terms, conditions and covenants

1. INDEPENDENT CONTRACTOR AGREEMENT

- 1.1 CITY hereby licenses Concessionaire to operate a food and beverage service pursuant to the provisions contained herein from the kitchen and dining areas at each Golf Course clubhouse (the "Premises"), and on the Golf Courses through mobile vending carts.
- 1.2 The Food and Beverage operation shall be provided to the general public and golfers enjoying the facilities.
- 1.3 Concessionaire shall be an independent contractor and not an employee of City.

2. DEFAULTS AND REMEDIES

- 2.1 The following events shall be deemed to be events of default by Concessionaire under this Agreement:
 - 2.1.1 Concessionaire shall fail to pay any fees provided for in this Agreement, including but not limited to the Concession fee provided for in the Article "Compensation To The City," and such failure shall continue for a period of ten (10) days following **the date on which the fee is due and owing.**
 - 2.1.2 Concessionaire shall fail to comply with any term, provision, or covenant of this Agreement, other than the payment of fees, and shall not cure such failure within thirty (30) days after written notice thereof to Concessionaire.
- 2.2 Upon the occurrence of an event of default as heretofore provided, City has the right, at its option to declare this Agreement, and all rights and interests created by it, terminated. Upon City electing to so terminate, this Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or City, its agents or attorney has the right, at its option, to resume possession of the Golf Course Clubhouse kitchen and dining areas without relieving Concessionaire of any obligation hereunder related to commission still due and owing in this Agreement, or any extension thereof, as applicable.

- 2.3 Any termination of this Agreement as herein provided, does not relieve Concessionaire from the payment of any sum or sums that are due and payable to City hereunder, or any claim for damages then or theretofore accruing against Concessionaire hereunder, or any such sum or sums or claim for damages by any remedy provided for by law, or prevent City from recovering damages from Concessionaire for any default thereunder. All rights, options and remedies of City contained in this Agreement shall be cumulative of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Agreement. No waiver by City of a breach of any of the covenants, conditions or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

3. TERM OF THE AGREEMENT

- 3.1 The term of this Agreement shall coincide with the time period required for the City to conduct a Request for Proposal (RFP) and select a new Golf Course Food and Beverage Concessionaire, beginning immediately upon execution of the City and ending, unless sooner terminated pursuant to the provisions of Articles 2, on the specific date set by the City in a notification to Concessionaire that the RFP has been concluded. Notwithstanding the preceding, the Term shall in no case be shorter than three (3) months and in no case shall the City provide Concessionaire less than 30 days notice from the end of the RFP process until the date specified as the end of the Term.

4. COMPENSATION TO THE CITY

- 4.1 Concessionaire agrees to pay to the City, throughout the term of this Agreement, 9.00% of all Gross Sales from this food and beverage concession operations which include but is not limited to, mobile vending sales, and event or catering sales, including third-party catered events, which are subject to special provisions set out below. In addition, in the event that the Concessionaire requires a beverage cart, the Concessionaire agrees there will be a \$20.00 daily rental fee per beverage cart. The City agrees to repair and maintain any broken or damaged carts.
- 4.2 "Gross Sales" is defined as (1) the aggregate amount each calendar month of all Clubhouse food and beverage service sales and (2) the aggregate amount each calendar month of all mobile services of food and beverage, all other items made and/or sold at the contracted Premises. The aggregate "Gross Sales" excludes actual sales tax paid. Mixed Beverage Gross Receipts Taxes, as defined in the Texas Administrative Code, shall not be calculated as a deduction from Gross Receipts. Concession food and beverage services include, but are not limited to, items prepared on and off the Premises, including delivery, "food-to-go" orders, and sales which are catered events, including catering fees and delivery fees not at the Clubhouse or adjacent Golf Course ("off-premises") that Concessionaire provides in whole or part through the Contracted Premises, including by telephone, fax or other means of electronic transmission, AND catered or delivered there from, before, during, and after Concession operation hours, for cash, credit, or otherwise, of every kind, name or nature

regardless of when or whether paid or not, together with the aggregate amount of all exchanges of goods, wares, merchandise or services for like property or services, at the selling price thereof, as if the same had been sold for cash or the fair and reasonable value thereof, whichever is greater. Additionally, Concessionaire will provide to the Director, for approval, copies of established cash handling procedures.

