

CONCESSION AGREEMENT

THE STATE OF TEXAS §

COUNTY OF TARRANT §

WHEREAS, on the 24th day of March, 1977 the City of Benbrook, Texas (hereinafter referred to as "CITY"), acting by and through its duly authorized Mayor, accepted a lease granted to it by a written agreement executed on the 13th day of June 1977, wherein the Secretary of the Army granted to the CITY Lease DACW63-1-770445 for a period of fifty (50) years, commencing on 13 June, 1977, to use and occupy an area in Tarrant County, Texas, Benbrook Lake Project, for public park and recreational purposes, reference to said lease agreement being hereby made for all purposes to the same extent as if set out herein word for word; and,

WHEREAS, Benbrook Lake Marina, LLC, (hereinafter referred to as "CONCESSIONAIRE"), has requested permission to use a portion of CITY lease property as more particularly described on Exhibit "A" and shown on Exhibit "B" as attached hereto and made a part hereof, to operate a marina, and other improvements; and

WHEREAS, Condition 5a of the said lease agreement authorizes the CITY to enter into concession agreements with third parties providing needed services to the public, subject to the approval of the Real Estate Contracting Officer, Corps of Engineers, Fort Worth District (hereinafter referred to as "REAL ESTATE CONTRACTING OFFICER"); and

NOW, THEREFORE,

For and in consideration of the premises and the covenants thereafter set forth, and in accordance with the above quoted authority, the CITY, acting by and through its duly authorized Mayor, hereby grants to CONCESSIONAIRE, authority to operate commercial activities on CITY lease property set forth in said lease agreement referred to above, for a term of ten (10) years, commencing on December 6, 2018 and ending on December 5, 2028, with an option to extend the lease for five (5) additional years, including compensation amounts, payable to the CITY, by the CONCESSIONAIRE, as may be agreed upon in the future in writing between the CITY and the CONCESSIONAIRE, and approved in writing by the REAL ESTATE CONTRACTING OFFICER.

It is expressly agreed and understood that all of the terms, conditions, privileges and obligations incorporated in the lease issued to the CITY, by the Secretary of the Army, are as binding on the CONCESSIONAIRE as if they were set forth herein.

This agreement is granted subject to the following conditions:

1. Terms

That the CONCESSIONAIRE shall pay to the CITY compensation for the concession privileges currently authorized in a sum equal to three percent (3%) gross revenues per month, whichever is greater, from all of the business operations conducted under this agreement by CONCESSIONAIRE with all lease rates to be reviewed every year which said payments shall be made in monthly installments, each to be due and payable on or

before the 10th day of the calendar month following the end of each month. A 10% late penalty will be levied against any payment that is late by a period of more than 15 days from the 10th day of each month. In the event that the CONCESSIONAIRE and the CITY are unable to agree upon adjusted remuneration at the conclusion of each annual period as set forth above, then, in such event, this lease shall terminate within thirty (30) days from the expiration. The CONCESSIONAIRE shall also pay to the CITY on demand, any sum which may have to be expended after the expiration, revocation, or termination of this agreement in restoring the premises to as good order and condition as that existing upon the date of commencement of the term of this agreement, damage beyond the control of the CONCESSIONAIRE and due to wear and tear excepted. Compensation shall be made payable to the CITY and forwarded by the CONCESSIONAIRE directly to the CITY.

In this Section, "gross revenues" means all revenues that CONCESSIONAIRE receives from the sale of property, services and commercial activities on the demised premises before deductions for any purpose. The City shall have the right, with reasonable prior notice to CONCESSIONAIRE, to audit CONCESSIONAIRE'S books and records to confirm the amount of gross revenues actually received by CONCESSIONAIRE from the sale of property, services and commercial activities on the demised premises.

