

CONTRACT FOR SERVICES

THIS CONTRACT is entered into this the ____ day of _____, 2014, by and between Amber Downs d/b/a Foxtrot Cafe (hereinafter known as “Contractor”), a food service provider authorized to do business in the state of Arizona, whose address is 1789 N. Lehmberg Ave., Casa Grande, Arizona 85122, and the City of Casa Grande (hereinafter known as “City”), an Arizona municipal corporation, whose address is 510 East Florence Boulevard, Casa Grande, Arizona 85122.

The City engages the Contractor to perform services for a project known and described as “Airport Café”.

1. Scope of Contractor’s Services.

The Contractor agrees to provide food services at the Casa Grande Municipal Airport, located at 3225 N. Lear Ave., Casa Grande, Arizona 85122, consistent with the Scope of Work. No material, labor, or facilities will be furnished by the City, unless otherwise provided for in the Agreement.

The City will provide the following amenities on the premises identified as the Airport Café (see Exhibit “A” – Airport Café Layout) located within the Casa Grande Municipal Airport Terminal: 665 square feet of interior floor space; finished, painted interior; service counter; cold and hot water mains; electrical circuits and conduits; ceiling and general lighting; commercial three-compartment sink; commercial hand sink; water heater; refrigerated sandwich prep station; display case; under counter freezer; espresso, coffee and ice machines.

For consideration herein described, Contractor’s use of the designated space shall be for the exclusive purpose of providing food concessions only. Except as otherwise stated in this Agreement, Contractor shall be fully responsible for all costs and expenses incurred relative to food service operations. Contractor is required to maintain a City business license, Pinal County Department of Health permit and all required compliance documentation for food service. Contractor shall fulfill all other City, County, State, and Federal requirements for food service operations.

A. Food and Beverage Products

Contractor shall serve beverage and food items that can either be prepared with the available equipment and appliances, or prepared and packaged off-site and delivered daily. Alcoholic beverages (without a permit), and illegal items shall not be sold. All items must be stored in rodent proof, plastic sealed containers. All menu items proposed by Contractor shall be approved by the Airport Manager.

B. Operation Schedule

The minimum hours of operation for the Café shall be as follows:

Monday- Friday 7:00 am – 1:00 pm during Winter Hours
Monday - Friday 6:00 am -- 1:00 pm during Summer Hours

Saturday	6:00 am - 11:00am (Last Saturday of the month)
Sunday	CLOSED

In addition, the Airport Café may be closed when the Airport is closed, despite the aforementioned hours of operation. Changes to the hours of operation may be approved at the discretion of the Airport Manager. The City reserves the right to modify the hours of operation for the Casa Grande Municipal Airport Terminal. From time to time, the Airport Manager may invite the Contractor to provide services at Airport events that occur outside normal hours of operation, which Contractor may accept or decline in its sole discretion.

C. Delivery Time

Contractor will be permitted to enter the terminal before the terminal opens in order to prepare and set up for the day's business. Deliveries for the Contractor shall use the side door, and must occur during the operating hours of the Cafe.

D. Health Inspection

Contractor shall notify the City in advance of any scheduled inspections by the County Health Department. In the event that Contractor is not notified in advance of an inspection, Contractor shall notify City staff as soon as Contractor is reasonably able. City staff may elect to be present at all inspections. Contractor shall furnish City all original inspection reports and post a copy of Food Establishment Rating Card on the premises.

E. Contractor Responsibilities

Contractor will furnish prompt, clean and courteous service and will keep the Café area attractively maintained, orderly, clean and sanitary at all times. Contractor shall be responsible for cleaning and trash removal within Café seating area inside the terminal. Contractor shall dispose of trash in the outdoor dumpster located in the Airport Terminal's parking lot as necessary during operating hours and at the close of business each day. Contractor shall provide promotional flyers and business signage. All business signage and location of business signage shall be approved by the Airport Manager. Contractor will be solely responsible for the safekeeping of all monies related to food service operations. City will not be responsible for the loss of any funds, equipment, materials or food items for which the Contractor is responsible. Contractor will secure these items at the end of each business day.