- 4.3 Percentage to City for catered events shall not be less than the percentage of Concessionaire-provided food and beverage service sales.
- 4.4 Concessionaire shall make aforesaid payments to City no later than the tenth (10th) day of each month for the preceding business month. Said payments shall be submitted to:

City of San Antonio
Treasury Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Accompanying aforesaid monthly payments to the City shall be a Gross Sales Report, prepared by Concessionaire, in form and content acceptable to City as herein prescribed. A copy of the Gross Sales Report shall also be sent to the Director or his designee for the purpose of contract financial and performance monitoring. The purpose of said monthly Gross Sales Report is to provide the basis for computation of Concessionaire's monthly payments to the City. In addition to retail sales figures from food and beverage (both alcoholic and non-alcoholic) concession operations, said monthly Gross Sales Report shall include Concessionaire's sales from mobile vending concessions, and sales from special and catered events, including those catered by third parties.

5. FOOD AND BEVERAGE CONCESSION OPERATION

- 5.1 Concessionaire agrees to maintain operating hours that coincide with the golf facilities' hours of operation.
- 5.2 A mobile refreshment vehicle containing snack food and beverages will be available on a daily basis. This refreshment vehicle will be operated from 10:00 a.m. until 4:00 p.m. daily. This refreshment vehicle may operate longer or shorter due to holidays, seasonal play, busy golf play days, and/or heavy and/or busy tournament schedule which will be determined by the Golf Manager. This refreshment vehicle will not be operated during inclement weather. Determination of longer or shorter hours or weather issues will be at the direction of the Golf Manager with 24 hour notice for longer hours and immediate notice relating to weather conditions.
- 5.3 Concessionaire must use a daily accounting system, approved in advance by the Director, that shall correctly and accurately measure, account for, and document all Gross Sales and be capable of generating monthly, quarterly, and annual financial reports of all Gross Sales, less sales tax, generated each year. Every effort should be made to capture sales from catered and special events, mobile concession receipts. Signed cashier's reports shall be included as part of Concessionaire's daily accounting system in order to ensure that

appropriate cash handling procedures are being followed. This report will be available for review by City staff upon request.

- 5.4 Concessionaire shall maintain such records for at least five (5) years following the end of the calendar year in which they are generated.
 - 5.4.1 Prior to commencement of operations hereunder, Concessionaire shall provide City with written documentation of proposed sales control system related to this Agreement, including examples of reports, journals, ledgers, forms, etc. Thereafter, Concessionaire shall provide to City updated documentation of its revenue control system. The City will require, during the term of this Agreement, that Concessionaire engage an independent CPA to report on Concessionaire's management's assertion about the effectiveness of Concessionaire's revenue control system.
- 5.5 Concessionaire will be responsible for the cleanliness of all food preparation and serving areas, as well as the tabletops and floor spaces in the eating areas, and shall maintain the Premises in a clean and sanitary condition at all times, which condition must conform with Concession minimum standards mandated by the City's San Antonio Metropolitan Health District.
- 5.6 City is responsible for the cleanliness of the eating area walls, windows, light fixtures and the common area restroom facilities. Excluded are the tabletops, floor spaces, and any accompanying condiment containers.
- 5.7 City agrees to furnish ice machines for each golf course. If the Concessionaire needs ice while the ice machine is broken, the City of San Antonio will furnish ice at no cost to the Concessionaire.
- 5.8 The Concessionaire shall also supply and maintain, at its own expense, any necessary and incidental kitchen and dining room appliances, equipment and/or paraphernalia necessary to insure that the food and beverages served are acceptable for both the food service operation and a particular catered event, including, but not necessarily limited to, chairs, tables, and individual linen. All equipment that is provided solely by Concessionaire shall remain the property of the Concessionaire and may be removed by the same at termination of the Concession Agreement with the City, subject to the terms of said Agreement. See Attachment A for City's Inventory List.
 - 5.8.1 Concessionaire may remove item(s) of equipment that the Concessionaire has installed which are not permanent fixtures, at his/her discretion, prior to the termination of the Concession Agreement, so long as the removed item(s) does not hinder efficient and continuous food and beverage operations.
 - 5.8.2 Catered events, unrelated to golf activities ("special events") scheduled by Concessionaire must be submitted to Director for written approval at least seven (7) days before the function.

