

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
07 APR 16 PM 2:01

DEPARTMENT: Library

AGENDA DATE: April 24., 2007, Introduction; May 8, 2007 Public Hearing

CONTACT PERSON/PHONE: CAROL BREY-CASIANO (543-5413)

DISTRICT(S) AFFECTED: District 2

SUBJECT: ORDINANCE

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

An Ordinance granting a license to Pulse Media, Inc., d/b/a Lumenbrite Café, permitting the operation of a concession inside the Memorial Park Branch of the El Paso Public Library and authorizing the Mayor to sign, on behalf of the City of El Paso, a License upon the terms set forth in the Ordinance and Exhibit, A, the License Agreement .

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This project was approved by the voters as part of the City of El Paso 2004 Bond Issue . The project includes a Friends of the Library Book Store, reading area and coffee bar.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

No cost to the City; Licensee shall incur all expenses for establishing and maintaining a "mini coffee café" or "coffee kiosk" within the Memorial Park Branch. In addition, Licensee will pay the City a fee in an amount equal to 10% of Licensee's monthly net revenues.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Carol A. Brey-Casiano

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

AN ORDINANCE GRANTING A LICENSE TO PULSE MEDIA, INC., d/b/a LUMENBRITE CAFE, PERMITTING THE OPERATION OF A CONCESSION INSIDE THE CITY OF EL PASO MEMORIAL PARK LIBRARY

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign, on behalf of the City of El Paso, a License upon the following terms to Pulse Media, Inc, d/b/a LUMENBRITE CAFÉ:

1. This License shall be in a form, which is attached and incorporated as Exhibit "A"; permitting Pulse Media, Inc, d/b/a LUMENBRITE CAFÉ, as a public service to the citizens of the City and patrons of the City's Memorial Park Branch of the El Paso Public Library, to establish and operate a concession within the Memorial Park Branch as more particularly described in the attached and incorporated Exhibit "A";

2. This License shall last a term of one (1) year, but may be renewed for one year terms, but for no more than four renewal periods, for a total of five (5) years, as described more fully in Exhibit "A".

PASSED AND APPROVED this ___ day of _____ 2007.

THE CITY OF EL PASO

John Cook, Mayor

ATTEST:

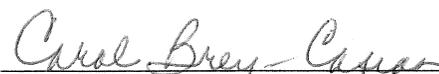
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Roberta B. Cross
Assistant City Attorney

APPROVED AS TO CONTENT:



Carol Brey-Casiano, Director
El Paso Public Library

EXHIBIT "A"

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THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LICENSE AGREEMENT

This License Agreement is effective this ____ day of _____, 2007, by and between the CITY OF EL PASO, hereinafter referred to as "City", and the PULSE MEDIA, INC., a Texas corporation, d/b/a LUMENBRITE CAFÉ ("Licensee").

WHEREAS, City owns the property located at 3200 Copper Avenue in the City of El Paso, El Paso County, Texas, and

WHEREAS, Licensee has requested permission from the City to establish and operate a food and beverage concession within the building located at 3200 Copper, known as the Memorial Park Branch of the El Paso Public Library (hereinafter referred to as "Premises"), and

WHEREAS, the City Council finds that the grant of a License upon the terms and conditions hereinafter set forth is not inconsistent with and in fact confers a benefit upon the general public;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION.** The City hereby grants a License to Licensee to establish and operate a food and beverage concession booth, specifically, a "mini coffee café" or "coffee kiosk," in the existing kiosk location on the Premises, as shown in Exhibit "B", which is attached hereto and made a part hereof for all purposes, and shall hereinafter be known as "the Structure."

2. **TERM.** The term of this License shall be for one (1) year from the date of execution of this agreement, with an option to renew the license for four (4) additional one year

periods, not to exceed a total of five years. This License shall expire without notice at the end of such expiration period unless both parties agree to renew the License prior to its expiration. Either party may submit a written request to renew the License to the other party, no later than sixty (60) days prior to the expiration date. If such notice is not given, then this renewal option shall fail and be of no further force and effect, and the Agreement shall expire upon its own terms. All terms and conditions of these renewal terms shall be the same as set forth in this Agreement. The City retains the right to deny any such renewal request for any reason.

3. **CONSIDERATION.** As consideration for this License, Licensee shall pay the City a fee in an amount equal to ten percent (10%) of the Licensee's monthly net revenues, which shall be calculated on a cash basis method of accounting. Said fee shall be remitted to City's Financial Services Department on the tenth day of each month for the immediately preceding month's net revenues. The Licensee shall provide the City with its monthly financial earnings statement and a schedule setting forth the monthly calculation.

4. **USE OF PROPERTY.** This License is granted solely for the Licensee's permission to install and maintain the Structure, from which the Licensee will offer the public in a non-discriminatory manner food and beverages during business hours at the Premises. Licensee shall ensure that it has complied with all applicable state and local laws in establishing and maintaining such concession. This License shall not be construed to waive any City or state regulatory or permit requirements. Licensee shall be responsible for all maintenance of the Structure.

