

**AGREEMENT FOR LODGING AND BANQUET SERVICES  
BETWEEN**

**STEPHEN F. AUSTIN STATE UNIVERSITY  
AND  
APPLEBY SAND ROAD BED AND BAGEL**

AGREEMENT is made this 1st day of September, 2009, by and between Stephen F. Austin State University (hereinafter referred to as "University") and Appleby Sand Road Bed and Bagel (hereinafter referred to as "Contractor"). Unless otherwise provided, "University" and "Contractor" refer also to the management, employees, and agents of the parties.

In consideration of the mutual promises and covenants contained in this document, the University and Contractor agree as follows:

**1.0 INTRODUCTION**

Stephen F. Austin State University is entering into this Agreement for the purpose of providing non-exclusive overnight lodging for University Clients as well as group meetings and/or banquet services for the University as needed.

University Clients may include, but are not limited to, prospective employees, contracted individuals providing services, guest performers, University guests, student athlete recruits, etc. University Clients assist the University in carrying out its educational purpose.

The word "hotel" will be considered an all inclusive term as it is used throughout this Agreement for motels, bed and breakfast, inns, hotels, etc.

**2.0 TERM OF AGREEMENT**

The term of the contract shall be effective from above date of Agreement through August 31, 2010.

**3.0 NON-EXCLUSIVE CONTRACT**

The University will offer hotels in Nacogdoches the opportunity to submit a Rate Agreement Application throughout most of the fiscal year (9/1/09 – 8/31/10). As new hotels are approved, they will be added to the list of contract hotels on the University's Purchasing web-site.

The choice of lodging establishment will be at the discretion of the University Department making the arrangements.

**4.0 RATES**

Room rates are as shown in Appendix A.

The rates shown in Appendix A do not apply to conferences and group meetings. Such rates shall be negotiated separately as part of the conference package.

Banquet services and meeting room rentals shall be included in the contract, but will be negotiated as needed.

**5.0 ROOM AVAILABILITY and VOLUME OF BUSINESS**

It is not required that the hotel hold any room inventory for the University. The approved rates are based on availability, meaning first-come, first-served, and black-out dates may apply.

The University does not guarantee any minimum or maximum volume of business.

#### **6.0 WEB POSTING**

Lodging information, including room rates and amenities, will be posted on the University Purchasing Department web site to aid University Departments in selecting a Contractor.

#### **7.0 PAYMENT**

It is understood that a University Representative will request the arrangements and the University will be responsible for payment. The University will not be responsible for any charges associated with a University Client making their own arrangements.

The University is state tax exempt.

To insure the University is making the reservation, the Contractor should accept only a University Procurement Card (MasterCard) or Purchase Order Number prior to or in conjunction with making arrangements. The University will not be responsible for any arrangements for which the Contractor fails to secure a credit card number or Purchase Order Number.

#### **8.0 GENERAL TERMS AND CONDITIONS**

##### **8.1 INDEPENDENT CONTRACTOR**

In performing services under this Agreement, Contractor shall be deemed an independent contractor and shall not act as nor be an agent or employee of the University. As an independent contractor, Contractor will be solely responsible for determining the means and methods for performing the professional and/or technical services described herein, and shall have complete charge and responsibility for persons employed by Contractor and engaged in the performance of the specified work. All of the Contractor's activities will be at its own risk and Contractor is hereby given notice of its responsibility for arrangements to guard against physical, financial, and other risks as appropriate. Contractor shall observe and abide by all applicable laws and regulations.

##### **8.2 CONTRACT TERMINATION**

SFA or the Contractor may cancel this contract without cause upon thirty (30) days written notice.

##### **8.3 INDEMNIFICATION**

THE CONTRACTOR AGREES TO JOINTLY AND SEVERALLY INDEMNIFY AND HOLD SFA, ITS SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ALL LIABILITY, LOSS, DAMAGE OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES WHICH THE STATE MAY INCUR OR SUSTAIN BY REASON OF THE CONTRACTOR'S NEGLIGENT PERFORMANCE OF THIS CONTRACT OR ACTIVITIES RELATED THERETO.

##### **8.4 LIMITATION OF LIABILITIES**

Except for the obligation of the University to pay Vendor pursuant to the terms of this contract, the University shall have no liability to the Vendor or to anyone claiming through or under the Vendor by reason of the execution or performance of this contract.

##### **8.5 INSURANCE**

The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and certificates of such insurance have been filed with and reviewed

by the Owner. Acceptance of the insurance certificates by the Owner shall not relieve or decrease the liability of the Contractor.

If policies are not written for the amounts specified below (except Worker's Compensation and Employer's Liability), Contractor shall carry Excess Liability insurance for any difference in amounts specified. If Excess Liability insurance is provided, it shall follow the form of primary policy.

This insurance shall not be canceled, limited in scope of coverage, or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given to the Owner.

