

Restaurant Concession Agreement Between
Yuma County Airport Authority, Inc.



and

Interested Company

For the Operation of a Restaurant Concession at
Yuma International Airport

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THIS CONCESSION AGREEMENT (hereinafter referred to as “Agreement”) is effective on the 1st day of **July 2017**, by and between the Yuma County Airport Authority, Inc. (hereinafter referred to as “Authority”), having an office at 2191 East 32nd Street, Suite 218, Yuma, Arizona 85365, and **Interested Company**, (hereinafter called the “Concessionaire”), having an office and/or principal place of business at **Interested Company’s Address**. The terms “Party” and “Parties” as used herein refer to the Authority, Concessionaire, or both as may be appropriate.

WITNESSETH:

WHEREAS, it is the desire of the Authority to have located on the Yuma International Airport (hereinafter called the “Airport”) a Restaurant Concession (hereinafter called “Concession”) operated by an entity or entities other than the Authority; and

WHEREAS, it is the desire of the Concessionaire to operate the Concession in accordance with the terms and conditions hereof;

NOW, THEREFORE, for and in consideration of the fees and charges herein reserved, and of the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1 Premises

The Authority hereby grants to the Concessionaire the use of the Premises, as described in Exhibit “A”, which is attached hereto and incorporated by reference herein, including any improvements existing thereon, or to be made thereon, for purposes set forth herein. The Concessionaire agrees to take the Premises for its use, subject to the terms and conditions set forth herein.

Section 2 Term

The Term of this Agreement shall be for the period as described in Exhibit “B,” which is attached hereto and incorporated by reference herein, unless terminated earlier pursuant to this Agreement.

Section 3 Rentals, Fees, Accounting Records, and Audit

Subsection 3.01 – Concession Payments

1. Concessionaire shall make monthly payments to the Authority in the amount of five percent (5%) of Concessionaire’s Gross Revenue of the previous month. Gross Revenue is defined as all revenue taken in by the Concession and all associated activities, including catering and vending machines, and any other revenue generated through the use of the Premises whether or not the actual sale or delivery of product takes place in the terminal building. In addition, Gross Revenues shall also include any and all “facility fees” or other charges designed to pass along the cost of using the Premises.

2. Time. The first of such payments shall be due and payable on **Date to be Determined**, and subsequent payments shall be due and payable on the 15th day of each succeeding month thereafter during the Term of this Agreement. Concessionaire shall include a completed and

corresponding report with each monthly payment; the form of such report shall be supplied by the Authority.

3. Place of Payment. All Concession Payments shall be made at the address shown for the Authority in Exhibit D, "Points of Contact," which is attached hereto and incorporated by reference herein.

4. Subsequent increases in Concession Payments: There shall be no subsequent increases in Concession Payments under the Term of this Agreement, unless otherwise agreed to in writing and executed by the Parties.

5. If it is determined, for any calendar year during the Term, that the Concessionaire shall have over or underpaid its obligations pursuant to this Agreement, the appropriate party shall pay or refund the excess or underpayment within thirty (30) days. Any changes made to the gross revenues previously reported shall be detailed in writing and submitted to the Authority.

Subsection 3.02 – Terminal Parking Lot

The Concessionaire's guests, customers and invitees shall pay the normal Airport charge as may be applicable to obtain access to, and egress from, public parking at the Airport. The Authority reserves the right to adjust Access and Egress Fees from time to time and in its sole and absolute discretion, and Concessionaire's guests, customers, and invitees shall be bound thereby. The Concessionaire and its employees shall use the employee lot exclusively for parking of their vehicles. Concessionaire's use of the paid parking lot North of the terminal passenger building for their vehicles or those of their employees is strictly prohibited.

Subsection 3.03 – Parking Validation

The Concessionaire may arrange to receive validation privileges from Republic Parking Systems. This accommodation is being provided solely by Republic Parking System, the performance of which is out of the control of, and in no way in conjunction with, the Authority. However, Concessionaire shall only validate parking for purchases of \$6.00 or more. Concessionaire shall have sole responsibility for resolving any issues with Republic Parking System and the Authority shall have no responsibility for, or liability with respect to, any failure to perform on the part of Republic Parking System.

Subsection 3.04 – Accounting Requirements/ Reporting

- a) The Concessionaire shall maintain complete and accurate accounting records of the food service operations in accordance with the Concessionaire's established commercial accounting practices in order to meet the financial requirements as stated herein. These records, at a minimum, shall contain detailed sales information differentiating between vending, alcohol, food and beverage sales.
- b) The Concessionaire shall submit an accounting of its gross receipts for the preceding month to the Authority within 15 calendar days after the end of each month and in a format supplied by the Authority. Further, at the request of the Authority, Concessionaire shall make the supporting cash register tapes and transaction privilege tax reports available for examination.
- c) All food service sales shall be recorded through the electronic cash register system and the Concessionaire shall retain the original tapes.
- d) The Concessionaire shall keep full and accurate books and records showing all of its Gross Receipts, including State of Arizona sales tax returns. The Concessionaire hereby agrees that all such books and records shall be made available to the Authority at the Premises, or at the Authority's offices upon reasonable notice, for at least a consecutive three-year period, which requirement shall survive the expiration or termination of this Agreement.

Subsection 3.05 – Late Payment

- a) If Concessionaire fails to make any payments when required, the Authority shall assess a late fee of fifteen percent (15%) of the unpaid balance each month. In the case of a good faith dispute as to the amount to be paid, the Authority shall accept the sum tendered without prejudice and, if a deficiency is determined, the penalty shall apply only to the deficiency.
- b) Any and all charges provided herein, for which a time of payment by the Concessionaire has not been specifically provided, shall be deemed due and payable on Concessionaire's receipt of the Authority's invoice.