- 5.8.3 City will have the right to authorize the placement of vending machines on the Premises under a separate contract. City shall not charge less for like-sized products vended in the machines than the Concessionaire's pricing. See Attachment B for Vending Machine Locations.
- 5.9 **The sale or consumption of Alcoholic Beverages at the Brackenridge Golf Course Clubhouse or any part of Brackenridge Golf Course is strictly prohibited. Notwithstanding any other provision of this agreement, violation of this section 5.7 by Concessionaire shall be sufficient for the City to immediately terminate this agreement.**
- 5.10 Where locations allow the sale and consumption of alcoholic beverages, Concessionaire must meet all state and local alcoholic drink licensing requirements. The City shall approve all state permit applications, such as those for "Beer and Wine," or "By the Drink."
- 5.10.1 Copies of all current Texas Alcoholic Beverage Commission (TABC) permits must be provided to Director.
- 5.10.2 At locations where alcohol is sold, Concessionaire will require the applicable employees to take the TABC-approved "seller/server" certification course.
- 5.11 All items sold and distributed by the Concessionaire shall be of First Class (Grade "A") quality, and all services provided by the Concessionaire shall be rendered courteously, efficiently and in a business-like and accommodating manner.
- 5.11.1 The City reserves the right to prohibit the sale of any item that it deems objectionable and shall have the right to order the improvement of the quality of the merchandise or the services rendered. Cigarettes are not to be sold.
- 5.11.2 The Director reserves the right to make reasonable objections to the food or drinks served or other items sold or otherwise used or distributed the service in the operation, the number of staff available for service, and the character of the appearance, cleanliness and condition of the Premises.
- 5.12 After the contract is awarded and initial pricing established, with City approval, any anticipated price increases for any item sold as described above will require advance review and subsequent written approval by the Director of the Parks and Recreation Department (Director) before implementation.
- 5.12.1 Concessionaire shall adhere to a system-wide pricing structure as it relates to the prices food and beverage items. Prices shall remain uniform amongst all courses through out the term of this Agreement.
- 5.12.2 Concessionaire may run reduced price specials and promotions consistent with good business practices. Such specials may result in temporary price differences between courses but in no case shall such price differences last more than 15 days.

- 5.12.3 Concessionaire shall prominently post current food and beverage menu(s) and prices.
- 5.13 Concessionaire shall comply with all building, plumbing, electrical and other applicable codes and regulations in the installation and operation of his food and beverage related equipment.
- 5.14 Food and beverage concession shall not be used to store any supplies, materials, or equipment not used in the food and beverage operation.
- 5.15 Concessionaire must provide a sufficient number of qualified employees to insure prompt customer service. All food and beverage concession employees shall comply with and be subject to applicable health codes, rules and regulations.
- 5.16 Concessionaire must comply with all federal and state laws and City ordinances and codes applicable to the food and beverage concession including payment of all federal, state and local taxes, fees, licenses and permits.
- 5.17 Concessionaire is responsible for controlling and/or policing of unauthorized food and beverages brought onto the golf course by golfers and their guests.
- 5.18 Concessionaire may contact Park Police or other local law enforcement officers to assist his efforts in controlling unauthorized food and beverages brought onto the golf course(s) when a patron of the course(s) violates City Ordinance No. 96180 and refuses to cooperate with Concessionaire's instructions. San Antonio Park Police may be reached at the following telephone number for non-emergency assistance: **210-207-7484**

6. IMPROVEMENTS BY CONCESSIONAIRE

- 6.1 Concessionaire shall make no physical construction, improvements or alterations to the Golf Course Clubhouse kitchen and dining areas or other locations on leased premises without prior review and written approval of plans therefore by the Director. All costs and expenses of such approved physical construction, improvements, or alterations to the Golf Course initiated by Concessionaire shall be at Concessionaire's sole cost and expense.
- 6.2 All permanent improvements and/or alterations made by Concessionaire become the property of City upon completion thereof.
- 6.3 Concessionaire covenants that he shall not bind, or attempt to bind, City for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on or about the Clubhouse kitchen and dining areas.
- 6.4 Concessionaire has had full opportunity to examine the Clubhouse facilities and acknowledges that there is in and about it nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. Concessionaire's use of the Clubhouse kitchen and dining areas for the purposes authorized herein shall be conclusive evidence of his acceptance thereof in good

order and satisfactory condition, and Concessionaire hereby accepts the kitchen and dining areas in their present condition as suitable for the purposes for which this Agreement prescribes.

- 6.5 Concessionaire agrees that no representations respecting the conditions of the Golf Courses' Clubhouse kitchen and dining areas and no promises to construct, reconstruct, alter, repair or improve same, either before or after the execution hereof, have been made by City or its agents to Concessionaire unless the same are contained herein or made a part hereof by specific reference herein. City expressly denies making any warranty as to the suitability of the Licensed Premises for any purpose. Licensee acknowledges that City has made no representations regarding the suitability of the premises for Licensee's purposes.