2. Activities

That the CONCESSIONAIRE is authorized to conduct all commercial activities at such sites as are specified by the CITY, and approved in writing by the REAL ESTATE CONTRACTING OFFICER. That the sites shall be occupied and used by the CONCESSIONAIRE or his duly authorized agents, assignees, sublessees, or transferees solely for the conduct of business in connection with recreation for the general public. Business in connection with recreation shall include but not necessarily be limited to the following:

1. Servicing, repairing, maintaining and caring for privately owned boats and equipment;
2. Sale of gasoline and oil;
3. Sale of food, refreshments, fishing tackle, sporting goods, gifts, souvenirs, fishing bait, boats, motors and other marine equipment and supplies; and
4. Providing potable water and sanitary facilities.

3. Business

That said business shall be initiated and operated in a manner satisfactory to the CITY, commencing on the, effective date of this instrument, and thereafter the CONCESSIONAIRE shall conduct such of the permitted activities, as the CITY shall at any time specify.

4. Facilities

The CONCESSIONAIRE agrees to maintain the facility and make improvements as noted below. Under extenuating circumstances additional time may be granted for the development of some improvements. Such extension must be approved in writing by the CITY. The City of Benbrook, Texas, and the Corps of Engineers may consider the CONCESSIONAIRE in violation

of the lease agreement if the facility improvements noted below are not constructed or fail to be maintained or replaced. The CONCESSIONAIRE may revise the plan as business needs change. The proposed 5-year plan is shown in Exhibit C.

5. Buildings and Structures

All plans and locations for buildings and/or structures to be placed upon the premises or any subsequent alterations thereto shall be approved in writing by the City of Benbrook, Texas, and the Real Estate Contracting Officer prior to commencement of construction by the CONCESSIONAIRE. All buildings and structures placed upon the premises by the CONCESSIONAIRE shall be and remain the property of the CONCESSIONAIRE, except as otherwise provided in Condition Number 23 below, and may be removed therefrom by the CONCESSIONAIRE as provided in Condition Number 23.

6. Utilities

That the lessee shall be responsible for all waterlines, wells, and sewage provisions located the lease area. This includes maintenance, compliance with all State Health Department regulations and replacement and repair.

7. Rates and Prices

That prices to be charged for services and rented services shall be subject to the approval of CITY and the REAL ESTATE CONTRACTING OFFICER, and a schedule of such prices shall be submitted to the CITY for its approval prior to commencement of operations, and prior to the commencement of each year of operation thereafter. The CONCESSIONAIRE shall, at all times, keep a schedule of such prices displayed in a conspicuous place on the occupied premises during class sessions and prices charged shall not exceed those shown on the approved price list.

8. Health and Safety

That the CONCESSIONAIRE shall comply with all Federal laws and regulations and with all the laws, ordinances, and regulations of the state and county wherein the said demised premises are located with regard to construction, sanitation, license or permits to do business, and all other matters. The CITY or the REAL ESTATE CONTRACTING OFFICER, upon finding that a violation exists that constitutes a health or safety hazard may suspend the use of that operation or facility until such violation is corrected.

9. Taxes

That any and all taxes which may be lawfully imposed by the State or its political subdivisions upon the property or business of the CONCESSIONAIRE on the said premises shall be paid promptly by the CONCESSIONAIRE.

10. Prohibited Uses

That the CONCESSIONAIRE shall not sell, store, or dispense, or permit the sale, storage, or dispensing on the said premises of any alcoholic beverages, or permit to be installed or

operated any devices or conduct any activities thereon, except where such devices and activities are legally authorized and then only after receipt of written approval by the REAL ESTATE CONTRACTING OFFICER, or permit to be installed or operated any devices or conduct any activities thereon which, in the opinion of the CITY are contrary to good morals or are otherwise objectionable.

The CONCESSIONAIRE shall not use the premises or permit them to be used for any illegal or immoral business or purpose; there shall not be carried on or permitted upon the premises any activity that would constitute a nuisance. CONCESSIONAIRE shall not store salvage or other similar materials on site.

11. Hunting and Trapping

That the CONCESSIONAIRE shall not hunt or trap or allow hunting or trapping on the said premises.