Subsection 3.06 – Permits and Licenses

In performance of work under this Agreement, the Concessionaire shall, without additional expense to the Authority, be responsible for obtaining any and all necessary licenses and permits, and for complying with any and all Federal, State, and municipal laws, codes and regulations applicable to the performance of the work. Concessionaire shall obtain and maintain all necessary health permits for its operation, including any and all such permits and/or licenses for Concessionaire's employees.

Subsection 3.07 – Audit

The Authority reserves the right to audit the Concessionaire's books and records of Gross Receipts and to verify the Gross Receipts for any period within a rolling three (3) years prior to the audit for all Concessionaire's activity under this Agreement. Any additional payments found due by the audit shall forthwith be paid by the Concessionaire to the Authority plus a fifteen percent (15%) late fee. Said late fee shall continue to accrue each month if any part of the monies discovered owing from the audit remains unpaid.

Subsection 3.08 – Quality Control

- a) The Authority shall evaluate the performance of the Concessionaire throughout the Term of this Agreement. The evaluations may be used to determine suitability for continuing the services under this Agreement. The Concessionaire shall have the opportunity to review and comment on the evaluations.
- b) The Concessionaire must correct deficiencies in the time specified by such inspections or shall submit a written request for an extension, of not more than one (1) full day, to complete said corrections to the Authority.
- c) The Authority shall have the right to send its representative(s) into all areas of the Premises to conduct such evaluations.
- d) The Concessionaire shall ensure that the required services meet the quality standards outlined herein. All work performed under this Agreement shall be of the highest quality, consistent with industry best practices, to assure timely provision of services, optimum tenant agency satisfaction, and adequate protection of Airport assets. Failure to meet these standards shall be considered a material breach of this Agreement.

Subsection 3.09 – Financial Provisions

Without limiting any other provision hereof:

- a) All proceeds from cafeteria services, catering and liquid vending services belong to the Concessionaire and are subject to Concession Fee;
- b) The Concessionaire agrees to bear the costs and expenses of maintaining the Authority's food services inventory of china, small wares, flat wares, trays, tray drop racks, etc.; and
- c) No funds of the Authority shall become due or be paid to the Concessionaire because of this Agreement.

Subsection 3.10 – Personnel

The Concessionaire shall provide the name, home phone and cell phone numbers of its General Manager to the Airport Director prior to commencing work under this Agreement. The General Manager or his or her designated representative shall be available at all times (24 hours a day, 7 days a week, 365 days a year) as may be required for exceptional circumstance as determined by the Airport Director in his or her sole discretion.

Section 4 Concessionaire's Uses, Privileges, Obligations, and Restrictions

Subsection 4.01 – Airport Minimum Standards

The Concessionaire acknowledges and agrees to adhere to the Airport's Minimum Standards as they may be revised from time to time at the sole discretion of the Authority. Concessionaire further acknowledges and agrees that changes to the Minimum Standards are applicable upon publication.

Subsection 4.02 – Use of Premises

The Concessionaire may use the Premises to operate a restaurant and vending machines. The Concessionaire is permitted to perform catering services based out of the Premises subject to the terms and conditions set forth in this agreement. The Premises shall be used only for the purposes specified in this Agreement and no others whatsoever, unless otherwise agreed to in writing signed by both Parties.

Subsection 4.03 – Non-exclusive Rights

The Concessionaire shall have the non-exclusive right, in common with other concessionaires so authorized by the Authority, for the operation of a Restaurant Concession within the Terminal Building. The Authority may, in its sole discretion, allow additional operators of businesses located off-airport to pick up and deliver product to the Airport, all under terms and conditions determined by Authority, without the Authority being deemed in breach of this Agreement.

Subsection 4.04 – Disadvantaged Business Enterprise Commitment

This Agreement is subject to the requirements of the US Department of Transportation (“USDOT”) regulations, 49 CFR Part 23F. The Concessionaire agrees that it shall not discriminate against any person because of race, color, national origin or sex in connection with this Agreement and the award or performance of any concession agreement covered by 49 CFR Part 23F.

The Concessionaire shall provide the maximum opportunity for direct Disadvantaged Business Enterprise (“DBE”), as defined by the Federal Aviation Administration (“FAA”), participation in the management and operation of the concession business herein authorized.

Subsection 4.05 – Subordination of Agreement

It is mutually understood and agreed that this Agreement shall be subordinate to the provisions of any existing or future agreement between the Authority and the United States of America, the State of Arizona, its Counties, Agencies, Commissions and other governmental agencies, relative to the operations or maintenance of the Airport, the execution of which has been, or may be, required as a condition precedent to the development or operations of the Airport.

Subsection 4.06 – Additional Services

The Concessionaire shall, upon receipt of written demand from the Authority, provide for the provision of services of a nature customarily provided in airport concessions similar to that contemplated herein and which the Authority, in its sole discretion, may determine necessary.

Subsection 4.07 – Capital Investment

No capital investment in improvements is required under this Agreement. If Concessionaire desires to make any renovations to the Premises, Concessionaire shall obtain prior, written approval of the Authority before commencing any such renovations.

Section 5 Prohibited Acts and Unusual Risks

Subsection 5.01 – Prohibited Acts

The Concessionaire shall not:

- a) Commit any nuisance on the Premises, or any other portion of the Airport, or do or permit to be done anything which may result in the creation or commission of such nuisance; and
- b) Store or use in or about the Premises any hazardous substances, of any nature whatsoever, without the advance, written approval of the Authority.

Subsection 5.02 – Unusual Risks

The Concessionaire shall not perform any action that is considered a hazard by the Airport Director, in his or her sole discretion. If any action by the Concessionaire results in a fine or fee to the Authority, the Concessionaire shall be wholly responsible for such payment.

Section 6 Construction

Subsection 6.01 – Construction by the Concessionaire

The Concessionaire shall not make any improvements or modifications, nor do any other construction work on the Premises, without prior, written approval of the Authority.

In the event any construction, improvement, alteration, modification, addition, repair or replacement is made without such approval, or in a different manner than approved, such action shall be considered a material breach of this Agreement.

