

VISITOR SERVICES AGREEMENT AMENDMENT #5

DEP Contract #R-0905

THIS AGREEMENT as entered into on the 2nd day of May, 2005, and amended on November 28, 2005, December 9, 2005, June 23, 2006, and November 7, 2006 is between the Department of Environmental Protection ("Department") a state agency, and Cayo Hueso Development, Inc. d/b/a Fort Zachary Taylor Visitor Services ("Visitor Service Provider" or "VSP"), to provide certain operations at Fort Zachary Taylor Historic State Park ("Park"), is hereby amended as follows:

1. Change all Cayo Hueso Development Inc. d/b/a Fort Zachary Taylor Visitor Services references to Cayo Hueso Company d/b/a Fort Zachary Taylor Visitor Services to represent entity name change filed with the Florida Department of State on December 22, 2008.
2. Paragraph 5 shall be amended to read as follows:
 5. The VSP is hereby authorized to conduct the following business and shall provide the following services: renovations to the existing 1050 sq. foot building; build new structures as needed; and rent other park related equipment as approved by the Park Manager; rent beach chairs, umbrellas, and snorkel equipment; sell snorkel equipment, snacks, food, groceries, soft drinks, beer and wine, picnic supplies, Florida Park Service merchandise (such as caps, shirts, cups), gifts, t-shirts, ice, ice cream, souvenirs, recreational equipment, tackle, bait, fishing equipment, sundries, cameras (disposable and underwater) and other Park related items such as beach towels, sunscreens and sunglasses; and, provide services for weddings in the Park.
 - a. The Department acknowledges that the VSP has conducted the following facility improvements: the Tiki structure completed for watersports; the Tiki structure completed and located at the west end of the Park for sunset activities; the storage structure is completed; the deck expansion is completed; and the gift shop is completed.
 - b. The VSP shall also provide the following capital improvements –
 - 1). Expand the service area of the Concession facility. The cost of this project is approximately \$40,000.00. ✓ The design, materials and size shall be pre-approved by the Division Director or his designee.
 - 2). Replace asphalt shingled roof of Concession facility restroom with metal roofing to match the Concession facility. Approximate cost \$20,000.00. ✓
 - 3). Install a portable emergency generator to the Concession facility to become Department property. The unit will be on a trailer and wired so that it can be removed from the site when severe weather evacuations are mandated. Work shall be permitted and performed by a licensed contractor. Design and plans to be reviewed and approved by the Division prior to any work being performed. Approximate cost \$15,000.00. ✓
 - 4). Upgrade electrical service for the Concession facility. This work will be performed after or in conjunction with the new lift station services being installed by the Division. Work shall be permitted and performed by a licensed contractor. Design and plans to be reviewed and approved by the Division prior to any work being performed. Approximate cost \$15,000.00. ✓
 - 5). Add office space to the existing Concession facility and provide Americans with Disabilities Act accessibility. The design, materials and size shall be pre-approved by the Division Director or his designee.
3. Paragraph 7 shall be amended to read as follows:
 7. The Park Manager, David Foster, who may be reached by telephone at 305-292-6850, by facsimile at 305-292-6881 and by email at David.Foster@dep.state.fl.us, or his

successor, is hereby designated as the Department's Agreement Manager, who shall be responsible for insuring compliance with the terms and conditions of this Agreement, and shall conduct regularly scheduled performance inspections of the visitor service provider's operation and report all findings to the Department. The Agreement Manager for the VSP is Thomas Blount, President, who may be reached by telephone at 305-296-0362 and by email at tblount@bellsouth.net.

4. Paragraph 18 shall be amended to read as follows:

18. All notices as provided herein, including notices of termination, shall be deemed sufficient if they are sent by mail, hand-delivery, e-mail or other professional delivery service to the following addresses:

VSP
Thomas E. Blount, Jr., as Registered
agent for Cayo Hueso Company
6810 Front Street
Key West, Florida 33040

Department
David Foster, as Park Manager for Fort
Zachary Taylor Historic State Park
Post Office Box 6560
Key West, Florida 33041

Reagan Russell
Assistant General Counsel
3900 Commonwealth Blvd, MS 35
Tallahassee, Florida 32399-3000

The parties agree to provide notice to the other party within thirty (30) days of any change to the above-stated contact, and the VSP shall also inform the Department within thirty (30) days of any change to its business name, business organization, ownership, address, Registered Agent or other contact information

5. Paragraph 44 is amended to read as follows:

44. The VSP shall comply with all applicable federal, state and local laws, rules, regulations and ordinances in providing services to the Department under this Agreement. The VSP acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state and local health and safety rules and regulations. The VSP further agrees to include this provision in all subcontracts issued as a result of this Agreement. The VSP's failure to comply with any part of this provision shall be grounds for termination of this Agreement by the Department, pursuant to paragraph 49 of the Agreement.

a. Compliance with the Americans with Disabilities Act. The VSP must comply with the Americans with Disabilities Act ("ADA"), and Chapter 760, Part I, Florida Statutes, the "Florida Civil Rights Act," and must provide facilities that provide accommodations to persons with disabilities, and must provide program access to each and every program and activity that the VSP offers to the public. It is the intent of the Department that the VSP offer access to all of its facilities, programs, and activities to the fullest extent possible, and not merely to the minimum extent mandated by law.

