

## **MANAGEMENT AGREEMENT**

This Management Agreement (“Agreement”) is made and entered into this 30 day of January, 2012, by and between El Paso County (“County”), a political subdivision of the State of Texas, and Super Chef, Inc. (“Concessionaire”), a Texas Corporation, 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 County retains Concessionaire to manage and operate Food Service for County’s staff, employees, invited guests and 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.** County will establish reasonable requirements for use and occupancy of the Premises and shall give Concessionaire written notice thereof. County’s authorized representatives shall have access to the Premises at all times.

### **ARTICLE II** **DEFINITIONS**

- 2.1 **Accounting Period.** A calendar month, twelve (12) of which constitute an accounting year.
- 2.2 **Food Service.** The preparation, service and sale of food, beverages, goods, merchandise and other items on or from the Premises between the hours of 7:00 a.m. and 2:00 p.m., Monday through Friday, as minimum hours of operation, excluding holidays when the Sheriff’s Office is close to the public.
- 2.3 **Gross Sales.** All sales of food, beverages, goods, merchandise, and services in the Food Service operation, plus sales and use of taxes.
- 2.4 **Net Sales.** Gross Sales excluding sales and use taxes.
- 2.5 **Premises.** County’s Food Service facilities located at 3850 Justice Blvd., El Paso, Texas, 79938.
- 2.6 **Small wares.** Dishware, glassware, flatware, utensils, and similar items.

### **ARTICLE III** **TERM AND EXCLUSIVITY**

- 3.1 Term of Agreement. The initial term of the Agreement is three (3) years, commencing on 01/30/2012, and continuing through 01/29/2015. County shall have the option to extend the initial term for two (2) additional one-year periods by giving the Concessionaire sixty (60) days' written notice.
- 3.2 Food Service Exclusive. County grants Concessionaire the exclusive right to operate Food Service on or from the Premises. This provision does not prevent County from installing and operating or engaging others to install and operate vending machines for food, beverage, confections, and similar products within the Premises.

#### **ARTICLE IV**

#### **RETAIL SALES PROGRAM**

- 4.1 Locations. Concessionaire shall provide retail sales at the Premises and at such other locations as County and Concessionaire shall agree.
- 4.2 Retail Segment Prices. Prices charged for retail sales shall be reasonable as determined by Concessionaire and competitive with prices charged in comparable establishments in the geographic area of the Premises for products of like quality.
- 4.3 County-Sponsored Functions. Prices for the catering of County-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 County-sponsored functions. Concessionaire shall bill and collect amounts due for functions not County-sponsored from the individuals or groups served, unless County and Concessionaire agree otherwise in writing.
- 4.4 Reports. Concessionaire shall prepare a statement of sales and commissions for each Account Period and shall submit such statement with commission payments due to County for such Account Period. Statement of sales and commissions shall be detailed, and shall be prepared using standard accounting practices, listing each commission category separately, number of customers served in each category and total sales in each category. Concessionaire shall submit an annual statement to County 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.
- 4.5 Electronic Reporting. Concessionaire shall submit required reports to County via the County cashiering system and equipment, RECWARE, or as subsequently updated. County shall provide the training and equipment required for its use. Concessionaire shall complete the system training in a satisfactory manner, and shall care for the equipment in a proper manner and return it in satisfactory condition. 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, County **does not** waive any Right of Inspection and Audit, as set forth below.

- 4.6 Record Keeping. Concessionaire shall retain copies of all financial records pertaining to Concessionaire Food Service at County's location for a minimum of two (2) years, or longer if requested by County or required by law.
- 4.7 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 by County. Such financial records include, but are not limited to a copy of register tapes, daily reports, and catering invoices.

#### **ARTICLE IV** **EMPLOYEES**

- 5.1 Concessionaire Management Employees. Concessionaire shall provide qualified management employees to operate the Food Service and supervise all Food Service employees.
- 5.2 Concessionaire Non-management Employees. All non-management Food Service employees shall be Concessionaire Employees. Concessionaire employees working at the Premises shall comply with County Sheriff policies and practices.
- 5.3 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.
- 5.4 Agreement Not to Hire. County shall not, without Concessionaire's written consent, hire, make any agreement with, or permit the employment of, in any operation providing food service, any person who has been a Concessionaire management employee at the Food Service within the earlier of one (1) year after termination of the Agreement. This provision shall survive termination of the Agreement.
- 5.5 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 1967; 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.