12. Timber

That the CONCESSIONAIRE shall not permit or suffer any offensive use of the said premises, or the commission of waste thereon, shall not cut timber or native shrubs except as approved in writing by the said City of Benbrook, Texas and the Real Estate Contracting Officer, shall not conduct mining operations or drill for oil or gas upon the said area, shall not remove sand, gravel, or kindred substances from the ground or shall not in any manner substantially change the contour or condition of the property unless approved in writing by the City of Benbrook, Texas, and the Real Estate Contracting Officer, but the CONCESSIONAIRE may salvage such fallen dead timber as may be required for use of firewood. The CONCESSIONAIRE shall keep the area in good order and in a clean, sanitary, and safe condition, and shall at all times maintain all structures and equipment in a condition satisfactory to the City of Benbrook, Texas, and the Real Estate Contracting Officer. The CONCESSIONAIRE shall be responsible for the removal of all refuse, debris, etc., that may accumulate in the concession area from any cause or for any reason, and shall keep all weeds, grass, and underbrush in the area under proper control by mowing or other approved methods. Such mowing and cleaning of the area will conform to standards of frequency and quality which are established by the U.S. Army Corps of Engineers.

13. Transfers, Subleases, Assignments

That the CONCESSIONAIRE shall not transfer, sublease, or assign this agreement or privileges thereunder, nor any interest whatsoever in connection with this agreement without the permission in writing from CITY and the REAL ESTATE CONTRACTING OFFICER.

14. Navigation

That there shall be no unreasonable interference by CONCESSIONAIRE or his employees with navigation by the privileges hereby granted.

15. Public Use

That no attempt shall be made by the CONCESSIONAIRE to forbid the full and free use by

the public of the water areas of the reservoir or the public use areas that may be developed upon the said premises in accordance with the purpose and intent of the Act of Congress approved 22 December 1944, as amended.

16. Lights and Signals

That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the REAL ESTATE CONTRACTING OFFICER shall be installed and maintained at the expense of the CONCESSIONAIRE.

17. Termination

That the CONCESSIONAIRE may terminate this agreement at any time by giving thirty (30) days notice in writing to the CITY, provided that, in case of such, termination, no remission by the CITY of any rental or gross revenues theretofore paid shall be made.

This agreement may be terminated by the CITY under the terms of Section 22-REVOCATION contained herein.

18. Inspections

That the use and occupation of the premises shall be subject to the general supervision and approval of the CITY, and to such rules and regulations as may be prescribed by it from time to time. The CITY may perform compliance inspections of all utilized building and facility premises and shall prescribe corrective action for all non-compliance. The REAL ESTATE CONTRACTING OFFICER also reserves the right to perform periodic inspections of all CONCESSIONAIRE activities and to require the CITY to notify CONCESSIONAIRE of deficiencies and prescribe corrective measures. The CONCESSIONAIRE also agrees to abide by any and all conditions of the master lease agreement (Lease DACW63-1-77-0445) between the CITY and the U. S. Army Corps of Engineers. The CITY or the REAL ESTATE CONTRACTING OFFICER may terminate this concession agreement, upon failure of the CONCESSIONAIRE to correct said deficiencies, within a reasonable time as determined by the CITY and the REAL ESTATE CONTRACTING OFFICER.

19. Right to Enter

That the right is hereby reserved to the CITY and to the United States, its officers, agents and employees to enter the demised premises at any time for inspection and to monitor the activities of CONCESSIONARIE and for any purpose necessary or convenient in connection with government work, to manipulate the level of the reservoir or pool in any manner whatsoever, and to draw down the reservoir or pool to any extent at any time, and the CONCESSIONAIRE shall have no claim for damages of any character on account thereof against the CITY or the United States or any officer, agent, or employee thereof.

20. Government Facilities

That the right is hereby reserved to the United States, its officers, agents, and employees, to construct or to permit the construction of facilities suitable for communication, electrical distribution or transmission, water supply, sewerage disposal, access roads, and similar

purposes on the premises, and the CONCESSIONAIRE shall have no claim for compensation or damages of any character on account thereof.

