



## FAMILY AND COMMUNITY SERVICES

Date: August 9, 2010

To: Delia Briones, County Clerk

From: Rosemary Neill

Re: Commissioners Court Agenda

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Please place the following item on the Commissioners Court agenda for August 23, 2010:

Approve and authorize the County Judge to sign a Concession Agreement By and Between the County of El Paso and Lumar Enterprises for concession sales and rentals at Ascarate Park for an initial term commencing on August 23, 2010 and ending July 31, 2015.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to be "Rosemary V. Neill", with a long horizontal flourish extending to the right.

Rosemary V. Neill

Director

# Memorandum

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**To:** County Judge Anthony Cobos, Commissioner Anna Perez,  
Commissioner Veronica Escobar, Commissioner Willie Gandara, and  
Commissioner Daniel Haggerty

**From:** Rosemary Neill

**Date:** 8/19/2010

**Re:** Approval of Concession Agreement with Lumar Enterprises

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## **Action Item**

Approve and authorize the County Judge to sign a Concession Agreement By and Between the County of El Paso and Lumar Enterprises for concession sales and rentals at Ascarate Park for an initial term commencing on August 23, 2010 and ending July 31, 2015.

## **Fiscal Impact**

The consideration to the County will be the occupancy, operation, and routine maintenance of a vacant facility and an investment in new amenities for the park.

## **Background Information**

On June 21, 2010, Commissioners Court awarded the concession at Ascarate Park to Lumar Enterprises. This was after an unsuccessful solicitation in the fall of 2009.

The Purchasing Department advertised an RFP on October 11 and October 18, 2009. The County received one response to that RFP. That respondent did not submit the required Conflict of Interest (CIQ) form. On January 11, 2010, the Court rejected the incomplete response and directed staff to solicit vendors. The Court elected to waive its percentage of gross receipts in favor of having a viable on-going enterprise serving the public.

Working with the Purchasing Department, staff identified several interested groups. These parties were encouraged to visit the park, view the Blue Gill, and the park surroundings before submitting a proposal.

The County received three submissions. Staff and Mr. Joe Lopez from the Purchasing Department reviewed all three proposals. Staff and Mr. Lopez were interested in establishing an anchor tenant. In looking at the proposals, staff and Mr. Lopez recommended Lumar as the best fit for this goal.

Lumar also has other County concessions including one at the golf course and is familiar with County business practices, the County's RecWare software and with the overall park operations. The Lumar principal, Luis Dominguez, has sixteen years of restaurant and concession experience.

Since Lumar is a current County concessionaire, the County has experience with Lumar. Lumar's audits are positive. Lumar quickly addresses any minor findings to the County's satisfaction.

Approval of this contract allows Lumar to open its concession. Although late in the season, Lumar will open on weekends through September. It will use the interval from October to March to prepare for the spring and summer season.

Lumar is interested in adding amenities for the park. This includes paddleboats, bicycles and other features. This concession opportunity allows the County to establish a going concern at the park for the benefit of its patrons.

**CONCESSION AGREEMENT**  
**BY AND BETWEEN**  
**THE COUNTY OF EL PASO**  
**AND**  
**LUMAR ENTERPRISES**  
**(ASCARATE PARK)**

This Management Agreement (“Agreement”) is made and entered into this \_\_\_ day of August 2010, by and between El Paso County (“Client”), a political subdivision of the State of Texas, and Lumar Enterprise Inc. (“Concessionaire”), who agree as follows:

**ARTICLE I**  
**PURPOSE OF THE AGREEMENT**

- 1.1 Purpose of Agreement. The Agreement sets forth the terms and conditions upon which Client retains Concessionaire to manage and operate Concession Sales and Rentals at Ascarate Park, 6900 Delta Drive, El Paso, Texas (the Premises) for the general public.
- 1.2 Independent Contractor. Concessionaire shall be an independent contractor and shall retain control over its employees and agents
- 1.3 Regulations and Access. This Agreement establishes reasonable requirements for use and occupancy of the Premises and shall give Concessionaire written notice thereof. Client’s authorized representatives shall have access to Concessionaire’s operations at the Premises at all times.

