

BLUE GILL BOAT AND GRILL SERVICES AND CONCESSION AGREEMENT

THIS SERVICE AND CONCESSION AGREEMENT (hereinafter the "Agreement") is entered into on DATE _____ between the COUNTY OF EL PASO, TEXAS, A political subdivision of the State of Texas (hereinafter the "County") and BORDERPLEX ADVENTURES LLC. (hereinafter Concessionaire").

R E C I T A L S:

The County owns and operates a concession and services venue with adjacent dock to lake known as The Blue Gill Boat and Grill (hereinafter the "Facility") located in El Paso, Texas, to which the public is invited and at which, as a part of the County's customary activities, food, beverage and related concessions services are provided to the public. This contract strictly covers the agreement to provide concessionaire and rental services to the Facility.

Concessionaire provides novelty services, food, beverage, and related concession services.

NOW, THEREFORE, in consideration of the foregoing and the terms, provisions and conditions set forth herein, the parties hereto, expressly intending to be legally bound hereby, agree as follows:

1. Definitions.

1.1 "Services" shall mean any and all kinds, types of services and categories of food and food products, candy, non-alcoholic beverages which presently are or may at any time during the term be sold or provided in, at or from the Facility. Per Commissioners Court order, the sale or consumption of alcoholic beverages has been banned from the Facility and alcoholic beverages (including beer or wine) are not included in the definition of "Services."

1.2 "Gross Receipts" shall mean the gross revenues received by Concessionaire at the Facility from categories of Services listed as Exhibit "A" attached hereto sold or provided there, whether for cash or credit, but excluding federal, state and local sales, excise and equivalent taxes levied upon Services sales.

1.3 "Contract Year" shall mean the period beginning on January 1 of each calendar year and ending on December 31st of each succeeding calendar year during the term of this Agreement. A Contract Year may be pro-rated.

2. License and Grant.

2.1 The County hereby grants and licenses to Concessionaire for and throughout the term of this Agreement and all extensions and renewals thereof, the right to use and occupy the Facility's food service office, storage, preparation areas located in the provided building, and related areas, including but not limited to all such areas, improvements, furnishings, trade fixtures and equipment owned by the County located at the Facility as of the commencement date of this Agreement.

2.2 The County hereby grants and licenses to Concessionaire the right to provide and sell the "Services" at the Facility, including but not limited to, the operation of the rental services, concession stand, and vending operations selling food, non-alcoholic beverages except as otherwise provided herein. The County retains the rights to control any and all types of sales within the facility outside of the concession stand areas. Failure to provide any service essential to operation of the Facility as determined by the County will be considered a breach of this Agreement.

2.3 The Commissioner Court currently does not permit the sale or consumption of alcoholic beverages at the Facility. In the event that alcoholic beverages are permitted in the future, the privilege to sell alcoholic beverages is subject to compliance with applicable laws, including the provisions of the Texas Alcoholic Beverage Code.

2.4 This concession grant does not require or permit continuous operation by Concessionaire, but rather requires that Concessionaire shall provide the merchandise and personnel necessary to serve the public during Facility operating hours, or as agreed upon.

2.5 Concessionaire shall not be required to make available its areas of the Facility or any equipment or trade fixtures to any third party(ies) or to the County for use and/or occupancy for the purpose of providing any Services at any time without the approval of both County and Concessionaire.

2.6 The County hereby grants to Concessionaire the non-exclusive right to use all common and other areas, system(s), fixtures and equipment at the Facility (including but not limited to the related areas) to the extent same shall be reasonably necessary for Concessionaire's sale and provisions of Services, together with all appurtenances now or hereafter associated therewith or necessary for provision of such Services.

2.7 The County grants to Concessionaire first opportunity to provide for catering for any event that requires it. If Client and Concessionaire are unable to agree on catering terms or menus County shall then have the right to solicit other catering options on an event-by-event basis.

3. Term and Commencement Date.

3.1 The term of this Agreement (hereinafter the "Term") shall be three (3) years, commencing _____ and ending _____. At the conclusion of the initial term the Agreement may be extended two (2) annual extension options, not to exceed five (5) total years.

