

## **CONCESSION AGREEMENT**

This Concession Agreement ("Agreement") is between the State of Florida Department of Environmental Protection ("Department"), a state agency, through its Division of Recreation and Parks ("Division"), whose address is 3900 Commonwealth Blvd., Tallahassee, Leon County, Florida 32399, and Cape Leisure Anastasia, LLC ("Concessionaire"), a Florida Limited Liability Company, whose headquarters is located at 8680 North Atlantic Avenue, Cape Canaveral, Brevard County, Florida, 32920.

### **RECITALS**

WHEREAS, the Department agrees to grant the privilege of providing the visitor services described more fully herein within the boundaries of Anastasia State Park ("Park");

WHEREAS, the Concessionaire agrees to accept the responsibility of providing such visitor services at the Park;

WHEREAS, such visitor services will require investment by the Concessionaire and will involve certain risks of financial loss; and

WHEREAS, the Concessionaire agrees not to interfere with the daily operations of the Park and agrees to promote the Park by all means possible and practicable.

NOW THEREFORE, in consideration of the promises and the mutual covenants and conditions contained in this Agreement, the Department and the Concessionaire agree as follows:

### **SPECIAL CONDITIONS**

A. Dates and extension or renewal discretion. The term of this Agreement shall commence on September 14, 2015, and shall end on September 30, 2025, (the "Term"), subject to all terms, conditions, and provisions contained herein ("collectively, the "Terms"). This Agreement may be extended by written amendment hereto, upon agreement by both parties. The Department may, in its sole discretion, consent to an extension or renewal of this Agreement, and the decision whether to consent to such extension or renewal and the length of such extension or renewal, if any, shall depend upon an analysis of various factors, including specifically, but not limited to: the needs and goals of the State Park system, as determined by the Department; the ability and willingness of the Concessionaire to perform under the Terms of this Agreement, as well as any other agreement, contract or written document to which the Department and the Concessionaire may agree; the good standing of the Concessionaire (including any entity related to or affiliated with Concessionaire) under any other agreement with the Department; the Concessionaire's past record of performance, including annual, quarterly, and other evaluation reports, and any audits; the past revenues paid to the Department; the nature and extent of Capital Improvements made by the Concessionaire; and other factors relevant to Park operations and planning of the individual Park ("collectively, the "Factors"). The Department, in its sole discretion, reserves the right not to extend or renew this Agreement beyond the initial term specified above.

B. Use of Facilities, Space and Equipment. The Department shall provide to the Concessionaire the following facilities, space and equipment (collectively, the "Facilities") for use during the term of this Agreement:

1. Concession & Restroom Building (BL003047) and approximately 1,000 square feet of outdoor area immediately east (for a dining deck to be constructed by the Concessionaire),
2. Salt Run Concession Building (BL003040), additional space for storage, and additional space for refurbishment of BL003040, or location of a new concession building; location and size to be pre-approved, in writing, by the Park Manager,
3. vending machine space at the four campground restrooms;
4. various beach locations for mobile concession operation as pre-approved, in writing, by the Park Manager,
5. other space as pre-approved, in writing, by the Park Manager

The Concessionaire accepts the Facilities "as is," "where is," and with no warranties as to the fitness of the Facilities for any particular purpose or the suitability of the Facilities for Concessionaire's intended use. Any current maintenance or repair needs which have been specifically identified by the Department are set forth in Exhibit A and shall be remediated by the Concessionaire at the Concessionaire's sole cost and expense. In addition, Concessionaire shall maintain and repair the Facilities pursuant to the maintenance and repair schedule agreed to by and between the Concessionaire and the Department as more particularly detailed in the Repair and Maintenance Plan. Prior to Concessionaire's commencement of operations under this Agreement, Concessionaire must submit and finalize the Repair and Maintenance Plan in accordance with the provisions of Exhibit A. The Concessionaire shall be responsible for and, at minimum, the Repair and Maintenance Plan shall encompass the following:

1. Routine maintenance and repair of the Facilities, including, but not limited to: interior electrical systems, interior plumbing systems; interior drain pipe systems; and interior painting;
2. Routine maintenance of interior and exterior components of the HVAC systems, fire detection systems, and other similar systems;
3. Cleaning of all restrooms in the Facilities (paper products shall be provided by the Department);
4. Damage to Facilities caused by the Concessionaire or its customers, which shall be at the Concessionaire's sole cost and expense;
5. Maintenance and repair of Concessionaire's signage; and
6. Nonstructural and/or cosmetic interior improvements to the Facilities, if pre-approved, in writing as by the Park Manager.

All cleaning, maintenance and repair supplies (chemicals and compounds) and all insecticides, rodenticides and herbicides shall be approved by the Department prior to use by the Concessionaire. The Concessionaire shall perform daily removal of litter within 50 feet of the Facilities. All construction or alterations of Facilities must be pre-approved in writing by the Park Manager and the Department, Concessionaire shall deliver a written description and details pertinent to the proposed construction and/or alteration; and if duly approved, Concessionaire may proceed with such work in compliance with all applicable federal, state, and local laws.

The Department shall be responsible for the repair and, if necessary, replacement of:

1. the major components comprising the HVAC systems (such as by way of example, the air handler units, compressors, fans, blowers, and evaporator coils), and
2. the roofs, exterior walls, and other structural elements of the Facilities -- unless such items are in the nature of capital improvements and the parties mutually agree that the repair and replacement thereof shall be undertaken by Concessionaire and

the associated expenses included as part of the Concessionaire's Capital Improvements Costs (as defined in Paragraph 8 below).

C. Services provided. The Concessionaire is hereby authorized to conduct, and does hereby agree to operate the following business and to provide the following services, which are further specified in Exhibit A, subject to all terms, conditions and provisions of this Agreement (collectively, the "Services"):

1. Food and Beverage Service
2. Merchandise Resale
3. Recreational Equipment Rentals
4. Event Management Services
5. Wi-Fi Services

The following Additional Services are authorized, but not required. The Concessionaire may provide these services with pre-approval, in writing, by the Park Manager:

6. Golf Cart Rental
7. Interpretative and instructional classes
8. Adult and youth camps
9. Guided eco-tours
10. Mobile food cart
11. Pavilion rentals

D. Utilities. The Concessionaire shall be responsible for the costs of all utilities associated with its operations within the Park, including, but not limited to:

1. Electricity: Concessionaire shall contract with and make payment directly to the provider.
2. Water: Concessionaire shall contract with and make payment directly to the provider.
3. Garbage: Concessionaire shall contract directly with the service provider for adequate dumpster capacity. Concessionaire shall provide waste receptacles, and recycle bins for plastics and paper. Types, models, location and minimum and maximum inventory levels shall be pre-approved, in writing, by the Park Manager.
4. Telephone/Internet: Concessionaire shall contract with and make payment directly to the provider.

E. Security for Concessionaire's Performance. Upon execution of this Agreement the Concessionaire shall post with the Department, one of the following types of security in the amount of \$16,000 (the "Security") to assure compliance with this Agreement and serve as liquidated damages in the event the Concessionaire defaults on the terms and conditions of this Agreement: 1. a verified payment bond, which meets the requirements of Florida Statute 287.0935, issued by a surety company authorized to do business in the State of Florida; 2. a verified, original, current letter of credit from a bank authorized to do business in the State of Florida containing terms and conditions satisfactory to the Department; or 3. establishment of a deposit account that is administered by the Department. No interest shall be payable on deposited funds. The terms of any letter of credit or performance bond shall provide they will be automatically renewed upon the expiration of their stated terms, unless the issuer notifies the party of its intent not to renew 120 days prior to their expiration. Further, bonds and letters of credit shall provide that they may not be terminated or cancelled on less than 120 days prior written notice to the Department. The additional terms and conditions applicable to this Security are listed in the Department's Operations Manual,

Chapter Seven, "Visitor Service Providers and Self-Operated Concessions." Section 11, "Security Instrument", and such terms and conditions are fully incorporated herein by this reference. The Security shall be returned to the Concessionaire upon termination for convenience pursuant to the Termination paragraph of this Agreement or upon expiration of this Agreement, if all terms and conditions of the Agreement have been satisfied. In the event where: (a) the Department terminates this Agreement for cause, or (b) the Concessionaire abandons this Agreement, the Department shall call upon or collect the full amount of the Security as liquidated damages for the default. The Security shall be maintained continuously throughout the term of this Agreement. If the Department receives notice the Security will expire, be terminated, cancelled or is scheduled for renewal, proof of its reinstatement, renewal or substitution of otherwise acceptable Security shall be submitted to the Park Manager at least 90 days prior thereto. The amount of the Security shall be re-assessed by the Park Manager on an annual basis, as the total gross sales are submitted by the Concessionaire in the Concessionaire's Annual Profit and Loss Statement, and, upon any renewal, extension, modification, or amendment to this Agreement. All changes to the Security for this Agreement shall be pre-approved, in writing, by the Park Manager.

F. Compensation. As compensation for this Agreement, the Concessionaire shall pay the Department a monthly fee based on the following schedule:

1. Period 1:

From October 1, 2015 through September 30, 2017 ("Period 1"), Concessionaire shall pay a commission equal to 12% of Total Gross Sales each month, but not less than \$45,000 annually, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages); and

2. Period 2:

From October 1, 2017 through September 30, 2020 ("Period 2"), Concessionaire shall pay a commission equal to 13% of Total Gross Sales each month, but not less than \$50,000 annually, plus, the applicable State Use Tax (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages); and

3. Period 3:

From October 1, 2020 through September 30, 2025 ("Period 3"), Concessionaire shall pay a commission equal to 14% of Total Gross Sales each month, but not less than \$55,000 annually, plus, the applicable State Use Tax (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).

"Total Gross Sales," for the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, vending and services generated as a result of the Concessionaire's operations at or associated with the Park. This includes all sales made or advertised within the Park, advertised on the Concessionaire's website associated with the Park, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its Park operations, and sales generated by subcontractors or related entities whose sales are associated with the Concessionaire's authorized operations at the Park. Total Gross Sales shall not include:

1. tax collections, or
2. gratuities, or
3. funds collected on food consumed by the Concessionaire's employees, or
4. pass through fees, which include:

- a. admission fees collected by the Concessionaire on behalf of the Department, and
- b. events fees collected by the Concessionaire on behalf of the Department; or
5. funds that were collected but have been refunded to the customer.

Sales of goods and services and collections of sales tax shall be accounted for separately at the point of sale. If the Concessionaire is unable to do this, it shall calculate sales tax from gross receipts using a method approved by the Florida Department of Revenue.

G. Notices. Any and all notices as provided herein, including but not limited to notices of termination, shall be effective upon receipt, only if made in writing and sent by first class mail with proper postage fully pre-paid thereon, by hand-delivery, or by express mail or other professional delivery service to the following addresses:

Concessionaire  
Dan LeBlanc  
Cape Leisure Anastasia, LLC  
8680 North Atlantic Avenue  
Cape Canaveral, Florida 32920

Department  
Warren Poplin, Park Manager  
Anastasia State Park  
1340 – A State Road A1A South  
St. Augustine, Florida 32080

With a copy to:  
Partnerships Section, Planning Manager  
3900 Commonwealth Blvd., MS 535  
Tallahassee, Florida 32399-3000

The Concessionaire shall inform the Park Manager in writing within 30 days of any change to its name, business organization, ownership, address, Registered Agent or other contact information.

H. Agreement managers. Warren Poplin, Park Manager, who can be reached by telephone at (904) 461-2000 or by email at [Warren.Poplin@dep.state.fl.us](mailto:Warren.Poplin@dep.state.fl.us), or his successor, is hereby designated as the Department's Agreement Manager. The Agreement Manager for the Concessionaire is Dan LeBlanc who can be reached by telephone at (321) 799-4020 or by email at [dleblanc@capeleisurecorp.com](mailto:dleblanc@capeleisurecorp.com).