**ARTICLE II**  
**DEFINITIONS**

- 2.1 Concession Sales. The preparation, service and sale of food, beverages, novelties, and other related items on or from the Premises, including at The Blue Gill and the use of mobile vending unit by Concessionaire within the Premises.
- 2.2 Rentals. The rental of canoes and pedal boats that are owned by the County, as further described in Exhibit A, and, if applicable, the rental of new equipment that may be purchased by Concessionaire for public use .
- 2.3 The Blue Gill. The concession stand located on the Premises.

**ARTICLE III**  
**TERM; EXCLUSIVITY; FINANCIAL ARRANGEMENTS**

- 3.1 Term of Agreement. The initial term of the Agreement is five (5) years, commencing on August 23, 2010, and continuing until July 31, 2015. Client shall have the option to extend the initial term for two (2) additional one-year periods by giving the Concessionaire written notice no later than sixty (60) days prior to termination of the Agreement.
- 3.2 Termination
- 3.2.1 Termination for Cause. If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other party notice of such cause. If the cause is remedied within ten (10) days in the case of failure to make payment when due thirty (30) days in the case of any other cause, the notice shall be null and void. If such cause is not remedied within the specified period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights to termination referred to in the Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.
- 3.2.2 Termination for Lack of Funding. The County may terminate this agreement at the end of any fiscal year during the term of this agreement if sufficient funds intended to satisfy the obligations of this agreement are not included in the adopted budget of El Paso County for the upcoming fiscal year.
- 3.2.3 Termination without Cause. Either party may terminate the Agreement at any time by giving thirty (30) days prior written notice.
- 3.3 Concession Sales and Rentals Exclusive for Day to Day Operations: Special Events. Client grants Concessionaire the exclusive right to operate Concession Sales and Rentals on or from the Premises on a day to day basis; Concessionaire’s exclusive rights include areas within the park such as the swimming pool, baseball fields, tennis courts, handball courts and soccer fields. Client reserves the right to host special events at the Premises, and to use Concessionaire or other food or event service providers in connection with special events, at Client’s option.

- 3.4 Vending Machines. Concessionaire may install and operate vending machines within the Premises for food, beverage, confections and similar products, upon written agreement with the County as to the location of the vending machines.
- 3.5 Concessionaire's Payments and Expenses.
- 3.5.1 Concessionaire shall pay all charges for electricity used inside the Blue Gill and shall be responsible for light bulbs inside the Blue Gill.
- 3.5.2 Concessionaire shall pay for all repairs and expenses for canoes and pedal boats owned by the County.
- 3.5.3 Concessionaire may, at its own expense, purchase new or additional equipment to ensure customer satisfaction. Concessionaire shall pay for all repairs and expenses to equipment purchased by Concessionaire. All equipment purchased by Concessionaire shall remain its property.
- 3.5.4 Concessionaire is also responsible for personnel, operating and maintenance costs as further described in Articles IV, V, VI and VII herein.

**ARTICLE IV**  
**RETAIL SALES PROGRAM**

- 4.1 Location; Retail Segment Prices. Concessionaire shall provide retail sales at the Premises. Prices charged for retail sales shall be reasonable as determined by Concessionaire and competitive with prices charged in comparable venues in the geographic area of the Premises for products of like quality. The initial menu and charges shall be as provided in Exhibit B. The menu and prices may be modified (the prices in an amount not to exceed 50% of the original prices) with the written consent of the Director of Family and Community Services.
- 4.2 Client-Sponsored Functions. Prices for the catering of Client-sponsored functions shall be established by mutual agreement of the parties. Concessionaire shall prepare and submit invoices to individuals or groups served by Concessionaire at Client-sponsored functions. Concessionaire shall bill and collect amounts due for functions not Client-sponsored from the individuals or groups served, unless Client and Concessionaire agree otherwise in writing.
- 4.3 Reports. Concessionaire shall prepare a statement of sales for each month and shall submit such statement to Client each month, by the 10<sup>th</sup> day of the next month. Statement of sales shall be detailed, and shall be prepared using standard accounting practices, listing each number of customers served in each category and total sales in

each category. Concessionaire shall supply Client with each statement a copy of register tapes, weekly reports and catering invoices. Concessionaire shall submit an annual statement to Client within sixty (60) days of close of the Accounting Year. All reports shall contain a separate original statement, signed by the person responsible for the report attesting to the report's accuracy.

