



## **CITY OF YUMA**

**Amended and Restated Operation of "The Patio" Restaurant  
Concession Agreement**

**With**

**Chef Alex Group, LLC**

**Amended and Restated Operation of “The Patio” Restaurant  
Concession Agreement**

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**Amended and Restated Operation of "The Patio" Restaurant  
Concession Agreement**

This Amended and Restated Concession Agreement, hereinafter called the "Agreement," is made and entered into as the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF YUMA, ARIZONA, a municipal corporation, , hereinafter called "City," and, **Chef Alex Group, LLC**, hereinafter called "Concessionaire."

**WITNESSETH:**

**WHEREAS**, City maintains the Desert Hills Golf Course, hereinafter called "Desert Hills", as a municipal golf course for the benefit and enjoyment of the public; and

**WHEREAS**, it is the desire of the City to have food and beverage services for the public using Desert Hills; and

**WHEREAS**, it is the desire of the City to have the food and beverage services at Desert Hills operated by an entity or entities other than the City; and

**WHEREAS**, it is the desire of the City to have any and all food and beverage services at Desert Hills operate in accordance with the terms and conditions hereof, and

WHEREAS, The City and Concessionaire desire to amend and extend the existing contract assumed by Concessionaire;

**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 sufficiency of which is hereby acknowledged, the City and Concessionaire agree as follows:

**ARTICLE 1**

**Concession Space**

1.1 Definition of Concession Space. For the purposes of this Agreement, the "Concession Space" shall mean the following areas at Desert Hills located at 1245 West Desert Hills Drive, Yuma, Arizona 85365:

1.1.1 The Hills Restaurant Patio & Bar ("The Patio") located in the Desert Hills clubhouse;

1.1.2 Desert Hills Snack Shack ("Snack Shack") located between Desert Hills 13<sup>th</sup> Tee Concession and Hole 14;

1.1.3 Desert Hills beverage and snack golf cart service ("Beverage Cart") providing delivery of beverages and snacks to golfers on Desert Hills; and

1.1.4 The Ninth Hole Turn ("9th Turn")

1.1.5 The Hills, Snack Shack, and Beverage Cart Concession Space areas are described in map form in Exhibit "A", which is incorporated herein by reference the same as if fully copied and set forth at length, including any improvements existing thereon, or to be made thereon, for purposes set forth herein.

1.2 The Concessionaire shall have the use of the Concession Space for the purposes of offering food, beverages, and related services to the golfers using Desert Hills and to the public who may engage Concessionaire for these services

1.3 Concessionaire's staff shall undergo liquor law training with an Arizona Department of Liquor approved training provider and shall maintain certificates of completion for liquor law training.

1.4 Concessionaire shall maintain a liquor license, oversee the management and staffing of alcohol sales in the Concession Spaces.

## **ARTICLE 2**

### **Concessionaire's Use of the Concession Space**

2.1 The Concessionaire agrees to take the Concession Space for its use, subject to the terms and conditions set forth herein.

2.2 In General. Subject to other limitations expressed in this Agreement, the City grants to Concessionaire the non-exclusive right to use in common with others of the Concession Space and the right to use in common with others, the public areas and grounds of Desert Hills in conjunction with operations of its food and beverage operations (and for no other purpose).

2.3 Compliance with Applicable Law. The Concessionaire agrees to comply fully with all applicable state and federal laws and all municipal ordinances, as well as all rules and regulations, policies, and procedures adopted by the City or any of its Boards, Commissions, or Departments having jurisdiction over Desert Hills.

## **ARTICLE 3**

### **Undertaking of Concessionaire**

3.1 Service. Concessionaire agrees as follows:

3.1.1 The Concessionaire shall furnish and pay for all equipment (except as otherwise provided by City pursuant to Article 7 of this Agreement), all goods, all labor, transportation, supervision and services necessary to provide food and beverage services in accordance with this Agreement.

3.1.2 Services provided by Concessionaire shall include the maintenance of an adequate stock of food and beverage supplies, condiments, dishes, silverware, paper supplies/dispensers, salt and pepper, cups and glassware, and any kitchen utensils or bar equipment necessary to serve the demand for such items at Concession Space, and shall maintain all existing audio and visual equipment, including, but not limited to, existing televisions, speakers, receivers, and stereo equipment. City will maintain security systems.