I. Special Events. Through the Agreement end date, the Concessionaire may schedule events to occur up to 12 months after the Agreement end date ("12 Month Period"). After the Agreement end date, the Concessionaire shall not schedule any additional events or reschedule existing events. For events scheduled to occur during the 12 Month Period, the Department may issue a permit authorizing the Concessionaire to fulfill event obligations, or may require the Concessionaire to transfer contracts and deposits to another concessionaire. In the event of a cancellation during the 12 Month Period, the Concessionaire shall not pursue or accept a replacement date or event, unless pre-approved, in writing, by the Department's Agreement Manager. For all events scheduled during the 12 Month Period, the Concessionaire shall provide to the Department a copy of the original event contract.

## **GENERAL CONDITIONS**

1. Agreement to provide Services in compliance with all laws and regulations. The Department grants to the Concessionaire, and the Concessionaire accepts from the Department, an Agreement to provide the Services within the Park as are described in this Agreement and pursuant to the terms and conditions set forth herein. The Concessionaire shall provide the Services in conformance with: Chapter 258, Part I, Florida Statutes; Rule 62D-2, Florida Administrative Code; Chapter 7 of the Division's Operations Manual regarding concession operations ("Division's

Operations Manual”); and the Concession Agreement Call for Business Plan Packet No. SUP-BP # 05-15 (“Business Plan Packet”). The Concessionaire shall comply with: a) all applicable federal, state, and local laws, rules, regulations and ordinances, such as those listed above and as further specified in this Agreement; b) the Division’s Operations Manual under that version currently in effect as of the date of this Agreement, as well as any subsequent version, modification, amendment or update; and c) all other terms and conditions contained in this Agreement. It is the Concessionaire’s responsibility to be apprised of any subsequent version, modification, amendment or update of any of the foregoing statutes and rules. The most updated version of the Division’s Operations Manual is available from the Park Manager.

2. Operations. The Concessionaire shall use the Facilities, and provide the Services to the public throughout the daily hours the Park is open, in full compliance with all terms, conditions and provisions of this Agreement, including specifically, but not by way of limitation, the Minimum Operational Requirements and Procedures outlined in Exhibit A. The Park Manager shall pre-approve, in writing, any closings of the Concessionaire’s operations, which shall include any and all holidays. Any changes made to the Minimum Operational Requirements and Procedures shall be pre-approved, in writing, by the Park Manager. The Concessionaire shall draft an Environmental Protection Plan and Safety Plan pursuant to the requirements contained in Exhibit A.

3. Use of premises and governing law. The Concessionaire shall not use, nor offer or permit any person to use the Facilities for any purpose in violation of any law, ordinance, or applicable governmental rule or regulation. Personal property of the Concessionaire’s officers, employees, agents, or acquaintances shall not be stored in the Park. This does not include Concessionaire-owned vehicles or equipment used in the conduct of Services under this Agreement, which may be stored in the Park at the discretion of and with approval from the Park Manager.

4. Fire insurance standards. The Concessionaire shall not permit the use or storage of materials of any kind that are prohibited by the standard policies of fire insurance companies in the State of Florida in any facilities or space occupied or used by the Concessionaire pursuant to this Agreement.

5. Inspection of facilities, space and premises; Concessionaire’s failure to maintain. The Concessionaire agrees the Facilities may be inspected at any time during operating hours by authorized representatives of the Department or by any other state, county or municipal officer or agency having responsibilities for inspection of such operations. The Concessionaire shall immediately undertake the correction of any deficiency cited by such inspectors. If the Concessionaire fails to correct any such deficiency, or, if after two inspections by the Department’s Agreement Manager, or designee, the Concessionaire fails to meet minimum maintenance or repair standards identified in Paragraph B above or contained in the Repair and Maintenance Plan, the Division reserves the right to correct the deficiency and issue an invoice to Concessionaire for payment of the cost thereof. If Concessionaire fails to deliver payment of such invoice to the Department within 30 days thereafter, the Department may suspend the Concessionaire’s operations under this Agreement until full payment has been received by the Department or may terminate this Agreement for cause and begin procedures to collect under the Security.

6. Surveys and reports. The Concessionaire shall cooperate with the Department in conducting surveys, providing reports of visitor contacts, and responding to Department inquiries regarding public usage of the Facilities and Services. Further, the Concessionaire shall provide the Department a nominal amount of space in or on the Facilities for Florida State Park marketing and promotional materials.

7. Leasing and lessee; Full compliance. The Concessionaire understands and agrees no parcel, building, facility, structure, equipment or space is leased to the Concessionaire; Concessionaire is an independent contractor and not a lessee; and the Concessionaire's right to occupy the Facilities and to conduct the Services shall continue only so long as the Concessionaire and its operations are in full compliance with the terms and conditions of this Agreement.

8. Construction. The Concessionaire shall obtain pre-approval, in writing, from the Department for any construction of new facilities, for all alterations or additions to existing Facilities, and shall bear the full cost for such construction, alterations, or additions, which shall become state-owned assets upon completion (or at the Department's election such work in progress shall become state-owned assets should Concessionaire abandon construction or this Agreement be terminated prior to the full completion of construction) (heretofore and/or hereinafter called "Capital Improvements"). The Concessionaire is responsible for applying for and paying all costs associated with required permits. The Concessionaire is responsible for all costs associated with design, site survey, geotechnical and other site testing including but not limited to asbestos and lead based paint surveys, and preparation of construction documents necessary for the successful completion of the project. Concessionaire shall submit to the Department for review and comment, all of the necessary documentation including sealed plans, construction documents, test reports, product submittals, budget estimates and sketches to accurately describe the scope of work, all of which must be pre-approved, in writing, by the Department, prior to commencement of any construction or alterations. Prior to construction, the Concessionaire shall attend a preconstruction meeting with the Park Manager, a representative from the Bureau of Operational Services ("BOS"), a representative from the Bureau of Design and Construction ("BDC"), and any other additional personnel required to properly document and coordinate the construction activities and agreement requirements. The Concessionaire shall provide all of the specifics of all projects which involve construction in the Park, including: timelines, critical paths, methods of construction, approval of plans, amenities, signage, color schemes, advertising, subcontractors, cost estimates, amortization period for the Capital Improvements, if applicable, and other information deemed relevant by the Department. Once the permits have been reviewed and final plans have been approved by the Department, the Park Manager shall provide to the Concessionaire a Notice to Proceed. Upon receipt of the Notice to Proceed, the Concessionaire shall commence construction and diligently pursue the full completion thereof.

9. Permits and licenses. The Concessionaire shall obtain and maintain all permits and licenses necessary for the operation of the business referenced in this Agreement and agrees to comply with all laws governing the responsibility of an employer with respect to persons it employs. All required permits and licenses must be obtained and presented to the Department prior to commencement of any Services under this Agreement by the Concessionaire or the Concessionaire's occupation of the Facilities.

10. Expansion of operations and assignment. The Department may, by formal amendment hereto, authorize the Concessionaire to expand or change the operations provided, if, in its sole discretion, the Department determines that such expansion or change would be beneficial to the Park, Park visitors, or the Department. The Concessionaire may not occupy or use additional Facilities, discontinue use of Facilities, or expand, change or terminate Services without the prior written consent of the Department and the execution of a formal amendment to this Agreement. This Agreement shall not be assigned in whole or part, without prior written approval of the Department, which approval may be granted, conditioned, or denied, in the Department's sole discretion. If the Department approves the assignment, the Concessionaire shall pay to the Department a processing fee of \$100, unless such processing fee is waived for good cause by the Department.

11. Subcontractor. The Concessionaire shall be responsible for providing all Services. The Concessionaire may subcontract, as necessary, to perform the Services, provided the Concessionaire provides the Department with pertinent information concerning the subcontractor with a copy of the proposed subcontract and obtains the Department's written consent thereto prior to Concessionaire's execution of the subcontract. Unless otherwise granted by amendment, only the Florida Park Service District Bureau Chief or his or her superior may grant consent to utilize a subcontractor. Consent to use a subcontractor must be in writing. The Department reserves the right to withhold its consent to use any proposed subcontract or subcontractor, in its sole discretion. Failure to obtain pre-approval of a subcontract or subcontractor may result in termination of this Agreement. The term subcontract, as used in this Agreement, shall include any written or oral agreement, license, or other arrangement in which any other entity undertakes to perform any of the Services. The term subcontractor, as used in this Agreement, shall include any entity or person offering goods or services in the Park by written or oral agreement, license, or other arrangement with the Concessionaire. The Concessionaire agrees the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract. The Concessionaire is solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract and the Concessionaire is solely responsible for the subcontractor's performance under the subcontract. The Concessionaire shall include a provision in its subcontract which requires the subcontractor to comply with the terms of this Agreement, and to submit reports in the form required by this Agreement. Failure by any subcontractor to perform or to pay the Concessionaire shall not be grounds for excusing the Concessionaire's obligations to the Department. The Concessionaire shall be solely responsible for verifying the subcontractors' reports and for reporting gross sales attributable to any and all subcontracts, and computing and remitting the monthly fee based on Total Gross Sales, as required by this Agreement. By execution of a subcontract between the Concessionaire and subcontractor, each agrees to be bound by the terms of this Agreement, including but not limited to: the requirements of Chapter 119, Public Records; Audit and Minimum Accounting requirements; and the commission on Total Gross Sales, as stated in this Agreement. In the event a subcontractor refuses to comply with the terms and conditions of this Agreement, the Concessionaire shall replace the subcontractor or such refusal shall immediately and automatically terminate the subcontract and this Agreement without further notice.

12. Competition. Unless otherwise provided herein, the Department agrees not to authorize any services in the Park which are in conflict or in direct competition with the Concessionaire's Services, except as further provided in this paragraph. The Department may propose competing services if it first gives the Concessionaire not less than 30 days advance written notice of its intent to authorize such services. If the Concessionaire desires the Department to consider Concessionaire as the vendor to provide such services, it must submit a sufficiently-detailed proposal to the Department within 14 days of receipt of such notice. The Concessionaire's proposal may be accepted or rejected by the Department, in its sole discretion, after reviewing, among other things, the Factors. Notwithstanding the foregoing, the parties agree that the following services or uses are not subject to this paragraph and shall not constitute competition: a. the Department and the Park's Citizen Support Organization selling of Florida State Park promotional merchandise; b. private persons hiring outside caterers or carrying in their own food and refreshments for individual events; c. the delivery of goods or services in the Park, the sales or service transactions of which originated outside the Park; d. Park management of events; or e. the Department's online retail and merchandise concessionaire. This paragraph is not intended to make the Department responsible to take any actions to prevent or remedy any competition which occurs or originates outside of the Park, even if such competing persons lawfully enter the Park.

13. Conflict of Interest. The Concessionaire covenants it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of Services to be provided under this Agreement. The Concessionaire agrees to use its best efforts to



maximize the profitability of this Agreement and to refrain from any self-dealing or activity which would usurp opportunities of the Park associated with the Services provided hereunder. The Concessionaire further agrees not to conduct any activity that would be injurious or cause disrepute to the Park.

14. Independent contractor. It is acknowledged the Concessionaire is performing at all times as an independent contractor and not as an employee, representative or agent of the State of Florida, the Department, or the Division, and neither the Concessionaire nor its employees are entitled to accrue any benefits of state employment.