21. Protection of Government Property

That the CONCESSIONAIRE shall be responsible for any damages that may be caused to property of the CITY, or government property by the activities of the CONCESSIONAIRE under this agreement and shall exercise due diligence in the protection of all improvements, timber, and other property of the CITY or of the United States which may be located on the said premises against fire or damage from any and all other causes.

22. INDEMNIFICATION

THAT NEITHER THE CITY, NOR THE UNITED STATES SHALL BE RESPONSIBLE FOR DAMAGES TO PROPERTY OR INJURIES TO PERSONS WHICH MAY ARISE FROM OR BE INCIDENT TO THE USE AND OCCUPATION OF THE SAID PREMISES, NOR FOR DAMAGES TO THE PROPERTY OF THE CONCESSIONAIRE, OR FOR INJURIES TO THE PERSON OF THE CONCESSIONAIRE, OR FOR DAMAGES TO THE PROPERTY OR INJURIES TO THE PERSON OF THE CONCESSIONAIRE'S OFFICERS, AGENTS, SERVANTS, OR EMPLOYEES, OR OTHERS WHO MAY BE ON SAID PREMISES AT THEIR INVITATION OR THE INVITATION OF ANYONE OF THEM, ARISING FROM OR INCIDENT TO THE FLOODING OF THE SAID PREMISES BY THE GOVERNMENT OR FLOODING FROM ANY OTHER CAUSE, OR ARISING FROM OR INCIDENT TO ANY OTHER GOVERNMENTAL ACTIVITY; AND THE CONCESSIONAIRE SHALL INDEMNIFY AND HOLD THE CITY AND THE UNITED STATES HARMLESS FROM ANY AND ALL SUCH CLAIMS.

23. Restoration

That, on or before the date of expiration of this agreement, or its termination by the CONCESSIONAIRE, the CONCESSIONAIRE shall at the CONCESSIONAIRE'S cost vacate the premises, remove the property of the CONCESSIONAIRE therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the terms of this agreement, damages beyond the control of the CONCESSIONAIRE and due to fair wear and tear excepted. If, however, this agreement is revoked, the CONCESSIONAIRE shall vacate the premises, remove the property of the CONCESSIONAIRE therefrom, and restore the premises to the condition aforesaid within such times as the CITY may designate. In either event, if the CONCESSIONAIRE shall fail or neglect to remove the property of the CONCESSIONAIRE shall either become the property of the CITY without compensation therefore, or the CITY may cause it to be removed and the premises so to be restored at the expense of the CONCESSIONAIRE, and no claim for damages against the CITY or its officers or agents shall be created by or made on account of such removal and restoration work.

24. Joint Obligations

That if more than one individual is named in this agreement, the obligations of said individuals herein contained shall be joint and severable obligations.

25. Notice

Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Government. Notices will be sent to:

Benbrook Marina LLC, 301 Lakeview Drive, Benbrook, Texas 76126-1001.

Notices will be sent to the City Addressed to the City Manager:

City Manager, City of Benbrook, 911 Winscott Road, Benbrook, Texas 76126-0569.

26. Revocation

This agreement may be revoked by the CITY upon the occurrence of any of the following events:

- (a) Non-payment of gross revenues.
- (b) A breach by the CONCESSIONAIRE of any of the terms or conditions of this agreement, including failure to perform prescribed corrective action for non-compliance.
- (c) Termination of the Department of Army lease.
- (d) Inability of the CONCESSIONAIRE and the CITY to agree upon adjusted remuneration at the end of any annual term as set forth.

27. Insurance

That CONCESSIONAIRE will fully indemnify, defend, and save whole and harmless the CITY, the United States, its officers, agents and employees from all claims or cause of action against it that may arise in connection with the maintenance and operation of the entire premises, which include all areas included in or adjacent to, and used in connection with, any devices or equipment placed at or beyond the shoreline of Benbrook Lake, and that, prior to commencing operations under this agreement, the CONCESSIONAIRE will obtain from a reputable insurance company, acceptable to the CITY and carry liability or indemnity insurance so indemnifying the CITY providing for limits not less than Three Million Dollars (\$3,000,000.00) per anyone claim arising from any accident with respect to bodily injuries or death resulting therefrom, and/or damage to property suffered or alleged to have been suffered by any person or persons resulting from the operations of the CONCESSIONAIRE. The CONCESSIONAIRE shall present a certificate to the CITY naming the CITY and the United States Corps of Engineers as additional insured. The insurance carrier and the CONCESSIONAIRE must provide the CITY notice within 30 days prior to cancellation of said policy or any amendment to the policy or the amount of coverage.