4.1 The Licensee shall have access to the Property during the term of this Agreement for Property improvements, as described herein below. Licensee, together with its employees, agents, contractors, subcontractors, and utility providers is granted access and Licensee

may enter and use the Premises for the purpose and use of constructing, erecting, installing, maintaining, inspecting, repairing, operating, replacing or removing Structure improvements as described herein below.

4.2 Nothing contained herein shall grant or be construed to grant any real property interest to the Licensee, nor shall it give rise to any vested right in the Licensee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this License.

5.0 **IMPROVEMENTS.** All improvements shall be made in accordance with City Code requirements. Licensee acknowledges that no improvements shall be constructed on the Property without the written consent of the City and City's prior approval of the proposed improvement plans and inspection of the construction of such improvements. The Licensee will remove any improvement, at their sole cost and expense, upon notice from the Director of Library Services if Licensee establishes any improvements that materially interfere with any City operations or activities.

5.1 Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair of the Structure. The Licensee shall install all new equipment as necessary. The Licensee shall use existing electrical outlets and plumbing.

6. **IMPROPER USE.** This License shall not permit or be construed to permit any other private use of the City's premises. Licensee shall not construct any additional improvements, or make any additions or alterations on the City Premises, without the prior written consent of the City Council.

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7. **REPAIRS.** Licensee shall keep the property, Structure and Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this License. Licensee shall be responsible for all maintenance of the Structure and Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Licensee's sole expense.

8. **CANCELLATION.** Should the City at any time or for any reason decide that the Premises upon which the Structure is erected is needed for another public use, the City may upon thirty (30) days written notice, cancel this License at no cost to the City. All rights of Licensee in the Premises shall then be terminated. Licensee may cancel this License, for any reason, upon thirty (30) days prior written notice to the City, and all rights of Licensee shall then be terminated.

8.1 In addition, if, for a period of six (6) months, Licensee shall cease to use or occupy the property for the purposes herein contemplated, or if Licensee defaults in any of their obligations under this License and fails to correct such defaults within thirty (30) days after written notice to do so has been sent; the City may cancel this License and take possession. All rights of the Licensee on the City Premises shall then terminate.

8.2 Any waiver by the City of any breach of any of Licensee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Licensee.

8.3 Upon termination of this License for breach or noncompliance, the Structure shall become the property of the City and shall, at the option of the City, be removed by the Licensee without cost to the City.

9. **LIENS AND ENCUMBRANCES.** Licensee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Licensee's use of the Premises.

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10. **ASSIGNMENT.** Licensee shall not assign this License without the prior written consent of the El Paso City Council.

11. **INDEMNITY AND LIABILITY INSURANCE.** IN THE USE OF THE PROPERTY, AND IN THE EXERCISE OF THE RIGHTS HEREIN GRANTED, LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, REGARDLESS OF CAUSE, INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH LICENSEE'S USE OF THE PROPERTY UNDER THIS AGREEMENT.

11.1 Licensee further agrees to handle and defend at their own expense, on behalf of the City and in the City's name, any claim or litigation in connection with any such injury, death or damage.

11.2 Licensee shall promptly, before utilizing the Property, provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000) per person.

11.3 Licensee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. All policies shall name the City, its officers, agents, servants and employees as additional insureds. Licensee shall file a copy of the policy or certificate of insurance with the City Clerk. Such policy or certificate shall provide that the insurance cannot be cancelled or the amount of coverage changed without thirty (30) days prior written notice to the City Clerk.

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12. MISCELLANEOUS.

12.1 **RIGHT OF ENTRY AND INSPECTION:** The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this License.

12.2 **LAWS AND ORDINANCES:** Licensee shall comply with all statutes, laws, codes and ordinances applicable to Licensee's operation of the concession, as well as Licensee's use of the Premises. In addition, Licensee shall obtain any and all required licenses, permits and inspections and shall pay the necessary license and permit fees.

12.3 **Handicapped Accessibility Standards.** Licensee agrees that in the performance of this Agreement, that they will comply with the Americans with Disabilities Act ("ADA"), as may be required by law. Licensee, if required, must follow the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons.

12.4 **Right of Inspection and Audit.** Licensee shall permit the City's auditors, authorized representatives or agents to examine, inspect and have access to Licensee's records at all reasonable times in order to assure that each of the provisions of this Agreement is being performed in a manner satisfactory to the City.

12.5 **Garbage and Trash:** Licensee shall provide for the adequate and proper handling and disposal of all trash, garbage and other refuse caused by its use or its customers use of the Structure and services provided by Licensee to the public. Piling of boxes, cartons, trash or similar items on the Structure or Premises shall not be permitted.

12.6 **Signs:** This Agreement does not permit external commercial signage on the Premises, but does permit limited commercial signage on the Structure.

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12.7 Taxes: Licensee shall pay taxes on all improvements and personal property it places upon the Property or uses in connection with its use of the Premises on the same basis as if the land were in private ownership, regardless of any other provisions hereof.