15. Fees and merchandise. The Concessionaire agrees prices and fees charged for merchandise and services offered by the Concessionaire pursuant to its operations under this Agreement shall be consistent with those charged by similar businesses for similar merchandise and services in the general vicinity of the Park. For the purposes of this Agreement, "general vicinity" is defined as being located or charging for merchandise or services within five miles of the Park. If there are no similar businesses which market similar merchandise or services within five miles of the Park, general vicinity shall be expanded to include the nearest such similar business. The Concessionaire shall not sell or rent any types of merchandise or equipment prohibited by the Department and shall sell or rent only the types of merchandise or equipment approved by the Department. The Concessionaire shall maintain an adequate supply of all merchandise and equipment (including Florida State Park merchandise), which the Park Manager deems appropriate for the Park or necessary to accommodate Park visitors. The Concessionaire shall ensure that all merchandise and equipment sold or rented is of good quality, safe and clean. The Concessionaire agrees to follow the merchandise guidelines contained in Chapter Seven of the Division's Operations Manual. A fee schedule shall be pre-approved, in writing, by the Park Manager. Price and fee adjustments may be requested by the Concessionaire. Such requests will be reviewed by and may be approved in the sole discretion of the Department.

16. Concessionaire employee standards. The Concessionaire shall provide continuing training and evaluation of all employees assigned to the Concessionaire's business operations under this Agreement to ensure an appropriate level of proficiency, a public service attitude, and a good understanding and use of the principles of hospitality. All of the Concessionaire's employees shall be required to wear a visitor service uniform and name tag, pre-approved, in writing, by the Park Manager, at all times while on duty in the Park. The Concessionaire shall replace any employee at the request of the Park Manager for good cause. No Department employee or close relative of an employee of the Department shall be employed by the Concessionaire without prior written approval of the Department.

17. Monthly fee payment. The monthly commission fee, plus the State Use Tax and any other fees or payments due, shall be submitted to the Department, through the Park Manager, along with the monthly report of Total Gross Sales, so that the Park Manager shall receive such funds and report(s) not later than the 20<sup>th</sup> day of each month. Payments received on or after the 21<sup>st</sup> day of each month shall result in a late fee being assessed in the amount of 1% of the current amount due for each day the payment is late. At the Department's sole discretion, late payment fees may be waived based on documented circumstances beyond reasonable control of the Concessionaire. If the monthly fee and accumulated late payment fees are not received within 30 days after the normal monthly payment deadline, the Department may suspend the Concessionaire's operations under this Agreement until full payment has been received by the Department or terminate this Agreement for cause and begin procedures to collect under the Security.

18. Accounting. Accounting requirements shall be as follows:

a. Minimum accounting requirements including subcontractors and audit. The Concessionaire shall comply with and document compliance with the Minimum Accounting Requirements detailed in Exhibit C attached hereto and incorporated herein by reference. The Concessionaire shall establish and maintain books, records, and documents directly pertinent to performance under this Agreement in accordance with the Minimum Accounting Requirements and with the generally accepted accounting principles, which shall be consistently applied. The Department, and other appropriate government agencies, or their authorized representatives, as provided by law, shall have access to all such records for audit purposes during the term of this Agreement and for five years following the Agreement's expiration or termination. Audits will be conducted at locations and at a frequency determined by the Department or other state agency and communicated to the Concessionaire. The Concessionaire shall provide materials for the audit at the designated place within 15 days after the Department's or other government agency's notice is received. In addition, the Department may require the Concessionaire to procure an annual financial audit of the Concessionaire's operations conducted by a Certified Public Accountant, at Concessionaire's sole cost and expense. If requested, the Concessionaire agrees such audit shall be conducted in accordance with generally accepted auditing and accounting principles and shall be completed within a reasonable time frame, which shall not be set at less than 60 days by the Department.

b. Monthly report of Total Gross Sales. The Concessionaire shall provide to the Department a Monthly Report of Concessionaire's Total Gross Sales, which shall include gross sales attributable to any and all subcontracts, in the form attached hereto as Exhibit D and incorporated herein by reference. Each monthly report shall contain the required detail based upon Total Gross Sales for such month by point of sale. Concessionaire shall deliver such report and required payment(s) to the Park Manager no later than the 20<sup>th</sup> day of the succeeding month.

c. Annual profit and loss statement. The Concessionaire shall provide an Annual Profit and Loss Statement to the Department, in the form attached hereto as Exhibit E and incorporated herein by reference. Such statement shall include the results of Concessionaire's operations pursuant to this Agreement for each calendar year or portion thereof for which this Agreement is in effect. The statement shall be delivered to, or sent so it is received by, the Park Manager no later than April 30<sup>th</sup> of the succeeding calendar year, or within 90 days of the expiration or termination of this Agreement, whichever is sooner.

d. Books of original entry. Both the monthly reports of Total Gross Sales and the annual profit and loss statements shall be based on source documents and books of original entry. The Concessionaire shall retain books of original entry and source documents for five years, or until final resolution of matters resulting from any litigation, claim, or audit that started prior to the expiration of the five year retention period, whichever is later. The retention period commences from the date of submission of the last annual profit and loss statement required in Paragraph 18 c. above.

e. Limited Engagement document. If annual Total Gross Sales from the Concessionaire's operations under this Agreement exceed \$400,000, the Concessionaire shall obtain and submit, at its sole cost and expense, a limited engagement document, prepared in accordance with the Agreed - Upon Procedures for a Certified Public Accountant as stated in Exhibit E, attached hereto and incorporated herein. Such limited engagement document shall be conducted in accordance with generally accepted auditing and accounting principles. This limited engagement document shall be submitted to the Park Manager no later than June 30<sup>th</sup> of the following calendar year or within 120 days after the expiration or termination of this Agreement, whichever is sooner.

f. Revenue subject to sales tax. The Concessionaire's revenue is subject to State Use Tax, unless the Concessionaire is exempt from paying such tax on commission fees to

the Department. If it is tax exempt, the Concessionaire shall provide verification of its tax exempt status by completing the State Use Tax Exempt Certification form attached hereto as Exhibit G and incorporated herein by reference. Concessionaire shall provide its completed Certification form to the Department contemporaneously with its delivery of the executed Agreement to the Department.

g. Purchasing card industry ("PCI"). The Concessionaire shall be responsible for complying with the PCI Data Security Standards ("PCI DSS"), which include a set of comprehensive requirements for enhancing payment account data security, at the Concessionaire's sole cost and expense. The PCI DSS standards can be found at the PCI Security Standards Council website, which is linked through: <https://www.pcisecuritystandards.org/>. Additional information can be obtained through the Florida Department of Financial Services ("DFS"), which coordinates the State of Florida's efforts directly with the PCI Security Standards Council. The Concessionaire shall ensure that the required data security measures are in place no later than 60 days after the execution of this Agreement or prior to the commencement of operations, whichever is sooner, by submitting a completed Self-Assessment Questionnaire ("SAQ") to the Park Manager. The Concessionaire shall submit an updated SAQ to the Park Manager annually on the anniversary of the commencement date through the expiration or termination of this Agreement. The SAQ can be found on the PCI DSS website listed above. During the term of this Agreement, it shall be the Concessionaire's responsibility to be apprised of any subsequent version, modification, amendment or update of the PCI DSS, and, if necessary, in order to comply with the most current version of the PCI DSS, to modify its annual SAQ as it pertains to its operations under the Agreement, at Concessionaire's sole cost and expense.

h. Electronic Payment. At such time the Department completes a system for accepting electronic payments from concessionaires, Concessionaire agrees to use such system for making or delivering its monthly payments to the Department.

19. Public records. Pursuant to Chapter 119, Florida Statutes, all documents, papers, letters, or other printed, written, or recorded material prepared in conjunction with or as a result of this Agreement is a public record, except for such records that are exempt under Chapter 119, Florida Statutes or other statutory provision, and Article I, section 24(a) of the Florida Constitution. All public records may be inspected or copied by any member of the public at any reasonable time. Additionally, such records may be audited by the State of Florida Auditor General or other authorized government agency. This Agreement may be unilaterally canceled by the Department for refusal by the Concessionaire to allow public access to all documents, papers, letters, or other materials made or received by the Concessionaire in conjunction with this Agreement, unless the records are exempt under Chapter 119, Florida Statutes or other statutory provision, and Article I, Section 24(a) of the Florida Constitution. Park visitors' and the Concessionaire's employees' social security numbers, bank account numbers, and credit or debit card numbers are not public records and shall be protected and redacted from any records shown or given to the public.

20. No vested real property right; Violation of grant terms. This Agreement shall not vest any real property right or interest in the Concessionaire, and shall be deemed to only be the grant of a privilege to perform the Services in full compliance with the Terms of this Agreement. In the case of state parks acquired or developed with Land and Water Conservation Fund (LWCF) grants, the Concessionaire shall comply with all terms and provisions of the LWCF Grant Agreement regarding standards of maintenance, public use, and accessibility. A copy of the LWCF Grant Agreement may be obtained through the Park Manager. If the Concessionaire fails to comply with any of the material terms and conditions of the LWCF grant, the Department shall provide Concessionaire written notice of said default and afford the Concessionaire 10 days to cure said default. Upon failure of the Concessionaire to bring the operations into compliance with the terms and provisions of the LWCF Grant Agreement or to show a good faith effort to comply within the time limit specified therein, the Department may terminate this Agreement for cause.

21. Termination. In addition to the Department's right(s) of termination contained elsewhere in this Agreement, this Agreement may be terminated prior to the expiration of the Term stated in Special Conditions, as follows:

a. Termination for cause.

i. Upon Concessionaire's default, breach, or deficiency in performing any obligation under this Agreement (a "Default"), the Department may terminate this Agreement for cause. The Department shall give Concessionaire thirty (30) days advance written notice of the Default, and this Agreement shall automatically terminate at 12:01 AM e.s.t. on the 31<sup>st</sup> day following Concessionaire's receipt of the notice.

ii. If a cure period is expressly provided under any provision of this Agreement for a particular Default specified in the Department's notice, or if otherwise the Department, in its sole discretion, elects to provide the Concessionaire a specific amount of time to cure a Default, then the Department's notice of termination shall provide such amount of time for Concessionaire to cure the Default(s) (the "Cure Period"). Concessionaire shall promptly commence and diligently pursue the full and complete cure of the Default(s), without interruption. Should Concessionaire desire an extension of the Cure Period, then on or before the expiration of the initial Cure Period: a. Concessionaire shall have commenced actions to cure the Default(s), and b. Concessionaire shall submit a notice in writing to the Department stating the curative actions it has undertaken to date, with a request to extend the Cure Period to a later date (which date cannot be greater than the ninetieth (90<sup>th</sup>) day following Concessionaire's receipt of the Department's written notice of default). Concessionaire's request shall include an explanation of the need for an extension of the Cure Period. The Department may grant, deny, or condition its approval of Concessionaire's extension request, in its sole discretion. If the Concessionaire does not fully and timely cure the Default(s) prior to the expiration of the Cure Period (or the extended Cure Period, if so requested and granted) then this Agreement shall automatically terminate at 12:01 AM e.s.t. on the first calendar day following the expiration of the Cure Period.