Any construction, improvement, alteration, modification, addition, repair or replacement approved shall be performed in accordance with the Airport Minimum Standards.

Subsection 6.02 – Signs

The Concessionaire shall submit to the Authority, for its approval, the size, design, content, and intended location of each and every sign it proposes to install on the Premises. Further, Concessionaire shall not install any signs on or within the Premises without the specific prior, written approval of the Authority as to the size, design, content, and location.

The Authority's approval is specifically understood to include approval of advertising and promotional materials which the Concessionaire seeks to display anywhere within the Premises. The Authority shall not grant approval to advertising or promotional materials that are not directly related to the Concessionaire's business activities at the Airport, as authorized by this Agreement.

Section 7 Maintenance, Utilities and Repairs

Subsection 7.01 – Trash and Refuse

The Concessionaire shall provide for the adequate sanitary handling and removal of all trash and other refuse caused because of its operations on the Premises. The Concessionaire shall use suitable receptacles, provided by the Authority, for all trash and other refuse. Piling of boxes, cartons, barrels or other similar items in, or in view from, a public area shall not be permitted.

Subsection 7.02 – Transporting Merchandise, Trash, etc.

In transporting merchandise, products, trash, and refuse associated with operating the concession to and from the Premises, the Concessionaire shall use only carts, vehicles or conveyances that are approved by the Authority.

Subsection 7.03 – The Concessionaire’s Maintenance Obligations

The Concessionaire shall be obligated, without cost to the Authority, to maintain its personal and trade fixtures in good appearance and repair, and in a safe condition. The Concessionaire shall furnish, at its sole cost and expense, janitorial services as required to keep the Premises neat, clean and in first-class condition at all times. Adequacy of such janitorial services shall be determined solely by the Authority. The Authority, or its authorized agents, may at any time, without notice, enter upon the Premises to determine if maintenance is being performed in accordance with this Agreement.

Subsection 7.04 – The Authority’s Maintenance Obligations

The Authority shall provide structural maintenance of the Terminal Building, including the roof and flooring systems installed by the Authority, and the automobile parking area assigned to the Concessionaire, and shall maintain and repair the exterior walls of the Premises in the Terminal Building. The Authority shall maintain, repair, replace, paint, or otherwise finish the Premises (including, without limitation thereto, wall coverings, partitions, floor coverings, ceiling tiles, windows, doors, and glass, and furnishings, fixtures, and equipment therein) as determined necessary by the Authority, except that Concessionaire shall be responsible for any maintenance, repair, replacement or other necessary actions caused by the negligence, omission or intentional act of Concessionaire or its officers, directors, employees, volunteers.

The Authority shall provide maintenance of all equipment provided as part of the Premises including but not limited to fire extinguishing systems.

The Authority will assure the provision of utility lines or connections reasonably necessary for the supply of utilities that the Concessionaire may reasonably require.

Concessionaire acknowledges and agrees that the Authority may enter the Premises at all reasonable times necessary to make repairs.

Subsection 7.05 – Utilities

Normal utilities, as determined by the Authority in its sole discretion, shall be furnished by the Authority, at no separate charge to the Concessionaire, and will be brought by the Authority to the perimeter of the Premises.

Section 8 Security Deposit

There will be no security deposit required under this Agreement.

Section 9 Liens

The Concessionaire shall not allow any liens, of whatever kind or nature, to attach to the Premises or any improvements or equipment thereon.

Section 10 Standards of Operation

Subsection 10.01 – Hours of Operation

Concessionaire shall maintain operating hours that will ensure a high level of service to the traveling public as identified in Exhibit E - Performance Specifications, which is attached hereto and incorporated by reference herein. The Concessionaire shall also keep its facilities open for longer than normal in the case of delayed, off-schedule or charter aircraft operations.

Subsection 10.02 – Personnel

The Concessionaire shall employ only such personnel as will assure a high standard of service to the public. All the personnel, while on or about the Premises, shall be clean, neat in appearance, uniformly attired (with appropriate identification badge displaying no less than the Concessionaire and employee name), and courteous at all times.

Subsection 10.03 – Nondiscrimination/Affirmative Action

The Concessionaire for itself, its personal representatives, successors in interest and assigns as a part of the consideration hereof does, hereby covenant and agree that:

- a) No person shall be excluded on the grounds of race, color, sex, or national origin from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Premises;
- b) In the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person shall be excluded on the grounds of race, color, sex, or national origin from participation in, denied the benefits of, or otherwise be subjected to discrimination; and
- c) The Concessionaire shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, as may be amended from time-to-time.

In the event of a breach of any of the above non-discrimination covenants, the Authority shall have the right to immediately, and without notice, reenter the Premises, and the Premises, including all improvements thereto, shall thereupon revert to and vest in and become the absolute property of the Authority and its assigns.

This provision shall not be effective until the applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise of expirations of appeal rights.

The Concessionaire assures that it shall undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall be excluded on the grounds of race, creed, color, national origin, or sex from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Further, the Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by that Subpart.

Subsection 10.04 – Cash and Record Handling Requirements

The Concessionaire shall, at all time, observe revenue handling and record handling systems in accordance with its Proposal.

The Authority shall have the right to monitor and test all of the Concessionaire's services and controls by a responsible service. Where such services identify a material breach in the terms and conditions of this Agreement by the Concessionaire, the Concessionaire shall reimburse the Authority for the cost of such service.

Where investigations performed by or for the Authority establish that Gross Receipts are not being properly recorded by the Concessionaire, or its employees, the Concessionaire shall pay to the Authority, in addition to any applicable late fees or other charges provided for herein, the amount that would have been due to the Authority, plus fifteen percent (15%) to offset the Authority's cost and expense of conducting any such investigation. The Authority shall have the right to make a reasonable estimate of the losses that it has incurred.

Subsection 10.05 – Level of Public and Customer Service

The Concessionaire shall maintain and operate the Premises in a first-class manner at least equal to the highest standard of service rendered by similar concessionaires at other airports in the United States. The Concessionaire shall provide prompt and efficient service adequate to meet reasonable demand.