F. Maintenance and Improvements

The Café contains personal property owned by City (see Exhibit "B" – City-owned Equipment) available for use by Contractor for food service operations. City will be responsible for any ordinary maintenance, repair, and/or replacement of the equipment which was originally purchased and installed by City. Any damage determined to be caused by Contractor will be the responsibility of such party. Contractor will also be responsible for any maintenance, repair, and/or replacement of any equipment and/or machinery that was originally purchased and supplied by Contractor.

Contractor shall not make or cause any substantial alterations or improvements to be made in or on the premises without first obtaining the written approval of the City. All improvements affixed to the premises by Contractor shall become the property of City at the expiration or early termination of this Agreement. At such time, Contractor agrees to remove, at City's option, any and all such improvements, notwithstanding their becoming affixed to and part of the realty. The payment of costs for said removal shall become the responsibility of Contractor.

F. Noise

Contractor shall not operate sound equipment in the Café that is determined by Airport staff to be distracting or offensive. City is aware that the preparation of hot and cold drinks or smoothies will require the operation of equipment that generates a certain level of noise.

G. Reporting Requirements

Contractor will maintain a standard, modern system of accounting and will keep and maintain all books and records in accordance with generally accepted accounting principles applied on a consistent basis. Contractor will supply a quarterly income statement to City, noting total revenues, expenditures, and net income.

H. Term

The initial term of this contract shall commence on the effective date as shown on Page One (1) of this agreement and remains in effect for a period of 12 months, unless terminated sooner pursuant to Section 8 or 9. If the parties agree on the User Fee, as described in subsection I below, for the next term of the contract prior to the termination of the initial term, this contract will be automatically renewed for a second one (1) year term at the conclusion of the initial term.

I. User Fees

During the initial term of 3 months the Contractor will not be required to pay any fees. During the subsequent 9 months the Contractor shall pay to City a sum equal to 15% of the net profits received by Contractor. For the purpose of this agreement, net profits are calculated by taking total revenue minus cost of supplies and equipment for the sole purpose of the cafe, staff costs calculated at \$10.00 per hour, and costs associated with advertising the cafe. These payments shall be made to the City on a monthly basis and will be due the 7th day of each month and shall be considered delinquent if not paid by the 15th day of the month in which the payment is due. Both parties agree that this fee may be negotiated after the initial 12 month term.

2. Assignment and Subcontracting.

No portion of this contract may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of the Contracting Officer. It will be the responsibility of the Contractor to ensure that any and all subcontractors comply with the terms and conditions of this agreement and that City of Casa Grande is named as express third-party beneficiary of such subcontracts with full rights as such.

3. Independent Contractor.

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing contained herein shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor.

4. No Guarantee of Employment.

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the City at the present time or in the future.

5. Regulations and Requirement.

This Agreement shall be subject to all laws, rules and regulations of the United States of America, the State of Arizona, and the City of Casa Grande.

6. Right to Review.

This contract may be subject to review by any federal or state auditor. The City or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the City. Such review may occur with or without notice, and may include, but is not limited to, on site inspection by City Agents or employees, inspection of all records or other materials which the City deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for five (5) years after contract termination in accordance with A.R.S. §35-214 and shall make them available for such review within the City of Casa Grande, State of Arizona, upon request.

7. Modifications.

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

8. Termination for Default.

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the City's option, obtain performance of the work elsewhere. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and

obligations of the parties shall be the same as if the notice of termination has been issued pursuant to the Termination for Public Convenience paragraph hereof.

9. Termination for Public Convenience.

The City may terminate the contract in whole or in part whenever the City determines, in its sole discretion, that such termination is in the best interests of the City. The Contractor may terminate the contract for any reason with 30 (thirty) days written notice. Termination of this contract by the City at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the City.

10. Equal Opportunity.

This Agreement, and the parties thereto, shall comply with the provisions of Arizona Executive Order 75-5 as amended by Arizona Executive Order 99-4 as they relate to equal opportunity.

11. Venue and Choice of Law.

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Arizona in and for the County of Pinal. This Agreement shall be governed by the laws of the State of Arizona.

12. Insurance.

12.1 Contractor Liability Insurance. Upon signing of the Agreement and so long as it shall remain in effect, Contractor, at its cost and expense, shall purchase and maintain the insurance described in this subsection 14. The insurance shall be purchased and maintained in companies duly licensed or otherwise approved by the State of Arizona, with forms acceptable to the City of Casa Grande, and shall be primary with no right of contribution. The contractor's insurer shall have a minimum A.M. Best's rating of A-VIII. Use of alternative insurers requires prior approval for the City of Casa Grande.