Upon such termination for cause, the Concessionaire shall immediately remove itself and all other parties who may be present upon or occupy any part of the premises or Facilities for its operations conducted hereunder. Continued occupancy of the premises or Facilities after termination of this Agreement shall constitute trespass by the Concessionaire and may be prosecuted as such. The Concessionaire will forfeit any unamortized costs for Capital Improvements upon termination for cause.

b. Termination for convenience. The Department or the Concessionaire may terminate this Agreement for convenience at any time by giving ninety (90) days' advance written notice to the other party.

i. If the Concessionaire terminates this Agreement for convenience before the end of the Term, the Concessionaire shall pay to the Department a \$100 processing fee in conjunction with such termination. If the Concessionaire gives less than the 90 days' notice required above, then, in addition to the processing fee above, the Department may require the Concessionaire to pay an expedited termination fee equaling 5% of its previous 12 months average monthly commission for each month remaining in the term of this Agreement, as liquidated damages to the Department. This provision does not preclude the Department from pursuing any other legal remedies, in its sole discretion.

ii. If the Department terminates this Agreement for convenience, it shall not be liable to Concessionaire for any direct, indirect or consequential damages arising therefrom, save and except for any obligation Department may have to reimburse Concessionaire for unamortized Capital Improvements. If Concessionaire has made Capital Improvements to the Park, which have not been fully amortized (as defined by the Amortization Schedule in Exhibit B, attached hereto and incorporated herein, if applicable), the Department shall pay the Concessionaire the remaining unamortized amount of the Capital Improvements, as of the termination date, within 90 days following the termination date. No Capital Improvements under this Agreement shall be considered to have an amortization period longer than five years. The amortization rate and period for Capital Improvements shall be as stated in Exhibit B, if applicable, and reimbursements shall be pro-rated based on the date of termination during the calendar year. Proration shall be calculated using a 360 day calendar year. Concessionaire agrees such payment shall constitute liquidated damages for termination for convenience by the Department.

c. Termination rights cumulative. Notwithstanding anything in this Paragraph 21 which may be construed to the contrary, the Department's termination rights in this Paragraph 21 are cumulative and in addition to termination rights which may be contained elsewhere in this Agreement, and to remedies available at law and in equity. There are specific circumstances expressly stated in this Agreement where termination occurs automatically without notice or with notice, and this Paragraph 21 does not alter nor affect the Department's use and reliance on those specific contractual termination rights contained elsewhere in this Agreement. All rights and remedies of the Department whether under this Agreement or at law or in equity are cumulative, and may be used by the Department singularly or concurrently.

22. Equipment and other tangible property. Upon termination or expiration of this Agreement for any reason, neither the Department nor any of its agents, officers or employees shall be obligated to purchase any of the Concessionaire's equipment or remaining inventory, unless otherwise provided herein. The Concessionaire shall remove or dispose of all assets which are not fixtures of state property, at the Concessionaire's sole cost and expense. Notwithstanding the foregoing, the Park Manager may elect, in his sole discretion, not to require the Concessionaire to remove assets which are not fixtures of state property and all such assets not removed by the Concessionaire prior to expiration or termination of this Agreement shall become the property of the Department. The Park Manager shall give written notice of any such election, prior to the termination or expiration of this Agreement.

23. Review of terms. This Agreement shall be reviewed by the Department periodically to determine whether the compensation agreed to herein is sufficient. Reasons to be considered for altering the compensation include: whether Capital Improvements were made by the Concessionaire, whether such Capital Improvements have been fully amortized, significant increase in use by the public, the Concessionaire contributions to the Park other than Capital Improvements, significant increase in Concessionaire profits without a comparable increase in value to the Park, decrease in overhead costs, competitive rates in the marketplace, and other relevant reasons. If the Department determines the compensation agreed to is insufficient, the parties shall negotiate until agreement is reached and amendment hereto is made. If the parties cannot agree upon the amount to be paid the Department, then Department shall terminate the Agreement after 90 days written notice to the Concessionaire.

24. Insurance coverage. The Concessionaire shall secure and maintain the following types of insurance covering its operations under this Agreement:

a. Liability. The Concessionaire shall secure and maintain Commercial General Liability insurance, including bodily injury, property damage, personal and advertising injury, contents

of the Facilities, as amended or expanded from time to time, products, and completed operations. This insurance shall provide coverage for all claims which may arise from the services and/or operations provided under this Agreement, whether such services and/or operations are by the Concessionaire or anyone directly or indirectly employed by the Concessionaire. The minimum limits of liability shall be \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

b. Automotive. The Concessionaire shall secure and maintain Commercial Automobile Liability insurance for company-owned vehicles and for hired and non-owned vehicles, which are used to transport equipment, merchandise, food products, customers, employees or otherwise provide operational support or deliver services to the day to day or incidental operations or otherwise used to conduct business and provide the Services in the Park at a minimum combined single limit of \$1,000,000. Commercial automobile liability insurance coverage may be provided as either vehicle specific coverage or as a coverage for the business use as a rider on the Concessionaire's general liability insurance policy.

c. Other as needed. Other insurance required under this Agreement shall be insurance for the unique or particular type of operations, recreation, or facilities provided, such as liability for the operation of vessels, water sports, operation of other motorized vehicles, and diving and snorkeling. The Concessionaire must provide its own insurance for such things as boat hulls, building contents, theft, vehicle comprehensive, and any other applicable insurance. The Concessionaire understands the state's insurance does not cover the Concessionaire's personal property or business losses in the Park. The Concessionaire is advised to thoroughly research its insurance needs prior to executing this Agreement.

d. Services cannot begin without insurance and filing requirements. No services under this Agreement shall begin prior to compliance with these insurance requirements. Compliance with the foregoing shall not relieve the Concessionaire of its liability under this paragraph or under any other portion of this Agreement. All insurance shall include a Hold Harmless Agreement in favor of the Department and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Board of Trustees"). All insurance policies shall name the Florida Department of Environmental Protection and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida as Additional Named Insured for the entire term of the Agreement, including all extensions, if any. All insurance policies shall include this Agreement's DEP Agreement No. on the certificate. Insurance policy certificates shall be submitted to the Park Manager, and shall list the Park Manager's Name, Florida State Parks and Mailing Address, as listed in the Notices provision of this Agreement, as the insurance policy certificate holder. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida. The Concessionaire's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after 30 days prior written notice to the Park Manager, except for nonpayment of insurance premium, which shall be handled in accordance with Florida law. The Concessionaire shall provide evidence of its current insurance coverage prior to commencement of operations. All required insurance policies shall remain in full force and effect throughout the term of this Agreement. Evidence of all policy renewals shall be provided to the Park Manager at the time of every renewal of such policy and prior to any extension of this Agreement. The Department reserves the right to request copies of insurance policies for examination and copying at any time during the term of this Agreement. Required per occurrence and aggregate loss limits for insurance coverage of Concessionaire's services under this Agreement shall not be subject to dilution or reduction by any other insurable loss or interest of Concessionaire under such policy, and if requested Concessionaire will provide proof thereof from its insurance provider. Any releases required by the Concessionaire's insurer to be signed by members of the public may be used in accordance with applicable law. To the extent releases are used, the release shall also release the Department and the Board of Trustees, in addition to the Concessionaire and must be approved in advance in writing by the

Department. If at any time, the Department deems it necessary to require a liability waiver to be signed by members of the public, the Concessionaire shall comply with the Department's request. Waivers seeking parents' or guardians' signature on behalf of a minor small child shall comply with the form requirements set forth in S.744.301, Florida Statutes.

25. Workers' Compensation. The Concessionaire shall secure and maintain during the life of this Agreement, Workers' Compensation Insurance for all of its employees connected with the work to be performed under this Agreement. Prior to the Concessionaire's signing of this Agreement, the Concessionaire shall provide evidence of such coverage. Concessionaire's self-insurance or insurance coverage shall comply fully with Florida Workers' Compensation Law. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law and the Merchant Marine Act of 1920 (P.L. 66-261), commonly known as the Jones Act, including any subsequent amendments or conditions. In case any class of the employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Concessionaire shall provide adequate insurance, satisfactory to the Department, for the protection of its employees not otherwise protected. Insurance policy certificates shall be submitted to the Park Manager, and shall list the Park Manager's Name, Florida State Parks and Mailing Address, as listed in the Notices provision of this Agreement, as the insurance policy certificate holder. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida.

26. Risk in operation. The Concessionaire assumes all risk in the operation of its business under this Agreement and shall be solely responsible and answerable in damages for accidents or injuries to persons or property, whether direct or indirect, arising out of its operations or arising by virtue of the carelessness, negligence, or improper conduct of the Concessionaire or its subcontractors, and their respective employees, representatives, or agents. The Concessionaire shall save and hold harmless and indemnify the Department and the Board of Trustees, and their respective officers, employees, and agents, against any and all liability, claims, judgments, attorney's fees, or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for the loss of or damage to any property resulting from the use, service, operation, or performance of work under the terms of this Agreement, resulting from any act, or failure to act, by the Concessionaire or its subcontractors, and their respective employees, agents, or representatives to the extent allowed by law. The Concessionaire shall notify the Park Manager within five days of all legal actions filed against the Concessionaire related to the Park or which may adversely affect or reflect on the Department.

27. Force majeure event. The Concessionaire hereby waives all claims for compensation for loss or damage sustained by reason of any force majeure event which takes place in or affects the Park. If a force majeure event occurs which causes delay or the reasonable likelihood of delay in Concessionaire's performance under this Agreement, the Concessionaire shall promptly notify the Park Manager orally, and within seven calendar days, notify the Park Manager in writing of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay, and the Concessionaire's intended timetable for implementation of such measures. If the parties agree the delay or anticipated delay has been or will be caused by a force majeure, time for performance of the Agreement may be extended for a period of time equal to the delay resulting from the force majeure. Such extension shall be the Concessionaire's sole remedy under this Agreement for delay caused by a force majeure event. Such extension shall be confirmed by an amendment to this Agreement. A force majeure event shall be an act of God or nature, strike, lockout or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary governmental or third party approvals, governmental restraint, terrorism, threat to homeland security, tornado, hurricane or other severe storms, civil commotion, criminal activity, or any other cause, whether of the kind specifically enumerated herein or otherwise, which is not reasonably within the control of the Concessionaire. Failures of the

Concessionaire's subcontractor to perform are not a force majeure; nor are business losses a force majeure. Any such event shall not relieve the Concessionaire from performance of any terms of this Agreement which can be performed. No payment from the Concessionaire shall be due for the time period during which its operations are totally suspended due to the force majeure event.

28. Waiver in light of force majeure event. The Concessionaire also hereby waives all rights, claims and demands and forever releases and discharges the Department and the Board of Trustees and their respective employees, officers and agents from all demands, attorney's fees, claims, actions and causes of action arising from a force majeure event.

29. Natural and cultural resources. The Concessionaire shall abide by all local, state and federal regulations and statutes governing the protection of natural and cultural resources and be considered liable for violation of such regulations or statutes.

30. Recyclable or biodegradable materials. When disposable serving supplies are utilized by the Concessionaire, they shall be produced from recyclable or biodegradable materials. Preference should be given to using non-disposable serving supplies. The Concessionaire shall develop and implement a solid waste reduction plan, as part of the environmental protection plan required by Exhibit A, for solid waste generated by the visitor service operations. In areas where recycling programs exist, this plan shall include provisions for recycling of all appropriate materials, and shall be approved, in writing, by the Park Manager during the first 60 days of operations under this Agreement.

31. Works for hire. Works for hire is defined as contributions to a collective work; part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; answer material for a test; and an atlas. For the purpose of this Agreement, the definition of works for hire shall be expanded to include: any marketing materials and websites generated by the Concessionaire utilizing a state park name for the purpose of conducting business under this Agreement, and whether such works for hire are patentable or copyrightable or not, such works for hire shall belong to the Department and shall be subject to the terms and conditions of this Agreement.

