

RESOLUTION R-2024-42

**A RESOLUTION AUTHORIZING THE EXECUTION OF A SERVICE AGREEMENT
FOR FOOD AND BEVERAGE CONCESSIONAIRE SERVICES AT THE WHEATON PUBLIC LIBRARY
BETWEEN THE CITY OF WHEATON AND AWAKE WHEATON LLC**

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Wheaton Public Library ("Library"), through the City, solicited a Request for Proposal package (RFP Number 24-78) from companies desirous of providing certain food and beverage concession services in the café area in the Library; and

WHEREAS, the Library received two proposals, conducted interviews, and has determined the proposal received from Awake Wheaton LLC to be in the best interest of the Library and the City; and

WHEREAS, on April 15, 2024, the Library Board adopted a motion recommending to the City to enter into a service agreement with Awake Wheaton LLC for the provision of concessionaire services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, Illinois that:

The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to, the Service Agreement for Food and Beverage Concessionaire Services between the City and Awake Wheaton LLC, a copy of which is attached hereto.

ADOPTED this 6th day of May 2024.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Clousing
Councilwoman Robbins
Councilman Weller
Councilman Barbier
Councilwoman Bray-Parker
Mayor Suess

Nays: None

Absent: Councilman Brown
Motion Carried Unanimously

**SERVICE AGREEMENT FOR FOOD AND BEVERAGE CONCESSIONAIRE
SERVICES AT THE WHEATON PUBLIC LIBRARY
BETWEEN THE CITY OF WHEATON AND AWAKE WHEATON LLC**

This Agreement is made this 7th day of May, 2024 by and between the City of Wheaton, an Illinois home-rule municipality and Awake Wheaton LLC.

WHEREAS, the Wheaton Public Library is owned by the City of Wheaton; and

WHEREAS, the Library Board has previously determined that it is in the best interest of the general public, Library patrons and staff at the Library to have food and beverages available, and as such, have a designated café area in the Library; and

WHEREAS, the City solicited a Request for Proposal package (RFP Number 24-78) for Café Services for the Wheaton Public Library and received and reviewed two proposals; and

WHEREAS, upon recommendation of the Library Board, the corporate authorities of the City of Wheaton have elected to approve Vendor as the exclusive service provider to manage and operate the concession for the sale of food and beverage in the Café.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Recitals. The above recitals are hereby incorporated into and made a part of this Agreement as though fully set forth herein.

2. Definitions. The following terms as used in this Agreement shall mean the following:

- A. "Café" means the portion of the Library as depicted on Exhibit 1 attached hereto and incorporated herein.
- B. "City" means the City of Wheaton, Illinois.
- C. "Concession" means the contractual right granted, pursuant to this Agreement, by the City to the Vendor to serve food and beverages to the general public and Library patrons and staff from the Café. Sales from the Café shall not include off-site catering.
- D. "Library" means the Wheaton Public Library located at 225 North Cross Street, Wheaton.
- E. "Library Director" means the executive director of the Library.
- F. "Vendor" means Awake Wheaton LLC.

3. Grant of Exclusive Service Agreement. In consideration of the payments provided for herein, the keeping and performance of the covenants and promises as described herein, the City hereby grants to the Vendor the contractual authority to operate a food and beverage concession in the Café.

4. Nature of Agreement. The City and the Vendor agree that this is a service agreement and not a lease notwithstanding any terms, conditions, restrictions or covenants contained herein that may appear to the contrary. If this provision is declared illegal or void by a court of competent jurisdiction, such declaration shall render this Agreement voidable by the City in its sole discretion.

Nothing in this Agreement shall be interpreted or deemed to result in the conclusion that the City is engaged in a partnership or joint venture with the Vendor. The Vendor understands and agrees that it, including its employees, is not entitled to receive any Library benefits, including vacation, workers' compensation, sick pay, or other benefits.

5. Term.

- A. Initial Term. This Agreement shall become effective on the date of approval by the Wheaton City Council and shall remain in effect for three (3) years thereafter.
- B. Renewal. If the Vendor wishes to renew this Agreement, it shall provide written notice to the Library Director and City Clerk of its intent to do so, at least 60 days prior to the expiration of the Initial Term. The Library shall have 30 days thereafter to recommend to the City Council whether to renew the term of this Agreement.