Contractor's insurance shall be deemed primary with respect to any insurance carried by Stephen F. Austin State University for liability arising out of operations under this Contract.

Stephen F. Austin State University, its officials, directors, employees, representatives and volunteers shall be named as additional insured. This is not applicable to the workers' compensation policy.

The workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner.

The workers' compensation insurance coverage must include the responsibility of the Contractor to provide coverage for every worker either under the Contractor's policy or under the policy provided by a subcontractor. The Contractor's policy shall provide that, in the event that a subcontractor's policy fails to provide worker's compensation coverage of a worker, that such insurance coverage is provided by the Contractor's policy.

Unless otherwise provided for herein, the Contractor shall provide and maintain, until the Work covered in this Contract is completed and accepted by the Owner, the minimum insurance coverage as follows:

TYPE OF COVERAGE	LIMITS OF LIABILITY
1. Comprehensive General Liability	\$1,000,000 combined single limit

**8.6 ACCESS TO RECORDS**

Contractor shall keep full and accurate records in connection with the services provided by it under this Agreement. All such records shall be retained by Contractor for a period of three (3) years and may be audited by the University or State of Texas Auditors at any time during regular working hours. If such books and records are audited and any overpayments are found, Contractor agrees to refund same to the Institution.

**8.7 LAWS**

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Texas and any and all litigation or actions commencing in connection with this contract shall be instituted in the appropriate courts in the State of Texas.

**8.8 PERMITS AND LICENSES**

Contractor shall, at its sole expense, procure and keep in effect all necessary permits and licenses required for its performance under this Agreement, and shall post or display in a prominent place such permits and/or notices as are required by law.

**8.9 TAXES**

Contractor shall pay when due all taxes or assessments applicable to Contractor. Contractor shall comply with the provisions of the applicable statutes and the regulations of the applicable taxation authority.

Stephen F. Austin State University is state tax exempt. On request, the University shall furnish a statement of tax exempt status or a hotel tax exempt form as appropriate, to the Contractor.

**8.10 ASSIGNMENT**

Contractor shall not assign or subcontract, in whole or in part, its rights or obligations under this Agreement without prior written consent of Stephen F. Austin State University. Any attempted assignment without said consent shall be void and of no effect.

**8.11 ALTERNATE DISPUTE RESOLUTION**

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by SFA and the Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Vice President for Finance and Administration of SFA shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor, (ii) neither the issuance of this Contract by SFA nor any other conduct, action or inaction of any representative of SFA relating to this contract constitutes or is intended to constitute a waiver of SFA's or the state's sovereign immunity to suit; and (iii) SFA has not waived its right to seek redress in the courts.

**8.12 FRAUD AND ETHICS**

Contractor is hereby advised that the University maintains policies regarding fraudulent or unethical conduct. These policies establish examples of acceptable and unacceptable conduct as well as procedures and responsibilities for detecting, reporting and resolving instances of known or suspected fraudulent activity and prescribe a coordinated approach toward investigation and resolution of fraudulent activity; reference University Policies C-46, Fraud and C-33, Purchasing Ethics and Confidentiality.

**8.13 ACCESS BY INDIVIDUALS WITH DISABILITIES**

Contractor represents and warrants (the "Electronic and Information Resources (EIR) Accessibility Warranty") that the electronic and information resources and all associated information, documentation and support that it provides to the University under the Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, Rule §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Contractor becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Contractor represents and warrants that it will, at no cost to the University, either (1) perform all necessary remediation to make the EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event the Contractor fails or is unable to do so, then the University may terminate the Agreement and Contractor will refund to the University all amounts the University has paid under the Agreement within thirty (30) days after the termination date.

**8.14 CONTRACTOR CERTIFICATIONS**

Texas Family Code Child Support Certification. By signature hereon, Contractor certifies as follows: "Under Section 231.006, Texas Family Code, the Contractor certifies it is not ineligible to receive the payments specified in the Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate."

Sales Tax Certification. By signing the Agreement, Contractor certifies as follows: "Under Section 2155.004, Texas Government Code, the Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

Franchise Tax Certification. By signing the Agreement, Contractor, a corporate or limited liability company, certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable. Contractor acknowledges and agrees that if this certification is false or inaccurate, at University's option, the Agreement may be terminated and payment withheld.

Payment of Debts to the State of Texas. That pursuant to Section 403.0551, Texas Government Code, Contractor agrees that any payments owing to the University under this contract may be applied towards any debt or delinquent taxes that the Contractor owes the State of Texas or any agency of the State of Texas, until such debt or delinquent taxes are paid in full.

IN WITNESS WHEREOF, the parties have executed this Agreement in the year and on the day first above written.

Stephen F. Austin State University

Appleby Sand Road Bed and Bagel

By

Baker Pattillo  
Signature

By

Betty Christian  
Signature

Dr. Baker Pattillo, President

Printed Name/Title

Betty Christian-owner  
Printed Name/Title

Date Signed

7-21-09

Date Signed

7-29-09