32. Federal, state and local laws. The Concessionaire shall comply with all applicable federal, state and local laws, rules, regulations and ordinances in providing services to the Department under this Agreement. The Concessionaire 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 Concessionaire further agrees to include this provision in all subcontracts issued as a result of this Agreement. The Concessionaire's failure to comply with any part of this provision is material and shall be grounds for termination of this Agreement for cause by the Department.

a. Compliance with the Americans with Disabilities Act. The Concessionaire 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 the Concessionaire offers to the public. It is the intent of the Department the Concessionaire offer access to all of its facilities, programs, and not merely to the minimum extent mandated by law.

b. Violation of ADA. In the event that the Concessionaire is sued for violation of the ADA, and a court of competent jurisdiction determines the Concessionaire is in violation of the ADA, or the Concessionaire settles the case with the understanding that ADA changes must be made, the Concessionaire 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 Concessionaire may seek insurance for such risk, and, if it obtains a policy which covers such risk, the Concessionaire shall name the Department and the Board of Trustees as Additional Named Insured under such policy, and shall comply with such requirements, as applicable. 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 the time records do not reflect whether counsel's work was attributable to the Department's or the Concessionaire's violations, or the parties cannot agree on a split, the attorney's fees and costs shall be split equally between the Concessionaire and the Department.

c. A & I Coordinator. The Division of Recreation and Parks employs an Accessibility and Inclusion Coordinator ("A & I Coordinator"), who shall be consulted by the Concessionaire 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 Concessionaire shall also inform the A & I Coordinator and the Park Manager within five days of service of process, in the event it is sued for an ADA violation. The Concessionaire shall inform the A & I Coordinator and the Park Manager of all ADA disputes or claims in writing within five days of the event. If there is a dispute between a Concessionaire 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 Department's Agreement Manager.

i. A & I Liaison. On or before the first day of operations under this Agreement, the Concessionaire shall 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 Park Manager.

ii. ADA Training.  
 (a) The Department shall send notice to the Concessionaire's A & I Liaison when the Department's online ADA training is available or updated. The Concessionaire's A & I Liaison and the Concessionaire's Agreement Manager shall take the Department's online ADA training within 60 calendar days of receiving such notice of course availability/update from the Park Manager.

(b) If offered, the Concessionaire shall attend training on ADA practices when a Concessionaire Meeting is held.

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

iv. Accessibility and inclusion policy. On the first day of operations under this Agreement, the Concessionaire shall make the Concessionaire's accessibility and inclusion policy available to everyone, including Concessionaire's employees, the Park Manager and Park visitors. The policy shall include, but is not limited to: the Concessionaire's responsibility towards individuals with disabilities; the degree of access available to the Concessionaire's operational facilities, programs and activities; the Concessionaire's policy for visitor requests or inquiries for access to the Concessionaire's operational facilities, programs and activities; and, the

Concessionaire's policy for handling a complaint on access and inclusion. The Concessionaire must post on its premises and its website, if it provides one, the Concessionaire's accessibility and inclusion policy in a highly visible location which will be visible to the public and Concessionaire's employees at all times.

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

vi. Compliance with ADA terms and conditions. The Concessionaire shall comply with ADA provisions of this Agreement beginning on its first day of operations within the Park, unless otherwise specified herein. Compliance with the above-listed terms and conditions shall be monitored by the Concessionaire's A & I Liaison and the Park Manager. The Department shall also include ADA compliance as a component of the Concessionaire's Quarterly Evaluation Report.

33. Civil Rights Act. The Department receives Land and Water Conservation Funds. Under Title VI of the 1964 Civil Rights Act, the U. S. Department of Interior prohibits discrimination on the basis of race, creed, color, national origin, age, sex, or disability. The Concessionaire shall not discriminate, in the providing of services to the public or through its employment practices, on the basis of race, creed, color, national origin, age, sex, or disability. Requests for information regarding Title VI or registering of complaints under Title VI may be made to: The Office of Equal Opportunity, U. S. Department of the Interior, Office of the Secretary, Washington, DC, 20240.

34. Unauthorized aliens. The employment of unauthorized aliens by any contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the Concessionaire knowingly employs unauthorized aliens, such violation shall be cause for immediate unilateral cancellation of this Agreement by the Department. The Concessionaire shall be responsible for including this provision in all subcontracts with private persons or organizations entered into as a result of this Agreement.

35. E-Verify Employment Eligibility Verification. The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. The Concessionaire shall only employ individuals who may legally work in the United States – either U.S. citizens or foreign citizens who are authorized to work in the U.S. The Concessionaire shall use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification system to verify the employment eligibility of:

a. All persons employed by the Concessionaire, during the term of this Agreement, to perform employment duties within Florida; and,

b. All persons (including subcontractors) assigned by the Concessionaire to perform work pursuant to this Agreement. The Concessionaire shall include this provision in all subcontracts it enters into for the performance of work under this Agreement.

36. Sexual predator and offender check. The Concessionaire shall conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and all other officers, employees and subcontractors of Concessionaire prior to executing this Agreement. The Concessionaire shall keep a copy of its investigation records in Concessionaire's personnel files that will be available to the Department during the Concessionaire's regular office hours. Concessionaire shall not employ any person within the Park who is listed on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement ("FDLE") or maintained by the U.S. Department of Justice National Sex Offender Public Registry ("NSOPR"). The

Concessionaire shall be responsible for including this provision in all subcontracts with private persons or organizations entered into as a result of this Agreement. The Department has the right to conduct criminal background checks and additional sexual predator and sexual offender checks on the Concessionaire's Agreement Manager, the Concessionaire's officers, employees, and subcontractors during the term of this Agreement. If the Concessionaire or any subcontractor of Concessionaire employs a sexual predator or sexual offender, either with knowledge or without knowledge due to failure to perform the required research of the FDLE list or the NSOPR, such violation shall be cause for immediate unilateral cancellation of this Agreement by the Department.

37. Public Entity Crime; Convicted Vendor. Concessionaire confirms that as of the execution date of this Agreement, and will re-affirm annually no later than July 1<sup>st</sup> of each year of the Concession Agreement, neither Concessionaire nor any of its officers, directors, executives, partners, shareholders, employees, members, and agents (as applicable) who are active in the management of the Concessionaire have been placed on the convicted vendor list maintained by the Florida Department of Management Services under Section 287.133(3)(d) of the Florida Statutes following a conviction for a Public Entity Crime or on any similar list maintained by any other state or the federal government. "Public Entity" means the State of Florida, any of its departments or agencies, or any political subdivision. "Public Entity Crime" means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any Public Entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation. A person or affiliate who has been placed on the convicted vendor list following a conviction for a Public Entity Crime, among other things, may not be awarded work nor perform work as a contractor, supplier, subcontractor, or consultant under a contract with any Public Entity; and may not transact business with any Public Entity in excess of a specified threshold amount for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.

Concessionaire must notify the Department within thirty (30) days after any conviction of a Public Entity Crime applicable to Concessionaire, its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the Concessionaire, or any affiliates of Concessionaire. In such event, this Agreement is voidable as set forth in Section 287.133(4) of the Florida Statutes.

38. Indemnification. The Concessionaire shall save and hold harmless and indemnify the State of Florida, the Department, the Board of Trustees, and their respective officers, employees, and agents from any lawsuit, claim or action arising out of its operations under this Agreement.

39. DEP employees act in representative capacity. It is understood and agreed the persons constituting the Department and the Board of Trustees, and their respective employees, officers, and agents are acting in a representative capacity and not for their own benefit, and neither the Concessionaire nor any of its or its subcontractor's employees, officers, or agents shall have any claim against any such Department employees, officers, or agents as individuals in any event whatsoever, when they are acting within the guidelines, terms and conditions set forth herein or when complying with applicable laws, rules, ordinances or Department directives and procedures.

40. Appropriation by Legislature. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature (Section 287.0582 F.S.). If funds are not appropriated or available for the Department to operate the Park or maintain the Facilities allotted for the Concessionaire, the Department may terminate this Agreement upon giving the Concessionaire 30 days' notice in writing.

41. Limitation of damages. The Concessionaire is aware this Agreement is for management purposes and may be revenue generating or revenue neutral. Therefore, there are no funds appropriated by the Legislature to pay damages. If a court of competent jurisdiction determines the Department is legally liable to Concessionaire by reason of the Department's breach of this Agreement *and* a. the Concessionaire has made no Capital Improvements in the Park, the Concessionaire agrees that damages for any such breach shall be limited to the amount of the Security; *or* b. the Concessionaire has made Capital Improvements to the Park which were not fully amortized as of the date of the Department's breach, damages for any such breach shall be limited to the amount of the Security and Paragraph 21.b.ii. shall apply to the Department's repayment of any remaining unamortized Capital Improvements, such unamortized amount being based upon the date of the Department's breach as determined by judgment, order, or settlement agreement.

42. Delivered under laws of Florida and action brought in Leon County. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Any legal action hereon or in connection herewith shall be brought in Leon County, Florida.

43. Delay and failure to exercise right shall not impair right. No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by either party under this Agreement, shall impair any such right, power or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

44. No interest given to any third party. This Agreement is not intended nor shall it be construed to grant any rights, privileges or interest to any third party without the mutual written agreement of the parties hereto.

45. Bona fide employee. The Concessionaire warrants it has not employed or retained any company or person, other than a bona fide employee working solely for the Concessionaire to solicit or secure this Agreement and it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Concessionaire any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

46. Time is of the essence. Time is of the essence in the performance of this Agreement.

47. Severability. If a court deems any provision of the Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

48. Conflict. Unless otherwise stated herein and in the event of any internal conflict among the terms of this Agreement and the exhibits, the Special Conditions and Exhibit A shall control over any conflicting terms in the General Conditions.

49. Entire agreement. This Agreement, and all exhibits annexed hereto which are incorporated herein by reference, collectively represent the entire agreement of the parties and the same supersedes any and all previous agreements of any kind. Any alterations, variations, changes,

modifications, or waivers of provisions of this Agreement shall be valid only if reduced to writing, duly signed by all of the parties hereto, and attached to the original of this Agreement.

50. Acceptance of terms per signature. The Concessionaire agrees with and accepts the terms and conditions of this Agreement by its signature below.

51. Counterparts: electronic signature. This Agreement may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which when taken together shall constitute the Agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature were an original thereof. Any party transmitting an electronic signature shall provide the inked original thereof to the receiving party, at the receiving party's request.

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The parties hereto have caused this Agreement to be executed the day, month and year last written below.

**CONCESSIONAIRE:**

CAPE LEISURE ANASTASIA, LLC, A  
FLORIDA LIMITED LIABILITY COMPANY

**DEPARTMENT:**


STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By:   
President or Authorized Signatory

Print Name: Daniel LeBlanc

Print Title: President, Cape Leisure

Date: August 14, 2015

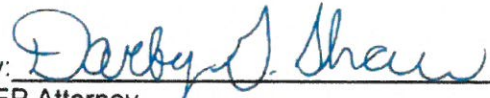
By: 

Print Name: Gary Clark

Print Title: Deputy Secretary

Date: August 19, 2015

Approved as to form and legality:

By:   
DEP Attorney

Revised 8/13/15

List of Exhibits incorporated as part of this Agreement:

- |           |  |
|-----------|--|
| Exhibit A | Minimum Operational Requirements and Procedures          |
| Exhibit B | Schedule and Scope of Capital Improvements               |
| Exhibit C | Minimum Accounting Requirements                          |
| Exhibit D | Monthly Report of Concessionaire's Total Gross Sales     |
| Exhibit E | Profit and Loss Statement                                |
| Exhibit F | Agreed-Upon Procedures for a Certified Public Accountant |
| Exhibit G | State Use Tax Exempt Certification                       |

**EXHIBIT A****Minimum Operational Requirements and Procedures****1. Operations:****a. Operating hours**

1). Minimum operating hours shall be:

|   | <b>Labor Day to Presidents Weekend</b>                                       | <b>Presidents Weekend to Memorial Weekend</b>                | <b>Memorial Weekend to Labor Day</b>  |
|---|--|--|---|
| Merchandise Resale;<br>Recreational Equipment Rental  | 9 am to 5 pm<br>Daily (Extended hours for holiday periods)                   | 9 am to 5 pm Weekdays;<br>8:30 am to 5 pm<br>Saturday/Sunday | 8 am to 5 pm Sunday<br>through Thursday; 8 am to 5:30 pm<br>Friday/Saturday |
| Food and Beverage Service                             | Weekends Only<br>11 am to 3 pm;<br>(Limited menu available in Shop Weekdays) | 11 am to 4 pm Daily  | 10:30 am to 5 pm Daily  |
| Recreational Equipment Rental (Anastasia Watersports) | 10 am to 3 pm<br>Weekdays; 9 am to 4 pm<br>Weekends                          | 9 am to 5 pm Daily (Last boat due back at 6 pm)              | 8 am to 6 pm Daily (Last boat due back at 6 pm, 7 pm weekends)              |
| Beach Rental Kiosk                                    | Closed   | Weekends 10 am to 3 pm                                       | Daily 10 am to 4 pm   |

2). Operating hours shall be posted near the main entrance of the business.