- 4.4 Electronic Reporting. If agreed upon by both Concessionaire and Client, Concessionaire may submit required reports to Client in a mutually agreeable electronic format. Concessionaire acknowledges that submission of required reports in electronic format is for the convenience of both parties only, and does not relieve the Concessionaire from the responsibility of accurate record keeping. Furthermore, by accepting the required reports in electronic format, Client **does not** waive any Right of Inspection and Audit, as set forth below. If Concessionaire chooses to submit reports in electronic format, Client may at any time, with or without notice, required additional supporting documentation. If Concessionaire reports in electronic format, a separate **original** statement, signed by the person responsible for the report attesting to the electronic report's accuracy shall accompany the Commission Payment. Copies of the report will be forwarded to Client's designation representative(s).
- 4.5 Record Keeping. Concessionaire shall retain copies of all financial records pertaining to Concessionaire Food Service at Client's location for the term of the agreement and a minimum of two (2) years thereafter.
- 4.6 Right of Inspection and Audit. Concessionaire agrees that all financial records pertaining to Concessionaire Food Service shall be available for inspection and audit without notice of Client.

## **ARTICLE V** **EMPLOYEES**

- 5.1 Policies and Procedures. Concessionaire's employees and operations at the Premises shall adhere to County policies and procedures as they pertain to the Premises, particularly those pertaining possession of firearms on parks, property and buildings of the county; substance abuse, alcohol abuse, and hours of operation, copies of which are attached as Exhibit C Concessionaire shall include instruction on the County Policies and Procedures as they pertain to the Premises to all employees that will staff operations at the Premises. Violation by Concessionaire of County Policies

and Procedures as they pertain to the Premises may be considered a breach of this contract.

- 5.2 Personnel Obligations. The parties hereto shall be solely responsible for employees on their respective payrolls, including responsibility for recruitment, employment, promotion, transfer, layoff and termination. Each party shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and state employment taxes and payroll insurance relating to its employees including any income, social security and unemployment taxes and workers' compensation costs charges.
- 5.3 Equal Opportunity and Affirmative Action Employer. Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability or status as a Vietnam veteran, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning Food Service employees. Concessionaire affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to: Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights act of 1964; Equal pay Act of 1963; Age Discrimination in Employment Act of 1963; Age of Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; and any additions or amendments thereto.

## ARTICLE VI

### INVENTORIES, FACILITIES, EQUIPMENT AND MAINTENANCE

#### 6. GENERAL CONTRACTOR RESPONSIBILITIES

Contractor will operate, manage, and maintain Concession Sales and Rentals at the Premises as described in this Agreement. Contractor will provide all personnel, food, supplies, materials and any equipment not otherwise furnished by El Paso County. Contractor must agree to the mandatory minimum requirements of responsibility as follows:

- 6.1 Food Service. Contractor shall operate, manage, and maintain a safe and sanitary food service environment at all times in compliance with local, state, and federal laws and



regulations. The food service mobile vending unit and the Blue Gill shall always be in good standing with the health, fire, and occupational codes. Failure to remain in good standing shall be considered cause for termination under section 7.12 hereunder. A copy of all inspection reports by any enforcement agency, including the Texas Department of Health, shall be provided to the Facilities Management Department within 24 hours. Contractor shall maintain, at all times, El Paso County foodservice facilities, vending kitchen, serving area, food preparation area, storage area, picnic tables, adjacent restrooms and vending machine area in a clean and sanitary manner, and in accordance with all federal, state and municipal laws, codes and regulations including:

