

CONCESSION SERVICES AGREEMENT FOR THE ENRIQUE MORENO COUNTY COURTHOUSE

THIS CONCESSION SERVICES AGREEMENT FOR THE ENRIQUE MORENO COUNTY COURTHOUSE is entered into on the ___ day of November 2024 between the COUNTY OF EL PASO, TEXAS, A political subdivision of the State of Texas (hereinafter the "County") and GLIA'S COFFEE, LLC. (hereinafter the "Concessionaire"). This Concession Services Agreement and the provisions and requirements under RFP 24-018 ("RFP"), which is incorporated by reference for all purposes, comprise the entire agreement between the parties (hereinafter the "Agreement"). To the extent that any provisions or requirements under RFP 24-018 conflict with the provisions of this Concession Services Agreement, the Concession Services Agreement shall control. This Agreement is effective as of the date executed by both parties (hereinafter the "Effective Date").

REC I T A L S:

The County owns and operates a coffee shop (hereinafter the "Facility") located at 500 E. San Antonio, El Paso, Texas, on the third floor of the Enrique Moreno County Courthouse ("Courthouse") which serves the County employers and employees, elected officials, and the public. This contract strictly covers the agreement to provide concessionaire services to the Facility.

Concessionaire will provide beverage, food, and related concession services.

NOW, THEREFORE, in consideration of the foregoing and the terms, provisions and conditions set forth herein, the parties hereto, expressly intending to be legally bound hereby, agree as follows:

1. Definitions.

1.1 "Services" shall mean any items and any and all kinds, types, and categories of coffee, food, and coffee products, and non-alcoholic beverages, which presently are or may at any time during the term of this Agreement be sold or provided in, at, or from the Facility. The sale or consumption of alcoholic beverages is prohibited at the Facility and alcoholic beverages (including beer or wine) are not included in the definition of "Services."

1.2 "Gross Receipts" shall mean the gross revenues received by Concessionaire at the Facility from categories of Services listed as **Exhibit A** attached hereto, that are sold or provided there, whether for cash or credit, but excluding federal, state, and local sales, excise and equivalent taxes levied upon Services sales.

1.3 "Contract Year" shall mean the period beginning on the Effective Date and ending 365 days from the Effective Date of each succeeding calendar year during the term of this Agreement. A Contract Year may be pro-rated.

2. Term and Commencement Date.

The term of the Agreement (hereinafter the "Term") shall be six (6) years commencing on the Effective Date with two (2) two (2) year options to renew. County shall provide at least 60 days' written notice of its intent to exercise an option to renew. The Agreement shall not exceed ten (10) total years.

3. License and Grant.

3.1 The County hereby grants and licenses to Concessionaire for and throughout the term of this Agreement and all extensions and renewals thereof, the right to use and occupy the Facility's coffee shop, serving area, and beverage and food preparation area located on the third floor of the Courthouse, and related areas, including but not limited to all such areas, improvements, furnishings, trade fixtures, and equipment owned by the County located at the Facility as of the Effective Date of this Agreement.

3.2 The County hereby grants and licenses to Concessionaire the right to provide and sell the "Services" at the Facility, including but not limited to, the operation of the coffee shop, selling coffee, non-alcoholic beverages, and food, except as otherwise provided herein. The County retains the rights to control any and all types of sales within the Facility outside of the coffee shop areas. Failure to provide any service essential to operation of the Facility as determined by the County will be considered a breach of this Agreement.

3.3 County grants Concessionaire the non-exclusive right to operate beverage and food service on or for the Facility only. This provision does not prevent County from installing and operating, or engaging others to install and operate, vending machines for food, beverage, confections, and similar products within the Courthouse. This provision does not prevent the County from installing and operating, or engaging others to install and operate, restaurants for beverage and food service within the Courthouse.

3.5 The Commissioners Court currently does not permit the sale or consumption of alcoholic beverages at the Facility. In the event that alcoholic beverages are permitted in the future, the privilege to sell alcoholic beverages is subject to compliance with applicable laws, including the provisions of the Texas Alcoholic Beverage Code.

3.6 This concession grant does not require or permit continuous operation by Concessionaire, but rather requires that Concessionaire shall provide the beverage and food service and personnel necessary to serve the public during Facility operating hours.