4. Equipment and Fixtures for Use and improvements by Concessionaire.

4.1 Concessionaire shall take possession of the improvements, equipment, fixtures and furnishings (except as otherwise set forth herein) in the areas to be occupied by Concessionaire, which Concessionaire agrees to accept in "as is" condition, on the commencement date of the Term. Any additional equipment necessary for Concessionaire to perform Services hereunder shall be provided by Concessionaire at its expense.

4.2 Concessionaire shall pay its local and long-distance telephone bills (if necessary). Concessionaire shall also provide, at its expense, internet/TV cable service. Upon expiration or termination of this Agreement, County shall assume responsibility for said services in the event that Concessionaire does not continue to provide services at the Facility.

5. License Fee.

In consideration of the rights and privileges licensed and granted Concessionaire hereunder:

5.1 Concessionaire agrees to pay to the County as a "License Fee" for each contract year the percentages of Concessionaire's Gross Receipts for each contract year as listed in Exhibit "A" hereto.

5.2 Concessionaire agrees to pay, without demand, said License Fees and all other sums payable to the County hereunder within 15 days following the close of each month in which payment obligations have arisen under this Agreement.

6. Financial Accounting and Reporting

6.1 Accounting. The concessionaire shall maintain for a period of 3 years thereafter, in accordance with generally accepted accounting procedures, such records as may be reasonably necessary for it to accurately record its Facility Gross Receipts and shall provide to the County, on a monthly basis, a financial performance report in a format compatible with and readily available to the County. The General form of the Concessionaire's sales records shall be subject to reasonable approval of the County for compliance with the provisions of this agreement and shall be subject to inspection without notice by the County, its officers, agents, employees and representatives during the regular business hours of the Facility throughout the term hereof and at the Concessionaire's headquarters thereafter. Such inspection shall not unreasonably interfere with Concessionaire's business activities.

6.2 Reporting. Concessionaire's accounting periods during each Contract Year shall be defined as each month during the term of this Agreement and any extension thereof. Within 15 days following the close of each Concessionaire accounting period, Concessionaire shall submit to the County in a form reasonably acceptable to the County, a written report of its Gross Receipts during such period in accordance with the categories set forth herein, which report shall be accompanied by such License Fees and other payments as are owing by Concessionaire for the period.

6.3 Other Requirements for Accounting, Reporting, and Financial Statements:

- a) Concessionaire shall keep completely separate financial records from those of any other enterprise or business activities at locations other than those specified by this contract;
- b) Concessionaire shall use a financial system which conforms to generally accepted accounting principles and practices;
- c) Concessionaire shall maintain complete inventories of concession equipment and other assets including expendable and consumable supplies maintained continuously at the facility;
- d) Concessionaire shall require receipts for every transaction in addition to the master register tape to be audited.
- f) All received Inventory (Food and beverage) may be verified by Facility Staff and receipts for all items shall be copied to the County upon request.

7. Duties of Concessionaire.

Concessionaire hereby agrees that throughout the Term of this Agreement it will at its expense:

7.1 Maintain and provide its Services at all events at the Facility in a manner equivalent to those provided at comparable first-class facilities.

7.2 Provide and/or sell all food, beverages, candy and all other Services in a fresh and wholesome condition. If, in the reasonable opinion of the County, it is necessary to discontinue the sale of any item of Service approved for sale because same is undesirable or injurious to the public, Concessionaire shall refrain from offering or providing said item or items.

7.3 Have appropriate food service areas and facilities open and in operation at reasonable times in order to serve patrons at Facility. Upon consultation with and written agreement by the County, no areas need be staffed or operation, nor need all areas remain open if the Facility's patronage does not warrant or require same.

7.4 Use its best efforts to promote, encourage and maximize its sales of Services hereunder. Food and beverage products of the County's or its Lessees' sponsors and advertisers, at the County's request, shall be non-exclusively featured and sold by Concessionaire to the extent permitted by law, provided such products can be obtained by Concessionaire at comparable reasonable prices and terms for products of like kind, quality, and quantity.

7.5 Provide its Services at prices not higher than those charged at comparable facilities in cities the size of EI Paso in areas throughout the southwest and which are agreeable to the County and shall post such prices on suitable menu boards.

