

CONTRACT AGREEMENT

CAFÉ / COFFEE BAR - SERVICES AND MANAGEMENT PRESCOTT VALLEY PUBLIC LIBRARY

THIS CONTRACT, entered into this 28th day of June, 2012 between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, hereinafter "TOWN", and CakeWorks, AZ, d/b/a "CakeWorks Library Café" of Prescott Valley, AZ, hereinafter "Concessionaire."

WHEREAS, the Town of Prescott Valley is the owner of facilities at Prescott Valley Public Library and Concessionaire desires a contract to offer coffee, food and refreshment services at the foregoing location as an independent contractor.

NOW THEREFORE, the Town of Prescott Valley, in consideration of the payments, agreements, conditions and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby agreed to by the parties, it is hereby agreed as follows:

1. That Concessionaire may operate a Café / Coffee Bar at Prescott Valley Public Library (hereinafter referred to as "the Library") on the terms and conditions as contained herein.
2. This Agreement shall be for a term commencing June 29, 2012, and ending at midnight the 28th day of June, 2015, unless sooner terminated as hereinafter provided.
3. Commencing June 29th, 2012, Concessionaire shall pay the Town as consideration for the concession and facilities according to this schedule:

22% of Gross Sales (before taxes)

which may be derived for the use of these concession facilities for the period of this contract. Such revenue and sums due to Town shall be reported and paid on or before the 20th day of each calendar month for the preceding month. Town shall have the right, at reasonable times, to examine all of Concessionaire's accounting and business records. Reports shall be submitted monthly to the Management Services Department, in a format deemed acceptable by the Town.

4. The Concessionaire and the Town shall have the option of renewing this contract for <two> additional one (1) year periods, upon the same terms and conditions as contained herein. Written notice of such option to renew shall be given by either party sixty (60) days prior to expiration of this agreement and the other party will then have thirty (30) days to concur in writing.
5. Concessionaire hereby covenants and agrees with the Town as follows:
 - A. Concessionaire shall have rights to sell coffee, food and refreshments within the confines of the Prescott Valley Public Library during the times and dates as directed by the Library Director or designee.

- B. Concessionaire shall conduct said concession activities on the days and during the hours coinciding with the hours of normal operation of the Library, which currently are:

| | |
|--------------------|--------------------|
| 9:00 am to 2:00 pm | Tuesday - Thursday |
| 9:00 am to 2:00 pm | Friday |
| 9:00 am to 2:00 pm | Saturday |
| Closed | Sunday & Monday |

Concessionaire shall be open a minimum of 25 hours per week in the existing library schedule. In the event the library expands days or hours of service, Concessionaire may also expand their hours of operation. Concessionaire may also open earlier than standard library hours to service students & patrons.

- C. Concessionaire is allowed to access their operating space before and after normal Library hours for activities deemed necessary to operate their business.
- D. Concessionaire will locate their services within the Café / Coffee Bar designated area of the Library per the architectural plans. Concessionaire must keep their responsible areas safe, clean and secure to avoid injuries to any members of the public.
- E. Concessionaire will not maintain or permit any nuisance, public or private, on or around the premises herein contracted or violate any laws, statutes, ordinances and regulations; and will keep and maintain compliance with all legal requirements relating to the premises and to the authorized business conducted thereon. The Concessionaire will not permit or suffer the premises to be used for the purpose of carrying on any illegal business or occupation and will use and occupy the demised premises in a careful, safe and proper manner and will not commit or suffer any waste.
- F. Concessionaire shall at all times maintain the facilities in a neat, clean and sanitary condition and shall at all times meet the standards of the State and County Departments of Health and all Federal, State and Town codes, rules and regulations.
- G. Concessionaire shall not transfer or assign any portion of the concession facilities, operations or rights under this agreement without prior written approval of the Town, which consent may be withheld at the Town's sole discretion.
6. The Concessionaire hereby agrees to save and hold harmless the Town, or any of its departments, agencies, officers or employees from all cost, damage and liability incurred by any of the above and from any other damage, cost and liability to any person or property whatsoever, which is caused by an activity, inactivity, condition or event arising out of the negligent performance or nonperformance of any provision of this agreement by contractor, its agents or independent subcontractors.