3.7 Concessionaire shall not be required to make available its areas of the Facility or any equipment or trade fixtures to any third party or to the County for use and/or occupancy for the purpose of providing any Services at any time without the approval of both County and Concessionaire.

3.8 The County hereby grants to Concessionaire the non-exclusive right to use all common and other areas, system(s), fixtures, and equipment at the Facility (including but not limited to the related areas) to the extent same shall be reasonably necessary for Concessionaire's sale and provisions of Services, together with all appurtenances now or hereafter associated therewith or necessary for provision of such Services.

4. License Fee.

In consideration of the rights and privileges licensed and granted Concessionaire hereunder:

4.1 Concessionaire agrees to pay to the County as a "License Fee" for each Contract Year the percentages of Concessionaire's Gross Receipts for each Contract Year as listed in **Exhibit A** hereto.

4.2 Concessionaire agrees to pay, without demand, said License Fees and all other sums payable to the County hereunder within 10 days following the close of each month in which payment obligations have arisen under this Agreement.

5. Equipment and Fixtures for Use and Improvements by Concessionaire.

5.1 Concessionaire shall take possession of the improvements, equipment, fixtures, and furnishings (except as otherwise set forth herein) in the areas to be occupied by Concessionaire, which Concessionaire agrees to accept in "as is" condition, on the Effective Date of the Term. Any additional equipment necessary for Concessionaire to perform Services hereunder shall be provided by Concessionaire at its expense.

5.2 Telephone and fax lines will not be provided by the County and will be the responsibility of the Concessionaire if necessary.

6. Financial Accounting and Reporting.

6.1 Accounting. The concessionaire shall maintain for a period of 3 years thereafter, in accordance with generally accepted accounting procedures, such records as may be reasonably necessary for it to accurately record its Facility Gross Receipts and shall provide to the County, on a monthly basis, a financial performance report in a format compatible with and readily available to the County. The general form of the

Concessionaire's sales records shall be subject to reasonable approval of the County for compliance with the provisions of this Agreement and shall be subject to inspection without notice by the County, its officers, agents, employees, and representatives during the regular business hours of the Facility throughout the term hereof and at the Concessionaire's headquarters thereafter. Such inspection shall not unreasonably interfere with Concessionaire's business activities.

6.2 Reporting. Concessionaire's accounting periods during each Contract Year shall be defined as each month during the term of this Agreement and any extension thereof. Within 10 days following the close of each Concessionaire accounting period, Concessionaire shall submit to the County in a form reasonably acceptable to the County, a written report of its Gross Receipts during such period in accordance with the categories set forth herein, which report shall be accompanied by such License Fees and other payments as are owing by Concessionaire for the period.

6.3 Other Requirements for Accounting, Reporting, and Financial Statements:

- a) Concessionaire shall keep completely separate financial records from those of any other enterprise or business activities at locations other than those specified by this contract.
- b) Concessionaire shall use a financial system which conforms to generally accepted accounting principles and practices.
- c) Concessionaire shall maintain complete inventories of concession equipment and other assets including expendable and consumable supplies maintained continuously at the Facility.
- d) Concessionaire shall require receipts for every transaction in addition to the master register tape to be audited.
- e) All received inventory (food, beverage, miscellaneous items) may be verified by County and receipts for all items shall be provided to the County upon request.

7. Duties of Concessionaire.

Concessionaire hereby agrees that throughout the Term of this Agreement it will at its expense comply with the responsibilities listed in the RFP and the following:

7.1 Maintain and provide its Services at the Facility in a manner equivalent to those provided at comparable first-class facilities.

7.2 Provide and/or sell all beverages, food, and all other Services in a fresh and wholesome condition. All beverages and food must meet the minimum food standards listed in the RFP. If, in the reasonable opinion of the County, it is necessary to discontinue the sale of

any item of Service approved for sale because same is undesirable or injurious to the public, Concessionaire shall refrain from offering or providing said item or items.

7.3 Have appropriate food service areas and facilities open and in operation at a minimum from 7:00 a.m. to 1:00 p.m. Monday through Friday. Upon consultation with and written agreement by the County, no areas need be staffed or operated, nor need all areas remain open if the Facility's patronage does not warrant or require same. Concessionaire understands the Facility will remain closed on days approved by the El Paso County Commissioners Court as holidays.