3.1.3 Concessionaire acknowledges the desire and obligation of the City to provide the public high quality food and beverages and a high level of public service. Therefore, Concessionaire agrees to offer for sale from the Concession Space only good quality food and beverages at fair and competitive pricing, relative to comparable food and beverage operations in Yuma, Arizona.

3.1.4 . Concessionaire will work with Desert Hills staff on promotions and tournaments along with revenue share to be mutually agreed upon. On those occasions Concessionaire will be entitled to a negotiated "Plate Fee" with no charge for room rental.

3.1.5 From time to time the City may desire to hold events at the Concession Space. Concessionaire agrees to accommodate request as space is available.

3.1.6 Concessionaire shall maintain existing City employee discount of 20%.

3.2 Hours of Operation. Subject to inclement weather, the Concessionaire is required to provide daily food and beverage service at Desert Hills in the following manner:

3.2.1 At the minimum, it is required that the concession will be open for breakfast, lunch and dinner hours, seven (7) days a week, twelve (12) months a year. The desired hours of operation are from 6:00 AM to 7:00 PM and may be subject to seasonal variations. During the fall, the City over seeds the golf course and ceases golf operations; therefore, the Concessionaire is not obligated to operate during the over-seeding timeframe. In addition, the Concessionaire must provide food service in full operation 30 minutes prior to the first tee time each day. Food service must include hot food items at breakfast, lunch, and dinner daily.

3.2.2 The Snack Shack and/or Beverage Cart, at a minimum, shall provide service from 8:00 AM or the first tee-time at Desert Hills, whichever is earlier, to dusk every day Desert Hills is open.

3.3 Concessionaire shall be the provider of all food and beverage services at Desert Hills for members of the public wishing to engage Concessionaire to negotiate for Concessionaire's services and to utilize the Concession Space.

3.4 Concessionaire Personnel. Personnel providing food and beverage services at the Concession Space under this Agreement shall be employees of the Concessionaire and are not employees of the City. Concessionaire shall control the conduct and demeanor of its agents and employees in a manner that will assure a high standard of service and courtesy to the public at all times. All Concessionaire personnel, while on or about Concession Space, shall be clean, neat in appearance, and uniformly attired (with appropriate identification badge displaying no less than the Concessionaire and employee name).

3.4.1 The Concessionaire shall provide to City the name, home phone and cell phone numbers of the Concessionaire's designated General Manager prior to starting service under this Agreement. The General Manager or his designated representative shall be available at any time, (24) twenty-four hours per day, (7) seven-days per week, (365) three-hundred sixty-five days per year (24x7x365), if required for exceptional circumstance as determined by the City's Authorized Agent in the City's Authorized Agent's sole discretion.

3.4.2 The Concessionaire and/or its General Manager agrees to maintain a current list of personnel, employees, volunteers and other representatives or agents of Concessionaire that will be working on behalf of Concessionaire in providing services to the City and public under this Agreement. Concessionaire and City acknowledge that certain services provided by Concessionaire will require employees, volunteers, and other representatives or agents of Concessionaire act in positions of trust which will entail the handling of and accounting for funds eventually becoming public monies and City property, or direct contact with youth and other members of the general public. Accordingly, Concessionaire agrees it will properly screen all of Concessionaire's employees, volunteers, and other representatives in positions of trust as described previously.

3.5 Statements, Recordkeeping and Examination. Concessionaire shall maintain complete and accurate records, including an accounting of all revenue and expenses of the Concessionaire's food and beverage operations at Desert Hills, in accordance with good accounting practice and in order to meet the financial requirements as stated herein.

3.5.1 All of Concessionaire's sales shall be recorded through the electronic cash register system, and the Concessionaire will retain the original tapes. The cash register shall be non-resettable and sufficient to supply accurate recording of all sales. All cash registers shall have a sales counter which is visible to the public.

3.5.2 Concessionaire shall submit to City, within fifteen (15) calendar days after the end of each month, an accounting of the daily Gross Revenue receipts for that period, and at the request of City, make the supporting cash register tapes available for examination. For purposes of this Agreement, Gross Revenue includes all of Concessionaire's income from food and beverage and service sales, of whatever kind, at or through the use and/or operation of Concession Space.

3.5.3 Concessionaire shall keep full and accurate books and records showing all of its Gross Revenue receipts, including State of Arizona sales tax returns. The Concessionaire hereby agrees that all such books and records will be made available to City at The Patio, or at City's offices upon reasonable notice, for at least a three-year period, which requirement shall survive the expiration or Termination of this Agreement.