- 5.6 **Background Check.** Concessionaire employees, both management and non-management, must each complete Exhibit B and pass a background check conducted by the County Sheriff's Office.

**ARTICLE VI**  
**INVENTORIES, FACILITIES, EQUIPMENT AND MAINTENANCE**

- 6.1 **Inventory of Equipment.** Concessionaire and County have inventoried County's Food Service equipment. Upon termination of the Agreement, Concessionaire shall surrender such inventory of equipment to County.
- 6.2 **Inventory of China and Small Wares.** County and Concessionaire jointly shall inventory all china, if any, and small wares owned by County. If at any time Concessionaire is to provide additional service, Concessionaire shall be responsible to increase, at its own expense, the inventories required for the additional service.
- 6.3 **Office Facilities.** Concessionaire shall have access to office facilities located at the Premises, including furniture and equipment. Concessionaire shall take reasonable and proper care of the office and furnishings and return them to County at termination of the Agreement in satisfactory condition.
- 6.4 **Telephone Expenses.** County shall be responsible for telephone installation costs. Concessionaire shall pay its local and long distance telephone billings.
- 6.5 **Sanitation.** Concessionaire shall be responsible for maintaining the Premises in a clean and sanitary condition. County shall be responsible for any costs involved in setting up and cleaning premises for functions not managed by Concessionaire.
- A. Concessionaire shall be responsible for housekeeping and sanitation in food preparation, storage, and serving areas. Concessionaire shall provide daily janitorial service for the Food Service area, including cleaning of dining area floors and /or carpets and of all windows, walls, ceilings, drapes, fixtures, tables, and chairs. Concessionaire shall provide necessary pest control, and transport refuse to designate refuse collection areas.
  - B. County shall provide and maintain adequate fire extinguishing equipment for the Premises.
- 6.6 **Maintenance.**
- A. County shall provide the equipment listed in Exhibit "A" in good condition for Concessionaire's use during the term of the Agreement. Concessionaire shall secure maintenance contracts on the equipment as indicated in Exhibit "A", at their own expense. Concessionaire shall maintain all the equipment in good condition and

repair at its own expense and shall surrender all equipment in good condition upon termination of the Agreement, normal wear and tear excepted. Concessionaire will be responsible for the cleaning of grease traps, vents, and vent filters. All property owned by the County shall remain the property of the County.

- B. Concessionaire agrees to provide written copies of all equipment maintenance agreements to County's Facilities Management Department within fifteen days of their effective date. Concessionaire shall notify the Facilities Management Department in writing within forty-eight (48) hours if any maintenance contract on specified equipment is cancelled, invalid, transferred, or otherwise taken out of effect. A copy of the new contract covering the equipment must be provided to the Client's Facilities Management Department within five business days of its effective date.
- C. Concessionaire shall establish and observe mandatory policies and procedures regarding the proper use of the grease trap, garbage disposal, and sink drains, including but not limited to the proper disposal and removal of grease, large food items, small food particles, paper and plastic products, utensils, and any other items typically used in the food preparation kitchen or cafeteria environment. Concessionaire shall post signs in prominent areas directing staff to the proper disposal of grease in the grease trap. Concessionaire shall provide mandatory detailed training and instruction to all new employees, and periodic re-training and instruction to all employees, regarding the above described policies and procedures.
- D. Concessionaire shall bear all expenses incurred that are a result of the improper disposal of grease, food, food particles, paper/plastic products, utensils, and/or any other item that is identified to be the cause of the plumbing problem in each incident. For service at the Premises, Concessionaire shall contract only with professional plumbers licensed by the State of Texas to perform commercial plumbing work. In the event that the problem affects the Sheriff's Office plumbing or facilities, Concessionaire shall reimburse the County for all costs and expenses within 30 days of receiving notice of said costs and expenses. Failure to do so shall be considered a material breach of contract.

6.7 Laundry, Linen, and Uniforms. Concessionaire shall be responsible for costs of all laundry, linen, and uniform services.

6.8 Utilities. County shall be responsible for the cost of utilities consumed in the Food Service operation.

6.9 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. County agrees that any modifications or alterations to the workplace or the Premises (whether structural or non-structural) necessary to comply with the Americans with Disabilities Act or any other similar law shall be the responsibility of County and shall be at the County's expense. Concessionaire shall take reasonable and proper care of the Premises and equipment under its custody and control and shall notify County of any known deficiencies.

