



City of Atascadero

Department of Community Services

AGREEMENT FOR SERVICES BY CONTRACTOR COLONY PARK COMMUNITY CENTER CAFÉ AND CONCESSION OPERATION

This Agreement is made upon the date of execution, as set forth below, by and between John and Edith Leboeuf, Leboeuf's Bar-b-que, a sole proprietorship, hereinafter referred to as "Contractor," and the City of Atascadero, California, a Municipal Corporation, hereinafter referred to as the "City." The parties hereto, in consideration of the mutual covenants contained herein, hereby agree to the following terms and conditions:

1.0 GENERAL PROVISIONS

- 1.01 **TERM**: This Agreement will become effective on the date of execution by the City, set forth below, and will continue in effect until terminated as provided herein.
- 1.02 **LOCATION**: The premises of operation is Atascadero's Colony Park Community Center, 5599 Traffic Way, Atascadero, California, including the café, kitchen facilities, enclosed patio and any additions and improvements to the Community Center premises (the "Premises").
- 1.03 **SERVICES TO BE PERFORMED BY CONTRACTOR**: Contractor agrees to perform and/or provide all food catering services at the Premises in a business-like manner to the satisfaction of the Department of Community Services. The City and Contractor agree that Contractor will be the exclusive commercial caterer for hire for all events at Atascadero's Colony Park Community Center. No other catering business may be hired for a fee by a renter using the facility. City functions may use the kitchen facilities with at least (thirty) 30 days notice and upon mutual agreement.

Contractor may not provide alcohol at the Premises as part of its café and catering services.

Contractor shall determine the method, details, and means of performing the above-referenced services so long as the method, details, and means of performing selected by the Contractor comply with all applicable statutes, ordinances, and regulations.

Contractor may use the Community Center Café and kitchen facilities for preparing and catering food for either public or private events, both at the Premises and off the Premises.

Contractor may, at Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this agreement. City may not control, direct or supervise Contractor's assistants or employees in the performance of those services.

- 1.04 **RENT AND GROSS SALES RECEIPTS**: In consideration for this Agreement, Contractor will pay the City on a monthly basis as follows: (1) a flat rental fee of \$400; (2) 10 % of total gross earnings from food and beverage sales and catering opportunities at any City-owned properties, including the Premises. Gross earnings shall not include any sales or excise taxes imposed by any governmental entity.

Contractor shall make monthly payments to the City of Atascadero by the **tenth** day of each month. Contractor must submit monthly payments to the City of Atascadero, ATTN: Community Center, 6907 El Camino Real, Atascadero California.

The City will consider monthly payments received from the **eleventh** of each month to the **twenty-fifth** of each month to be delinquent and will assess a **10%** penalty. Payments received after the **twenty-fifth** of each month will be assessed an additional **10%** penalty.

Failure by Contractor to tender payment to the City within **30** days of any payment so due, shall be sufficient cause for the City to terminate this Agreement.

- 1.05 **SUBLEASE**: Contractor shall not sublease or otherwise convey any interest of any sort granted by this Agreement to any person or persons whatsoever without prior written consent and approval by the City.
- 1.06 **RECORDS AND ACCOUNTS**: Contractor shall keep true and accurate books and records showing all of its business transactions in separate records of account for the catering operation, in a manner acceptable to the City. The City shall have the right, through its representatives, and at all reasonable times, to inspect such books and records, including State of California sales tax records.

The City may require Contractor, at its expense, to have its records and accounts audited by an auditor acceptable to the City and shall present said audit to the Director of Community Services within **30** days after the completion of the audit. If Contractor fails to provide the required audit, the City shall contract to have an audit performed at Contractor's expense.

- 1.07 **CONDITIONS OF PREMISES**: Contractor's execution of and performance of services under this Agreement shall constitute Contractor's acknowledgment that the Premises are in good and tenable condition. Contractor agrees to accept the Premises, and any existing additions and improvements thereto, "as is" in the present existing condition.

Contractor may modify the Premises only with **prior** written approval by the Director of Community Services (or designee). Any plans for such modification, shall be submitted to the City for approval prior to the commencement of any modification. Any modification by Contractor shall be without cost to the City and shall be subject to the indemnification provisions set forth in section 2.11.

1.08 **SIGNS**: All signs, names or placards shall be approved by the Director of Community Services (or designee) prior to installation. All signs must meet all requirements and specifications as set forth by the City.

a. Signage locations must have prior approval from the Department of Community Development and conform to the sign ordinance, and the Director of Community Services (or designee).