3.5.4 Concessionaire shall use his Point of Sale ("POS") system at Concession Space. 3.6 Physical Interference. Concessionaire shall not do, nor permit to be done, anything, which may interfere with the effectiveness or accessibility of the drainage system, sewage system, fire protection system, sprinkler system, camera/alarm system and fire hydrants and hoses, if any, installed at Concession Space or elsewhere at Desert Hills..

3.7. Taxes. Concessionaire agrees to pay all local, state and federal social security, unemployment insurance, sales, use, personal property, Special 2% tax, possessory interest, and other taxes, assessments and payments-in-lieu which, during the term of this Agreement or any extension hereof, may become a lien which may be levied or charged by the Federal Government, the State, County, City of Yuma or other tax-levying body upon or with respect to the Concession Space, upon any taxable interest acquired by the Concessionaire in this Agreement, or any taxable possessory right which Concessionaire may have in or to the Concession Space or facilities or the improvements thereon, by reason of Concessionaire's occupancy or use thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by Concessionaire or taxes on Concessionaire's operations or activities in or about the Concession Space, Desert Hills and/or Civic Center. Nothing herein shall prevent Concessionaire from protesting, through due process, any taxes levied to the tax-levying body.

3.8 Licenses. Concessionaire agrees to obtain and pay for all licenses necessary in connections with its operation at the Concession Space, including, but not limited to, all County Health Department licenses and inspections, and a City of Yuma business license.

3.8.1 Any such licenses held by Concessionaire in connection with this Agreement shall be surrendered by the Concessionaire upon termination of this Agreement.

3.8.2 Concessionaire will manage liquor sales as described in Article 1 section 1.4. City shall maintain its Class 5 liquor license at the Civic Center and Baseball Complex.

3.9 Beverage Carts. Concessionaire shall be required to operate a minimum of one (1) beverage/food carts in order to provide food and beverage services on the grounds of Desert Hills when a sufficient number of customers are golfing, as determined by the City's Authorized Agent. Concessionaire will manage liquor sales as described in Article 1 section 1.4. Concessionaire shall only use the Beverage Cart provided by City unless a substitute vehicle, provided by Concessionaire, is approved by the City's Authorized Agent in writing. Concessionaire shall notify City's Authorized Agent of any mechanical issues with beverage cart immediately.

3.10 Off-Site Equipment Use: Concessionaire shall have use of kitchen facilities and equipment at "The Patio". If catered event is a non-city function the concessionaire is prohibited from removing any city owned equipment off-site without prior permission of the City's Authorized Agent.

#### **ARTICLE 4**

##### **Term**

4.1 Period. The term of this Agreement is two (2) years and shall commence on the date this Agreement is executed by both parties and, unless terminated sooner, shall expire two years from the executed date.

4.2 Renewal. If at the end of the two year period it is the desire of both parties to renew this Agreement, it shall automatically renew for an additional 5 years.

4.2.1 If the Concessionaire decides NOT to seek extension of this Agreement, then normal Termination procedures shall apply. Notice of its desire to extend or terminate the Agreement at the end of two years and each five-year period shall be given by the Concessionaire to City in writing and not less than ninety (90) days before the end of the then current Term

4.2.2 If City wants to bid Desert Hills Concession Agreement, a new solicitation shall be published. The Concessionaire shall have the right to compete for Desert Hills Concession agreement at that time.

4.2.3 During any bidding process, the Concessionaire shall faithfully execute the Concessionaire's duties under this Agreement until such time that a new Concessionaire shall assume those duties under a new Agreement.

4.3 Holding Over. In the event that the Concessionaire, or its successor in interest, if any, shall remain beyond the term set forth herein, although no right to remain is given by this Article, it is the intention of the parties and it is hereby agreed that a right of use from month-to-month shall then arise subject to all provisions and conditions of this Agreement in connection with such right, except that the City shall have the sole right to determine reasonable fees for any holdover period.