28. Non-Discrimination

That the CONCESSIONAIRE shall not discriminate against any person or persons because of race, creed, color, sex, age, sexual orientation or national origin in the conduct of operations on the premises.

This constitutes the entire agreement between the parties, and all previous agreements

are either merged herein or rescinded.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2019.

BENBROOK MARINA LLC _____
Ron Rogers

Kayla Stidham

CITY OF BENBROOK, TEXAS _____
Jerry B. Dittrich, Mayor

ATTEST:

Joanna King, City Secretary

EXHIBIT "A"

A tract of land in Tarrant County, Texas, being a portion of the J. Reasoner Survey, A-1325, consisting of approximately 17.4 acres, more or less.

Beginning 219.14 feet north westerly of an iron pin at the intersection of the east ROW line of Lakeview Drive and the northwest division line of Holiday Park and Dutch Branch Park, such line also presently being marked with a post and cable fencing.

Thence proceeding in a northwesterly direction a distance of 700 feet to an iron pin intersecting the centerline of the entrance of the drive entering the Sailing Center.

Thence in a southwesterly direction, a distance of 27.7 feet.

Thence in a northwesterly direction a distance of 481.6 feet, presently marked by a steel rail fence.

Thence in northwesterly direction of 227.6 feet to the water's edge.

Thence following the water's edge as it meanders, in an easterly direction, a distance of 1,245 feet to an iron pin at its intersection with the northwestern division line of Holiday Park and Dutch Branch Park, such line presently being marked by post and cable fencing.

Thence in a southwesterly direction a distance of 626.29 feet to the point of beginning.

EXHIBIT "B"



**EXHIBIT C
5 YEAR PLAN**

Benbrook Lake Marina, LLC

Project List for years 1-5

Some items may require City approval and or a permit prior to construction. Concessionaire will contact the City for the proper procedure.

Year One

General Repairs and Clean Up

- a. Power wash all surfaces.
- b. Trim trees and clear additional shoreline
- c. Define property lines better
- d. Patch all asphalt surfaces
- e. Continue to repair and patch all wood and metal areas

Improvements

- a. Repaint entire marina area inside and out as needed
- b. Additional security for boat owners.
- c. Add grills to the picnic area.
- d. Repair and/or replace picnic tables.
- e. Repair and/or replace covered area
- f. Add security cameras to be integrated with current system.

Marketing designed to increase awareness and interest

- a. Additional print advertising
- b. Promotional giveaways
- c. Annual holiday community gatherings (Memorial Day, 4th of July, Labor Day)

Year 2

- a. Extend and repair walk plank from parking lot to make it more handicap accessible.
- b. Additional lighting and electrical outlets throughout property
- c. Define family beach area
- d. Modify several slips to accommodate larger vessels and add covers to those slips.
- e. Fencing of property with separate entrance for slip owners, ramp usage and dry storage as well as family beach area.

Year Three

- a. Discuss with the Corps the possibility of adding RV area with power and water
- b. Increase dry storage area and level ground
- c. Rental hut. (Wave runners, Pontoons, Skis, Kayaks, Towels, canvas day tents in beach area, fishing rods and equipment, etc.)
- d. Bring in local bands to play key dates
- e. Construct small eatery on existing concrete slab

Year Four

- a. Asphalt dry storage and stripe
- b. Remove and replace flotation with current regulation

Year Five

- a. Modify and increase beach area
- b. Add pavilions to beach area
- c. Increase camping area
- d. Add additional slips as necessary and if possible
- e. Add external picnic/fishing area off barge
- f. Research dredging feasibility of marina area

** All Items List above are dependent on water being at consistently usable levels to generate income.**