7. UTILITY AND MAINTENANCE RESPONSIBILITIES

- 7.1 The City agrees to waive all utilities at all golf courses for the term of this Agreement. If the Concessionaire wants cable or dish television service, it is at the Concessionaire's expense.
- 7.2 The City agrees to repair any broken or damaged kitchen equipment owned by the City at each golf course location, and to maintain the equipment for the term of this Agreement.
- 7.3 Concessionaire agrees to secure permanent Certificates of Occupancy from the City of San Antonio, Development Services Department.
- 7.3.1 Concessionaire agrees, at Concessionaire's sole cost and expense, to provide for all necessary safety inspections and maintenance of vent hoods, grills, grease traps and fire-suppression systems associated with the food and beverage concession service.
- 7.4 With the exception of areas delineated in Section 5.5 of this Agreement, the Concessionaire shall be responsible for the prompt removal of waste, trash and garbage from the Premises and will keep Premises clean and washed at all time. Concessionaire will be responsible for trash being picked up and properly disposed of. In addition, Concessionaire will arrange for all grease traps to be cleaned and maintained on a regular schedule.
- 7.5 Concessionaire agrees, at Concessionaire's sole cost and expense, to maintain and keep the interior of the Contracted Premises, including, but not limited to, interior plumbing, plumbing fixtures, plumbing lines and plumbing connections and interior electrical fixtures, lamps, bulbs, wiring and connections, and interior walls, flooring, doors, plate glass and other interior improvement, as well as, all appliances, tables and chairs, in good working order and repair and in a good, clean, safe and sanitary condition (usual wear, tear, acts of God, or unavoidable accident, only excepted).
- 7.6 The City, the Director and/or his designee shall have access to the Concession Premises during its regular business hours of operation for the purpose of inspecting the conditions of the facility and for making repairs, when applicable and necessary.

8. INDEMNIFICATION

- 8.1 **CONCESSIONAIRE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONCESSIONAIRE'S** activities under this **AGREEMENT**, including any acts or omissions of **CONCESSIONAIRE**, any agent, officer, director, representative, employee, consultant or subcontractor of **CONCESSIONAIRE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONCESSIONAIRE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **CONCESSIONAIRE** known to **CONCESSIONAIRE** related to or arising out of **CONCESSIONAIRE'S** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **CONCESSIONAIRE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONCESSIONAIRE** of any of its obligations under this paragraph.
- 8.2 It is the **EXPRESS INTENT** of the parties to this **AGREEMENT**, that the **INDEMNITY** provided for in this section (Section 10), is an **INDEMNITY** extended by **CONCESSIONAIRE** to **INDEMNIFY**, **PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **CONCESSIONAIRE** further **AGREES TO DEFEND**, **AT ITS OWN EXPENSE** and **ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above
- 8.3 Concessionaire specifically understands and agrees that City accepts no liability for any loss by Concessionaire of funds/revenues, merchandise, equipment, supplies, materials or other goods owned by Concessionaire whether due to theft, robbery, break-in, vandalism, acts of God or any other causes.

9. INSURANCE REQUIREMENTS

- 9.1 Any and all employees, representatives, agents or volunteers of CONCESSIONAIRE while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of CONCESSIONAIRE only and not of the CITY. Any and all claims that may result from any obligation for which CONCESSIONAIRE may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of CONCESSIONAIRE.
- 9.2 Prior to the commencement of any work under this AGREEMENT, CONCESSIONAIRE shall furnish an original completed Certificate(s) of Insurance to the CITY'S Director, Parks and Recreation Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department, and no officer or employee shall have authority to waive this requirement.
- 9.3 The CITY reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
- 9.4 A CONCESSIONAIRE'S financial integrity is of interest to CITY, therefore, subject to CONCESSIONAIRE'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONCESSIONAIRE shall obtain and maintain in full force and effect for the duration of the Lease Agreement, and any extension hereof, at CONCESSIONAIRE'S sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-(vii.) or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory \$500,000/\$500,000/\$500,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate or its equivalent in umbrella or excess liability coverage
	a. Premises/Operations	
	b. Independent Contractors	
	c. Broad Form Contractual Liability	
	d. Products/completed operations	
	e. Broad form property damage, to include fire legal liability	
	f. Personal Injury	
3.	Comprehensive Automobile Liability (if appl.)	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
	a. Owned/Leased Vehicles	
	b. Non-owned Vehicles	
	c. Hired Vehicles	
4.	Motor truck cargo insurance including loading and unloading coverage; written on an inland marine form and an all risk basis (if applicable)	\$1,000,000
5.	Property Insurance: For physical damage to the property of CONCESSIONAIRE, including improvements and betterment to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the actual cash value of Concessionaire's property
6.	Liquor Liability	\$1,000,000 per Occurrence
7.	Liquor Host Liability	\$1,000,000 per Occurrence