Subsection 10.06 – Standards and Obligations

It is intended that the standards and obligations imposed herein shall be maintained or complied with by the Concessionaire, in addition to its compliance with all other applicable governmental ordinances, rules, or regulations, and, in the event that any of the laws, ordinances, rules or regulations shall be more stringent than the standards and obligations herein contained, the Concessionaire shall comply with such laws, ordinances, rules and regulations.

Section 11 Insurance

Subsection 11.01 – Insurance

Upon execution of this Agreement, the Concessionaire shall procure, or otherwise provide, for itself, and for any of its contractors or agents, the insurance set forth in the Airport's Minimum Standards.

Subsection 11.02 – Indemnification and Hold Harmless

Concessionaire shall protect, indemnify, and hold Yuma County and the Authority and its officers, directors, agents, employees and consultants, harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury (including economic injury) or death to any person or damage to any property, including all reasonable costs from investigation and defense thereof (including but not limited to attorneys' fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to the Concessionaire's activities pursuant to this Agreement. Expressly included herein shall be all damages of an environmental nature in or about the Premises, caused by the Concessionaire, its agents, employees or contractors. This indemnification shall include the use and occupancy of

the Premises and/or the acts or omissions of Concessionaire's officers, directors, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, except to the extent such injury, death or damage is caused by the gross negligence or willful misconduct of the Authority, its officers, agents, employees, contractors, subcontractors, licensees or invitees. The Authority shall give to Concessionaire reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or termination of this Agreement. The Concessionaire agrees to defend, at its own cost, and to protect, indemnify, and otherwise hold harmless, Yuma County and the Authority and its officers, agents and employees (including but not restricted to the posting of bond and release of attachment) from and against any and all claims in any way connected with or arising out of this Agreement and/or arising out of construction, repair, or maintenance work hereunder, or operation of the concession under this Agreement (including but not restricted to attachments, liens and/or levies, and whether or not the claim is meritorious) made, filed and/or asserted by any party other than the Concessionaire against the Authority its officers, agents and employees and/or the Premises or improvements thereon or part thereof, or monies owing to the Authority, or monies owing the Concessionaire for goods and services furnished in or from the Premises.

The Concessionaire shall give the Authority prompt notice of any matter covered hereby, and shall forward to the Authority copies of every demand, notice, summons, or other process received in any claim or legal proceeding covered hereby. Any payments made by the Concessionaire pursuant to this indemnification shall be in addition to any and all other remedies available to the Authority, and shall not be deemed the Authority's exclusive remedy.

Section 12 Premises and Services Acceptance

The Concessionaire unequivocally agrees that it shall accept the Premises when delivered to the Concessionaire by the Authority in finished condition. Except as provided herein, the Authority shall not be obligated to provide any additional improvements or services of any type, character or nature (including any utilities or telephone service) to the Concessionaire or to the Premises during the Term.

Section 13 Cancellation – Termination

Subsection 13.01 – By the Concessionaire

This Agreement may be cancelled by the Concessionaire, upon sixty (60) days advance, written notice, at any time after the happening, and during the existence, of one (1) or more of the following events:

- a) The permanent abandonment of the Airport or the permanent removal of all certificated passenger airline service from the Airport or the Terminal Building;
- b) The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in a manner as substantially to restrict the Concessionaire for a period of at least ninety (90) days from operating thereon;
- c) The issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport in its entirety, and remaining in force of the injunction for a period of at least ninety (90) days;
- d) The default by the Authority in the performance of any covenant or agreement herein required to be performed by the Authority and the failure of the Authority to remedy the default for a period of sixty (60) days after receipt from the Concessionaire of written notice to remedy the same; or
- e) Failure of the Authority to repair and reconstruct (or require the Concessionaire to repair and reconstruct) the Premises that are destroyed in accordance with the terms as set forth herein.

Subsection 13.02 – By the Authority

This Agreement may be canceled by the Authority, with ninety (90) days written notice, without cause and without regard to any specific breach of this Agreement by the Concessionaire. In the event of such cancellation, the Authority will buy out the Concessionaire's unamortized, verifiable investment in additions (all of which shall thereafter belong to the Authority free of any liens or encumbrances), if any, for an amount determined in the Authority's sole and absolute discretion, and there shall be no further liability to the Concessionaire unless otherwise specified in this Agreement. Further, upon the expiration of the 90-day period, the Authority shall be released and forever discharged from any and all liability or further obligations hereunder.

This Agreement may also be cancelled by the Authority, at any time and without notice unless otherwise specified herein, and with no requirement for a buyout of Concessionaire's investment, if any, in the event the Concessionaire:

- a) Is in arrears in the payment of the whole or any part of the fees and charges due hereunder for a period of ten (10) days after receipt of written notice from the Authority of the failure; or
- b) Makes a general assignment for the benefit of creditors; or
- c) Abandons the Premises or a substantial part thereof for more than ten (10) calendar days; or
- d) Files a voluntary petition in bankruptcy; or
- e) Fails to repair or replace any improvements which have been destroyed by fire, explosion, etc., as required of the Concessionaire; or
- f) Defaults in the performance of any other covenant and/or condition required under this Agreement, and the default continues for a period of thirty (30) calendar days after the Concessionaire's receipt of written notice from the Authority (provided Concessionaire has the

right to cure and subject to any limitations on Concessionaire's right to cure as may otherwise be provided herein). If the default cannot be cured within the 30 days, Concessionaire shall not be in default if it shall, within the same 30 day period, commence performance and thereafter diligently pursue the same to completion.

Finally, the Authority may also cancel this Agreement, at any time and without notice, with no requirement for a buyout of Concessionaire's investment, if any, in the event that: (1) cancellation is required by the County of Yuma, Arizona, due to a termination of the master Lease between the Authority and the County of Yuma, Arizona, or a material change in such master Lease wherein the County of Yuma, Arizona, requires such cancellation; or (2) it is determined by the Authority, FAA or any other governmental agencies that cancellation is necessary in the interests of national security. In such event, the Authority shall be released and forever discharged from any and all liability or further obligation hereunder.