This indemnification shall extend to any and all alleged negligent acts or omissions related to or arising out of any activities of the contractor. The above cost incurred by the Town of any of its departments, agencies, employees, or officers shall include, in the event of legal action, court costs, expenses of litigation and reasonable attorney's fees.

7. Any and all personal property and other taxes assessed against the movable fixtures, equipment and personal property and merchandise placed in and upon said premises by Concessionaire shall be the sole obligation and responsibility of Concessionaire. Any and all franchise, excise and other taxes assessed against Concessionaire by virtue of the commercial business conducted on the demised premises and any license and other fees assessed against Concessionaire shall be the sole obligation of the Concessionaire.
8. The payments to the Town provided for in Paragraph 3 will be reported and all fees paid at the time and manner provided therein. Time is of the essence in this agreement.
9. It is agreed between the parties hereto that this written Contract contains all the covenants and agreements of the parties hereto and shall not be modified except by an instrument in writing signed by the parties hereto. Any notice given by either party pursuant to the terms and conditions of this contract shall be sufficient if mailed by prepaid postage or certified mail; addressed to the other party as follows:

Town:

ATTN: Town Manager
Town of Prescott Valley
7501 E. Civic Circle Drive
Prescott Valley, AZ 86314

With copies to:
Library Director
Town Attorney

Concessionaire:

ATTN: CakeWorksAZ
1530 S Sierra Dr.
Dewey, AZ 86327

Any such notice shall be effective as of the date of mailing thereof, and any notice given either party must be made in writing and may be personally delivered to the party, with such personal delivery to be effective as the date of such deliverance.

10. The parties hereto expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney's fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01 (A) and (B), or pursuant to any other State or Federal statute.
11. The agreement shall be construed under the laws of the State of Arizona.
12. The covenants, conditions, terms and revenues contained hereinabove shall extend to and be binding upon the Town, upon Concessionaire, its heirs, personal representatives and assignees.
13. Pursuant to A.R.S. ss.38-511, the Town of Prescott Valley may cancel this contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town of Prescott Valley is, at any time while the contract or any extension of the contract is in effect, an employee or agent of

any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In the event of the foregoing, the Town of Prescott Valley further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this contract, arising as a result of this contract.

14. This Agreement is the result of negotiations by and between the parties. Although it has been drafted by the Attorney for the Town of Prescott Valley, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Agreement is not to be construed against either party.
15. It is expressly agreed and understood by and between the parties that the Concessionaire is being retained by the Town as an independent contractor, and as such the Concessionaire shall not become a Town employee, and is not entitled to payment or compensation from the Town or to any fringe benefits to which other Town employees are entitled other than that compensation as set forth in Section 1(A) above. As an independent contractor, the Concessionaire further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, the Concessionaire further agrees that he will conduct himself in a manner consistent with such status, and that he will neither hold himself out nor claim to be an officer or employee of the Town by reason thereof, and that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the Town, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
16. The Concessionaire, with regard to the work performed by it after award and during its performance of this contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Concessionaire will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Orders 99-4 and 2000-4.
17. In the event the Concessionaire does not make any payment of monies owed to the Town by any due date specified in the agreement / contract, interest shall accrue on the unpaid sum at a rate often (10) percent per annum until said late payment is paid in full. Any refusal to make any payment owed to the Town within forty five (45) days of the payment date shall constitute an event of default under the agreement / contract entitling the Town to terminate the agreement / contract.
18. Either party may terminate this agreement / contract at any time, with or without cause, by giving the other party thirty (30) days written notice to terminate.
19. The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement (contract), each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court.
20. Request for Proposals, Specifications, Special Provisions, Addenda (if any), Qualification Submittal Tables, (as accepted by the TOWN), per this Contract, and any Performance

Bonds, Payment Bonds, Certificates of Insurance, and Change Orders are by this reference the Contract Documents and are made a part of the Contract to the same extent as if set forth herein in full. Contract is not valid until (a) contract documents are executed, (b) bonds are posted, (c) the notice to proceed has been delivered to the Concessionaire.