- 9.5 The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the CITY, the CONCESSIONAIRE shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.
- 9.6 CONCESSIONAIRE agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 9.7 Name the CITY and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- 9.7.1 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
- 9.7.2 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.
- 9.8 CONCESSIONAIRE shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

- 9.9 If CONCESSIONAIRE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Lease Agreement. Procuring of said insurance by the CITY, however, is not the exclusive remedy for failure of CONCESSIONAIRE to maintain said insurance or secure said endorsements. In addition to any other remedies the CITY may have upon CONCESSIONAIRE'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONCESSIONAIRE to stop work hereunder, and/or withhold any payments(s) which become due to CONCESSIONAIRE hereunder until CONCESSIONAIRE demonstrates compliance with the requirements hereof.

- 9.10 Nothing herein contained shall be construed as limiting in any way the extent to which CONCESSIONAIRE may be held responsible for payments of damages to persons or property resulting from CONCESSIONAIRE'S or its subcontractors' performance of the work covered under this Lease Agreement.
- 9.11 All personal property placed in the Leased Premises shall be at the sole risk of CONCESSIONAIRE. CITY shall not be liable, and CONCESSIONAIRE waives all claims for any damage either to the person or property of CONCESSIONAIRE or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. CONCESSIONAIRE shall save and hold harmless CITY from any claims arising out of damage to CONCESSIONAIRE'S property or damage to CONCESSIONAIRE'S business, including subrogation claims by CONCESSIONAIRE'S insurers.

10. CONTRACT OVERSIGHT

- 10.1 The Director of the Parks and Recreation Department, or his designee, shall be City's Representative for actions taken under this Agreement. Concessionaire's Representative shall be Manuel H. Garza, Owner.

11. SURRENDER OF POSSESSION

- 11.1 Concessionaire shall, on or before the expiration or termination of the Agreement, peaceably and quietly leave, surrender and yield up to City the Premises and City, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Clubhouses and possess itself thereof, by force, summary proceedings, ejectment or otherwise, and may remove Concessionaire and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Clubhouse kitchens and dining areas. All Concessionaires' personal property shall be removed by Concessionaire at the expiration or termination date provided that Concessionaire shall promptly repair any damage to the Premises caused by such removal. Notwithstanding the foregoing, any of Concessionaire's personal property which is either permanently affixed or is an integral part of and used in connection with the maintenance or operation of the improvements shall remain in the Premises and shall remain the property of City. Any of Concessionaire's personal property which shall remain in the Premises after termination may, at the option of City, be deemed to have been abandoned by Concessionaire and either may be retained by City as its Property or be disposed of, without accountability, in such manner as City Representative may determine necessary, desirable or appropriate, and Concessionaire, upon demand, shall pay the cost of such disposal.

12. RECORDS, REPORTS, AND AUDIT RIGHTS

- 12.1 Concessionaire shall maintain, in the City of San Antonio, Texas, books and records reflecting his operations hereunder in accordance with generally accepted accounting principles. Such books and records, together with any other documentation necessary for verification of Concessionaire's compliance with the terms of this Agreement, shall be made available to Director or any of his authorized representatives, upon request. The Parks and Recreation Department shall have the right to conduct an audit, examine and make excerpts or transcripts from said books, records and documentation to verify the amount of Gross Sales reported and Compensation paid to City each year.
- 12.2 All applicable records and accounts of Concessionaire, together with all supporting documentation, shall be preserved in Bexar County, Texas, by Concessionaire for five (5) years after the final payment under this Agreement or until all audits, if any, are complete and findings on all claims have been finally resolved, whichever is the greater period of time. City, if it elects, has the right to require that any or all of such records and accounts be submitted for audit to City or to a certified public accountant to be selected by City. If it shall be determined, as a result of such audit, that there has been a deficiency in the payments due to City hereunder, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if payments have been understated by more than two percent (2%) and City is entitled to an increase in payments due hereunder as a result of such understatement, then Concessionaire shall pay the cost of such audit by City or City's designated auditor. In the event Concessionaire shall be delinquent in furnishing to City any monthly statement or other statements required hereunder and shall not furnish said statements to City within two (2) days following the request for same, then Concessionaire shall be automatically in default of this Agreement, and shall constitute grounds for termination of this Agreement by City.