6. Vendor Responsibilities. The Vendor shall:

- A. The Vendor shall:
 - i. Provide a top-quality retail food and beverage operation from the Café, which will be available to the general public and Library staff and patrons.
 - ii. Comply with all applicable City, County, state and federal laws, guidelines and regulations associated with the operation of the Café.
 - iii. Employ, train and manage all personnel required to properly operate and maintain the Café.
 - iv. Obtain any and all licenses, permits or certificates required to operate the Café and post them in the Café.
 - v. Collect the proper sales tax and report to the proper agencies.
 - vi. Equip the Café with any appurtenances not provided by the Library to properly operate the Café.
 - vii. Operate the Café in compliance with Library policies and procedures.
 - viii. Promote and market the Café off site from the Library.
 - ix. Post signs stating whether the Café is a peanut free area or is an area which may contain peanut or nut tree products.
- B. The Vendor shall not:
 - i. Permit any unlawful practice to be carried on or committed in the Café.
 - ii. Make any use of the Café in any manner for purposes that might invalidate or increase the cost of insurance maintained by the City and/or the Library, including the storage or use of flammable fluids, toxic materials or any substance deemed unreasonably dangerous by the Library Director or the Library's insurance carriers, without obtaining the written consent of the Library Director, except for reasonable quantities of cleaning products to be used by the Vendor.
 - iii. Use the Café for any purpose that creates a nuisance or injures the reputation of the Library.
 - iv. Permit odors to emanate from storage that would be distasteful or disruptive to Library patrons or services. Ordinary odors associated with food and beverages shall not be considered improper.

- v. Permit tobacco products to be used by any person in the Café.
- vi. Conduct or allow gambling in the Café.

7. Operation Standards. The Vendor shall operate the Café in compliance with the following standards.

- A. Cleaning. The Vendor, at its sole cost and expense, shall keep the Café neat, clean and in good repair so as to comply with all applicable public health, safety and welfare laws and regulations. The Vendor shall regularly bus the seating area and promptly clean-up spills or other debris in the Café created by the operation of the Café. All trash receptacle shall be periodically emptied so they do not become over-filled or attract insects. This includes trash receptacles in the lobby area when used by patrons of the Café. The Vendor shall not allow boxes, cartons, barrels or other similar items to remain in view of the public. The Library reserves the right to inspect the Vendor's food preparation and seating areas to ensure a clean, healthy, and safe environment.
- B. Maintenance. The Vendor shall be responsible for all routine maintenance costs. The Vendor shall be responsible for costs associated with the maintenance or repair of HVAC systems, plumbing, fixtures, structural elements, and real property if maintenance or repair of said items is necessary due to the actions or inactions of the Vendor or its employees; otherwise, the Library shall be responsible for these costs. If the Vendor fails to maintain or repair any items or systems for which it is responsible, the City may contract to make necessary repairs or maintenance and the Vendor or its insurance carrier shall reimburse the costs of the repairs or maintenance to the City. The Vendor shall be responsible for the maintenance and repair of all equipment and other items it has provided in the Café.
- C. Employee Standards. The Vendor shall require its employees to be timely, attentive and friendly. Food and beverage orders shall be taken with reasonable expediency and in a courteous manner. All employees shall be clean, neat and well-groomed. Employees of the Vendor are not employees of, and have no authority to act on behalf of, the Library or the City.
- D. Menu. The Vendor shall provide a menu designed to provide products for sale which are consistent with the operation of this type of concession. The initial approved menu is attached hereto and incorporated herein as Exhibit 2. Any changes to the menu are subject to the prior approval of the Library Director.
- E. Days and Hours of Operation. The Café shall be open during the following times, except on days when the Library is closed –

Monday-Thursday – 7:00 a.m. – 8:00 p.m.

Friday – 7:00 a.m. – 7:00 p.m.

Saturday & Sunday – 9:00 a.m. – 5:00 p.m.

Any changes to the operating hours are subject to the prior approval of the Library Director.

- F. Deliveries. All deliveries must come into the Library via the delivery ramp on the east side of the building; the public entrances are not to be used for deliveries. Deliveries may be scheduled on weekday mornings after 7:00 am and must be supervised and handled by the Vendor's staff. Disturbance of public areas and elevator use by deliveries must be kept to a minimum during the hours that Library is open to the public.
- G. Name and Signs. The name of the Café will be "The Bean Caffé". The Vendor shall erect signs in the Café in accordance with applicable laws and regulations and with approval of the Library Director. All signs and advertising shall be in good condition and shall be installed and maintained at the Vendor's expense.
- H. Recycling. The Vendor shall recycle all eligible items under the City's recycling program with the City's refuse/recycling contractor. Management and placement of recyclables for collection shall be coordinated with the Library Director.