## **ARTICLE 5**

### **Fee for Conducting Business/Audit**

5.1 All revenue generated by Concessionaire's operation of Concession Space belongs to the Concessionaire.

5.2 Payments. Concessionaire shall pay to City for the use of Concession Space on a monthly basis in the amount of six percent (6%) of Gross Revenue of the previous month. Gross Revenue is defined as all revenue taken in by the Concessionaire and all associated activities, and any other revenue generated through the use of the Concession Space whether or not the actual sale or delivery or service/consumption of product takes place within the Concession Space. In addition, Gross Revenues shall also include any and all "facility fees" or other charges designed to pass along the cost of using facilities at Concession Space.

5.3 Time of Payment. Concessionaire's Payment shall be due and payable no later than the fifteenth (15th) day of each succeeding month thereafter during the term of this Agreement. Each payment will be accompanied by the State's monthly sales tax report and other required reports set forth and described in Section 3.5 of this Agreement.

5.4 Interest on Past Due Amounts. Concessionaire shall pay interest on any and all past due amounts at the two percent rate per annum from the due date until paid in full.

5.5 Place of Payment. Payment for all fees under Article 5 shall be by cashier's check, or other negotiable instrument with prior City approval, payable to the City of Yuma and shall be delivered to City of Yuma, Department of Financial Services, One City Plaza, Yuma, Arizona 85364-1436.

5.6 Subsequent increases in The Patio amounts: None, during the term of this Agreement.

5.7 Overpayment/Underpayment. If it is determined, for any calendar year during the Term, that the Concessionaire, in good faith, has over or underpaid its obligations pursuant to this Agreement, the appropriate party shall pay or refund the excess or underpayment, within thirty (30) days without penalty. Any changes made to amounts previously reported shall be detailed in writing and submitted to City's Authorized Agent.

5.8 Audit. City reserves the right to audit the Concessionaire's books and records of Gross Receipts, to verify the Gross Receipts hereunder, for any period within three (3) years prior to the audit. Any additional payments found due by the audit shall forthwith be paid by the Concessionaire to City plus Interest on Past Due Amounts set forth and described in Section 5.4 of this Agreement.

5.9 Cost of Audit. If the audit confirms an additional amount due to the City and that amount exceeds (5%) five percent of amount Concessionaire previously reported to City, and there is no good faith or reasonable basis for the failure to report and pay thereon, Concessionaire shall also pay the cost of the audit.

## **ARTICLE 6**

### **Maintenance, Janitorial Duties and Utilities**

6.1 Concessionaire's Maintenance Obligations. The Concessionaire shall be obligated, without cost to City, to maintain the nonstructural portions of the Concession Space and restrooms, and every part thereof, including personal and trade fixtures, so that the nonstructural portions of the Concession Space remains in good appearance and repair and in safe condition. It is the Concessionaire's sole responsibility to maintain, repair, replace, paint, or otherwise furnish the Concession Space (including, without limitation thereto, wall coverings, partitions, floor coverings, ceiling tiles, windows, doors, and glass, and all furnishings, fixtures, and equipment therein, whether installed by the Concessionaire or by City) as determined necessary by the City's Authorized Agent. All of the maintenance, repairs, finishing and replacements shall be of quality at least equal to the original in materials and workmanship and concessionaire shall use a licensed contractor for any repairs. The City's Authorized Agent shall inspect the quality of maintenance. The City's Authorized Agent, or other designated City employees may at any time, without notice, enter upon the Concession Space to determine if maintenance is being performed in accordance with this Agreement.

6.2 City's Maintenance Obligations. City shall provide structural maintenance of the Concession Space, including the roof and flooring systems installed at direction of City, air conditioning system repairs, the automobile parking area assigned to the Concessionaire, and shall maintain and repair the exterior walls of the Concession Space structures. City may enter the Concession Space at all reasonable times to perform maintenance or to make repairs. The Concessionaire and/or its insurers shall neither hold nor attempt to hold the City liable for any injury or damage, either approximate or remote, occasioned through or caused by defective electrical wiring or the breaking or stoppage of plumbing or sewage upon the Concession Space.

6.3 Janitorial Duties. The Concessionaire shall furnish, at its sole cost and expense, such janitorial services as may be required by ordinances, resolutions, statutes and health, sanitary and police regulations of the City of Yuma, County of Yuma, and State of Arizona. Concessionaire shall keep entire Concession Space in clean and in first class condition at all times, including, but not limited to, the cleaning of all kitchen fixtures, hoods and exhaust, refrigerators and refrigerator coils, and floors, counters and tables to provide a clean and orderly appearance for golfers and the public.