13. TAXES AND LICENSES

- 13.1 Concessionaire shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees and applicable employment taxes which are now or may hereafter be levied upon Concessionaire, or upon the business conducted on the Golf Course by Concessionaire, or upon any of Concessionaire's property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by Concessionaire. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Agreement by City.

14. ASSIGNMENT AND SUBLETTING

- 14.1 Concessionaire shall not assign this Agreement or any portion hereof, or allow same to be assigned by operation of law or otherwise, or sublet the Agreement or any part thereof. Any assignment or subletting by Concessionaire shall constitute grounds for termination of this Agreement by CITY.
- 14.2 Without the prior written consent of Concessionaire, City shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Agreement and in the Golf Course Clubhouses referred to herein; and to the extent that such assignee assumes City's obligations hereunder, City shall, by virtue of such assignment, be released from such obligation.

15. CONCESSIONAIRE'S EMPLOYEES

- 15.1 Concessionaire shall provide and train, at his sole cost and expense, a sufficient number of employees to comply with the Agreement obligations hereunder. Such employees of Concessionaire shall in no way be construed as City employees nor shall they be entitled to any compensation or benefits from or by the City.
- 15.2 Concessionaire shall develop and enforce a policy of employee standards for on-the-job conduct, appearance and demeanor.
- 15.2.1 Employees must be properly attired in dress that is clean and neat at all times.

16. NON-DISCRIMINATION

- 16.1 Discrimination based on race, color, sex, age, religion, disability, political affiliation, belief, or national origin, directly or indirectly, in employment practices or in the use of or admission to the Golf Course Clubhouse Food and Beverage Service is prohibited.

17. MINIMUM WAGE

- 17.1 Concessionaire shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and City ordinances to persons employed in his operations hereunder.

18. CONFLICT OF INTEREST

- 18.1 Concessionaire acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or

his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 18.2 Concessionaire warrants and certifies, and this lease is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

19. CITY RESERVATIONS

- 19.1 City reserves the right to approve or disapprove any food and beverage service and/or special events scheduled by Concessionaire; any function that requires a third party vendor must receive written approval from the Director ten (10) days prior to the event.

20. SEPARABILITY

- 20.1 If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable there be added as a part of this Agreement a legal, valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

21. NOTICES

- 21.1 Notices to City required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, first class, U.S. Mail, postage pre-paid, addressed to the City Clerk, P.O. Box 839966, San Antonio, Texas 78283-3966, and to the Director of Parks and Recreation, P.O. Box 839966, San Antonio, Texas 78283-3966, or to such other address as may have been designated from time to time in writing by the City Manager of the City of San Antonio. Notices to Concessionaire shall be deemed sufficient if in writing and mailed, first class, U.S. Mail, postage pre-paid, addressed to Concessionaire at the address currently on file with the Director or at such other address on file with the City Clerk as Concessionaire may provide from time to time in writing to CITY. Current address of record:

Catering by Nick
Manuel H. Garza, Owner
1715 N. Trinity
San Antonio, Texas 78201
210.737.0000 (voice)
210.737.0065 (fax)

22. PARTIES BOUND

- 22.1 The covenants and agreements herein contained shall inure to the benefits of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns, and if there shall be more than one party designated as Concessionaire in this Agreement, they shall each be bound jointly and severally hereunder.

23. TEXAS LAW TO APPLY

- 23.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

24. GENDER

- 24.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

25. CAPTIONS

- 25.1 The captions contained in this Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

26. ENTIRE AGREEMENT

26.1 This Agreement, together with the authorizing ordinance, constitutes the entire Agreement between the parties hereto respecting the subject matter herein, and any other written or parol agreement with CITY regarding the subject matter herein is hereby expressly waived and terminated by Concessionaire. It is understood that the Charter of the City requires that all contracts with the CITY be in writing and adopted by ordinance. Further, no amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto and approved by such an ordinance.

IN WITNESS WHEREOF, we have affirmed our signatures this ___ day of _____, 2006.

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

ATTEST:

City Clerk

By: _____
Sheryl Sculley, City Manager

APPROVED AS TO FORM:

S. A. Café, LLC.

City Attorney

By: _____

Title: _____