**ARTICLE VII  
FINANCIAL ARRANGEMENTS**

7.1 Commissions. Concessionaire shall pay County a commission as follows:

Guest Meal Retail Sales	<u>1%</u> of Net Sales
Concession Catering Sales	<u>1%</u> of Net Sales

7.2. Commission Payments. Commission payments are to be made without demand, within thirty (30) days after close of each Account Period. Commission payments are to be made to the Treasury Division, El Paso County Auditor, fourth floor, El Paso County Courthouse unless notified otherwise in writing.

7.2 Financial Offsets. A penalty of one percent, (1%) per month shall be assessed by the County against Concessionaire for Commission Payments in arrears.

7.3 Changes in Policies and Practices. Financial terms of the Agreement shall be adjusted automatically to reflect any changes in Concessionaire's costs and charges resulting from changes in County's policies, practices, wage rates, employee benefits, service requirements, including increased costs that result from County's procurement specifications or in Federal and State minimum wage rates.

**ARTICLE VIII  
GENERAL TERMS AND CONDITIONS**

8.1 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 County 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.

8.2 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. Failure to do so shall be considered a material breach of contract.

8.3 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.

8.4 Comprehensive or Commercial Insurance. Concessionaire shall, as charged 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 County 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. County shall be named as an additional insured under Concessionaire's policies of insurance.

- 8.5 Property Insurance. County shall keep County'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.
- 8.6 Liability for Non-Concessionaire Approved Vendors. County understands that Concessionaire has entered into agreements 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 County. County may, however, direct Concessionaire to purchase products from non-Concessionaire approved vendors. In such instances, for the mutual protection of County and Concessionaire, County will require each such vendor to obtain from a reputable insurance company acceptable to County 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 and naming County and Concessionaire as additional insured's. Said insurance shall not exclude the negligence of County or Concessionaire from coverage. A certificate evidencing such insurance shall be provided to County and Concessionaire upon the request of either party. County shall also require each such vendor to sign an indemnity certificate (acceptable to County and Concessionaire) in which such vendor shall agree to defend, indemnify, and hold harmless County 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 County. County shall not require Concessionaire to use products from non-Concessionaire approved vendors until such insurance certificates and indemnity certificates have been provided.
- 8.7 Indemnity. Concessionaire shall defend, indemnify, and hold harmless County 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 survive termination of the Agreement.
- 8.8 Trade Secrets and Proprietary Information. During the term of the Agreement, Concessionaire may grant to County 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 databases and similar compilations and documents regularly used in Concessionaire's business operations

(“Trade Secrets”). SUBJECT TO THE REQUIREMENTS OF TEXAS PUBLIC INFORMATION ACT, County shall not disclose any of Concessionaire’s Trade Secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. County 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, County specifically agrees that all software associated with the operation of the Food Service, including without limitation, menu systems, food production systems, County accounting systems, and other software, are owned by or licensed to Concessionaire and not County. Furthermore, County’s access or use of such software shall not create any right, title interest, or copyright in such software, and County shall not retain such software beyond the termination of the Agreement.

8.9 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.

8.10 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 County: El Paso County Sheriff’s Office  
Attention: Budget Director  
3850 Justice Drive  
El Paso, Texas 79938

To Concessionaire: Super Chef  
1475 George Dieter, Suite A-B  
El Paso, Texas 79936

And to such other persons or places as either of the parties may hereafter designate in writing. All such notices shall be affective when received.

8.11 Catastrophe. Neither Concessionaire nor County 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.

8.12 Termination for Cause. If either party breaches a material provision hereof, the non-breaching party shall give the other party notice of the breach as follows.



- a. If the breach is for failure to timely make payment when due, the breaching party shall have ten (10) days to remedy the breach. If the breach is not remedied within ten (10) days of the notice, the non-breaching party shall have the right to terminate the contract, for-cause, and without further notice.
- b. If the breach is for the Concessionaire's failure to perform the service in a professional and courteous manner, as described in the "Specifications for Operation of Cafeteria" (attached as Exhibit "C"), the Concessionaire, shall have ten (10) days to remedy the breach. If the breach is not remedied within ten (10) days of the notice, the County shall have the right to terminate the contract, for-cause, and without further notice.
- c. If the breach is for any other material cause, the breaching party shall have thirty (30) days to remedy the breach. If the breach is not remedied within thirty (30) days, the non-breaching party shall have the right to terminate the contract, for-cause, and without further notice.

8.13 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 payment obligations of this agreement are not included in the adopted budget of El Paso County for the upcoming fiscal year.

8.14 Termination without Cause. Either party may terminate the Agreement, without cause, at any time by giving at least sixty (60) days prior written notice.

