



City of Glendale  
FOOTHILLS RECREATION AND AQUATICS  
CENTER

C-8068  
06/08/2012

**CITY CLERK  
ORIGINAL**

**Concession Services  
Operator Agreement**

This Operator Agreement is made and entered into this effective date of **June 8, 2012**, by and between the **City of Glendale (City)** and **Angela M. Pena d/b/a/Angie's Dawg Haus (Operator)**.

City desires to provide concession services to the patrons of the Foothills Recreation & Aquatics Center ("FRAC"), located at **5600 West Union Hills Drive, Glendale, Arizona 85308** for a temporary period of time of not to exceed **three months**. Operator agrees to provide concession services at the FRAC for the benefit of City and the FRAC patrons.

City and Operator agree as follows:

1. Concession Term and Schedule

This Operator Agreement shall be for the time period beginning June 8, 2012 through and including September 3, 2012. Notwithstanding the preceding sentence, the term may be shortened by mutual written agreement of the City and Operator, but in no case shall the term be shortened to end prior to August 4, 2012.

Operator shall hold open the FRAC concession stand Monday-Saturday 8am-5pm and Sunday 11:30am-4:30pm.

2. Physical Location

The concession area is located at the rear of the lobby, next to the viewing windows to the aquatics area. The "Concession Stand" is a portion of the facility's public lobby containing the seating for the Operator. The "Storage Area" is located in a non-public area to provide storage of concession items and several storage shelves. Water and sink access is provided in the facility's Catering Kitchen.

FRAC shall provide to Operator a twelve by nine foot (12' x 9') storage space for supplies. This is an exclusive area that shall be locked and maintained by the Operator. It will be the responsibility of the Operator to make and maintain all modifications or improvements required as a result of health inspections.

The concession area has direct access to two hundred and twenty (220) volt electricity. The concession area is self-contained with an equipment inventory including, but not limited to, refrigerator, freezer, ice machine, microwave, fresh water supply, sinks/plumbing, and storage shelving.

The City is not responsible for any improvements or to provide any equipment relative to the concession area or to the seating area. Any improvements to the facility shall be pre-approved by the City's Contract Administrator, David Seid.

3. Operator Responsibilities

Operator is responsible for all operations including, but not limited to:

- Hiring, firing, and supervision of Operator's employees
- Addressing complaints within a forty-eight (48) hour period where possible
- Inventory related procedures
- Bookkeeping and reporting
- Basic Equipment Maintenance

Operator, its agents and employees, are all independent contractors and shall not represent themselves as agents or employees of City.

4. Menu

The Operator shall offer non-alcoholic beverages along with food items (collectively "Concession Items") for sale to facility patrons and the general public. Operator shall provide a menu of traditional concession fare, at an affordable price, such as hot dogs, soda, popcorn, and other snacks, as set forth in **Exhibit A** attached to and incorporated herein. The FRAC shall be notified of any changes to the menu and/or prices of menu items prior to changes taking effect.

Concession items shall be sold from the concession stand and operated by the Operator.

A vending machine company in the facility restricts the sale of duplicate items within the concession stand. Operator is responsible for monitoring the products sold in machines so as not to duplicate product.

The FRAC retains the right to sell additional items at the front desk for the benefit of its pass holders and guests. Operator agrees to not sell similar items as those sold at the front desk.

5. Operator Employees

The Operator shall ensure that the training of its employees is consistently high quality, and the Operator agrees to make available upon request its training and safety plan.

The Operator shall handle all complaints. When Operator is not on site, a form will need to be available to FRAC staff for customers to complete.

Operator is solely responsible for any and all taxes pertaining to its employees, including FICA and Unemployment Taxes.

Operator shall operate and manage the concession stand in a safe and professional manner. Operator shall control the conduct of its employees and be responsible for taking immediate action to rectify any inappropriate behavior or misconduct.

6. Use Fees and Report

Operator will pay to the City 35% of monthly gross receipts received from sales at the Foothills Recreation & Aquatics Center ("Use Fees") on the fifteenth (15<sup>th</sup>) day of each month. Also by the fifteenth (15<sup>th</sup>) of each month, Operator shall submit a report detailing the calculation used to determine the Use Fees amount.

7. Compliance with Laws and Regulations

Operator shall fully comply with all laws, ordinances, rules and regulations of the United States, State of Arizona, County of Maricopa and the City of Glendale, including specific City regulations related to building permits and fees, zoning, use permit stipulations and regulations regarding alcoholic beverages, nuisance abatement, immoral conduct, smoking/non-smoking, privilege, and use excise taxes.