7.4 Provide its Services at prices not higher than those charged at comparable facilities in cities the size of El Paso in areas throughout the southwest and which are agreeable to the County and shall post such prices on suitable menu boards. Concessionaire may request changes in any menu price from County upon 30 days advance written notice and presentation to the County for approval. Said approval shall not be unreasonably withheld. Concessionaire's requested changes shall be deemed approved by the County if no response is given to Concessionaire within 30 days after presentation. Within said 30 days, the County shall have the right to reject such of Concessionaire's changes as may exceed the foregoing standard. Any changes to the menu of available items, pricing, or any type of change in procedure must be submitted in writing to the County for approval. The same process of approval as mentioned above will apply to any requested changes. Final decisions on all pricing and menu of available items rest with the County.

7.5 Maintain the beverage and food preparation and service areas under its control in a clean and sanitary condition, and at the close of each day during which Concessionaire has provided its Services, clean Concessionaire's beverage and food preparation and service areas, and deliver the trash, garbage, litter, and refuse accumulated therein to refuse containers provided by the County and Concessionaire, and located in agreed-upon areas adjacent to the areas under the management of Concessionaire for removal by the County therefrom at the County's expense. However, Concessionaire shall have no responsibility with respect to portions of the Facility not under the exclusive control and use of Concessionaire. All trash, garbage, litter, and refuse removal shall be in compliance with the El Paso County Recycling Program as stated in the RFP.

7.7 Maintain, repair, and replace all improvements, furnishings, fixtures, small wares, equipment, and other items located in the areas under the exclusive control of the Concessionaire. The County shall be responsible for maintenance, repairs, and replacements to only electrical, heating, ventilation, air conditioning, sewer, plumbing and other utility systems throughout the Facility, and the foundation, walls, and roof; provided; however, that Concessionaire shall be responsible for all of the foregoing costs if Concessionaire's negligence caused the need for such repairs or replacements. Concessionaire shall train all staff on proper disposal of food, utensils, napkins, and all

other solids to the appropriate disposal receptacle. Concessionaire shall also train all staff on the proper use of the County's plumbing and sewer system.

7.9 Concessionaire's employees shall at all times reflect personal cleanliness and be clean shaven or properly trimmed, be polite and courteous in their dealings with Facility patrons, be attired in suitable, attractive uniforms of a standard style and color, which uniforms shall be subject to the County's reasonable approval and shall not unreasonably disturb or offend such patrons. Concessionaire employees will wear identification tags. Concessionaire shall supervise its personnel to ensure the practice of said standards of cleanliness, courtesy, and service. Concessionaire personnel shall be subject to all rules and regulations established from time to time by the County.

7.10 Concessionaire shall not discriminate against any of its employees or applicants for employment because of age, sex, handicap, race, creed, color, or national origin. Concessionaire will take affirmative action to ensure that its employees are treated during employment without regard to age, sex, handicap, race, creed, color, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. In serving the public, Concessionaire's employees shall not on the grounds of age, sex, handicap, race, creed, color, or national origin discriminate or permit discrimination or refuse to serve any person or group of persons in any manner prohibited by federal, state, or local laws, rules, and regulations.

7.11 Post in a conspicuous place at each location within the Facility where Services are offered, whether permanent or temporary, a menu including a complete list of prices for all Services then offered for sale.

7.12 Bear all costs and expenses of its operations hereunder, including but not limited to, all wages and labor costs, costs of small wares, inventory and supplies and other charges related to Concessionaire's preparation, sale, and provision of Services, and maintain in commercially acceptable condition all uniforms provided by Concessionaire, which uniforms shall remain the sole and exclusive property of Concessionaire.

7.13 Hold and save the County harmless from and indemnify the County against any and all damage, loss, or liability of every kind whatsoever by reason of any injury to persons and/or property occasioned by any act, omission, neglect or wrongdoing by Concessionaire or by any of Concessionaire's officers, servants, agents, representatives or employees.