- 6.1.1 Routine and daily cleaning of floors, walls, ceilings, doors, lights, and exhaust hoods and vents.
- 6.1.2 Clean all foodservice equipment, preparation and service area surfaces on a continuous basis and following each meal period. The vendor's employee shall be trained to follow a "clean-as-you-go" policy.
- 6.1.3 Adhere to ware washing sanitation regulations (i.e. recommended temperatures, use, storage and disposal of chemical sanitizers).
- 6.1.4 Picnic tables shall be cleaned at intervals after clients leave.
- 6.1.5 Picnic tables, chairs, and general picnic area shall be cleaned as necessary throughout the day.
- 6.1.6 Floors shall be mopped at the end of each day.
- 6.1.7 Floor must be stripped and waxed a minimum of once per year and must provide documentation to the County Facilities Management Department, with a copy to the Director of Family and Community Services upon completion of each schedule.
- 6.2 Facilities and Maintenance. Contractor is responsible for the annual cleaning and inspection of the exhaust hood vent, and is to provide documentation to the Facilities Management Department within 48 hours of completion, with a copy to the Director of Family and Community Services upon completion of each schedule.. (With the exception of the exhaust hood vent, El Paso County shall be responsible for all (other) fire compliance inspections, including fire extinguishers, Halon, fire alarm, and sprinkler system.)

- 6.2.1 Contractor shall be responsible for the proper use of the County's plumbing and sewer system. Contractor shall train all staff in the proper disposal of grease, food, utensils, napkins, and all other solids to the appropriate disposal receptacle. **ANY EXPENSE INCURRED DUE TO THE MISUSE OR IMPROPER USE OF THE COUNTY'S PLUMBING SYSTEM OR GARBAGE DISPOSAL SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND MUST BE PAID WITHIN 30 DAYS UPON RECEIPT OF INVOICE. REPAIRS MADE BY COUNTY MAINTENANCE STAFF WILL BE BILLED TO THE CONTRACTOR BASED ON THE MECHANICS HOURLY RATE AND THE CONTRACTOR MUST REIMBURSE THE COUNTY WITHIN 30 DAY UPON RECEIPT OF INVOICE. REPEATED INCIDENTS OF IMPROPER USAGE OF THE COUNTY'S PLUMBING SYSTEM SUCH AS DESCRIBED IN THIS SECTION OF TWO INCIDENTS OR MORE WITHIN A 12-MONTH PERIOD, SHALL BE CONSIDERED CAUSE FOR TERMINATION UNDER SECTION 7.12 HEREIN.**
- 6.2.2 Contractor shall maintain repair and routine service equipment maintenance contracts on all equipment listed in Exhibit A at the Contractor's expense, at all times throughout the duration of the contract. Copies of all maintenance contracts, and any subsequent updates or changes to each contract must be provided to the Facilities Management Department. Contractor shall provide copies of all repair and services reports and invoices to the Facilities Management Department, no less than quarterly of each contract year.
- 6.2.3 Contractor shall comply with El Paso County Recycling Program: Contractor **MUST** recycle all eligible containers and materials, which include #1 and #2 plastic containers, paper, cardboard, boxes, aluminum, steel, and tin are disposed of in a dumpster provided by Contractor and designated solely for recyclables. Recyclables shall be thorough rinsed and collected in a separate container from the regular trash. Contractor is prohibited from disposing of delivery pallets in any County dumpster, and Contractor shall be responsible for their disposal through appropriate means of donation, trade, consignment, etc. Failure to properly dispose of recyclable materials or pallets shall be grounds for termination of contract.
- 6.2.4 All non-recyclable trash shall be disposed of from the facility on a daily basis to the appropriate designated dumpsters provided by Contractor. Contractor shall ensure that bags, boxes, or any other container used to transport disposables do not leak and are not torn in a manner that will leave a mess. Any spill, discharge, or other disorder resulting from leaking or torn bags shall be cleaned up immediately by the contractor.
- 6.2.5 Pest Control: Contractor is responsible for all pest control services to be performed a minimum of once per month and include the extermination of insects, rodents, and vermin to ensure a sanitary, pest-free foodservice environment. The areas of responsibility include: kitchen, serving area, food preparation area, storage area, picnic

tables, ice cream truck and vending machine area, within the designated areas available for use by the Contractor's personnel.