6.4 Garbage, Refuse and Recyclable Material. The Concessionaire shall provide for the adequate handling and removal of all garbage and other refuse caused because of its operation of Concession Space. The Concessionaire shall provide at its own expense trash and garbage containers with plastic liners in all Concession Space food service areas. All garbage and other refuse shall be dumped in Desert Hills provided dumpsters. All trash shall be sealed in appropriate trash bags before putting in the dumpster. Concessionaire acknowledges and agrees to dispose of approved recyclable materials in the recycling dumpster.

6.5 Utilities. Normal Utilities, as determined by City and at City's sole discretion, shall be furnished by City, at no separate charge to the Concessionaire, and such Utilities service lines will be brought by City to the perimeter to the Concession Space. By entering this Agreement, Concessionaire agrees to be prudent in its Utility use and acknowledges that waste of Utilities will result in Utility cost shifted back to the Concessionaire. For purposes of this Agreement, Normal Utilities are: electricity, gas, heat, air conditioning, hot and cold running water and ventilation. Normal Utilities will not include telephone line charges or internet connection charges for either telephonic communication or processing credit card transactions. The Concessionaire, and/or its insurers shall not hold or attempt to



hold the City liable for product loss or revenue/business interruption that may result from interruptions or failure of the above services.

6.6 Inspections. City will inspect all areas of Concession Space on a quarterly basis to ensure The Hills area and equipment and other Concession Space areas are being maintained to the highest industry standard. Any discrepancies must be addressed by Concessionaire within three (3) working days.

## **ARTICLE 7**

### **Acceptance and Trade Fixtures**

7.1 Concession Space, City Equipment and Fixtures. In addition to the Concession Space, the City shall provide the following:

7.1.1 Existing equipment for The Patio listed in Exhibit "B", attached hereto and made a part hereof;

7.1.2 Lighting fixtures for general area illumination to include replacing light bulbs in all light fixtures and required lamp replacement; and

7.1.3 Heat and air conditioning.

7.2 Acceptance. On the date of commencement of this Agreement, Concessionaire shall acknowledge that it accepts the Concession Space as well as any City equipment and fixtures "as is."

7.3 Installation of Equipment and Trade Fixtures. Except for the items listed in Exhibit "B" attached and incorporated herein, no equipment, trade fixtures, signs or other personal property used by Concessionaire in its business, whether or not attached to the Concession Space structure or any improvements thereon, shall be installed without prior written approval of City's Authorized Agent.

7.4 Removal of Concessionaire Equipment, Concessionaire Trade Fixtures. Concessionaire shall have the right at any time during the term of this Agreement or upon termination and within ten (10) days thereafter, to remove all Concessionaire trade fixtures, Concessionaire equipment and other Concessionaire personal property subject to any valid lien the City may have thereon for any unpaid Fee Payment or installation of equipment in lieu of Concessionaire Fee pursuant to Article 5. Any property not so removed by Concessionaire upon termination shall become a part of the realty on which it is located and title thereto shall vest in the City.

## **ARTICLE 8**

### **Damage by Concessionaire**

The Concessionaire shall be liable for and shall repair, replace or cause to be repaired or replaced within fifteen (15) days after occurrence, any damage to Concession Space, including The Hills, or to City's property, equipment and fixtures (defined in Article 7) caused by Concessionaire, its officers, agents, employees or anyone acting under its direction and control, ordinary wear and tear excepted. All repairs or replacements shall be made promptly and when necessary by a licensed contractor and shall be in a quality and of a class at least equal to the original. If the damage for which Concessionaire is liable is to the Concession Space, Concessionaire shall continue to be liable for all Concession Fees, even if it has been rendered untenable.

## **ARTICLE 9**

### **Total or Partial Destruction**

9.1 Concession Space or Other Major Component Rendered Untenable. In case, during the term of this Agreement, the Concession Space, The Patio, Desert Hills or any principal part of any one of them shall be destroyed or shall be so damaged by fire, flood or other casualty so as to rendered untenable or unusable as determined by the City, the City and Concessionaire shall meet and if one or

both agree, the term hereby created shall cease and Concessionaire shall immediately surrender Concession Space. If the City and Concessionaire mutually elect not to terminate this Agreement, that this Agreement shall continue in full force and effect and City and/or its insurers, shall repair the Concession Space structure(s), City Equipment and City Fixtures and Concessionaire, and or its insurers, shall repair and/or replace Concessionaire's trade fixtures and/or personal property installed by Concessionaire, with all reasonable speed, placing the same in as good a condition as it was at the time of the damage or destruction.