8. Equipment.

- A. Library Responsibilities. The Library will provide the following equipment, furniture, and furnishings for use by the Vendor (See Exhibit 3 attached hereto):
 - i. Lighting
 - ii. Ceiling and flooring
 - iii. Plumbing
 - iv. Customer seating; the tables and chairs that are currently in the Parkview Commons area will be offered for use.
 - v. Beverage preparation area, counter, and display case.
- B. Vendor Responsibilities. The Vendor, at its sole expense, shall supply all other equipment, furniture, and furnishings, as needed, including but not limited to garbage receptacles, refrigerator(s), freezer(s), ice machine, preparation table(s), convection oven, espresso machine, grinders, brewers, air pots, blenders, small ware, and other accessories.

The equipment, furniture, and furnishings should be in keeping with the decor and style of the overall Library. The Library Director reserves the right of approval for all equipment, furniture, and furnishings brought into the Café.

9. Utilities and Services.

- A. Library Responsibilities. The Library will provide and pay for the following utilities and services:
 - i. Electricity
 - ii. Natural Gas
 - iii. Water and Sanitary Sewer
 - iv. Heating/air conditioning
 - v. Wi-Fi Network

Under no circumstances shall the Library or the City be held responsible for any break in the Utilities or for any loss of operation hours by the Vendor resulting therefrom.

- B. **Vendor Responsibilities.** The Vendor shall provide and pay for the following utilities and services:
 - i. Janitorial Services
 - ii. Pest Control Services
 - iii. Telephone
 - iv. Grease Trap Maintenance
 - v. Trash removal – The Vendor must empty the trash receptacles in the Café and place trash in the Library’s bins outside the Library.

10. Performance Bond. The Vendor shall deposit with the City a cash bond in the amount of \$1,000.00 guaranteeing performance of the terms and conditions of this Agreement. The City may draw on this cash bond for any purpose associated with the operation of the Café, including payment of taxes, if the Vendor materially breaches the terms and conditions of this Agreement or abandons the Café.

11. Access and Inspection. The Library Director or designee may enter the Café, including in any back areas of the Café, at any reasonable time for the purpose of inspecting the same. Entry for inspection shall not constitute interference with the operation of the Café and no abatement of any payments due under this Agreement shall be allowed.

12. Payments and Records.

- A. Monthly Base Payment. The Vendor shall pay to the City a monthly concession fee of ten percent (10%) gross revenue or \$1,000.00, whichever is greater. Payment shall be due on the first day of each month. The Vendor shall submit sufficient documentation to the City’s Finance Director to show its gross revenue for each month. The fee paid shall be without notice or demand and without deduction or offset at City of Wheaton, Attn: Finance Department, 303 W. Wesley St., Wheaton, IL 60187.
- B. Late Payment. If any payment required under this Agreement is not paid on the date it is due, a late payment fee equal to 2% of the sum of the monthly base payment shall be imposed per diem from the due date until the date the payment is made. A late payment shall be considered a material breach of this Agreement and sufficient grounds for termination of this Agreement.
- C. Books and Records. The Vendor shall keep permanent and accurate records of all gross sales derived from the operation of the Café, including tax documentation filed with any governmental authority that reflect in any manner sales, income or revenue generated in connection with the concessions as may be reasonable in order to ascertain, document or substantiate gross monthly sales. All such records shall be retained for a period of three years after the end of the calendar year for which they relate. The City’s Finance Director shall have reasonable access to and the right to inspect such books and record during regular business hours or as otherwise agreed between the City and the Vendor. The records shall be considered proprietary records under the Freedom of Information Act. The City shall not disclose any of the records based upon a FOIA request except as ordered by a court of competent jurisdiction or the Public Access Bureau of the Attorney General’s Office.

13. Condition and Improvements in Café.

- A. As-is Condition. The Vendor shall accept use of the Café and equipment provided by the Library in an "as-is" condition, without any representations or warranties from the Library or the City as to the condition of such property and equipment, their code compliance, or fitness for any use, nor will the Library or City make any promises to maintain, alter, remodel, repair, improve or replace such property or equipment.
- B. Improvements. The City maintains the right to modify or alter the Café at any time and in any manner. Except in cases of emergency, the City shall provide the Vendor with 30 days' advance notice of any improvements or alterations to the Café. If the improvements or alterations materially interfere with the operation of the Café, the Vendor may discontinue the operation of the Café until the improvements or alterations are completed. The Vendor will not be required to pay any fees during a period of discontinuance. Upon renewal of operation, the monthly fee shall be prorated on a per diem basis. The Vendor shall make no improvements or alterations to the Café unless approved by the City, unless they are necessary to prevent imminent injury to persons or property.