7.6 Maintain the food preparation and service areas under its control in a clean and sanitary condition, and at the close of each day during which Concessionaire has provided its Services, clean Concessionaire's food preparation and service areas, and deliver the trash, garbage, litter and refuse accumulated therein to refuse containers provided by the County and Concessionaire, and located in agreed-upon areas adjacent to the areas under the management of Concessionaire for removal by the County therefrom at the County's expense; provided, however, that

Concessionaire shall have no responsibility with respect to portions of the Facility not under the exclusive control and use of Concessionaire.

7.7 Maintain, repair and replace all improvements, furnishings, fixtures, small wares and other items provided by Concessionaire throughout the Term of this Agreement.

7.8 Concessionaire shall be responsible for all repairs, maintenance and replacements of all improvements, furnishings, fixtures and equipment located in the areas under the exclusive control and use of Concessionaire, specifically including the following: (1) general cleaning and upkeep of appliances; (2) cleaning of the grease trap, including the services of an outside vendor if necessary; (3) replacement of light bulbs; and (4) cleaning of restrooms in building only, which shall be documented on an individual schedule posted for each bathroom and to be retained for a period of 1 year. The County shall be responsible for maintenance, repairs and replacements to only electrical, heating, ventilation, air conditioning, sewer, plumbing and other utility systems throughout the Facility, and the foundation, walls, and roof; provided- however, that Concessionaire shall be responsible for all of the foregoing costs if Concessionaire's negligence caused the need for such repairs or replacements.

7.9 Concessionaire must properly display safety procedures for all waterfront activities to be in compliance with Texas Parks and Wildlife boating and fishing. Must provide customers with appropriate lifejackets during waterfront rentals and assist in wearing properly.

Concessionaire will provide Department with Water Safety/Rescue Action Plan for review and approval of all waterfront activities, as well as Action Plan for any other rentals.

7.10 All Concessionaire's personnel shall be acceptable to the County, in the County's reasonable judgment, and shall be identified by numbers or letters prominently displayed on their uniform(s) or badge(s). Concessionaire shall employ at all times a manager who is reasonable satisfactory to the County and who will be available, or a specified satisfactory alternate, at the Facility during the provision of Services.

Concessionaire's employees shall at all times have an appropriate cleared background check, reflect personal cleanliness and be clean shaven or properly trimmed, be polite and courteous in their dealings with Facility patrons, be attired in suitable, attractive uniforms of a standard style and color, which uniforms shall be subject to the County's reasonable approval, and shall not unreasonably disturb or offend such patrons.

Concessionaire shall supervise its employees to ensure the practice of said standards of cleanliness, courtesy and service. Concessionaire employees shall be subject to all rules and regulations established from time to time by the County.

7.11 Concessionaire shall not discriminate against any of its employees or applicants for employment because of age, sex, handicap, race, creed, color or national origin. Concessionaire will take affirmative action to ensure that its employees are treated during employment without regard to age, sex, handicap, race, creed, color, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. In serving the public, Concessionaire's employees shall not on the grounds of age, sex, handicap, race, creed, color or national origin discriminate or permit- discrimination or refuse to Serve any person or group of persons in any

manner prohibited by federal, state or local laws, rules and regulations.

7.12 Post in a conspicuous place at each stand, whether permanent or temporary, a menu including a complete list of prices for all Services offered for sale or rental.

7.13 Bear all costs and expenses of its operations hereunder, including but not limited to, all wages and labor costs, costs of small wares, inventory and supplies and other charges related to Concessionaire's preparation, sale, and provision of Services, and maintain in commercially-acceptable condition all uniforms provided by Concessionaire, which uniforms shall remain the sole and exclusive property of Concessionaire.

7.14 Hold and save the County harmless from and indemnify the County against any and all damage, loss or liability of every kind whatsoever by reason of any injury to persons and/or property occasioned by any act, omission, neglect or wrongdoing by Concessionaire or by any of Concessionaire's officers, servants, agents, representatives or employees.