7.14 Concessionaire shall, at its own cost and expense, procure and maintain throughout the Term of the Agreement the following insurance in the designated amounts:

Professional Liability: \$1,000,000 for E&O/Professional Insurance

General Liability:

- Each Occurrence \$1,000,000
- General Aggregate \$1,000,000
- Personal & Advertising Injury \$1,000,000 each person
- Premises Medical Expense \$5,000
- Damage to Rented Premises \$500,000 each occurrence
- Products/Completed Operations - Aggregate:

Automobile Liability: \$1,000,000 each occurrence

Worker's Compensation: \$1,000,000/\$1,000,000/\$1,000,000
each accident/disease policy limit/each employee

Cyber Liability: \$1,000,000 per claim and in the annual aggregate (Must include 1st and 3rd party coverage)

The County is to be named as an additional insured (except for Worker's Compensation Insurance), and furnish to the County certificates of insurance, not cancelable or changed except upon 30 days' advance written notice to County.

7.15 Observe and comply with, at its own expense, all statutes, ordinances, orders, regulations, and requirements of all federal, state, and local governments pertaining to Concessionaire's Services at the Facility; provided, however, that Concessionaire shall not be required to make any structural improvements, replacements, or modifications, changes to utility lines or other systems or to any physical areas of the Facility including but not limited to any alterations, additions or modifications as may be required by OSHA, the American's With Disabilities Act, or by building, fire, and related codes, except to the extent that Concessionaire's negligence shall have caused such condition(s) in violation of the foregoing.

7.16 Obtain all licenses and permits required for it to perform hereunder and correct promptly any violation thereof.

7.17 Pay all taxes arising by reason of Concessionaire's property, occupancy, use, revenues, sales, and Gross Receipts hereunder, including all sales and equivalent taxes.

8. Duties of the County.

The County hereby agrees that its responsibilities shall be as follows:

8.1 For and throughout the Term and all extensions and renewals thereof, Concessionaire shall have the full, quiet, and unobstructed use, and quiet enjoyment of the Facility's areas licensed to Concessionaire, along with all improvements, furniture, fixtures and equipment (as granted herein), and the right of Concessionaire to non-exclusively provide its Services at the Facility throughout the Term of this Agreement.

8.2 Consult in good faith, respond in a timely manner and not unreasonably withhold its consent to all requests from Concessionaire pursuant to this Agreement.

8.3 Perform its repair, maintenance and replacement responsibilities as provided in this Agreement.

8.4 The County will provide to Concessionaire without charge throughout the Term and all extensions and renewals thereof, all utilities and utility services (including but not limited to water, electricity, gas, heating, ventilation, air conditioning, and sewage as are reasonably required for Concessionaire's performance.

9. Termination.

9.1 Either party shall have the right to terminate this Agreement upon 30 days' advance written notice in the event that, notwithstanding any other provision of this Agreement:

a) The other party shall fail to observe or perform any covenants, conditions, or agreements to be performed hereunder, but only if such failure(s) shall not have been remedied by the party in default within 30 days following such party's receipt of written notice of said default, except License Fee payments payable hereunder which must be made within 10 days following Concessionaire's receipt of written notice of default from the County; and/or

b) The other party shall institute or have instituted against its receivership proceedings of any kind or nature, insolvency, or bankruptcy proceedings, make an assignment for the benefit of creditors or permit a decree or order to remain undischarged or unstayed for a period of 60 days adjudicating it bankrupt or insolvent, or upon the appointment of a receiver (of any kind for any purpose) or a trustee for its property.

9.2 County may terminate the Agreement at any time by giving at least thirty (30) days prior written notice.

9.3 The failure of the County or Concessionaire, as the case may be, to seek redress for violation(s) of or to insist upon the strict performance of any provision, term, or condition

of this Agreement or of any rules and regulations established by the County shall not constitute a future waiver thereof or in any way limit or prevent subsequent enforcement of any such term, provision, condition, rule, or regulation in any other circumstance.

9.4 In the event the Facility for any reason is closed or becomes substantially untenable for the holding of events to which the public is admitted, the Term of this Agreement and the County's and Concessionaire's respective rights, privileges, and obligations hereunder shall abate, with the Term resuming at such time as the Facility is opened and becomes tenable in the manner existing before such occurrence. Provided, however, that in the event the Facility is untenable or is closed and fails to open for a period of six months following the occurrence of any such event or condition, this Agreement may be terminated by Concessionaire upon 30 days' advance written notice given to the County at any time prior to the reopening of the Facility.

9.5 Concessionaire agrees that at the expiration of the Term or termination of this Agreement, it will return to the County, the Facility and all areas and equipment furnished to it in the same condition they were as of the commencement date of this Agreement, except for (1) ordinary wear and tear; (2) loss or damage occurring without the negligence of Concessionaire; and (3) damage occurring through fire, flood, theft or other unavoidable occurrences without the negligence of Concessionaire.