The insurance coverages to be purchased and maintained are:

12.1.1 Workers' Compensation. Contractor shall provide workers' compensation insurance as required by state and federal laws having jurisdiction over Contractor's employees engaged in the performance of the Services within this Agreement.

12.1.2 General Liability. Contractor shall maintain a Commercial General Liability (Occurrence) policy that includes coverage for premises and operations, products and completed operations, contractual liability, broad form property damage, and personal injury liability. The policy shall have limits of not less than:

- \$1,000,000 for each occurrence of bodily injury and property damage; and
- \$1,000,000 for personal injury;

12.1.3 Automobile Liability. Contractor shall maintain an Automobile Liability policy with a combined single limit for bodily injury and property damage of not less than \$1,000,000 for each accident. The policy shall cover all owned, hired, and non-owned automobiles used in connection with the Agreement for the performance of Contractor's services.

12.1.4 Property Insurance. A policy or policies of fire and extended coverage property damage insurance covering the full insurable value of all tools and equipment used by contractor from time to time on the lands of City of Casa Grande pursuant to the Agreement, including mobile equipment. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

12.1.5 Adjustment of Liability Limits. If the initial term of the Agreement shall exceed ten years or if the aggregate term of the Agreement, including any extension or renewal terms agreed to by the parties or provided for in the Agreement shall exceed ten years, on each tenth anniversary of the date of the Agreement, the liability limits provided for in sections 14.1.2 and 14.1.3 shall be increased by an amount proportional to the increase in the US consumer price index occurring since the date of the Agreement or the date of the last such increase as appropriate.

12.1.6 Professional Liability. The Contractor retained by the City to provide the engineering services required by the Agreement will maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by the Contractor or any person employed by him, with an unimpaired limit of not less than \$1,000,000 each claim and \$2,000,000 all claims, or 10% for the construction budget, whichever is larger. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Services as evidenced by annual Certificates of Insurance.

12.2 Insurance Certificate. Contractor shall not exercise any of its rights under the Agreement until it delivers to City of Casa Grande's designated recipient certificates from contractor's insurers showing that the coverage required above has been obtained.

12.2.1 The insurance certificates must show City of Casa Grande, its subsidiaries, affiliates directors, officers, and employees as additional insured parties in respect of all liability coverage except workers' compensation. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

12.2.2 The insurance certificate shall provide on its face that the policies it represents will not be terminated, amended, or allowed to expire without 30 days prior written notice to City of Casa Grande.

12.2.3 Failure of City of Casa Grande to demand the insurance certificate or other evidence of full compliance with these insurance requirements or failure of City of Casa Grande to identify a deficiency from any certificate provided to it shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

12.3 Severability of Interests. The policies referenced in 14.1.2. and 14.1.3. shall contain a severability of interests clause, generally providing, "the insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's insurance."

12.4 Waiver of Subrogation. Contractor hereby waives any and all rights that it might have against City of Casa Grande, its employees, officers and directors, to recover all or part of any loss or damage insured or insurable by the insurance policies carried or required to be carried by it pursuant to the Contract Documents. Contractor shall require each of its agents, contractors, licensees and others performing the obligations, or exercising the rights, of Contractor under the Agreement to provide a similar waiver for City of Casa Grande's benefit.

12.5 Deductibles. Contractor may purchase the required insurance policies with deductibles which are reasonable in light of the contractor's financial condition; provided that any loss not covered due to the deductible will be paid by Contractor. Contractor shall also require its agents, contractors, licensees and others performing the obligations, or exercising the rights, of contractor under the Agreement to carry such property damage insurance. Such policy or policies shall cover the full insurable value of such tools and equipment.

13. Contractor Commitments, Warranties and Representations.

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to materially fulfill such a commitment shall result in a breach of this Contract. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

14. Patent/Copyright Infringement.

Contractor will defend and indemnify the City from any claimed action, cause or demand brought against the City, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the City in any action. Such defense and payments are conditioned upon the following:

a. That Contractor shall be notified promptly in writing by City of any notice of such claim; and

b. Vendor shall have the right, hereunder, at its option and expense, to obtain for the City the right to continue using the information, in the event such claim of infringement is made, provided no reduction in performance or loss results to the City.