8.15 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.

8.16 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.

8.17 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 later.

**EL PASO COUNTY**

By: \_\_\_\_\_  
**Veronica Escobar**  
County Judge

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant County Attorney

**CONCESSIONAIRE  
SUPER CHEF**

By: \_\_\_\_\_  
**Alma Gallardo**  
Owner

Date: \_\_\_\_\_

## **EXHIBIT "C"**

**El Paso County Sheriff's Office Headquarters  
3850 Justice Blvd.  
El Paso, Texas**

### **Specifications for Operation of Cafeteria**

#### **SCOPE**

The El Paso County Sheriff's Office is requesting proposals for the operation of the Cafeteria and concession area located at 3850 Justice Blvd. El Paso, Texas. Services are to include the preparation, service, and sale of food, beverages, goods, merchandise, and other items at the premises.

#### **TERM**

The term of the award shall be for an initial period of three (3) years, to begin once the final contract is approved by El Paso County Commissioner's Court. El Paso County Sheriff's Office shall have the option to extend the initial term for two additional one-year periods by giving the concessionaire sixty days notice. Any such award extensions shall be under the same conditions set forth in the original term unless agreed to in writing by both parties.

#### **HOURS OF OPERATION**

Successful concessionaire shall provide the services between the hours of 7:00 a.m. to 2:00 p.m., Monday through Friday, as minimum hours of operation. This shall exclude any observed holidays when the Sheriff's Office is closed to the public. Concessionaire shall open at other hours upon the request of the El Paso County Sheriff's Office and with reasonable advance notice.

#### **MATERIALS AND SUPPLIES**

The El Paso County Sheriff's Office shall provide the equipment listed in Exhibit "A" for the concessionaire's use during the term of the award. Concessionaire shall secure maintenance contracts on the equipment as indicated in Exhibit "A", at their own expense. Concessionaire shall maintain all the equipment in good condition and repair and shall surrender the equipment in good condition upon termination of the award, normal wear and tear excluded.

Concessionaire shall be responsible for the cleaning of grease traps and vents and vent filters. All property owned by the El Paso County Sheriff's Office shall remain the property of the El Paso County Sheriff's Office.

All other supplies and equipment necessary to perform the contract shall be provided by the Concessionaire at their expense.

Concessionaire shall provide all personnel and other items necessary to perform their obligations under the contract.

The El Paso County Sheriff's Office will provide for electricity and other utilities required excepting telephone service, which shall be provided by the Concessionaire.

## **COMPLIANCE WITH APPLICABLE STATUTES, ORDINANCE, AND REGULATIONS**

In performing the services required, Concessionaire shall comply with the applicable federal, state, county and city statutes, ordinances, and regulations and shall secure all necessary licenses and permits required. Failure to comply shall constitute a material breach of contract.

## **INSURANCE**

Concessionaire shall, at all times during the term of award and any subsequent extension maintain 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 County with a certificate evidencing such policies no later than 10 days prior to execution of the contract. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice. County shall be named as an additional insured under Concessionaire's policies of insurance. Failure to carry or provide proof of insurance shall constitute a breach of Contract. Concessionaire shall provide Worker's Compensation Insurance

## **PERFORMANCE OF CONCESSIONAIRE**

Concessionaire and its employees will perform the service in a professional and courteous manner. If in the opinion of the Commissioner's Court, the services are not provided in a professional and courteous manner the County may terminate the award by giving ten days notice.

Concessionaire employees shall be neatly groomed and in a clean uniform to perform the services.

## **INTEREST IN REAL ESTATE**

Award shall convey no interest in real estate.

## **COMPENSATION**

Please state in your proposal the percentage of net/receipts derived from the cafeteria operation to be paid to the El Paso County Sheriff's Office. Indicate the percentage of guest meal sales and the percentage of catering sales separately. **Net receipts are defined as gross receipts excluding sales and use taxes.**

Concessionaire shall use the County cashiering system (RECWARE), and keep detailed records of all receipts and shall provide the El Paso County Sheriff's Office with daily summary reports. Said reports shall be submitted to the County Auditor's Office monthly.

Payment will be made without demand within thirty (30) days after close of each account period.

The El Paso County Sheriff's Office and County Auditor's Office shall have the right, without notice, to inspect any and all records kept by Concessionaire pertaining to the cafeteria operation at the El Paso County Sheriff's Headquarters.

**Proposal should include a proposed food/beverage menu along with a proposed price listing.**