- 6.2.6 Contractor shall diligently obtain and maintain all applicable licenses and permits as required by any of the above governmental entities for operation of a food service facility and assure that all staff is properly trained and certified as applicable, including food handler safety compliance. Contractor shall be responsible for the posting of all signage required by local, state, or federal laws and the compliance with the postings therein.
- 6.2.7 Contractor shall not permit any disorderly and/or unsafe conduct or practice by Contractor or its employees that would bring discredit of any kind to El Paso County or present cause for concern for public safety.
- 6.2.8 All Contractor employees shall exhibit professional and courteous behavior at all times. Preferably, employees serving the public shall be bilingual in English and Spanish, however at a minimum, employees serving the public must speak English to a degree that allows understanding of common food service orders.
- 6.2.9 Contractor's employees shall be paid, at minimum, a salary commensurate with federal minimum wage requirements as they apply throughout the contract and in conjunction with any/all other appropriate governmental requirements and regulations.
- 6.2.10 Contractor shall employ only persons who are citizens of the United States and/or those who may be lawfully permitted to work in this country.
- 6.2.11 Contractor shall not permit liens of any type to attach to any El Paso County space, equipment, property, repairs or improvements applicable to this contract.
- 6.3 Laundry, Linen and Uniforms. Concessionaire shall be responsible for costs of all laundry, linen and uniform services.
- 6.4 Telephone Expenses. Client shall responsible for telephone installation costs. Concessionaire shall pay its local and long distance telephone billings.
- 6.5 Inventory of Equipment. Concessionaire and Client have inventoried Client's Food Service equipment. The inventory is included in Exhibit A. Upon termination of the Agreement, Concessionaire shall surrender such inventory of equipment to Client in good condition, reasonable wear and tear excepted.

- 6.6 Utilities. Client shall be responsible for utilities, with the exception of the cost of electricity consumed in the services provided at the Blue Gill, which shall be paid by Concessionaire.
- 6.7 Maintenance. Client shall provide maintenance for the Blue Gill exterior, including roof, exterior paint, exterior light bulbs and landscaping. Client shall also maintain the refrigeration, plumbing and electrical services at for the Blue Gill.
- 6.8 Condition of Premises and Equipment. The Premises and equipment provided by each party for use in the Food Service operation shall be in good condition and maintained by Concessionaire to ensure compliance with applicable laws concerning building conditions, sanitation, safety and health. Concessionaire shall take reasonable and proper care of the Premises and equipment under its custody and control and shall notify Client of any known deficiencies.

## **ARTICLE VII**

### **GENERAL TERMS AND CONDITIONS**

- 7.1 Taxes. Concessionaire shall bill and collect sales and use taxes, if applicable, on all meals and services rendered on or from the Premises. If the parties disagree as to taxability of any meals or services, Concessionaire shall promptly obtain a ruling from the appropriate governmental authority. Concessionaire shall indemnify Client against any liability or assessment, including related interest and penalties, arising from a tax assessment and shall pay reasonable collection expenses, attorney's fees and costs incurred in connection with the enforcement of such indemnity. This provision shall survive termination of the Agreement.
- 7.2 Compliance with Law. Concessionaire shall comply with all applicable laws, ordinances, rules and regulations relating to Food Service sanitation, safety and health, and shall maintain all necessary licenses and permits, excluding any necessary liquor licenses and permits which shall be Client's responsibility to obtain and maintain. Client shall cooperate with Concessionaire to accomplish the foregoing.
- 7.3 Workers' Compensation Insurance. Each party shall maintain workers' compensation as required by state law covering all of its employees employed in connection with the Food Service operation.