Subsection 13.03 – Right of Entry upon Termination

In the event of the termination or the normal expiration of this Agreement, the Concessionaire hereby irrevocably appoints the Authority its agent to remove all persons or property from the Premises and place any property in storage for the account of and at expense of the Concessionaire. The Concessionaire further agrees to save the Authority harmless from any loss or damage or claim arising out of the action of the Authority in pursuance of this paragraph.

Section 14 Property

Subsection 14.01 – Repairs and Replacements

Replacements or repairs of property or equipment owned by the Authority shall belong to the Authority. Replacements or repairs of property or equipment owned by the Concessionaire shall belong to the Concessionaire.

Subsection 14.02 – Rights upon Termination

Upon expiration or termination of this Agreement, the Authority shall have the right to require removal by the Concessionaire of all trade fixtures installed by the Concessionaire. Any property remaining on the Premises after the termination or expiration of this Agreement shall belong to the Authority and may be disposed of in any matter deemed suitable to the Authority.

Section 15 Holding Over

Any holding over by the Concessionaire of the Premises after the expiration or other termination of this Agreement shall operate and be construed as a tenancy at sufferance with the fees and charges provided herein prorated by the day; and the Concessionaire agrees to surrender the Premises upon ten (10) days written notice.

Section 16 Redelivery of Premises

The Concessionaire shall, upon the expiration or termination of this Agreement, quit and deliver the Premises to the Authority peaceably, quietly, and in as good order and condition as the same may be hereafter improved by the Concessionaire or the Authority, reasonable use and wear thereof excepted.

Section 17 Assignment and Subcontract

Except as explicitly set forth herein, the Concessionaire shall not assign, sell, convey, transfer, mortgage or pledge this Agreement, or any part thereof, without the prior, written consent of the Authority. Any restrictions that form a part of any written consent granted by the Authority shall be deemed part of this Agreement.

Section 18 Representatives of the Authority

The Authority may designate, in writing, certain of its employees to act on its behalf as its representatives. The designation will specify the matter or area in which the representative may act, and any action taken by the representative shall be deemed as the action of the Authority.

Section 19 Taxes and Licenses

The Concessionaire shall pay all taxes of whatever character, including ad valorem and intangible taxes, that may be levied or charged upon the Premises, improvements thereto, or operations hereunder and upon the Concessionaire's rights to use the Premises. The Concessionaire shall pay all sales taxes on its occupancy or use of the Premises whether the taxes are assessed against the Concessionaire or the Authority. The Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. The cancellation, suspension or revocation of any of the Concessionaire's licenses or permits shall be a material breach of this Agreement.

Section 20 Authority's Right to Transfer

The Authority reserves the right to transfer, assign, sell or convey its interest and obligation herein to any other entity authorized by law to operate the Airport.

Section 21 Notices

Any notices required to be given herein shall be deemed to have been sufficiently given to either Party for all purposes if delivered by hand or mailed regular or registered or certified mail, postage prepaid, or by electronic mail, to the address and person identified in Exhibit D, unless otherwise directed and acknowledged in a signed, writing by the Parties. Notices that are hand-delivered shall be deemed effective upon receipt; notices sent via regular, certified or registered mail shall be deemed effective upon receipt or attempted delivery; and notices sent via electronic mail shall be deemed effective upon the date and time sent.

Section 22 Agent for Service of Process

Concessionaire acknowledges and expressly agrees that it, or its agent, must be a resident of the State of Arizona. If Concessionaire fails to comply with this provision and Concessionaire, or its agent, is not a resident of the State of Arizona, or is an association or partnership without a member or partner resident of the State of Arizona, or is a foreign corporation, the Concessionaire hereby designates, and shall take all such action as may be required to make, the Secretary of State of Arizona its agent for the purpose of service or process in any court action between it and the Authority. Service shall be made as provided by the laws of the State of Arizona for service upon a nonresident. As an alternative valid method of service, the

Concessionaire expressly agrees that it may be personally served out of this State by the registered or certified mailing of the Complaint to the Concessionaire at the address set out in this Agreement. It is further expressly agreed that the Concessionaire is amenable to and hereby agrees to the process so served.

Section 23 Right to Amend

The United States, the State of Arizona, and/or the County of Yuma, Arizona, and any of their agencies may require modifications or changes in this Agreement as a condition precedent to the granting of funds for the improvement of the Airport. The Concessionaire agrees to consent to the amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to obtain the funds. The Concessionaire shall be required, pursuant to this paragraph, to agree to an increase in the rent, fees and charges provided for hereunder or to a reduction in size or the authorized use of the Premises.

Section 24 Aircraft Noise and Overflight

The Concessionaire accepts without qualification that the Premises is on an airport and is subject to such an environment. The Concessionaire releases and holds harmless the Authority, the County of Yuma, Arizona, the United States of America, the airlines operating at the Airport, and their officers, employees, consultants and agents, from any and all claims for damages or injunctive relief arising out of aircraft operations at the Airport, including, but not limited to, noise, vibration, exhaust and overflight issues. This release was a material inducement of the Authority's decision to grant the use of the Premises to the Concessionaire.

Section 25 Rights-Of-Way, Exclusions and Limitations

The Authority has right-of-way over the Premises and shall use its reasonable best efforts to minimize interference with the Concessionaire's business.

Section 26 Security Regulations

The Concessionaire acknowledges that Airport security may have a negative impact on its business. The Concessionaire agrees that it shall make no claim of constructive eviction, or similar theory, or make any monetary or other demand of the Authority, and agrees to conform to, and strictly comply with, all such regulations at all times.

Section 27 General Provisions

Subsection 27.01 Mineral Rights

It is agreed and understood that all water, gas, oil and mineral rights in and under the soil are expressly reserved by the Authority.