9.2 Exception for Damage Caused by Concessionaire. In the event of damage caused by Concessionaire as more specifically addressed in Article 8 of this Agreement, the provisions of Article 8 shall govern in any conflict between Article 8 and Article 9.

9.3 No Claim by Concessionaire. No compensation or claim shall be made by or allowed to Concessionaire, or its insurers, by reason of any loss, inconvenience or annoyance arising from the necessity of repairing any portion of the Concession Space or Desert Hills, however the necessity may occur.

## **ARTICLE 10**

### **Indemnification and Insurance**

10.1 Indemnification. To the fullest extent permitted by law, Concessionaire, and/or its insurers, shall protect, indemnify, defend, and hold City and its officers, agents and employees, 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 Concession Space, Desert Hills and/or the Civic Center, caused by the Concessionaire, its agents, employees or contractors. This indemnification shall include the use and occupancy of the Concession Space and/or the acts or omissions of Concessionaire's officers, 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 City, its officers, agents, employees, contractors, subcontractors, licensees or invitees. City 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.)

10.1.1 The Concessionaire, and/or its insurers, agrees to defend, at its own cost, and to protect, indemnify, and otherwise hold harmless, City 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 Concession Space and/or The Hills and/or any other operation contemplated 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 City its officers, agents and employees and/or the Concession Space or improvements thereon or part thereof, or monies owing to City, or monies owing the Concessionaire for goods and services furnished in or from the Concession Space.

10.1.2 The Concessionaire shall give City prompt notice of any matter covered hereby, and shall forward to City 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 considered payments to release the City from any/all liability and any payments made by the Concessionaire shall be in addition to any and all other remedies available to City, and shall not be deemed City's exclusive remedy.

**ARTICLE 11****Insurance**

11.1 Insurance. Upon acceptance of this Agreement, the Concessionaire shall procure, or otherwise provide, for itself, and for any of its contractors or agents, the following insurance minimums:

11.1.1 Commercial General Liability. The policy shall include bodily injury, property damage, personal injury and broad form contractual liability and all food liability.

- General Aggregate: \$2,000,000.00
- Products—Completed Operations Aggregate: \$1,000,000.00
- Personal and Advertising Injury: \$1,000,000.00
- Blanket Contractual Liability – Written and Oral: \$1,000,000.00
- Fire Legal Liability: \$50,000.00
- Each Occurrence: \$1,000,000.00
- Food Liability: \$1,000,000.00
- 

• When Concessionaire obtains liquor license for the Concession Space, Concessionaire shall procure, or otherwise provide, for itself, and for any of its contractors or agents, Liquor Liability insurance in the minimum amount of \$2,000,000.00.

• The Commercial General Liability policy shall be endorsed to include the following language: “The City of Yuma, its officials, officers, employees, and agents shall be named as additional insured with respect to liability arising out of activities performed by Concessionaire.” The Commercial General Liability policy shall contain a waiver of subrogation against City, its officials, officers, employees and agents and/or insurers for liability or losses arising out of activities performed by or on behalf of Concessionaire.

11.1.2 Business Automotive Liability. In the event automobiles are used for business purposes, Concessionaire shall obtain a policy of automobile insurance and the policy shall include bodily injury and property damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

- Combined Single Limit (CSL): \$1,000,000.00

• The Business Automotive Liability policy shall be endorsed to include the following language: “The City of Yuma, its officials, officers, employees, and agents shall be named as additional insured with respect to liability arising out of activities performed by Concessionaire involving automobiles owned, leased, hired or borrowed by Concessionaire.” The Business Automotive policy shall contain a waiver of subrogation against City, its officials, officers, employees and agents and/or insurers for liability or losses arising out of activities performed by or on behalf of Concessionaire.

11.1.3 Workers’ Compensation and Employers’ Liability. Concessionaire shall obtain a policy of Workers’ Compensation and Employers’ Liability insurance to provide:

- Workers’ Compensation: Statutory Limits
- Employers’ Liability each accident: \$500,000.00
- Employers’ Liability—Disease Each Employee: \$500,000.00
- Employers’ Liability—Policy Limit: \$1,000,000.00

• The Workers’ Compensation and Employers’ Liability policy shall contain a waiver of subrogation against City, its officials, officers, employees and agents and/or insurers for liability or losses arising out of activities performed by or on behalf of Concessionaire.