1.09 **DAMAGE TO/DESTRUCTION OF PREMISES**: Should the Premises be totally or partially damaged or destroyed, the City shall promptly repair the same, except that the City is not obligated to make such repairs, and the City may terminate this Agreement if (a) the subject premises or the building improvements in which the premises are situated cannot reasonably be expected to be restored under existing law to substantially the same condition as existed prior to such damage or destruction with 90 days from the date that the insurance proceeds become available to the City; or (b) if the costs of such restoration would exceed one-half of the full insured value of the building and other improvements in which the subject premises are situated; or (c) if the damage or destruction results from a casualty not customarily insured against by a policy of standard fire and extended coverage insurance having vandalism and malicious mischief endorsements or (d) the Premises are totally or partially damaged or destroyed as a result of actions by Contractor and/or its employees and agents. Nothing in this section affects or diminishes Contractor's indemnification obligations set forth in section 2.11. Any notice of termination given here shall be given to Contractor within 15 days after City determines the period of time required for and the estimated cost of such repair or restoration.

2.0 **OBLIGATIONS OF CONTRACTOR**

2.01 **MINIMUM AMOUNT OF SERVICE BY CONTRACTOR**: Contractor agrees to devote the hours necessary to perform the services set forth in this Agreement in an efficient and effective manner. Contractor may represent, perform services for, and be employed by additional individuals or entities, at Contractor's sole discretion, as long as the performance of these extra-contractual services does not interfere or conflict with Contractor's obligations under this Agreement.

2.02 **HOURS OF OPERATION**: Hours of operation **to be established** by Contractor upon mutual agreement with the Director of Community Services (or designee).

2.03 **PERMITS:** Contractor is required to provide City, prior to commencement of operation of catering business, a copy of a City Business License, a San Luis Obispo County Health Department permit for food sales, and a Board of Equalization Certificate.

2.04 **TAXES:** Contractor agrees to pay all lawful taxes, assessments or charges which may be levied by government entities.

2.05 **FACILITIES:**

- a. **Kitchen:** Contractor shall have a right to use the Community Center kitchen and all City- owned appliances and equipment within the kitchen area so long as the kitchen has not been reserved for use by the City of Atascadero. If Contractor wishes to use the Community Center's other spaces (rooms), tables, chairs and other rental equipment to perform its services, it must request permission in advance from the Community Center supervisor, and all normal rental fees shall apply. Contractor shall notify the Center supervisor as soon as possible when Contractor need to reserve the café for events not open to the public. The City shall supply Contractor, in writing, 30 days prior notice when it plans to use the kitchen for a City event. NO kitchen reservations may be made by the City without Contractor consent and will be limited to no more than nine (9) dates annually.
- b. **Café:** Contractor, at its own expense, shall completely equip the Community Center café and keep all equipment in a first class manner to the satisfaction of the Director of Community Services (or designee) throughout the term of this Agreement.
- c. **Ice Cream/Food Cart:** Contractor may use an ice cream/food cart in Colony Park, weather permitting. Care shall be taken not to interfere with Atascadero Girl's Softball snack bar business when open.
- d. **Equipment, Tools, and Instrumentalities:** Contractor shall provide, at its own expense, all equipment, tools, and instrumentalities to perform the services under this Agreement.
- e. **Storage:** Contractor may only store its equipment, tools, and instrumentalities in an area approved by the Director of Community Services (or designee). The Director of Community Services (or designee) may allow storage of the Contractor's equipment, tools, and instrumentalities in the Community Center kitchen if there is available space, as determined by the Recreation supervisor. Contractor is responsible for returning all equipment, tools, and instrumentalities to their proper place after catering events and performing services under the Agreement. Neither the City nor Community Center staff is responsible for items left out after an event.
- f. **Theft:** The City is not responsible for damage to, theft of, or loss of any equipment, tools, and/or instrumentalities owned and/or rented by Contractor.

- 2.06 **QUALITY OF SERVICE/CONTROLLED RATES AND CHARGES:** The City has the right to inspect and schedule the prices and rates of goods sold upon the Premises. Contractor may only sell items that have been agreed upon through mutual consent between the Contractor and the City. The City reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public. Contractor shall post rates and prices of all items in such places as designated by the City.
- 2.07 **SECURITY/COMMUNICATIONS:** Contractor agrees to provide telephone services to the Community Center café throughout the duration of this Agreement at Contractor's expense. Optional Security Alarm services are to be provided by the City.
- 2.08 **WORKER'S COMPENSATION AND OTHER EMPLOYEE BENEFITS:** City and Contractor intend and agree that Contractor is an independent contractor of City and agrees that Contractor and Contractor's employees and agents have no right to Worker's Compensation and other employee benefits. If any worker insurance protection is desired, Contractor agrees to provide Worker's Compensation and other employee benefits, where required by law, for Contractor's employees and agents. Contractor agrees to hold harmless and indemnify, and defend City for any and all claims arising out of any claim for injury, disability, or death of and any of Contractor's employees or agents.
- 2.09 **INDEMNIFICATION:** Contractor agrees to indemnify, defend, protect and hold harmless City from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively, "Claims"), which City may suffer or incur or to which City may become subject by reason of or arising out of the negligent or willfully wrongful acts or omissions of Contractor, its officers, employees, or agents committed in performing services under this Agreement. For purposes of this section, "City" includes City's officers, officials, employees, agents, and volunteers. The provisions of this section do not apply to Claims occurring as a result of the City's sole negligence or willful acts or omissions. The insurance required to be maintained by Contractor under this Agreement is intended to ensure Contractor's obligations under this section, but the limits of such insurance do not limit the liability of Contractor. The provisions of this section will survive the expiration or earlier termination of this Agreement.
- 2.10 **INSURANCE:** Contractor shall not commence work under this contract until he/she has obtained all insurance required under this section and such insurance shall have been approved by City as to form, amount and carrier:

- a. **Public Liability and Property Damage Insurance.** Contractor shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect City, its elective and appointive boards, officers, agents and employees, and Contractor and any agents and employees performing work covered by this agreement from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from Contractor's or any subcontractor's operations under this Agreement, whether such operations be by Contractor or by anyone directly or indirectly employed by Contractor, the amounts of such insurance shall be as follows:

(1) **Public Liability Insurance.**

In an amount not less than **\$500,000** per injury, including, but not limited to death to any one person and, subject to the same limit for each person, in an amount not less than **\$1,000,000** on account of any one occurrence;

(2) **Property Damage Insurance.**

In an amount of not less than **\$50,000** for damage to the property of each person on account of any one occurrence.

(3) **Comprehensive Automobile Liability.**

Bodily injury liability coverage of **\$500,000** for each person in any one accident and **\$1,000,000** for injuries sustained by two or more persons in any one accident. Property damage liability of **\$50,000** for each accident.

(4) **Worker's Compensation Insurance.**

In the amounts required by law, if applicable.

- b. **Proof of Insurance.** Contractor shall furnish City, concurrently with the execution hereof, with satisfactory proof of carriage of the insurance required, and adequate legal assurance that each carrier will give City at least 30 days' prior notice of the cancellation of any policy during the effective period of this contract. The certificate or policy of liability of insurance shall name City as an additional insured with the Contractor.

- 2.11 **CONTRACTOR'S MAINTENANCE:** Except as otherwise provided in this Agreement, Contractor, at its own cost and expense agrees:

- a. To maintain throughout the Agreement term in good sanitary order, condition, and repair, all portions of the Colony Park Community Center café and kitchen facilities, including, without limitation, (a) the interior of the café and kitchen facilities, including flooring, exposed plumbing, lighting lamps and wiring, paint and finish; (b) any windows; (c) the outside patio area; (d) any personal property of the Contractor situated in or upon the Premises; (e) all City-owned kitchen appliances, including but not limited to the stove, grill, soft serve machine, meat slicer, coffee/espresso maker, ice machine, refrigerator and freezer; (f) any heating, ventilating or air conditioning equipment installed by Contractor in or upon the Premises.
- b. To maintain the Colony Park Community Center café and kitchen facilities in conformance with the highest standards of health and safety.
- c. To notify the City promptly of any damage to the Premises or the building in which they are situated resulting from or attributed to the acts or omissions of the Contractor, its invitees or its authorized representatives, and thereafter promptly to repair all such damage at Contractor's sole cost and expense.

2.12 **UTILITIES**: The City shall pay the reasonable costs for the actual utilities, including water, gas, heat, trash pick- up, light and power supplied to the café and kitchen facilities at the Community Center. Grease must be disposed of separately by the Contractor. Contractor shall make arrangements for and pay the charges when due for telephone.

The suspension or interruption in utility service to the Premises for reasons beyond the ability or control of the City shall not constitute a default by City or entitle Contractor to any reduction or abatement of the monthly payment due to the City.

3.0 **OBLIGATIONS OF CITY**

3.01 **COOPERATION**: City agrees to comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this agreement.

3.02 **PLACE OF WORK**: City agrees to provide exclusive use and access to Atascadero's Colony Park Community Center café for use by Contractor while performing the services described within this agreement.

4.0 **TERMINATION OF AGREEMENT**

4.01 **TERMINATION ON NOTICE**: Notwithstanding any other provision of this Agreement, any party hereto may terminate this Agreement, at any time, without cause by giving at least 30 days prior written notice to the other parties to this Agreement.

4.02 **TERMINATION ON OCCURRENCE OF STATED EVENTS:** This Agreement shall be terminated automatically on the occurrence of any of the following events:

- (1) Bankruptcy or insolvency of any party;
- (2) Sale of the business of any party;
- (3) Death of any party;
- (4) The end of the 30 days as set forth in section 4.01 of this Agreement;
- (5) End of the Agreement to which Contractor's services were necessary; or
- (6) Assignment of this Agreement by Contractor without consent of the City.