3). Any deviation in operating hours shall be pre-approved, in writing, by the Park Manager.

- b. Concessionaire shall maintain a telephone as a public and vendor contact point, which shall be staffed during operating hours. If an answering device is used, calls must be returned within 24 hours.
- c. The Concessionaire's advertising, including online, brochures, signs and other forms of advertisement shall be consistent with the Florida Park Service mission. The Department shall have the right to require removal of all or part of any advertising the Department deems inappropriate or to reflect poorly on the Department.
- d. Concessionaire shall provide adequate staffing and oversight to operate the Services authorized in this Agreement.
- e. All paper products and serving containers shall contain post-consumer recycled content.

**2. Services:****a. Food and Beverage Service:**

The Concessionaire shall operate within the authorized Facilities to provide prepared and prepackaged food service, including, but not limited to: meal items, non-alcoholic beverages, alcoholic beverages, snacks, ice cream and other similar items according to the following conditions:

- 1). Concessionaire shall maintain a standard menu with prices which shall be pre-approved, in writing, by the Park Manager.

- 2). Alternative menu items such as vegetarian and gluten-free options are encouraged, if viable.
  - 3). Individually packaged condiment packs and Styrofoam serving containers shall not be utilized.
  - 4). Concessionaire shall meet all applicable Health Codes and Standards for Concession Food Service (Rule 7C-4.019, Florida Administrative Code). For more information, please visit the website: <https://www.flrules.org>.
  - 5). Concessionaire shall meet inspection standards set by the Florida Department of Business and Professional Regulation Routine Food Inspections, and the Fire Marshal. If there is a report of a violation, the Concessionaire shall correct the violation in a timely manner and prior to the next routine inspection. For more information, please visit the website: <http://www.myfloridalicense.com/dbpr/index.html>.
  - 6). Alcoholic Beverages Requirements
    - a. Concessionaire shall purchase and be issued an alcoholic beverage license from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco prior to selling any alcoholic beverage at the Park;
    - b. Concessionaire shall be responsible for complying with Chapters 561, 562, 563 and 564, Florida Statutes, and Rule 61A-3, Florida Administrative Code, the Division's Operations Manual, and St. Johns County Ordinances that regulate the alcoholic beverage licenses;
    - c. Prior to implementation of the serving of alcoholic beverages, Concessionaire shall submit a plan of action including hours of service and control methods, in writing, to the Park Manager for approval;
  - 7). This Agreement shall not preclude Park personnel or visitors from using alternate sources of food, such as bringing their own or having events catered, should they so desire.
- b. Merchandise Resale:  
 Concessionaire shall provide the following items for resale including, but not limited to: ice, snacks, T- shirts, hats, sunglasses, sunscreen, bug repellants, souvenirs, charcoal and other appropriate items which shall be pre-approved, in writing, by the Park Manager. Inventory levels shall be to the standards acceptable to the Park Manager. All merchandise shall be of high quality, environmentally friendly and reflective of the Florida Park Service mission.
- c. Recreational Equipment Rentals:
- 1). Concessionaire shall provide recreational equipment rentals. Types, models, and minimum and maximum inventory levels shall be pre-approved, in writing, by the Park Manager. The types of equipment shall include, but not be limited to:
    - a). kayaks, with paddles;
    - b). paddleboards, with paddles;
    - c). canoes, with paddles;
    - d). unisex bicycles, varying in style to accommodate different ages and sizes of riders; and
    - e). beach chair setups, each of which consists of two chairs and one umbrella.
  - 2). Concessionaire shall provide an employee to work at each recreational equipment rental operations until all visitors have returned, or have been accounted for. The employee shall work at the recreational equipment rental operation facility until all visitors are located, and until either all cars have left the parking lot, or until all cars remaining in the parking lot have been positively identified, owner confirmed and Park Management notified.
  - 3). Water-based recreational equipment rentals shall be provided by means of safe, comfortable, well maintained, Coast Guard approved watercraft that is compatible with



the docking facilities provided at the Park. U.S. Coast Guard Inspection Certifications shall be presented prior to commencing any vessel operation under this Agreement.

- 4). The Concessionaire shall obtain pre-approval, in writing, by the Park Manager prior to placing passenger or tour vehicles, vessels and rental equipment in use.
- 5). The Concessionaire shall provide a small service boat or motorized watercraft to aid in the location and in the recovery of overdue vessel rentals and emergency situations.

d. Event Management Services: The Concessionaire shall provide Event Management Services at the Park including, but not limited to, proactively recruiting and scheduling events, catering, event-related equipment rentals and other similar services with pre-approval, in writing, by the Park Manager. Events may include, but are not limited to: concerts, weddings, reunions, conventions, meetings, memorials or other appropriate special events ("Event"). The Concessionaire shall:

- 1). Obtain pre-approval, in writing, by the Park Manager for the type of Event, location, date, time and duration for all Events.
- 2). Manage all aspects of the Events management process including, but not limited to: recruiting and scheduling of events; establishing appropriate fees for services;
- 3). Cleaning of all facilities and space utilized for Events; arranging for external vendors; ensuring adequate parking; etc.
- 4). Manage all aspects of conducting Events, including, but not limited to: set up and removal of all equipment; coordinating external vendors; security; safety; compliance with the Americans with Disabilities Act; additional temporary facilities, if necessary; clean up; etc.
- 5). Ensure all Facilities are cleaned, presentable and safe for public use by 8:00 a.m. the following day, and returned to their original condition within 24 hours after each Event, unless otherwise pre-approved, in writing, by the Park Manager.
- 6). Manage and adequately document third party vendors, including, but not limited to: catering, entertainment, rental equipment, etc.
- 7). Ensure each Event has adequate staffing for proper management, safety, security and access to Facilities.
- 8). The Concessionaire may be required to utilize Park employees to provide Park security for Events held during or after hours at the Park. For each Event, the Concessionaire will provide direct payment to the Park.
- 9). After hours Events in the Park shall not be booked for periods in excess of four hours following the close of the Concessionaire's operating hours unless pre-approved, in writing, by the Park Manager.
- 10). This Agreement shall not preclude visitors from utilizing the Park for their own special event so long as the event does not require reserving a space within the Park or detract from other visitors' experiences.
- 11). The Concessionaire shall collect a wedding/special event fee according to a fee schedule as determined by the Department. The Concessionaire shall collect and pass through the applicable wedding/special event fee directly to the Park for deposit.

e. Wi-Fi Services:

The Concessionaire shall provide Wi-Fi services, free of charge to guests at Concession Building BL003047. The Concessionaire may provide Wi-Fi services to visitors in other areas of the Park, as pre-approved, in writing, by the Park Manager.

3. Additional Operations:

The Concessionaire may provide the following services with pre-approval, in writing, by the Park Manager:

- a. Golf Cart Rental
- b. Interpretative and instructional classes
- c. Adult and youth camps
- d. Guided eco-tours
- e. Mobile food cart
- f. Pavilion rentals
- g. Other similar services

Additional Services, if provided, shall be in compliance with the Park's Unit Management Plan, the Division's Operations Manual and be pre-approved, in writing, by the Park Manager.

4. Website: The Concessionaire, at its sole cost and expense, may maintain a website to promote the Park, activities and events within the Park in accordance with the following conditions:
  - a. Concessionaire shall use a domain name and social media accounts which shall be pre-approved by the Department. Pursuant to Paragraph 31 of this Agreement, Concessionaire understands and agrees any websites or social media accounts created, used and/or maintained in conjunction with this Agreement shall immediately become and remain the property of the Department.
  - b. The website and its content shall be pre-approved, in writing, by the Park Manager.
  - c. The website shall include a link to the Park page on the Department's online Park Guide ([floridastateparks.org](http://floridastateparks.org)).
  - d. Concessionaire may offer a mobile-optimized version of the website and/or mobile application.
  - e. At the Department's request, Concessionaire agrees to edit or adapt the website such that reservations for Services can be made via the Department's Central Reservation System website or other Department website.
5. Maintenance and Repair Plan:  
 Prior to operation under this Agreement, the Concessionaire shall provide a draft Maintenance and Repair Plan which will be evaluated by the Park Manager. A final Maintenance and Repair Plan, which incorporates the District and Park Manager's comments and shall be approved by the Park Manager, shall be implemented prior to operation under this Agreement. The Maintenance and Repair Plan shall be revised periodically to ensure Facilities are maintained for a quality visitor experience. This Maintenance and Repair Plan shall include guidelines for all aspects of the Concessionaire's maintenance and repair responsibilities. At a minimum, the Maintenance and Repair Plan shall include:
  - a. Facilities and grounds maintenance and cleaning.
    - 1). Schedule
    - 2). Standards
  - b. Concessionaire staff and/or positions assigned maintenance and cleaning responsibilities
  - c. Contact information and instructions posted as signs at identified Facilities, for visitors to contact and report to the Concessionaire concerns with maintenance and cleaning.
  - d. Concessionaire shall maintain a pest control contract for the Facilities.
  - e. No landscape material may be planted or removed from the premises without pre-approval, in writing, from the Park Manager. Any planted material shall be pre-approved, in writing, by the Park Manager and the species must be native to the Park.
6. Environmental Protection Plan:  
 Prior to operation under this Agreement, the Concessionaire shall provide a draft Environmental Protection Plan which will be evaluated by a Department biologist. A final Environmental Protection Plan which incorporates the District and Park Manager's comments and shall be

approved by the Park Manager, shall be implemented prior to operation under this Agreement. This Environmental Protection Plan will cover all operations in the Park, and shall include, but not be limited to:

- a. Use of recyclable or biodegradable materials where possible, with preference given to use of non-disposable materials;
- b. Natural resource impact minimization;
- c. Solid waste reduction and recycling;
- d. Waste management;
- e. Use of cleaning and maintenance supplies/compounds, insecticides, rodenticides and herbicides; and,
- f. Any other information which would allow a reviewer to evaluate and understand the total Environmental Protection Plan.

7. Safety Plan:

Prior to operation under this Agreement, the Concessionaire shall provide a draft Safety Plan which will be evaluated by the Department's Safety Coordinator. A final Safety Plan, which incorporates the District and Park Manager's comments and shall be approved by the Department's Safety Coordinator, shall be implemented prior to operation under this Agreement. The Safety Plan shall be revised once a year, thereafter by the Agreement execution anniversary date. This Safety Plan shall include guidelines for all aspects of the Concessionaire's operation with special attention to traffic control, first aid, security, fire prevention and water related activities and equipment. A section of the Safety Plan shall be devoted to Emergency Action, which shall cover proper preparations and responses to all natural and man-caused disasters.