Operator shall maintain a 100% rating with the Maricopa County Health Department. If Operator receives an inspection report of less than 100%, Operator shall remedy the defects noted by the Health Department within fourteen (14) days. All inspection reports must be retained on site.

In addition to license payments, transaction, privilege, sales, and other taxes at the rate provided by law, shall be paid by Operator in addition to any taxes imposed on Operator's business activities conducted at this location.

8. Signage

The Operator shall provide pre-approved signage for the concessions area.

9. Site Visit

The City reserves the right to audit the concession area at any time during the duration of this Operator Agreement.

10. General Maintenance

Maintenance performed by the Operator shall include cleaning of fixtures, equipment and furnishings, enclosed within the concession area, and maintain the concession area to Maricopa County Health Department standards. The Operator is also responsible to disinfect, clean, pick up trash and debris from the floors, tables and chairs in the near vicinity of the concession area in order to maintain an inviting appearance throughout the lobby. The Operator is responsible for the cost of cleaning due to Operator's negligence. The Operator shall report any facility or equipment issues to the Facility Manager.

11. Use of City Equipment

The Operator shall be allowed to use the FRAC's equipment that is listed in **Exhibit B**, attached to and incorporated herein. Operator shall be responsible for the cleaning and up-keep of all the equipment while this Operator Agreement is in effect. Operator is responsible for the repair and maintenance of all equipment.

Operator shall be permitted access to the Catering Kitchen for the express purpose of using the 3-bin sink, and the janitorial closet for access to the mop sink in order to meet Maricopa County Health Department requirements. Operator will provide their own cleaning supplies and must keep areas clean after every use.

12. Electricity and Water

The City is responsible for the cost of electricity and water necessary to operate all concession equipment.

13. Grease Trap

The Operator will be responsible for the payment of one required cleaning of the Facilities grease trap, pre-approval of subcontractor will be required prior to cleaning.

14. Permits and Licenses

Operator shall be responsible for determining and securing, at her expense, any and all licenses and permits that are required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction in any manner connected with providing food service operations and maintenance of the facility. During the term of the Operator Agreement, the Operator shall notify the City in writing, within two working days, of any suspension, revocation or renewal of any permits or licenses.

15. Insurance

Operator, performing as an independent contractor hereunder, shall be fully responsible for providing Workers' Compensation or other applicable insurance coverage for itself and its employees and the City shall have no responsibility of liability for such insurance coverage.

Before commencing any work under this Operator Agreement, Operator shall provide to the City a copy of the policy or a certification by the insurance carrier, showing the Operator to have in effect during the term of this Operator Agreement a General Liability Insurance policy, which shall be the primary coverage for Operator activities under this Operator Agreement. The coverage limits of such insurance shall not be less than those listed below.

The insurance company issuing the policy required above shall have an AM Best financial rating of "A-" or better and be authorized by the State of Arizona Department of Insurance to transact business within the State. **The certificate and policy shall name the City as an additional insured and shall be primary and non-contributory coverage. The City shall also be an additional insured to the full limits of the liability insurance purchased by the Operator even if those limits are in excess of those required by this contract.**

The City reserves the right to terminate this Operator Agreement if the Operator fails to maintain such insurance coverage.

Operator must provide certification of insurance prior to beginning any work under this Operator Agreement. Certification must include: name and address of insurance company, policy number, liability coverage amounts, and a statement that the policy will not be canceled or failed to be renewed without thirty (30) days written notice to the City. Certification shall be submitted to: Materials Management, 5850 West Glendale Arizona 85301.

Type of Insurance

Limits of Liability

(Minimum)

Workers' Compensation

Statutory

Employer's Liability

Each Accident

\$100,000

Disease-Each Employee

\$100,000

Disease-Policy Limit

\$500,000

Commercial General Liability shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, independent contractors, and broad-form contractual coverage.

Each Occurrence	\$1,000,000
Personal and Advertising	\$1,000,000
General Aggregate	\$2,000,000
Products-Completed Operations	\$1,000,000

Automobile Liability – Including bodily injury and property damage for any owned, hired and non-owned vehicles used in the performance of the services.