14. Insurance and Indemnification.

- A. Insurance. The Vendor shall obtain and maintain during the term of this Agreement the following insurance on an occurrence-made basis.
 - i. General liability coverage with limits no less than \$1,000,000 for each occurrence and \$2,000,000 aggregate, naming the City, Library, their elected officials, employees, trustees, agents, and successors and assigns ("City entities") as additional insureds on a primary and non-contributory basis. A waiver of subrogation shall be included in favor of the City entities.
 - ii. Business and personal property insurance in amounts deemed sufficient by the Vendor to cover loss of business and personal property.
 - iii. Workers' compensation coverage in amounts required by Illinois law. A waiver of subrogation shall be included in favor of the City entities.
 - iv. Business automobile insurance with limits no less than \$1,000,000 for each accident for any owned, hired or non-owned vehicles.
 - v. Umbrella liability insurance with a limit of no less than \$2,000,000 for each occurrence and \$2,000,000 aggregate.
 - vi. Business and personal property insurance on an all risk basis, including theft, covering all of Vendor's equipment and inventory.

The Vendor shall provide a certificate of insurance to the City's Finance Director prior to occupying the Café. The insurance must be AM best rated "A- or better". All policies of insurance shall provide thirty (30) days' notice of termination to the City. All insurance provided by the Vendor shall be primary and non-contributory.

- B. Indemnification. To the fullest extent permitted by law, the Vendor shall indemnify, keep and save harmless the Library and the City and their officers, employees, and agents against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, which may arise directly or indirectly from any negligence or from the reckless or willful misconduct of the Vendor, its employees, or its subcontractors, and the Vendor shall at its own expense, appear, defend and pay all charges of attorneys and all costs and

other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the Library and/or the City in any such action, the Vendor shall, at its own expense, satisfy and discharge the same. This agreement shall not be construed as requiring the Vendor to indemnify the Library or the City for their own negligence respectively. The City retains the right in its sole discretion to use defense counsel of its choice at the Vendor's sole cost. Nothing in this indemnification shall be interpreted to waive or release any and all statutory or common law privileges and immunities available to the City. There are no third-party beneficiaries to this Agreement.

15. Termination.

- A. This Agreement may be terminated in the following circumstances:
 - i. Default. If either Party commits a material breach of the terms and conditions of this Agreement, the non-defaulting party shall send written notice to the defaulting party describing such default and providing 15 days to cure the default. If the defaulting party fails to cure the default within said 15 days, then this Agreement shall be terminated without further notice.
 - ii. Bankruptcy/Insolvency. If the Vendor, while in possession of the Café, files a petition for bankruptcy or insolvency or for reorganization under the Bankruptcy Act or voluntarily takes advantage of such Act by answer or otherwise makes an assignment for the benefit of creditors; or, if proceedings are instituted against the Vendor under any bankruptcy or insolvency law or if a receiver or trustee is appointed for all or substantially all of the Vendor's property and such proceedings or receivership are not vacated or dismissed within 30 days after the institution or appointment.
 - iii. Without Cause. Either party may terminate this Agreement without cause upon 45 days prior written notice to the other party.
- B. The Vendor shall deliver the Café and all City-owned equipment therein, to the City upon termination of this Agreement in as good of a condition or state of repair as received, except for ordinary wear and tear. The Vendor shall be responsible for all costs of damage or repairs caused by the Vendor upon termination and shall reimburse the City for said costs within 30 days of receipt of an invoice.

16. Miscellaneous.


- A. Nondiscrimination. The Vendor, as a party to a public contract, shall refrain from unlawful discrimination in employment and assure equality of employment opportunity.
- B. Sexual Harassment Policy. The Vendor, as a party to a public contract, shall have a written sexual harassment policy.
- C. Drug Free Workplace. The Vendor, as a party to a public contract, certifies and agrees that it will provide a drug free workplace and has a drug free workplace policy.
- D. Subletting of Agreement. The Vendor shall not assign or sublet any part of the services without the prior written consent of the Library and the City.
- E. Cooperation with FOIA Compliance. The Vendor acknowledges that the Freedom of Information Act applies to public records in possession of the Vendor. The Vendor shall cooperate with the Library and the City in its efforts to comply with the Freedom of Information Act. (5 ILCS 140/1 *et seq.*)
- F. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois. Venue is proper only in the Eighteenth Judicial Circuit Court, DuPage County.

G. Notice. Any notice or communication required by this Agreement shall be given by personal service or USPS certified mail as follows:

- i. To the City: City Clerk, 303 W. Wesley St., Wheaton, IL 60187
- ii. To the Library: Betsy Adamowski, Library Director, 225 N. Cross St., Wheaton, IL 60187
- iii. To the Vendor:

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date indicated above.

Awake Wheaton LLC

By:  Nick Bhati

Title: President & CEO

Date: 05/02/24

City of Wheaton

By: 

Title: MAYOR

Date: 05/07/2024