Subsection 27.02 No Waiver of Forfeiture

Any failure or neglect of the Authority or the Concessionaire at any time to declare a forfeiture of this Agreement for any breach or default whatsoever hereunder shall not be taken or

considered as a waiver of the right thereafter to declare a forfeiture for like or other or succeeding breach or default.

Subsection 27.03 Force Majeure

Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations by reason of labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other similar circumstances for which it is not responsible, or which is not in its control. These provisions shall not apply to failures of the Concessionaire to pay the Concession Payments, fees and charges herein specified.

Subsection 27.04 Rules and Regulations

The Concessionaire agrees to follow all Airport rules and regulations including the Minimum Standards. The Concessionaire is responsible for any fees, fines or other costs related to its operations, even if assessed to the Authority.

Subsection 27.05 Headings

The titles and headings contained in this Agreement and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Agreement.

Subsection 27.06 Venue; Jurisdiction

The Parties irrevocably agree that this Agreement shall be construed in accordance with the laws of the State of Arizona, and any controversy, dispute or litigation shall be brought or commenced only in Yuma County, Arizona, exclusively, and any action shall be maintained in such County.

Subsection 27.07 Successors and Assigns

Subject to the limitations upon assignment and transfer herein contained, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.

Subsection 27.08 No Third Party Benefit

No provision contained in or incorporated by this Agreement shall create or give to third parties any claim, or right of action, against the Authority, or the Concessionaire, beyond that which may legally exist in the absence of any such provision.

Subsection 27.09 Relationship of the Parties

It is expressly understood and agreed, by and between the Parties hereto, that the Concessionaire is, and shall be, an independent operator responsible to all parties for its acts and omissions associated with its operations pursuant to this Agreement, and that the Authority shall in no way be responsible therefore. Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the Parties.

Subsection 27.10 Disabled Persons

The Concessionaire shall comply with the Americans with Disabilities Act and all similar state, federal or local legislation, rules, regulations or ordinances.

Subsection 27.11 Authorship of Agreement

This Agreement, and its terms and conditions, shall not be construed for or against either Party by virtue of the authorship or drafting of the provisions hereof.

Subsection 27.12 Entire Agreement; Modification

This Agreement contains the entire agreement between the Parties on the subject matter set forth herein. All prior and contemporaneous agreements, representations, and understandings, written or oral, are superseded by and merged into this Agreement. No promises or assurances have been made which are not part of this Agreement. Any previous agreements, whether written or oral, entered into between the Parties and null and void unless specifically incorporated herein. No supplement, modification, or amendment of this Agreement shall be binding unless in writing and executed by the Parties.

Subsection 27.13 Attorneys' Fees and Costs

In the event suit is brought or an attorney is retained by any Party to this Agreement to seek interpretation or construction of any term or provision of this Agreement, to enforce the terms of this Agreement, to collect any money due, or to obtain any money damages or equitable relief for breach, or to seek recourse in a bankruptcy proceeding, the prevailing Party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees, including attorney's fees for representation in the bankruptcy court, court costs, costs of investigation, and other related expenses.

Subsection 27.14 Time is of the Essence

Time is of the essence in each and every provision of this Agreement.

Subsection 27.15 Reference to "Days"

All references to "days" herein shall be measured in calendar days, unless otherwise specified.

Subsection 27.16 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Subsection 27.17 Non-Severability

If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof.

Subsection 27.18 Cumulative Remedies

No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Subsection 27.19 Interpretation

This Agreement is the result of negotiations between the Parties, and accordingly the terms and provisions hereof shall be interpreted and construed in accordance with their usual and customary meanings. The Parties hereby waive the application of any rule of law which otherwise would be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions should be interpreted or construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first set forth above.

Yuma County Airport Authority, Inc.

Interested Company

By: _____
Robert F. Ingold, Jr. President

By: _____
Title: _____

Date: _____

Date: _____

ATTEST:
By: _____
Andrea Lopez, Executive Assistant

ATTEST:
By: _____

Exhibit A – Description of Property

The descriptions made herein are “non-surveyed” descriptions based upon the best available information and are made in good faith and considered accurate for the purposes of this Agreement. Any future discrepancies will be corrected with the written consent of both Parties, but will not entitle either the Authority or the Concessionaire to any abatement or increase in rent or other related charges retroactively without the written consent of both Parties.

The property in this concession consists of areas within the Airport terminal building located at 2191 E 32nd Street, Yuma, Arizona as follows: the kitchen area, including storerooms, a small office, a walk-in cooler and the dumb waiter; the dining area (located outside of the kitchen area and also known as serving area), including tables and chairs on a tile floor; and areas for vending machines and other portable concession activities as may be allocated from time to time by the Airport Director depending on Airport operational requirements. The Parties agree that the following list of furniture, appliances and other equipment is only an initial, non-guaranteed inventory of items that will also be included in the Premises and which may change subsequent to an audit of the outgoing restaurant vendor, such change shall be evidenced by an amendment after execution of this Agreement which shall constitute the final inventory of items included in the Premises:

Inventory of Restaurant and Bar Ground Floor Restaurant Each

Inventory Description	Quantity
Wolf brand six row broiler – Gas	1
Wolf brand six burner stove top – Gas	1
Bunn 3 burner coffee machine	1
Pitco brand “Frialotor” deep fryer with drip collector	2
Scotsman brand ice machine	1
Walk-in cooler with Storage racks, Beer pump and regulators	1
Syrup soda dispensing racks with regulators	1
Traulsen brand stainless steel upright refrigerator with two doors	1
Victory brand upright stainless steel freezer with two doors	1
Daewoo Flat Screen Televisions	3
Food warmers	3
Storage room shelving racks	9
Federal Industries brand large refrigerated display case	1
Superior brand reach in beer cooler	1
True Brand beer cooler with 3 doors	1
Commercial microwave oven	1
Steel safe	1
Cash register	2
Large Bar Stools with arms	5
Large booths with table	6
Small booths with table	3
Square dining tables	9
Dining chairs without arms	34