4.03 **TERMINATION BY ANY PARTY FOR DEFAULT OF AGREEMENT:** Should any party default in the performance of this Agreement or materially breach any of its provisions, a non-breaching party, at their option, may terminate this Agreement, immediately, by giving written notice of termination to the breaching party.

4.04 **TERMINATION:** This Agreement shall terminate on September 30, 2010, unless extended as set forth in this section. City grants to the Tenant the option to extend this Lease for two (2) single one-year periods, following the above ending date. Tenant must notify city of its intent to exercise the extension no later than 30 days before the expiration date or before the expiration of any extension period.

4.05 **REMOVAL OF ALTERATIONS:** City, by giving written notice to Contractor within 30 days before the expiration or termination of the Agreement, may elect to require Contractor, at Contractor's sole cost and expense, to remove the alterations specified by City in its notice and make such repairs necessitated by the removal of said alterations, and any damage resulting therefrom, as may be necessary to restore the Premises to good condition the last day of the lease term or within 30 days of the City's notice. This stipulation will not affect any improvements agreed to by the Director of Community Services, as described in Section 1.07 of this agreement.

5.0 **MISCELLANEOUS**

5.01 **REMEDIES:** The remedies set forth in this Agreement shall not be exclusive but shall be cumulative with, and in addition to, all remedies now or hereafter allowed by law or equity.

5.02 **NO WAIVER:** The waiver of any breach by any party of any provision of this agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of this Agreement.

5.03 **ASSIGNMENT:** This Agreement is specifically not assignable by Contractor to any person or entity. Any assignment or attempt to assign by Contractor, whether it be voluntary or involuntary, by operation of law or otherwise, is void and is a material breach of this agreement giving rise to a right to terminate as set forth in Section 4.03.

- 5.04 **ATTORNEYS' FEES**: In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement, or the breach thereof, the prevailing party shall be entitled, in addition to other such relief as may be granted, to a reasonable sum as and for attorneys' fees.
- 5.05 **TIME FOR PERFORMANCE**: Except as otherwise expressly provided for in this agreement, should the performance of any obligation or act required by this Agreement to be performed by either party be prevented or delayed by reason by any act of God, war, terrorism, natural disaster, strike, lockout, labor trouble, inability to secure materials, or any other cause except financial inability not the fault of the party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay will be excused; provided, however, that nothing contained in this section shall exclude the prompt payment by either party as required by this Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.
- 5.06 **NOTICES**: Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any party to this Agreement shall be in writing and shall be deemed duly served and given when personally delivered or in lieu of such personal service when deposited in the United States mail, first-class postage prepaid to the following address for each respective party:

PARTY	ADDRESS
CITY OF ATASCADERO Department of Community Services	6907 El Camino Real Atascadero, CA 93422 (805) 461-5000
CONTRACTOR LeBoeuf's Bar-b-que (805) 460-0155	2375 Homestead Road Templeton, CA 93465

- 5.07 **GOVERNING LAW**: This Agreement and all matters relating to this Agreement shall be governed by the laws of the State of California in force at the time any need for the interpretation of this agreement or any decision or holding concerning this Agreement arises.
- 5.08 **BINDING EFFECT**: This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this section shall be construed as a consent by City to any assignment of this Agreement or any interest in this Agreement.
- 5.09 **SEVERABILITY**: Should any provision of this Agreement be held by a court of competent jurisdiction or by a legislative or rule-making act to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, unimpaired by the holding, legislation or rule.

5.10 **SOLE AND ENTIRE AGREEMENT**: This Agreement constitutes the sole and entire Agreement between the parties with respect to the subject matter hereof. This Agreement correctly sets forth the obligations of the parties hereto to each other as of the date of this Agreement. All Agreements or representations respecting the subject matter of this Agreement not expressly set forth or referred to in this Agreement are null and void.

5.11 **TIME**: Time is expressly declared to be of the essence of this Agreement.

5.12 **DUE AUTHORITY**: The parties hereby represent that the individuals executing this agreement are expressly authorized to do so on and in behalf of the parties.

5.13 **CONSTRUCTION**: The parties agree that each has had an opportunity to have their counsel review this Agreement and that any rule to the effect that ambiguities are to be resolved against the drafting shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.

5.14 **AMENDMENTS**: Amendments to this Agreement shall be made only with the mutual written consent of all of the parties to this Agreement.

Executed on _____, 2008 at Atascadero, California.

Attest:

CITY OF ATASCADERO

Marcia M. Torgerson
City Clerk

By: _____
Wade McKinney
City Manager

Approved as to form:

Brian Pierik
City Attorney

By: _____
CONTRACTOR