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## EXHIBIT B

### Schedule and Scope of Capital Improvements

The Concessionaire shall comply with the Department's guidelines outlined below:

1. The Concessionaire shall adhere to the Americans with Disabilities Act for remodeling and construction. The costs incurred as a result of such requirement shall be the sole responsibility of the Concessionaire.
2. Any demolition or construction performed under the Agreement shall comply with all applicable federal, state, county, and local laws.
3. The Concessionaire is responsible for applying and paying for all costs of any required permits. The Concessionaire shall obtain permits according to the below schedule for Improvements.
4. The Concessionaire shall submit to the Park Manager copies of all required permits and copies of the final construction documentation. The Park Manager will facilitate the review of the permits, final sealed last documents by the Bureau of Parks District 5 Administrative Office and the Bureau of Design and Construction ("BDC"). The Department shall have 30 days to review and approve the scope of work identified in the final construction documents and ensure all required permits have been obtained.
5. Once the permits and the final plans have been approved by the BDC, the Park Manager shall provide the Concessionaire a written Notice to Proceed.
6. Upon receipt of the Notice to Proceed, the Concessionaire shall begin with the construction as indicated below.
7. Concessionaire shall provide at least \$87,000 in funding to pay Capital Improvement Costs for the purpose of enhancing the Facilities at the Park ("Capital Improvement Funding") as follows:
  - a. The Capital Improvements will be identified and agreed to in writing by both parties no later than December 31, 2015, unless the parties mutually agree to extend this deadline.
  - b. The preliminary agreed upon Capital Improvements are:
    - i. Repair or replacement of the watersports operating structure located at the Salt Run. Respondent shall fund and complete this Capital Improvement prior to September 30, 2016.
    - ii. Construction of a dining deck adjacent to the seating area at the main Concession Building. Respondent shall fund and complete this Capital Improvement prior to September 30, 2017.
  - c. If the parties cannot agree on the Capital Improvements, the Concessionaire shall pay to the Department the Capital Improvement Funding prior to December 31, 2016.
  - d. If the parties agree on the Capital Improvements, the Concessionaire shall complete the Capital Improvements no later than September 30, 2017. If the agreed upon Capital Improvements are valued at less than the Capital Improvement Funding, the Concessionaire shall pay to the Department the remaining balance of the Capital Improvement Funding prior to September 30, 2017.
  - e. Constructed Capital Improvements shall immediately become the property of the Department. Capital Improvement Costs shall amortize each year on October 1

based upon the capitalized Capital Improvement costs then incurred at a rate of one fifth thereof for a period of five years, provided all such Capital Improvement Costs are fully amortized by October 1, 2022.

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**EXHIBIT C**  
**Minimum Accounting Requirements**

The Concessionaire shall comply with the general Minimum Accounting Requirements detailed in this attachment. Every sale shall be accounted for by use of computerized or electronic cash registers, pre-numbered receipts or pre-numbered tickets unless the Concessionaire has received prior written authorization from the Department to use some other method.

**A. Minimum Accounting Requirements Regardless of Method Used to Document Sales**

1. The Concessionaire shall establish and maintain bank accounts (checking, savings, etc.) that are used solely for operations for this Concession Agreement and are separate from any other Concession Agreement and non-Concession Agreement operations.
2. All checks written on the Concessionaire's checking account, whether voided or not, shall be retained.
3. Sales receipts shall always be offered to customers regardless of the amount involved. Sales receipts may be in the form of cash register slips, pre-numbered receipts or pre-numbered tickets depending on the method employed to document sales. Signs reminding customers to ask for a receipt shall be conspicuously posted, at or near, all collection stations.
4. Customer refunds shall be supported by customer signed documents. Transaction voids shall be documented and approved by the Concessionaire's Agreement Manager, or designated employee.
5. Daily entries, to account for gross sales and sales tax collections by point of sale and/or collection station, shall be made to a ledger, an automated ledger, a journal or by an automated entry. Entries shall equal amounts deposited by period. All adjustments to gross sales, such as customer refunds, shall be recorded in the ledger or journal using a separate entry. Source documents, such as daily cash register tapes, Concessionaire's copy of pre-numbered receipts and use schedules for pre-numbered tickets, shall be retained to support recorded gross sales and sales tax collections. Adjustments to gross sales shall be supported by source documents such as customer signed receipts and cancelled checks.
6. Duties associated with handling, recording, and reconciling receipts and disbursements shall be assigned to different employees, whenever possible. Employees who handle cash or cash-like items shall be adequately supervised. Daily cash register totals should be verified, at the end of the day, by a person not having access to cash. If a person, other than the employee handling the cash or cash-like items, is not available to verify and reconcile the cash register at the end of a day, the Concessionaire shall designate the General Manager as the alternative internal control. Prior to any changes in the internal controls, the Concessionaire shall provide to the Park Manager notification of the change in writing.
7. Purchases shall always be made by check or through use of an imprest fund. The imprest fund, if used, shall always be replenished by check. Only under extremely unusual circumstances may daily receipts be used to make purchases. If daily receipts are used to make refunds or purchases, the Concessionaire shall document both the occurrence and the reason.
8. Purchases shall always be supported by vendor invoices and cancelled checks payable to either the vendor or the imprest fund. Receipts for purchases shall be maintained.

9. A custodian shall be assigned by the Concessionaire to have physical possession of the imprest fund, whenever possible. If it is not possible to assign a custodian, the Concessionaire shall provide in writing to the Park Manager an alternative internal control. Prior to any changes in the internal controls, the Concessionaire shall provide to the Park Manager notification of the change in writing.

B. Acceptable Methods of Documenting Sales and Minimum Accounting Requirements

1. Electronic Cash Registers and computerized software systems

At a minimum, the register and software shall:

- a) Have a visual display which faces customers.
- b) Produce customer's copy of sales receipt.
- c) Contain a locked-in tape and sequential numbering system for such tapes.
- d) If the Concessionaire uses a computerized software system, the system shall contain an electronic record of each daily transaction by point of sale and/or by collection station; additionally, each transaction shall be date stamped and timed; identify the cashier making the transaction, and provide sequential numbered printed receipts for each transaction.
- e) Record and accumulate sales and sales tax amounts.

Concessionaire shall:

- a) Provide daily supervision over employees using the registers.
- b) Clear or close all cash registers at the end of the day; and retain all tapes.
- c) If the Concessionaire uses a computerized software system, the system shall clean and close all transactions at the end of the day; maintain transactions electronically in the computer by date and time; and, identify the person closing the system daily.
- d) Approve all refunds and voids or delegate this duty to an employee who normally does not handle cash.

At a minimum, customer refunds shall be documented by customer signed sales slips indicating receipt of the refund; and, the document shall state the reason for the refund; identify the cashier making the refund; date stamp and time the refund, and be maintained electronically within the point of sale system. If the customer does not have his copy of the sales receipt, a pre-numbered refund receipt signed by the customer shall be issued (see minimum requirements for pre-numbered receipts).

2. Cash Register Receipts (electronic or computerized software system)

At a minimum, cash register receipts shall:

- a) Clearly state the attraction, rental or service purchased.
- b) Be designed to capture all pertinent sales data, such as: receipts for date and time, items or service purchased, amount of sale, amount of sales tax collected, total collected, and cashier's identification.
- c) Have a numbering sequence by point of sale and/or by collection station which is continuous and does not repeat itself any more often than every three years.
- d) Be issued to customers sequentially; any breaks in the numbering sequence shall be explained.

Concessionaire shall:

- a) Retain the record copy of all issued receipts and all copies of voided receipts.

- b) All receipts and copies of voided receipts shall identify the cashier making the void, and provide the reason for the void.
- c) Maintain a work sheet, or schedule, which reports the numbering sequences of receipts used and money collected by day.
- d) Provide adequate security over unused receipts, and periodically inventory these receipts; at a minimum every six months).
- e) Provide adequate supervision over employees for assurance previously issued receipts are not resold.

At a minimum, customer refunds should be documented by the customer's signature on the original receipt. If the customer does not have the original receipt (his copy), then a refund receipt shall be issued.

### 3. Pre-numbered Receipts and Tickets

At a minimum, pre-numbered receipts and tickets shall:

- a) Clearly state the attraction or service purchased.
- b) Be designed to capture all pertinent sales data, such as: receipts for date, customer's name, items or service purchased, amount of sale, amount of sales tax collected, total collected and salesperson's name or initials.
- c) Be at least two copied (customer and record copy), each clearly identified.
- d) Have a numbering sequence which is continuous and does not repeat itself any more often than every three years. Numbering sequence shall be supported by vendor's invoice at a minimum.
- e) Be issued to customers sequentially; any breaks in the numbering sequence shall be explained.

Concessionaire shall:

- a) Retain the record copy of all issued receipts and all copies of voided receipts.
- b) All receipts and copies of voided receipts shall identify the cashier making the void, and provide the reason for the void.
- c) Maintain a work sheet or schedule which reports the numbering sequences of receipts/tickets used and money collected by day.
- c) Provide adequate security over unused receipts and periodically inventory these receipts (at least every six months).
- d) Provide adequate supervision over employees for assurance that previously issued tickets are not resold.

At a minimum, customer refunds should be documented by the customer's signature on the original pre-numbered receipt. If the customer does not have the original pre-numbered receipt (his copy), then a pre-numbered refund receipt shall be issued.

### C. Wedding, Memorial Services and Event ("Events")

1. The Concessionaire shall provide the customer a written contract for each Event it books and organizes at the Park. The contract shall be pre-numbered, dated and time stamped. The contract shall include, but is not limited to: details of booking fees requested and collected, amount of balance due and date balance is due, client name, address, phone number, date of Event, number of people expected to attend, any and all subcontractors, client requirements and any other pertinent information needed to organize the Event.



2. The Concessionaire shall adequately report and pay the Park, any Park entrance fees or Park use fees, collected for each contract. Park entrance fees and use fees shall not be waived for the Event, unless pre-approved by the Park Manager.
3. The Concessionaire shall record all contracts by date, and shall maintain records by the Event date. The records shall document any deposits, booking fees, fees charged for organizing the Event, fees in arrears, and late fees.
4. If a contract is canceled or voided, it shall be logged as canceled and any refunded amounts shall be documented.
5. The Concessionaire shall provide the Park Manager copies of all contracts which document, monthly, each Event contract booked and organized in the Park by the Concessionaire. The copies shall be submitted with the Monthly Report of Gross Sales, and shall support the subcontract and contract revenue reported on the Monthly Report of Gross Sales.
6. When contracted Events are held in the Park, payments shall go through the Concessionaire's bank account that is used solely for concession Agreement operations and is separate from any non-concession Agreement operations.