Combined Single Limit (CSL)	\$1,000,000
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16. Workers' Compensation

Operator shall be in full compliance with the provisions of the Arizona Workers' Compensation Law (Title 23, Chapter 6, Arizona Revised Statutes) as amended, and all rules and regulations of the Industrial Commission of Arizona made in pursuance thereof. Operator shall secure payment of compensation to employees by insuring the payment of such compensation with the State Compensation Fund or any insurance company authorized by the Insurance Department of Arizona to transact business in the State of Arizona.

Operator further agrees that he shall require any and all subcontractors performing work under the Operator Agreement to comply with said Worker's Compensation Law. It is expressly understood and agreed that all persons employed directly or indirectly by the Operator, or any of his subcontractors, shall be considered the employees.

17. Indemnification

Operator agrees to indemnify, defend and hold harmless the City against: i) any and all losses, claims, damages, lawsuits and liabilities for any personal injury, death, or property damage arising out of, or as a consequence of, any work or activity performed by Operator, or its employees, subcontractors, agents or assigns, pursuant to the Operator Agreement; ii) any and all expenses related to claims or lawsuits resulting from the above, including court costs and attorney(s) fees; and iii) any and all penalties and damages incurred by reason of Operator's failure to obtain any required permit or license, or comply with any applicable laws, ordinances, or regulations. Operator shall hold the City harmless from any claimants supplying labor, materials, equipment or supplies to the Operator or subcontractors in the performance of the services required under this Operator Agreement.

18. Termination

This Operator Agreement is terminable at the discretion of either party, with or without cause, upon two (2) weeks written notice delivered to the other party.

19. Immigration Law Compliance

A. Operator, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

- B. Any breach of warranty under subsection (A) above is considered a material breach of this Operator Agreement and is subject to penalties up to and including termination of this Operator Agreement.
- C. City retains the legal right to inspect the papers of Operator or subcontractor employee who performs work under this Operator Agreement to ensure that Operator or any subcontractor is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, Operator shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Operator agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section 19.
- E. Operator agrees to incorporate into any subcontracts under this Operator Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Operator also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Operator Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- F. Operator's warranty and obligations under this Section 19 to the City are continuing throughout the term of this Operator Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

20. Prohibitions

Operator certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Operator Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

21. Conflicts

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

[Signatures on following page]

**"Operator":**

ANGELA M. PENA dba ANGIE'S DAWG HAUS

By: Angela Pena  
Its: Operator

**"City":**

CITY OF GLENDALE, an Arizona  
municipal corporation

Horatio Skubis for  
Ed Beasley, City Manager

ATTEST:

Pamela Hanna  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall  
Craig Tindall, City Attorney

MENU FOR RFQ 12-37

ANGIE PENA - ANGIE'S DAWG HAUS  
1201 E. SAHUARO DRIVE  
PHOENIX, AZ 85021  
623-341-5911

Single hotdog w all condiments (Nathan's 100% Beef)	\$3.00
Hotdog combo=hotdog, drink and bag of chips	\$4.50
Single Hamburger w all condiments	\$3.50
Hamburger combo=burger, drink and bag of chips	\$5.00
Personal Pizza	\$2.50
Pizza and drink	\$3.50
Turkey Deli Sandwich	\$3.50
Combo meal=sandwich, drink and bag of chip	\$5.00
P B & J Sandwich	\$2.00
Combo Meal=sandwich drink and bag of chip	\$3.50
Nachos	\$3.00
Giant Soft Pretzel	\$2.00
w/chs	\$2.50
Popcorn	\$1.50
Bag of Chips (Variety)	\$0.50
Cookies (Variety)	\$0.75
Candy (Variety)	\$0.50-1.50
Milk Box	\$1.00
Gogurt	\$0.75
Sunny D	\$0.75
Fruit cup	\$0.75
Tea	\$0.80
Apple	\$0.50
Banana	\$0.50
Juicebox	\$0.75
Water	\$1.50
Gatorade	\$1.50

**PROPERTY INVENTORY**

**CITY OWNED EQUIPMENT  
TO REMAIN IN CONCESSIONS STAND**

1. Sencotel GHZ-228 SF 2 Dispenser Smoothie Machine
2. Alto Sham 3 Drawer Food Warmer
3. Manitowac Ice Maker & Bin
4. True Glass Face Freezer
5. True 2 Door Fridge w/ Countertop
6. 2 Door Cabinet w/ Countertop
7. True Sandwich Server/Fridge
8. Amana Commercial Microwave
9. Georgia-Pacific Wall Mounted Paper Towel Dispensers x 2
10. Waxie Wall Mounted Hand Soap Dispensers x 2
11. Federal Countertop Display Chip/Candy Case