- 7.4 Comprehensive or Commercial Insurance. Concessionaire shall, as Charge to the Food Service operation, maintain during the term of the Agreement, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance in the Combined Single Limit of not less than One Million Dollars (\$1,000,000) for each occurrence, including, but not limited to, Personal Injury Liability, covering only the activities of Concessionaire under the Agreement and shall provide Client with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice. Client shall be named as an additional insured under Concessionaire's policies of insurance.
- 7.5.1 Property Insurance. Client shall keep Client's building, including the Premises and all property contained therein, insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance policies.
- 7.5.2 Liability for Non-Concessionaire Approved Vendors. Client understands that Concessionaire has entered into agreement with many vendors and suppliers of products which give Concessionaire the right to inspect such vendors' and suppliers' plants and/or storage facilities and require such vendors and suppliers to adhere to standards to ensure the quality of the products purchased by Concessionaire for or on behalf of Client. Client may, however, direct Concessionaire to purchase products from non-Concessionaire approved vendors. In such instances, for the mutual protection of Client and Concessionaire, Client will require each such vendor to obtain from a reputable insurance company acceptable to Client and Concessionaire liability insurance (including products liability coverage) and contractual liability insurance in the amount of not less than One Million Dollars (\$1,000,000) for each occurrence naming Client and Concessionaire as additional insureds. Said insurance shall not exclude the negligence of Client or Concessionaire from coverage. A certificate evidencing such insurance shall be provided to Client and Concessionaire upon the requesting of either party. Client shall also require each such vendor to sign an indemnity certificate (acceptable to Client and Concessionaire) in which such vendor shall agree to defend, indemnify, and hold harmless Client and Concessionaire from and against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses, and attorney's fees which may arise as a result of using such vendor's products, except when such liability arises solely as a result of the negligence of Concessionaire and /or Client. Client shall not require Concessionaire to use products from non-Concessionaire approved vendors until such insurance certificates and indemnity certificates have been provided.

7.6 Indemnity. Concessionaire shall defend, indemnify and hold harmless Client from and against all claims, liability, loss and expense, including reasonable collection expenses, and attorney's fees, which may arise because of the acts or omissions of the Concessionaire, its agents or employees. This clause shall service termination of the Agreement.

7.7 Trade Secrets and Proprietary Information. During the term of the Agreement, Concessionaire may grant to Client a nonexclusive right to access certain proprietary materials of Concessionaire, including recipes, signage, Food Service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed to Concessionaire), computerized data bases and similar compilations and documents regularly used in Concessionaire's business operations ("Trade Secrets"). SUBJECT TO THE REQUIREMENTS OF TEXAS PUBLIC INFORMATION ACT, Client shall not disclose any of Concessionaire's Trade Secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. Client shall not photocopy or otherwise duplicate any such material without the prior written consent of Concessionaire. All Trade Secrets and other confidential information shall remain the exclusive property of Concessionaire and shall be returned to Concessionaire immediately upon termination of the Agreement. Without limiting the foregoing, Client specifically agrees that all software associated with the operation of the Food Service, including without limitation, menu systems, food production systems, Client accounting systems, and other software, are owned by or licensed to Concessionaire and not Client. Furthermore, Client's access or use of such software shall not create any right, title interest, or copyright in such software, and Client shall not retain such software beyond the termination of the Agreement.

7.8 Assignment. The Agreement may not be assigned by either party without the written consent of the other, except Concessionaire may, without prior approval and without being released from any of its responsibilities hereunder, assign the Agreement to an affiliate or wholly-owned subsidiary of Concessionaire.

7.9 Notice. Any notice of communication required or permitted to be given hereunder shall be in writing and served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To Client: County Judge  
El Paso County Courthouse  
Attention: Facilities Management

500 E. San Antonio, Room 301  
El Paso, Texas 79901

with a copy to Director, Family and Community Services  
800 E. Overland  
El Paso, Texas

To Concessionaire: Jose Luis Dominguez, President  
Lumar Enterprises Inc.  
11645 Norman Montion  
El Paso, Texas 79936

Notice may be given and/or to such other persons or places as either of the parties may hereafter designate in writing, which notices shall be effective when received by the other party.

7.10 Force Majeure. Neither Concessionaire nor Client shall be liable for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy-related closings, governmental rules or regulations, or like causes beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.

7.11 Construction and Effect. A waiver of any failure to perform under the Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any exhibits referred to herein are made a part of the Agreement by reference. The Agreement may be executed in several counterparts, each of which shall be deemed an original.

7.12 Severability. If any term or provision of the Agreement or the application thereof to any person or circumstance shall, to any extent or for any reason be invalid or unenforceable, the remainder of the Agreement and the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.13 Amendments to Agreement. All provisions of the Agreement hereto shall remain in effect throughout the term thereof unless the parties agree, in a written document signed by both parties, to amend, add or delete any provision. The Agreement contains all agreements of the parties with respect to matters covered herein, superseding any prior agreements and may not be changed other than by an agreement in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have entered into the Agreement as of the date first signed or the first day of the Term, whichever is sooner.