7.15 Provide throughout the Term at its expense, Workmen's Compensation Insurance, Employer's Liability Insurance, and Commercial and General Liability Insurance in the amounts set forth below and cause the County to be named as an additional insured (except Worker's Compensation and Employer's Liability Insurance), and furnish to the County certificates of insurance, not cancelable except upon 10 days' advance written notice. The following minimum amounts of insurance shall be certified:

(1) Workmen's Compensation Insurance - Statutory Limits Employer's Liability Insurance - \$1,000,000.00 (accident or disease)

(2) Commercial General Liability Policy(ies) that cover Premises, Products and Completed Operations:

\$2,000,000.00 per occurrence

\$2,000,000.00 general policy annual aggregate (including products and completed operations, personal injury, and advertising injury)

7.16 Observe and comply with, at its own expense, all statutes, ordinances, orders, regulations and requirements of all federal, state and local governments pertaining to Concessionaire's Services at the Facility; provided, however, that Concessionaire shall not be required to make any structural improvements, replacements, or modifications, changes to utility lines or other systems or to any physical areas of the Facility including but not limited to any alterations, additions or modifications as may be required by OSHA, the American's With Disabilities Act, or by building, fire and related codes, except to the extent that Concessionaire's negligence shall have caused such condition(s) in violation of the foregoing.

7.17 Obtain all licenses and permits required for it to perform hereunder and correct promptly any violation thereof.

7.18 Pay all taxes arising by reason of Concessionaire's property, occupancy, use, revenues, sales and Gross Receipts hereunder, including all sales and equivalent taxes.

7.19 Concessionaire shall use its best efforts to participate in special promotional events with the County or its lessees but may only participate in those promotional events which shall provide a reasonable financial return to the County, the Concessionaire, and the lessee. Concessionaire, when requested and upon reasonable circumstances, help, participate, and agree to feature any

type of "special product" that is requested by the promoter or manager of the event. This can be a product that is sponsoring the event or not.

Concessionaire agrees to comply to all contractual agreements that the County has reached an exclusive agreement with. Failure to abide by these agreements by purchasing the product, even if it is the same brand/product, from another source other than the exclusive contracted company will cause the contract to be reviewed and potentially voided by the County.

8. Duties of the County.

The County hereby agrees that its responsibilities shall be as follows:

8.1 For and throughout the Term and all extensions and renewals thereof, Concessionaire shall have the full, quiet and unobstructed use and quiet enjoyment of the Facility's areas licensed to Concessionaire, along with all improvements, furniture, fixtures and equipment (as granted herein), and the right of Concessionaire to exclusively provide its Services at the Facility throughout the Term of this Agreement.

8.2 Consult in good faith, respond in a timely manner and not unreasonably withhold its consent to all requests from Concessionaire pursuant to this Agreement.

8.3 Perform its repair, maintenance and replacement responsibilities as provided in this Agreement.

8.4 The County will provide to Concessionaire without charge throughout the term and all extensions and renewals thereof, all utilities and utility services (including but not limited to water, electricity, gas, heating, ventilation, air conditioning, and sewage, but excluding local telephone and long distance service), as are reasonably required for Concessionaire's performance.

9. Termination.

9.1. Either party shall have the right to terminate this Agreement upon 30 days' advance written notice in the event that, notwithstanding any other provision of this Agreement:

a. The other party shall fail to observe or perform any covenants, conditions, or agreements to be performed hereunder, but only if such failure(s) shall not have been remedied by the party in default within 30 days following such party's receipt of written notice of said default, except License fee payments payable hereunder which must be made within 10 days following Concessionaire's receipt of written notice of default from the County; and/or

b. The other party shall institute or have instituted against it receivership proceedings of any kind or nature, insolvency or bankruptcy proceedings, make an assignment for the benefit of creditors or permit a decree or order to remain undischarged or unstayed for a period of 60 days adjudicating it a bankrupt or insolvent, or upon the appointment of a receiver (of any kind for any purpose) or a trustee for its property.

9.2 The failure of the County or Concessionaire, as the case may be, to seek redress for violation(s) of or to insist upon the strict performance of any provision, term or condition of this Agreement or of any rules and regulations established by the County shall not constitute a future waiver thereof or in any way limit or prevent subsequent enforcement of any such term, provision, condition, rule or regulation in any other circumstance.

9.3 In the event the Facility for any reason is closed or becomes substantially untenable for the holding of events to which the public is admitted, the Term of this Agreement and the County's and Concessionaire's respective rights, privileges and obligations hereunder shall abate, with the Term resuming at such time as the Facility is opened and becomes tenable in the manner existing before such occurrence. Provided, however, that in the event the Facility is untenable or is closed and fails to open for a period of six months following the occurrence of any such event or condition, this Agreement may be terminated by Concessionaire upon 30 days' advance written notice given to the County at any time prior to the reopening of the Facility.