Refuse cabinets	3
Condiment cabinet	1
Sanitizing Machine	1

Figure 1 - Restaurant Area* First Floor

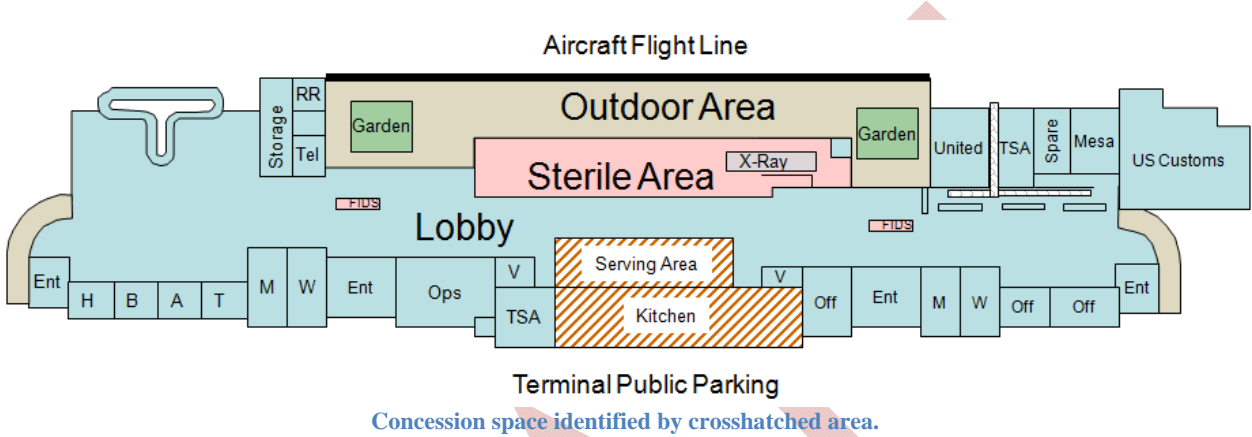


Exhibit B – Term of Agreement

This Agreement shall be binding upon the Authority and the Concessionaire as of the date first written in the Agreement. Subject to the provisions hereof relating to cancellation, termination, any “Special Requirements” in Exhibit “E,” or any other relevant provision, this Agreement shall last a period of five (5) years, commencing on **Date to Be Determined**, and ending on **Date to Be Determined** (“Term”). Further, Concessionaire shall have one (1) option to extend the Agreement for one (1) additional year subject to the conditions specified below.

If the Concessionaire has not, at any time, been in default under any term or condition of the Agreement, as determined in the sole and absolute discretion of the Authority, the Concessionaire may elect to exercise its option to extend the Term of the Agreement as specified above. Concessionaire shall notify the Authority, in writing, of its decision to extend the Agreement not less than ninety (90) days before the end of the then current Term. If concessionaire fails to submit the timely, written notice to the Authority as required herein, this Agreement may be extended only upon a written agreement signed by both Parties.

Exhibit C – Special Requirements

1) NO WARRANTY. The property is provided “as is.” The Authority neither makes nor gives any warranty, express or implied, as to the condition of the Premises, or any improvements, furniture, fixtures or equipment thereon, including warranty of habitability or fitness for a particular use, or as to the suitability of the Premises for Concessionaire’s intended use(s).

2) Security: All Concessionaire’s employees, visitors and guests must comply with the Airport Minimum Standards including, but not limited to, applying for and obtaining Airport Identification badges, if required. This is mandated by regulations from the Department of Homeland Security. Any security requirement on the part of the Concessionaire or its agents that does not comply with the Airport Security Plan must first receive approval from the Department of Homeland Security/Transportation Security Administration and the Authority.

DRAFT

Exhibit D – Points of Contact

To the AUTHORITY:

Yuma County Airport Authority, Inc.
Attn: Airport Director
2191 E. 32nd St., Suite 218
Yuma, AZ 85365
Ph: (928) 726-5882
Gladys@yumaairport.com

To the Concessionaire:

Interested Company
Attn: Owner
Address
City, State, Zip
Telephone
Email:

DRAFT

Exhibit E - Performance Specifications

a) The Concessionaire shall manage and operate, in the Concessionaire's name, the food service areas and facilities of the Airport Terminal Building. You may rename these facilities, as approved by the Airport Director, to suit your marketing plan. This includes:

- 1) Terminal Restaurant
- 2) Liquid Vending Machines

b) Vending Services: All food and beverage vending opportunities within the Terminal Building are included as may be allocated from time to time by the Airport Director depending on Airport operational requirements. Each vending machine shall have a sign posted on it that provides a phone number and Airport office location to report problems and obtain refunds. All vending machines must be kept filled and in working order.

c) Catering: The Concessionaire shall provide periodic special services such as catering for specific conferences, meetings, or other affairs originating in the Airport Terminal Building. These events will be varied in frequency and types of food, ranging from simple coffee services to full food services and beverage functions. Creativity and quality are the key issues for catering at the Airport. Concessionaire acknowledges and agrees, however, that it may not be the exclusive provider of any such catering requirements.

d) Emergency Operations: The Concessionaire shall maintain an ability to respond with basic food services, such as sandwiches and hot and cold drinks, in the event of an emergency situation. When required by the Airport Director or Airport Operations Officer, these provisions shall become the Concessionaire's first priority and will be provided on-call basis, in quantities sufficient for up to 100 people or as otherwise directed by the Airport Director or Airport Operations Officer. The Airport shall compensate the Concessionaire for these services at mutually agreeable rates.

d) Normal Hours

- 1) The main floor restaurant/snack bar shall have minimum operating hours that include being open and available to provide full food and beverage service beginning at least two (2) hours prior to the first scheduled air carrier departure and continuing until 03:00 p.m. Arizona time, seven (7) days per week.
- 2) These hours may be increased if desired by the Concessionaire. Certain other functions on the Premises may be conducted on irregular schedules to the extent allowed under this Agreement.