b. In the event that the VSP is sued for violation of the ADA, and a court determines that the VSP is in violation of the ADA, or the VSP settles the case with the understanding that ADA changes must be made, the VSP shall pay all of its own attorney's fees and costs as well as the plaintiff's attorney's fees and costs, as required by law. The VSP may seek insurance for such risk, and, if it obtains a policy that covers such risk, the VSP shall name the Department and the Board of Trustees as additional parties insured under such policy. If the Department is

a co-defendant in such suit, the Department shall only pay for those attorney's fees and costs attributable to its violation of the ADA, as determined by the plaintiff's records. In the event that the time records do not reflect whether counsel's work was attributable to the Department's or the VSP's violations, or the parties cannot agree on a split, the attorney's fees and costs shall be split equally between the VSP and the Department.

c. The Division of Recreation and Parks employs an Accessibility and Inclusion Coordinator ("A & I Coordinator"), who shall be consulted by the VSP each time an ADA issue arises. The A & I Coordinator will be the Division's contact for all public complaints and questions related to the ADA. The VSP shall also inform the A & I Coordinator and the Department's Agreement Manager within five (5) days when it is sued for an ADA violation. The VSP shall inform the A & I Coordinator and the Department's Agreement Manager of all ADA disputes or claims in writing within five (5) days of the event. If there is a dispute between a VSP and a visitor related to the ADA, an accommodation shall be negotiated between the parties by the A & I Coordinator. The A & I Coordinator can be contacted through the Bureau of Operational Services at (850) 245-3076.

1). On the first (1st) day of operations under this Agreement, the VSP will identify one or more officers or employees to act as their Accessibility and Inclusion Liaison ("A & I Liaison"), and will promptly provide their names and contact information to the Department's A & I Coordinator and the Park Manager.

2) The Department shall send notice when the Department's online ADA training is available or updated. The VSP's A & I Liaison and the VSP's Agreement Manager shall take the Department's online ADA training within sixty (60) calendar days of receiving such notice from the Park Manager.

3) If offered, the VSP shall attend training on ADA practices when a VSP Meeting is held.

4) The VSP's A & I Liaison and the VSP's Agreement Manager shall make themselves familiar with the ADA requirements related to the VSP's operations. The VSP shall follow guidelines as provided by the Park Manager for accessibility and follow the Department's complaint procedure found on the www.FloridaStateParks.org web site for any visits, calls or complaints from visitors to initiate the resolution of the complaint to the visitor's and Department's satisfaction. The VSP's A & I Liaison shall: act as liaison with the Department's A & I Coordinator; educate and direct other VSP staff in ADA matters and issues; and, cooperate with the Department's A & I Coordinator.

d. On the first (1st) day of operations under this Agreement, the VSP will make available to everyone, including VSP's employees, the Park Manager and Park visitors, the VSP's accessibility and inclusion policy. The policy shall include, but is not limited to: the VSP's responsibility towards individuals with disabilities; the degree of access available to the VSP's operational facilities, programs and activities; the VSP's policy for visitor requests or inquiries for access to the VSP's operational facilities, programs and activities; and, the VSP's policy for handling a complaint on access and inclusion. The VSP will post on its premises and its website, if it provides one, the VSP's accessibility and inclusion policy in a highly visible location which will be visible to the public and VSP's employees at all times.

e. If the VSP provides written publications such as a website and brochures for its operations, the VSP shall include accessibility information in such publications.

f. The VSP shall comply with ADA provisions of this Agreement beginning on their first (1st) day of operations within the Park, unless otherwise specified herein. Compliance with the above listed terms and conditions shall be monitored by the Department's A & I Liaison and the Park Manager. The Department shall also include ADA compliance as a component of the VSP's Quarterly Evaluation Report and the Annual Review conducted by the Department's Bureau of Operational Services Visitor Services Planning Manager (see Exhibit B).

6. Paragraph 52 is added:

52. The Department shall conduct a sexual predator and sexual offender check on the VSP's Agreement Manager and its officers prior to executing a VSP Agreement. No person on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement ("FDLE") shall be employed within the Park. The Department has the right to conduct criminal background checks and additional sexual predator and sexual offender checks on the Agreement Manager, officers, employees and subcontractors during the life of this VSP Agreement. The VSP shall perform sexual predator and sexual offender checks on its employees and subcontractors and shall keep a copy of such records in their personnel files that will be accessible by the Department during the VSP's regular office hours.


7. Exhibit G of the Agreement deleted and the new Exhibit G is attached hereto and incorporated herein.

In all other respects, the Agreement to which this is an Amendment, and attachments and amendments relative thereto shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be executed the day and year last written below.

CAYO HUESO COMPANY D/B/A FORT
ZACHARY TAYLOR VISITOR SERVICES

By:



President's signature or designee

Printed

Name:

Title:


THOMAS BLOUNT
President

Date:

2-25-09

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By:



Secretary's signature or designee

Printed

Name:

Title:

Scott D. Robinson

Assistant Director

Date:

3-31-09

Approved as to form and legality:



DEP Attorney

EXHIBIT G

SCHEDULE AND SCOPE OF CAPITAL IMPROVEMENTS

EXHIBIT G shall be amended to read as follows:

The following schedule is to commence upon execution of the Agreement Amendment #5.

- Notice to proceed (written notification will be supplied to VSP) – capital improvements to be performed under this Agreement shall commence within sixty (60) calendar days after the date of the Department's Notice to Proceed, at which time the VSP shall proceed with construction of facility.
- Entrance into the construction contract between the VSP and the construction company within sixty (60) days of permit receipt.
- VSP has two hundred seventy five (275) days (approximately nine (9) months) for substantial completion of the construction project.
- VSP has another forty two (42) days for final completion.

All capital improvements listed in paragraph 5 shall be complete in its entirety by April 30, 2015 or sooner.