11.2 The insurance requirements are minimum requirements and in no way replace or limit covenants contained herein. City in no way warrants that the minimum limits contained herein are sufficient to protect City and/or Concessionaire and Concessionaire is free to purchase additional insurance.

11.3 The policies of insurance required under this section of this Agreement are to be primary insurance policies and any insurance policy maintained by City is considered excess insurance. The existence of excess insurance should in no way be construed to limit the requirements of insurance described herein.

11.4 Insurance shall be placed with a duly licensed or approved non-admitted insurer in the State of Arizona with an "A.M. Best" rating of not less than A-VII. Concessionaire shall deliver valid Certificates of Insurance with required endorsements to the City prior to the commencement of this Agreement.

## **ARTICLE 12**

### **No Interest in Real Property**

Concessionaire agrees that this Agreement constitutes merely a right to use and occupy the Concession Space for a limited purpose and does not create or convey to Concessionaire any interest in real property.

## **ARTICLE 13**

### **Assignment**

The Concessionaire shall not assign this Agreement, sublet or otherwise allow any person to take possession of all or any portion of the Concession Space without prior written consent of the City nor permit any transfer by operation of law of Concessionaire's interest created hereby, other than by merger or consolidation unless approved by City.

## **ARTICLE 14**

### **Default, Rights of Termination**

14.1 Default by Concessionaire. Time of payment and performance is of the essence of this Agreement. Concessionaire shall be in default under this Agreement upon the occurrence of any one or more of the following events:

14.1.1 Concessionaire's failure to pay any fee or other charge when due and within thirty (30) working days after notice from City of such nonpayment.

14.1.2 Concessionaire's failure to maintain the insurance required in Article 11.

14.1.3 Concessionaire's assignment of any right hereunder in violation of Article 13.

14.1.4 Concessionaire's failure to perform, keep or observe any of the terms, covenants or conditions of this Agreement within seven (7) days (or such longer time as may be necessary to cure, provided that cure commenced within the initial seven (7) days) after notice from the City specifying the nature of the deficiency with reasonable particularity and the corrective action that is to be taken within such period to cure the deficiency.

14.1.5 The filing by Concessionaire of a voluntary petition in bankruptcy, the filing of an involuntary petition in bankruptcy against Concessionaire, the taking possession of all or substantially all of Concessionaire's assets pursuant to proceedings brought under the provisions of any federal reorganization act or the appointment of a receiver of all or substantially all of Concessionaire's assets and/or dismissal of such proceeding within ninety (90) days after the filing.

14.1.6 The abandonment for a period of seven (7) days by Concessionaire of the conduct of its services and operations during the season from the beginning of April through the end of September, or for a period of fourteen (14) days during the October through March off-season.

14.1.7 The assignment by Concessionaire of its assets for the benefit of creditors.

14.1.8 The death of the Concessionaire.

#### 14.2 City's Remedies on Default

14.2.1 In the event of a default by Concessionaire, the City may terminate this Agreement effective immediately upon provision of written notice of such termination to Concessionaire. In the alternative, the City may elect to keep the Agreement in force and work with Concessionaire to cure the default. If this Agreement is terminated, the City shall have the right to take possession of the Concession Space at the time of default. Concessionaire's liability to City for damages and rent shall survive the termination, and the City may re-enter, take possession of the Concession Space and remove any persons or property by legal action or by self-help with the use of reasonable force without liability for damages.

14.2.2 Following re-entry or abandonment, City may make arrangements for use of the Concession Space by others and in that connection may make any suitable alterations or refurbish the Concession Space, but City shall not be required to make such arrangement for any use or purpose.

14.3 Rights and Remedies Reserved. It is understood and agreed that any rights and remedies reserved pursuant to this Article are in addition to any other rights or remedies the City may have pursuant to this Agreement or to applicable law to seek judicial enforcement, damages or any other lawful remedy.

### **ARTICLE 15**

#### **Miscellaneous Provisions**

15.1 Cumulative Rights. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other or of any other remedy available to the City, or Concessionaire, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

15.2 Non-Waiver. The failure by either party to exercise any right or rights accruing to it by virtue of the breach of any covenant, condition or agreement herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.