9.6 Further, upon expiration or termination of the Agreement, Concessionaire shall either: (1) arrange for an inspection by the City/County Health Department of the areas occupied by Concessionaire and pay any required fee; or (2) arrange for and pay for such areas to be cleaned by a professional cleaning service. If Concessionaire fails to pass inspection by the City/County Health Department, Concessionaire shall be responsible for promptly arranging for re-inspection and ensuring that the re-inspection is passed. Any professional cleaning service to be used shall be approved in advance in writing by the County Facilities Director. If inspection or re-inspection by the City/County Health Department is not available within a reasonable period of time, the County Facilities Director may waive such (re)inspection in writing.

10. Notice.

Notice is hereby deemed to be effective for all purposes two (2) days after delivery by a party to the United States Post Office or upon the date of hand delivery. All mailed notices shall be in writing, by certified mail, return receipt requested, postage prepaid, as follows, or to such subsequent addresses as shall be supplied by a party from time to time:

If to the County, addressed to:

COUNTY OF EL PASO
ATTN: FACILITIES DIRECTOR
500 E. San Antonio St. Ste. M-1
El Paso, Texas 79901

If to CONCESSIONAIRE, addressed to:

GLIA'S COFFEE, LLC.
ATTN: _____
ADDRESS: _____

11. Interest in Real Estate.

The County and Concessionaire acknowledge that this Agreement conveys no interest in real estate.

12. Surrender of Premises.

Concessionaire acknowledges that upon termination of this Agreement, the County withdraws any permission for the use of the Facility and Concessionaire agrees that upon termination of this Agreement it will turn over the Facility to the County on demand. In the event that it is necessary for the County to file a suit for forcible detainer, Concessionaire agrees to pay reasonable attorney's fees and costs of suit.

13. Assignment.

This Agreement may not be assigned by Concessionaire except upon the express written consent of the County. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Term shall be unaffected by any change of ownership or transfer of the County's interest in or management of the Facility or any part thereof.

14. Miscellaneous Provisions.

14.1 Force Majeure and Other Contingencies. Except as expressly provided herein, neither party shall be obligated to perform hereunder and neither shall be deemed to be in default if performance is prohibited by (1) fire, earthquake, flood, act of God, riot, civil commotion, labor dispute(s) or related problems, pandemic, or other occurrence of condition of like nature, or (2) any law, ordinance, rule, regulation or order of any public

or military authority stemming from the existence of economic controls, riot, hostilities, war or any other governmental laws and regulations.

14.2 Full Agreement. This Agreement constitutes the full and complete understanding of the parties. This Agreement may not be amended or modified except by a writing executed by both parties hereto.

14.3 Law Governing Contract. This Agreement shall be governed by the laws of the State of Texas and venue shall lie in El Paso County, Texas.

14.4 Authority to Contract. The parties hereby represent, warrant, and guarantee that they are each duly authorized to enter into this Agreement, and those individuals executing this Agreement on behalf of each of the parties have the right and authority to so act.

14.5 Independent Contractor. Nothing contained herein shall be construed as creating the relationship of employer and employee between the County and the Concessionaire. The Concessionaire shall be deemed at all times to be an independent contractor. The County shall not be subject to any obligations or liabilities of the Concessionaire incurred in the performance of this Agreement.

14.6 Severability. If any part of this Agreement is held to be unenforceable, the rest of the Agreement shall continue in full force and effect to the extent that it substantially reflects the agreement contemplated by the parties.

IN WITNESS WHEREOF, the parties hereto have caused their officers to enter into and execute this Agreement the day and year first above written.

EL PASO COUNTY

COUNTY JUDGE

RICARDO A. SAMANIEGO

DATE

GLIA'S COFFEE, LLC.

MANAGER

DATE

CONCESSIONAIRE

EXHIBIT A

Concessionaire's License Fees

Percentage of Gross Receipts from all Concessionaire Services and Catering:

Year 1: 10% of Gross Receipts

Year 2: 15% of Gross Receipts

Year 3-6: 20% of Gross Receipts

1st Option to Renew: 20% of Gross Receipts

2nd Option to Renew: 20% of Gross Receipts