**COUNTY OF EL PASO**

----- Dated: -----  
Anthony Cobos  
County Judge

**LUMAR ENTERPRISE INC.**

By: ----- Dated: -----  
Jose Luis Dominguez  
President



## Exhibit B

### Proposed menu for Ascarate Park

Hot dogs	\$1.75
Popcorn	\$1.50
Nachos	\$2.50
Churros	\$1.75
Funnel cakes	\$1.75
Chicharrones	\$1.75
Fruit bars	\$1.50
Cotton candy	\$1.75
Chips	\$1.25
Candy	\$1.25
16 oz Water	\$1.00
12 oz can soda	\$1.00
Powerade	\$2.25
Three liter soda	\$3.00
5# charcoal	\$4.50
10# charcoal	\$9.00
Charcoal fluid	\$3.00
Sleeve of 8oz cup	\$1.00
Plastic pack utensils	\$0.25
Napkin packs	\$2.00
Ice bag 20#	\$3.00

Canoes or pedal boats \$12.50 per hour.

## EXHIBIT C

### County Policies and Procedures

LUMAR Enterprises agrees to abide by the following policies and procedures as part of its occupancy of the Blue Gill and the use of mobile vending units at Ascarate Park, 6900 Delta Drive, El Paso, Texas (the "Park").

#### Hours of Operation

The Park is open to the public seven (7) days per week from 6:00 AM to 11 PM Mountain **Time**. Lumar Enterprises must set its hours of operation within this period.

**Comment [ca1]:** Wouldn't it be Mountain Daylight Time during the summer?

#### General Park Rules

"Park Staff" means County employees assigned to duty at the Park.

Commissioners Court prohibits the sale or consumption of alcoholic beverages within the Park, other than those authorized pursuant to the Agreement and held in compliance with all Texas Alcoholic Beverage Commission rules and regulations. LUMAR shall provide the Director of Family and Community Planning with copies of TABC permits obtained for each special or restricted event within 1 week of the event

County policy prohibits glass containers in the park. Lumar will exclude any and all products packaged in a glass container.

Park Staff, in cooperation with the El Paso County Sheriff's Office, set the speed limits, direction of traffic flow and designation of special parking locations. Lumar shall observe all posted speed limits and traffic control signage when operating its mobile vending unit.

Sheriff's Deputies and the Texas Parks and Wildlife Game Wardens patrol the park to ensure the safety and well-being of park patrons and observance of fishing regulations. Lumar shall comply with any and all directions, guidelines or instruction provided by these officers while they patrol the park.

Lumar shall obtain and keep in good order a small motorized craft for use in a water emergency at the Park by any authorized rescue **personnel**.

**Comment [ca2]:** Any requirement as to size or horsepower, etc?

Lumar shall report to Park Staff any activities it identifies as a possible or potential violation of general park rules as quickly as possible. Park Staff, Sheriff's Deputies or Game Wardens will respond as appropriate.

Attached County Policy Regarding Possession of Firearms on Parks, Property and Buildings of El Paso County, Texas.

**From:** Josie Brostrom

**Sent:** Tuesday, August 17, 2010 11:44 AM

**To:** Rosemary Neill

**Subject:** Contract Legal Review Form KK-10-294 LUMAR Ascarate Park Concession Agreement

**Attachments:** k10294 Exh. A Inventory.pdf; k10294 Exhibit B Menu.pdf; K10294 LUMAR EXHIBIT C.doc; k10294 Lumar Ascarate Lake Food and Rental Concession.doc

**COUNTY LEGAL REVIEW FORM**

KK-10-294

Contract Description: [Family and Community Services - Lumar Enterprise Inc. - Concession Agreement - Ascarate Park](#)

**COUNTY ATTORNEY ACTION\*\***

**\*\*Requested Amendments/Clarifications:** We assume you have submitted any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

Approved as to Form as Submitted  
 Approved as to Form with Amendments/Modifications/Reservations Noted Below\*  
 Not Approved

\*1) NA

This document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

**Josefina J. Brostrom**  
**Assistant County Attorney**