15.3 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 the public and City for its acts and omissions associated with its operations pursuant to this Agreement, and that City shall in no way be responsible therefore. Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the City and Concessionaire.

15.4 Limitations of Use. Concessionaire shall not use, or permit the use of the Concession Space, or any part thereof, for any purpose or use other than those authorized by this Agreement. Neither shall Concessionaire permit nor suffer any disorderly noise or nuisance whatsoever about the Concession Space, Desert Hills and/or Civic Center.

15.5 Governing Law/Venue. This Agreement shall be performable and enforceable in Yuma County, Arizona, and shall be construed in accordance with the laws of the State of Arizona and Venue of any action brought under this Agreement shall lie in Yuma County, Arizona, exclusively, and any action shall be maintained in such County.

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

15.7 Construction of Agreement. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

15.8 Successors and Assigns. All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns, if any.

15.9 Headings. The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

15.10 Legal Fees. In the event any legal action or proceeding is brought to collect sums due or to become due hereunder any portion thereof or to enforce compliance with this Agreement for failure to observe any of the covenants of this Agreement, the losing party agrees to pay to the prevailing party such sums as the Court may judge reasonable for legal fees, including attorneys' fees and costs, in such action or proceeding and in any appeal therefrom.

15.11 This Agreement, which is the entire Agreement between the parties hereto, supersedes all prior Agreements, understandings, warranties or promises between the parties hereto, whether written, spoken or implied from the conduct of the parties hereto, except as expressly incorporated herein.

15.12 Severability. In the event any covenant, condition or provision of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition or provision shall not in any way affect any of the other covenants, conditions or provisions of this Agreement, provided that the invalidity of such covenant, condition or provision does not materially prejudice either the City of the Concessionaire in his or its respective rights and obligations under the valid covenants, conditions or provisions of this Agreement.

15.13 Surrender of Possession. Upon the expiration of this Agreement or its earlier termination as herein provided, Concessionaire shall remove all of its property from Concession Space and surrender entire possession of its rights at Concession Space, and/or Desert Hills to City and its improvements in accordance with Article 7 and Article 14 above, unless this Agreement is renewed or replaced.

15.14 City Representative. All requests for contract interpretations, amendments and other clarifications or instructions shall be directed to the City's Authorized Agent.

15.15 Notices. Notices permitted or required to be given under this Agreement or under law shall be in writing and shall be deemed given upon personal delivery or upon deposit in the United States Mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other addresses as the parties may designate from time to time by notice given in accordance with this Section:

To Concessionaire: Alex Trujillo  
Chef Alex Group, LLC  
600 S 5<sup>th</sup> Ave  
Yuma, Arizona 85364

To the City: City Administrator  
City of Yuma  
One City Plaza  
Yuma, Arizona 85364-1436

With a Copy to: Director of Parks & Recreation  
City of Yuma  
One City Plaza  
Yuma, Arizona 85364-1436

15.16 Exhibits. Whenever reference is made in this Agreement to an Exhibit, unless otherwise specifically expressed to the contrary, such Exhibit shall be deemed attached to and by this reference incorporated in this Agreement.

15.17 Force Majeure. Neither the City nor the Concessionaire shall be deemed in violation of this Agreement if prevented from performing any of its obligations hereunder by reason of acts of God and other circumstances which are beyond their control. Nonetheless, the Concessionaire agrees to pay all fees and charges due.

15.18 No Limitation on General Powers. Nothing in this Agreement shall be construed as in any way limiting the general powers of the City to fully exercise their governmental functions or their obligations under any bond covenants or federal, state or local laws, rules or regulations.

15.19 Agent for Service of Process. It is agreed that Concessionaire or its agent must be a resident of the State of Arizona.

15.20 Survival. To the extent necessary to carry out all of the terms and provisions hereof, the said terms, obligations and rights set forth herein required shall survive and shall not be affected by the expiration or termination of this Agreement.

15.21 Public/Customer Complaints. The Concessionaire shall maintain a customer service system to record and monitor complaints from the public and 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 City's Authorized Agent shall have access to the record of complaints upon request.

CITY OF YUMA, a municipal corporation

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Gregory K. Wilkinson  
City Administrator

APPROVED AS TO FORM:

ATTEST:

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Richard W. Files  
City Attorney

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Lynda L. Bushong  
City Clerk

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Date

Chef Alex Group, LLC  
Name of Concessionaire

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Alex Trujillo  
Title, Owner