E. Transfer to Electronic Format

1. The Department supports a Concessionaire's transfer of original paper documents to an electronic record-keeping system. This shall be supported if the Concessionaire uses a record-keeping system that (1) accurately reproduces the paper original records, (2) manages electronic records as a duplicate or substitute copy of the original paper records, and (3) the electronic records can be converted back into legible, readable and capable of being copied paper documents; and, can be provided upon the Department's request.
2. The Department shall have access to the electronic records, and the electronic recordkeeping system for inspection, copying and during Park Manager quarterly evaluations, Division compliance evaluations, Department audits, or compliant investigations.
3. In general, the original paper record may be disposed of any time after it has been transferred to an electronic recordkeeping system. However, the original paper record shall not be disposed of if the electronic copy would not accurately reproduce the original record.
4. If records are maintained electronically, Concessionaires shall ensure the electronic records comply with the Agreement's record retention and access regulations, which requires the Concessionaire to retain the records for the life of the Agreement.
5. The Concessionaire shall ensure that their electronic recordkeeping system:
  - a) Has reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of the records kept in electronic format;
  - b) Is capable of retaining, preserving, retrieving, and reproducing the electronic records;
  - c) Is able to readily convert paper originals stored in electronic format back into legible and readable paper copies; and,
  - d) Has adequate records management practices in place.
6. The Concessionaire shall manage, at a minimum, their electronic recordkeeping system, according to these best management practices:
  - a) Labeling electronically maintained records;

- b) Providing secure storage of electronic data;
- c) Providing internal controls of the system to prevent manipulation of data and information;
- d) Creating back-up electronic file copies;
- e) Observing quality assurance for electronic recordkeeping through regular evaluations of the system; and,
- f) Retaining paper copies of records which cannot be accurately or completely transferred to the electronic recordkeeping system.

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**EXHIBIT D**

**Monthly Report of Concessionaire's Gross Sales**  
 (Due by the 20<sup>th</sup> of each month)

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

Concessionaire  
 Name: \_\_\_\_\_

Period Covered: From \_\_\_\_\_ To \_\_\_\_\_

|  |                           |
|--|---------------------------|
| <b><u>Point of Sale/Location of Cash Receipt (excluding base fee amount)</u></b> | <b><u>Gross Sales</u></b> |
| <b><u>Subtotal</u></b>   |                           |

|   |                 |
|---|-----------------|
| _____                                   | \$ _____        |
| _____                                   | \$ _____        |
| _____                                   | \$ _____        |
| <b><u>Subcontractor Gross Sales</u></b> | <b>\$ _____</b> |

Subcontractor is defined in paragraph 11 of this Agreement. If there are multiple subcontractors, please include the total for all subcontractors on this line; and, list the name of each subcontractor on this form, or on an attached second sheet. If additional space is required, attach second sheet.

**Compensation**

|   |          |
|---|----------|
| Gross Sales Subtotal (from above)                             | \$ _____ |
| Monthly Commission: _____ % x Gross Sales Subtotal            | \$ _____ |
| Monthly Base Fee Amount: \$ _____                             | \$ _____ |
| Subtotal:   | \$ _____ |
| Use Tax: _____ % of Monthly Commission, plus Monthly Base Fee | \$ _____ |
| Other Payments (identify) _____                               | \$ _____ |
| Total Payable   | \$ _____ |
| Use Tax Exemptions  | \$ _____ |

**Improvements Spending**

|                               |          |
|-------------------------------|----------|
| Monthly Spending              | \$ _____ |
| Total Spending, Year to Date: | \$ _____ |

CERTIFICATION: I certify that this monthly gross sales statement is true and correct and is based upon actual gross receipts for the period covered and recorded in the accounting records available for review/audit by the Department.

\_\_\_\_\_  
Signature of Concessionaire

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Accountant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Accountant Name

Return this form to the Park Manager.

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**EXHIBIT E**  
**Profit and Loss Statement for \_\_\_\_\_ (year)**  
**(due April 30 of the following year)**

Concessionaire : \_\_\_\_\_ Park: \_\_\_\_\_

|           | <b>Services</b> | <b>Gross Sales</b> | <b>Less Commissions Paid</b> | <b>Less Cost of Goods Sold</b> | <b>Less Operating Expenses</b> | <b>Less Taxes</b> | <b>Net Profit/ (Loss)</b> |
|-----------|-----------------|--------------------|------------------------------|--------------------------------|--------------------------------|-------------------|---------------------------|
| <b>1.</b> | _____           | _____              | _____                        | _____                          | _____                          | _____             | _____                     |
| Comments: |                 |                    |                              |                                |                                |                   |                           |
| <b>2.</b> | _____           | _____              | _____                        | _____                          | _____                          | _____             | _____                     |
| Comments: |                 |                    |                              |                                |                                |                   |                           |
| <b>3.</b> | _____           | _____              | _____                        | _____                          | _____                          | _____             | _____                     |
| Comments: |                 |                    |                              |                                |                                |                   |                           |
| <b>4.</b> | _____           | _____              | _____                        | _____                          | _____                          | _____             | _____                     |
| Comments: |                 |                    |                              |                                |                                |                   |                           |

**Add a second page, as needed, to provide an inclusive list of services, including revenue from subcontractors.**

**5. Totals:** \_\_\_\_\_

Prepared by: \_\_\_\_\_

Capacity: \_\_\_\_\_

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

**CERTIFICATION:** I certify this annual profit and loss statement is true and correct and is based upon actual gross receipts for the period covered and recorded in the accounting records available for review/audit by the Department.

Signature of Concessionaire : \_\_\_\_\_ Date: \_\_\_\_\_

Return the form to the Park Manager.

## EXHIBIT F

| <b>Agreed-Upon Procedures For a Certified Public Accountant</b> |  |                    |             |
|---|--|--------------------|-------------|
| <b>Review of Florida State Park<br/>Concession Operations</b>   |  |                    |             |
| <b>Item No.</b>   | <b>Procedures</b>  | <b>Done<br/>By</b> | <b>Date</b> |
| I.  | <p><b>OVERALL OBJECTIVES AND TIME PERIOD</b></p> <p><u>Objective:</u> To determine the accuracy of the gross sales reported to the Department of Environmental Protection (DEP) for the audit period and compliance with the Minimum Accounting Requirements included in the Agreement. The audit time period is the calendar year.</p> <p><u>Reports are due to the Park Manager no later than the date indicated in the Minimum Accounting Requirements paragraph found in the Agreement.</u></p> <p><b>Required records for review:</b></p> <ol style="list-style-type: none"> <li>1. Concession Agreement</li> <li>2. Monthly Reports of Gross Sales</li> <li>3. Cash register tapes (select a sample of several days to form an opinion)</li> <li>4. Cash receipts or sales journals</li> <li>5. Bank statements, including validated deposit slips</li> <li>6. General ledger</li> <li>7. Sales tax forms (DR-15)</li> <li>8. Quarterly evaluation reports.</li> <li>9. Other financial records, including expenditure documentation, if records listed above are not available or are not adequate to form an opinion on the accuracy of reported gross sales.</li> </ol> |                    |             |
| II.   | <p><u>OBJECTIVE:</u> To determine if gross sales have been properly reported and commission fees properly remitted to DEP. In addition, determine compliance with the Minimum Accounting Requirements.</p> <p>A. Review source documents to determine if the Concessionaire provided a Monthly Statement of Gross Sales to DEP in the format established in Exhibit D of the Agreement by the 20th of the following month.</p> <ol style="list-style-type: none"> <li>1. If payments were late, the late payments shall result in the assessed amount of 1% of the current amount due for each day the payment is late.</li> </ol>   |                    |             |

|                     | B.         | Has the Concessionaire based the Monthly Statement of Gross Sales on source documents and books of original entry?  |            |      |
|---------------------|------------|---|------------|------|
| Item No.<br>(cont.) | Procedures |   | Done<br>By | Date |
|                     |            | <ol style="list-style-type: none"> <li>1. Obtain and examine daily cash journals, general ledger, and bank statements which reflect gross sales reported by the Concessionaire.</li> <li>2. Schedule this information on a spreadsheet. Note any differences.</li> <li>3. Create a spreadsheet of point-of-sales documentation (daily cash register tapes or receipts) for sales. Search for revenues which may not have been reported to the DEP.</li> <li>4. Compare point-of-sales (typically cash register tapes) with sales amounts reported in the cash journal. Depending on the volume of transactions, pick a judgmental sample of days for detailed testing. Test until an opinion is formed regarding the accuracy of the cash journal based on daily sales receipts.</li> <li>5. Evaluate rental transactions to ensure there is adequate documentation to support use of equipment.</li> </ol> |            |      |
|                     | C.         | <p>Determine whether a subcontractor operated during the review period. If so:</p> <ol style="list-style-type: none"> <li>1. Determine if the Concessionaire included gross sales from the subcontract operation in the gross sales reported on the Monthly Statement of Gross Sales.</li> <li>2. Create a spreadsheet of point-of-sale documentation (daily cash register tapes or receipts) for subcontractor sales.</li> <li>3. Compare subcontractor point-of-sales source documentation with monthly sales reports to DEP to determine the accuracy of sub-contractor sales.</li> </ol>  |            |      |
|                     | D.         | <p>Determine whether Concessionaire paid the monthly visitor service fees equal to the established percentage of gross sales for all operations of the Concessionaire.</p> <ol style="list-style-type: none"> <li>1. Compare amounts reported on the Monthly Reports of Gross Sales to amounts obtained from source documents and scheduled in step II-B above. Note differences.</li> </ol>  |            |      |
|                     | E.         | <p>Does the gross sales reported to the Department on monthly reports agree with gross sales listed in other reports?</p> <ol style="list-style-type: none"> <li>1. Use spreadsheet of gross sales figures obtained from the Monthly Gross Sales reports. Compared to amounts reported on quarterly evaluation reports, Profit and Loss Statements, and DR-15 forms. Analyze the DR-15 gross sales forms and evaluate whether the reported amount is equal to gross sales reported to the Department.</li> </ol>  |            |      |

| Item No.<br>(cont.) | Procedures   | Done<br>By | Date |
|---------------------|--|------------|------|
| F.                  | <p>Evaluate internal control for cash handling and accounting. Prepare a conclusion on the adequacy of internal controls and any deficiencies noted.</p> <ol style="list-style-type: none"> <li>1. Are sales receipts offered to customers regardless of the amount?</li> <li>2. Are signs posted reminding customers to ask for a receipt?</li> <li>3. Is a bank account maintained for the sole purpose of the concession operations?</li> <li>4. Are bank deposits made in compliance with chapter 10, paragraph 1.2 of the Operations Procedures Manual?               <ol style="list-style-type: none"> <li>a. If receipts exceed \$2000, are they deposited intact daily?</li> </ol> </li> <li>5. Are customer refunds supported by customer signed documents?</li> <li>6. Are duties associated with handling, recording, and reconciling receipts and disbursements assigned to different employees whenever possible?</li> <li>7. Are cash boxes secured?</li> <li>8. Determine whether the cash register and other methods of revenue collection account for all items available for sale. Is there a register category for all items?</li> </ol> |            |      |
| G.                  | <p>Summarize findings and prepare calculations of fees owed to DEP if gross sales were under reported. Prepare a report that includes a conclusion on the accuracy of gross sales reported to DEP, compliance with the Minimum Accounting Requirements, and a summary of monthly gross sales based on this review.</p>   |            |      |

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## EXHIBIT G

## STATE USE TAX EXEMPT CERTIFICATION

Re: Concessionaire Agreement between

\_\_\_\_\_ and  
(Insert name of Park)

(Insert name of Concessionaire per Agreement)

I, \_\_\_\_\_ as the Park Manager, attest that the above named Concessionaire is Exempt from paying state use tax to the Department on commission fees based on the following.

\_\_\_\_\_ The Concessionaire has provided a valid Florida Tax Exemption Certificate. A copy has been retained by the Department and a copy is attached herein.

\_\_\_\_\_ The Concessionaire sells food and beverage, through a means **other than a vending machine**, and is therefore exempt from paying state use tax on commission fees paid to the Department.

\_\_\_\_\_ Other (explain and provide proof of exemption):

\_\_\_\_\_ None of the above exemptions apply, therefore the commission fees paid to the Department are subject to state use tax.

Park Manager's Signature

Date \_\_\_\_\_

Concessionaire's Agreement Manager's Signature

Date \_\_\_\_\_

Return this form to the Park Manager.