9.4 Concessionaire agrees that at the expiration of the Term or termination of this Agreement, it will return to the County, the Facility and all areas and equipment furnished to it in the same condition they were as of the commencement date of this Agreement, except for (i) ordinary wear and tear; (ii) loss or damage occurring without the negligence of Concessionaire; and (iii) damage occurring through fire, flood, theft or other unavoidable occurrences without the negligence of Concessionaire.

9.5 Further, upon expiration or termination of the Agreement, Concessionaire shall either: (1) arrange for an inspection by the City/County Health Department of the areas occupied by Concessionaire and pay any required fee; or (2) arrange for and pay for such areas to be cleaned by a professional cleaning service. If an inspection by the City/County Health Department is failed, Concessionaire shall be responsible for promptly arranging for re-inspection and ensuring that the re-inspection is passed. Any professional cleaning service to be used shall be approved in advance in writing by the Parks and Recreation Director. If inspection or re-inspection by the

City/County Health Department is not available within a reasonable period of time, the Parks and Recreation Director may waive such (re)inspection in writing.

10. Notice.

Notice is hereby deemed to be effective for all purposes two (2) days after delivery by a party to the United States Post Office or upon the date of hand delivery. All mailed notices shall be in writing, by certified mail, return receipt requested, postage prepaid, as follows, or to such subsequent addresses as shall be supplied by a party from time to time:

If to the County, addressed to:

ATTN: MANAGER
6900 Delta
El Paso, Texas 79905

If to CONCESSIONAIRE, addressed to:

CONCESSIONAIRE
13420 Emerald Ranch Ln
Horizon City, Texas 79928

11. Interest in Real Estate.

The County and Concessionaire acknowledge that this Agreement conveys no interest in real estate.

12. Surrender of Premises.

Concessionaire acknowledges that upon termination of this Agreement, the County withdraws any permission for the use of the Facility and Concessionaire agrees that upon termination of this Agreement it will turn over the Facility to the County on demand. In the event that it is necessary for the County to file a suit for forcible detainer, Concessionaire agrees to pay reasonable attorney's fees and costs of suit.

13. Assignment.

This Agreement may not be assigned by Concessionaire except upon the express written consent of the County. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Term shall be unaffected by any change of ownership or transfer of the County's interest in or management of the Facility or any part thereof.

14. Miscellaneous Provisions.

14.1 Force Majeure and Other Contingencies. Except as expressly provided herein, neither party shall be obligated to perform hereunder and neither shall be deemed to be in default if performance is prohibited by (i) fire, earthquake, flood, act of God, riot, civil commotion, labor dispute(s) or related problems, or other occurrence of condition of like nature, or (ii) any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or any other governmental laws and regulations.

14.2 Full Agreement. This Agreement constitutes the full and complete understanding of the parties. This Agreement may not be amended or modified except by a writing executed by both parties hereto.

14.3 Law Governing Contract. This Agreement shall be governed by the laws of the State of Texas and venue shall lie in El Paso County, Texas.

14.4 Authority to Contract. The parties hereby represent, warrant, and guarantee that they are each duly authorized to enter into this Agreement, and those individuals executing this Agreement on behalf of each of the parties have the right and authority to so act.

14.5 Independent Contractor. Nothing contained herein shall be construed as creating the relationship of employer and employee between the County and the Concessionaire. The Concessionaire shall be deemed at all times to be an independent contractor. The County shall not be subject to any obligations or liabilities of the Concessionaire incurred in the performance of this Agreement.

14.6 Severability. If any part of this Agreement is held to be unenforceable, the rest of the Agreement shall continue in full force and effect to the extent that it substantially reflects the agreement contemplated by the parties.

IN WITNESS WHEREOF, the parties hereto have caused their officers to enter into and execute this Agreement the day and year first above written.

EL PASO COUNTY

COUNTY JUDGE
RICARDO A. SAMANIEGO

DATE

Borderplex Adventures, LLC

MANAGER
CONCESSIONAIRE

DATE

EXHIBIT "A"

Concessionaire's License Fees

Category

Food and Beverage (Concession Stand, Selling Stations and Hawkers)	10% of Gross Receipts
Services (All rentals, etc.)	10% of Gross Receipts
Monthly Facility Rent	\$300