e) Uniforms

- 1) While on Yuma International Airport premises for work related matters, all employees of Concessionaire shall wear a uniform shirt with a logo identifying the individual as an employee of the Concessionaire. Concessionaire shall be responsible for all costs associated with, and acquisition of, the uniform shirts and logos. However, said uniform shirts and logos must be in good taste as determined by the sole discretion of the Airport Director.

f) Payment Instruments

- 1) Concessionaire shall ensure that patrons can make purchases with cash or credit/debit card.
- 2) Concessionaire shall offer a ten (10%) discount to Airport employees, contingent upon presentation of a valid Airport Security Identification Badge. Cash registers shall be programmed to automatically calculate this discount upon presentation of a Yuma International Airport Security Badge.

g) Liquor License

- 1) Concessionaire may obtain a liquor license from the State of Arizona and sell alcohol. The nature of the license shall be a class 12 “restaurant” unless the Authority consents in writing to another type of license.
- 2) If desired, the Concessionaire may operate under the existing class 5 liquor license currently owned by the Authority. In order to operate under the Authority’s liquor license the Concessionaire shall:
 - a) Maintain a list of all of its alcohol servers with the Authority;
 - b) Provide evidence that all alcohol servers have successfully passed the State of Arizona Liquor Board–approved server training course; and
 - c) Maintain, at all times, a \$1,000,000 liquor liability insurance policy with the Authority listed as additional insured.

Facilities Provided to the Concessionaire

a) Service Access

- 1) A dumb waiter elevator is designated for the non-exclusive use of the Concessionaire in transporting deliveries or other items between the ground floor and Airport reception and Event Room in the Airport Terminal Building.
- 2) The Concessionaire will be given access to the Airport Terminal Building loading entrance consistent with Airport security limitations for the purpose of accepting deliveries.

b) Employee parking: Employees must park in the airport's employee parking lot and acquire security badges as defined in the minimum standards and as set forth in this Agreement.

c) Smoking Areas: The front of the terminal building is a public area and is NOT to be used for smoking or lounging. Employees and invitees desiring to smoke shall only do so in designated smoking areas.

Services Provided to the Concessionaire

a) Utilities: The Authority will provide the following necessary utilities for the operation of the food service facilities: electricity, gas, heat, air conditioning, hot and cold running water and ventilation. The Authority will not guarantee the uninterrupted provision of the above utilities and service except to insure that reasonable and diligent efforts will be pursued in restoring any interrupted service. The Authority shall not be liable for product or revenue loss that may result

from the interruptions or failure of the above services. Utilities shall not include telephone line charges for either telephonic communication or processing credit card transactions.

b) **Lighting:** The Authority will provide all illumination in the food service areas to include replacing light bulbs in all light fixtures and required lamp replacement. If the Concessionaire installs new lighting to achieve a desired look, that lighting shall be the responsibility of the Concessionaire.

c) **Maintenance**

1) The Authority will make all repairs in the food service areas with respect to all the equipment, fixtures and facilities owned by the Airport. The Concessionaire must take steps to ensure routine maintenance and cleaning of those systems. Inspection of those systems shall be part of the Authority's quality control review process. The Authority will maintain the exterior roof mount unit of the walk-in cooler.

2) The Authority recognizes the need to respond on a timely basis to food service maintenance requirements. Depending on the maintenance condition, the Authority will perform preventive maintenance, emergency maintenance and non-emergency maintenance as appropriate.

3) The Authority is not responsible for product or revenue loss resulting from repair of equipment or property. The Concessionaire shall be responsible for the immediate communication of maintenance or repair conditions through the Airport's website, upon discovery.

4) Damage or injury to any equipment, facilities or property of the Airport that necessitates major refurbishment resulting from negligence on the part of the Concessionaire shall be repaired or replaced to the Authority's satisfaction at the sole expense of the Concessionaire.

d) **Inspections**

1) The Authority will inspect all facilities on a quarterly basis to ensure the concession area and equipment is being maintained to the highest industry standard. Any discrepancies must be addressed by the Concessionaire within three (3) working days.

2) The Authority will inspect all health and safety cards on a quarterly basis.

Complaints

The Concessionaire shall maintain a customer service system to record and monitor complaints from customers with an effective process for resolution and monitoring progress. Complaints involving the work performance of individual employees shall be considered in evaluating employee performance in accordance with the Concessionaire's policies and procedures for disciplinary actions. These Concessionaire policies and procedures shall address the disciplinary actions for deviations from service requirements, up to and including termination. The Airport Director or his or her agent shall have access to the record of complaints upon request.

Cleaning

The Concessionaire shall also adhere to the following standards and guidelines:

- a) Cleaning and appropriate housekeeping of the vending and alcove areas of the Premises shall be the Concessionaire's responsibility during the Concessionaire's operating hours. The Concessionaire shall keep all eating areas during operation hours in a broom-clean condition.
- b) The Concessionaire shall provide, at its own expense, trash and garbage liners for all trash and garbage containers provided to it by the Authority in all food service areas. The food service Concessionaire is responsible for the daily cleanliness of both the Restaurant and Bar areas. All trash shall be dumped in the Airport provided dumpsters. All trash shall be sealed in appropriate trash bags before putting in the dumpster.
- c) Failure to keep any of the facilities in a clean and sanitary condition satisfactorily to the Authority may result in the authorization of cleaning of the facilities by other means and charging the cost of such work to the Concessionaire. Repeated failure to meet cleaning standards shall constitute a material breach of this Agreement.
- d) The Authority does not provide any daily janitorial service for the restaurant dining area. The Concessionaire shall perform, at least once a day, daily cleaning and vacuuming of floors and carpeting, including periodic steam cleaning.
- e) The Concessionaire shall be responsible for all cleaning of areas behind the drop gates and the restaurant dining area at all times.
- f) The Concessionaire shall also clean and maintain all liquid vending machines.