13. **SUCCESSORS AND ASSIGNS:** All of the terms, provisions, covenants and conditions of this License shall inure to the benefit and be binding upon the parties, their successors and assigns.

14. **NOTICES:** All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

with copy to:

City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196

and:

Roman J. Villarreal, President
Pulse Media, Inc., d/b/a
LUMENBRITE CAFE
217 N. Stanton St.
El Paso, TX 79901

Or to such other address as the parties may designate to each other in writing from time to time.

14.1 **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

14.2 **SEVERABILITY:** The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

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14.3 **LAW GOVERNING:** The laws of the State of Texas shall govern the validity, performances and enforcement of this License and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

15. **EFFECTIVE DATE:** This License shall be null and void unless signed by Licensee within thirty (30) days after its passage and approval by City Council. This License shall not take effect unless Licensee shall, within thirty (30) days after its passage and approval, file its written acceptance with the City Clerk.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

John Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Roberta B. Cross, Assistant City Attorney

APPROVED AS TO CONTENT:

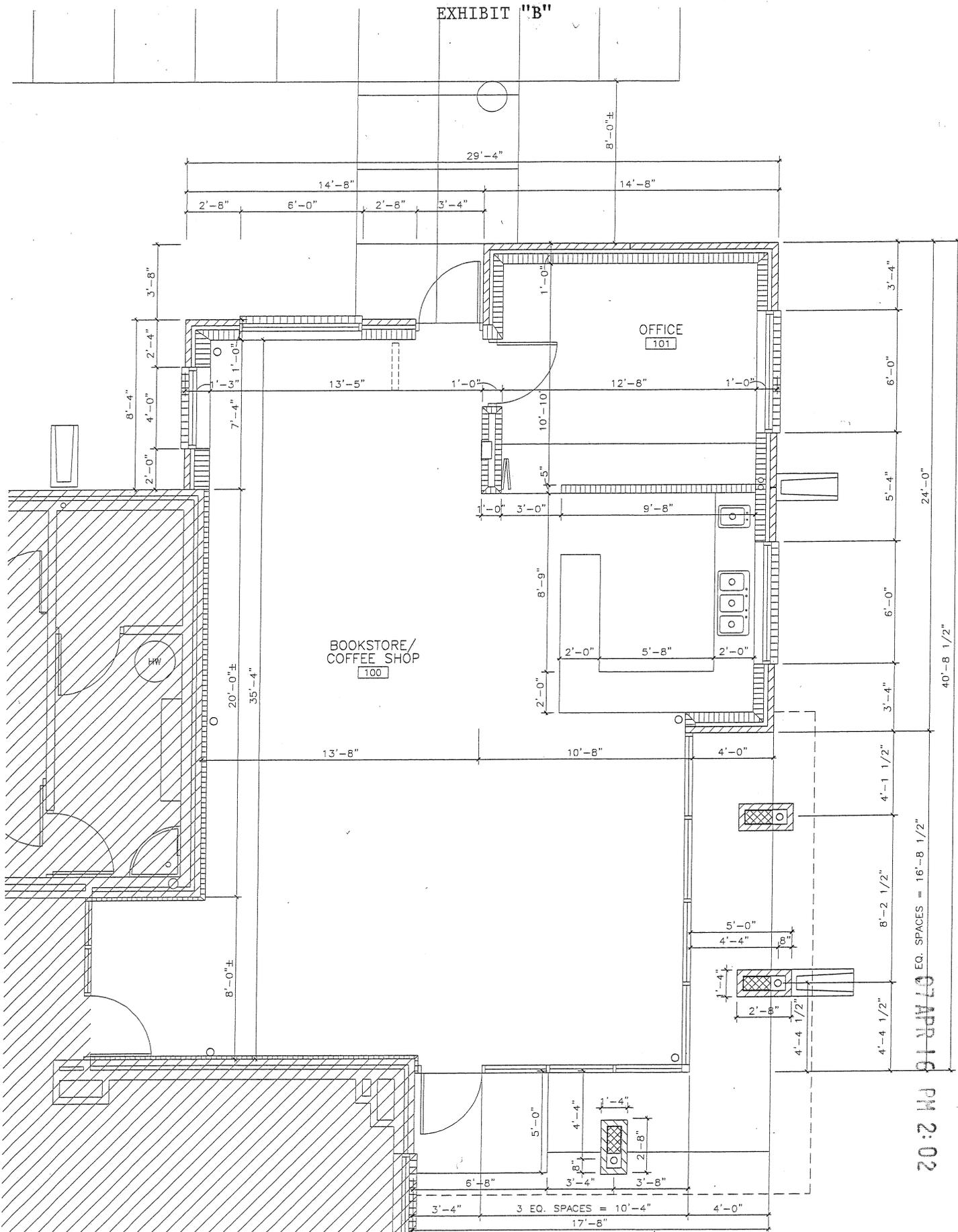


Carol Brey-Casiano
Director, El Paso Public Library

(ACCEPTANCE ON FOLLOWING PAGE)

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EXHIBIT "B"



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EQ. SPACES = 16'-8 1/2"

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