21. The Town will furnish available utilities and phone service for the premises and will maintain the building in a usable state of repair.
22. Concessionaire shall require all employees and agents to wear appropriate attire and provide polite, professional service to patrons.
23. Concessionaire shall comply with Prescott Valley's signage code when displaying external signage.
24. Concessionaire shall not install or keep on the Premises any vending machines without written approval by the Library Director.
25. Concessionaire shall promptly report security and mechanical problems to the Library Director (or designee), and refrain from direct involvement in security problems unless absolutely necessary.
26. Concessionaire shall not make any changes in, alterations to or additions to, or remove any portion of the building or any equipment belonging to the Town without having first obtained the written consent of the Library Director. The Director shall determine which party shall bear the expense of any alterations or additions that are made.
27. Concessionaire shall not by reason of any of the privileges granted hereunder direct or interfere with any of the activities conducted within the Library (or elsewhere within the building).
28. Concessionaire is not authorized to sell or distribute alcoholic beverages at any event or activity under this Agreement. Furthermore, private consumption of alcoholic beverages by the Concessionaire's employees or agents while operating the Concession is expressly prohibited.
29. Concessionaire agrees to purchase and maintain worker's compensation coverage as required by statute, covering any of the Concessionaire's personnel or agents involved in the performance of the Concession. The Concessionaire also agrees to purchase and maintain standard commercial liability insurance (including automobile liability insurance) in a minimum amount of \$1,000,000.00 combined single limit, covering the Concessionaire's activities during the operation of the Concession. The Town shall be named as an additional insured in such liability policy or policies. The Concessionaire shall provide the Town with proof of such insurance prior to operation of the Concession.
30. It is expressly understood that nothing herein authorizes Concessionaire to enter into any contracts or agreements with third-parties on behalf of the Town, nor to incur any debts or other liabilities on behalf of the Town.
31. It is understood by the parties that under the Immigration Reform and Control Act of 1986, employers are prohibited from hiring persons not authorized to work in the United States.

The Act subjects employers to civil and criminal penalties for violating this ban. Concessionaire agrees to comply with the Act by verifying that each and every employee (and applicant for employment) involved with this concession has the legal right to work in the United States.

32. It is understood by the parties that under the Americans with Disabilities Act of 1991 and the Arizonans with Disabilities Act of 1992, employers must provide reasonable accommodations for employees who are disabled, and governmental entities and private businesses must provide the disabled with access to their respective programs and services. Concessionaire agrees to comply with these Acts in its operation of the Concession.
33. It is understood by the parties that the Town has adopted a policy establishing a drug-free workplace for itself and persons and entities doing business with the Town. Concessionaire agrees to require that its employees and agents remain drug-free during their operation of the Concession. Being drug-free includes refraining from the manufacture, distribution, dispensing, possession, and illegal use of controlled substances.
34. Any successors, executors, or administrators of Concessionaire and any assignees of Concessionaire's interests herein shall be bound to the Town to the full legal extent to which Concessionaire is bound with respect to each of the covenants, conditions and promises of this Agreement.
35. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
36. This Agreement may only be amended by a written agreement fully executed by the parties through their authorized representatives.
37. No waiver of any part of a breach of any of the covenants, conditions or promises in this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or promise herein. Furthermore, no delay in exercising any right or remedy shall constitute a waiver thereof.
38. Passed, approved and adopted by the Mayor and Council of the Town of Prescott Valley this 28th day of June, 2012.

TOWN:

Town of Prescott Valley, Arizona

Harvey C. Skoog, Mayor

ATTEST: Town of Prescott Valley

BY: _____
Diane Russell, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

BY: _____
Ivan Legler, Town Attorney

CONCESSIONAIRE:

BY: Signature of Owner/Officer/Agent

Print Name(s) and Title(s) of Person