15. Disputes.

15.1 General. Differences between the Contractor and the City, arising under and by virtue of the Contract Documents shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions and decisions of the Contracting Officer, shall be final and conclusive.

16. Conflict of Interest.

The Contractor agrees to promptly disclose any financial or economic interest in the Project property, or any property affected by the Project, existing prior to the execution of this Contract. Further, the Contractor agrees to promptly disclose any financial or economic interest with the Project property, or any property affected by the Project, if the Contractor gains such interest during the course of this Contract.

If the Contractor gains any financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of the City.

The Contractor shall not engage the services on the Contract of any present or former City employee who was involved as a decision maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.

The Contractor agrees that it shall not perform services on this Project for the contractor, sub-contractor, or any supplier.

The Contractor shall not negotiate, contract, or make any agreement with the contractor, sub-contractor, or any supplier with regard to any of the work under this Project, or any services, equipment or facilities to be used on this Project.

This Agreement is subject to the cancellation provisions for conflicts of interest pursuant to A.R.S. §38-511.

17. Covenant Against Contingent Fees.

The Contractor affirms that he has not employed or retained any company or person, other than a bona fide employee working for the Contractor to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this clause, the City may terminate this Contract without liability, or in its discretion may deduct from the

Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

18. Indemnification.

To the fullest extent permitted by law, the Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless the City of Casa Grande, its agents, officers, officials and employees from and against all allegations, demands, proceedings, actions, claims, damages, losses, expenses, judgments, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting, relating to, arising out of, or resulting from any acts, errors, mistakes, omissions, work or services of the Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this Contract.

Contractor's duty to defend, indemnify and hold harmless the City of Casa Grande, its agents, officers, officials and employees shall arise in connection with any allegation, demand, proceeding, action, claim, damage, loss, expense or judgment that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by Contractor's acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor, any tier of Contractor's subcontractors or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance requirements set forth herein will not be construed as limiting the scope of the indemnity provisions of this Contract.

To the fullest extent permitted by law, the City agrees to indemnify and hold the Contractor harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the City is legally liable, and arising from the project that is the subject of this Agreement. The Contractor is not obligated to indemnify the City in any manner whatsoever for the City's own negligence.

19. Confidentiality.

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the City or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the City Attorney, or an order entered by a court after having acquired jurisdiction over the City. Contractor shall immediately give to the City notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the City, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

20. Public Disclosure.

In the event of a public records request to the City for the Licensed Program or Licensed Documentation, the City shall promptly provide a copy of such request to Contractor so that it

has at least 7 days from Contractor's receipt of such request in which to seek an order restraining the City from disclosing the Licensed Program and Documentation pursuant to such public records request. If Contractor does not obtain a restraining order within such period of time, the City may disclose the Licensed Program and Licensed Documentation pursuant to such public request as the City deems appropriate to comply with Arizona's Public Records Laws.

21. Notice.

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the Airport Manager and to the City Attorney's Office. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

22. Severability.

If any term or condition of this contract or the application thereof to any person(s) or circumstance(s) is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

23. Waiver.

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

24. Survival.

The provisions of paragraphs, 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21 and 27 and the provisions of any non-collusion affidavit, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

25. Discrimination.

Contractor **shall not** unlawfully discriminate against any employee, applicant for employment, recipient of services or programs, or applicant for services or programs, on the basis of race, creed, color, sex, age, marital status, national origin or the presence of any sensory, mental or physical handicap. Contractor shall comply with the Americans with Disabilities Act.

26. Entire Agreement.

This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

27. E-Verify.

To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and

EXHIBIT “A”— Airport Terminal Café Layout

LAYOUT TO BE INSERTED HERE

DRAFT

EXHIBIT “B”— City-owned Equipment

Reach in 2-door commercial refrigerator
Under Counter/Worktop Freezer
Refrigerated Sandwich Prep Table
Refrigerated countertop display case
Commercial three-compartment sink
Commercial hand-sink
(2) Food prep tables
Under counter Ice machine
Bunn coffee machine
Espresso machine
Mop Sink

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