

**MULTI -YEAR CONCESSION AGREEMENT**

This Multi-Year Concession 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 – 3000 and Advantus Leisure Management Services, Inc. organized as a Florida corporation whose headquarters is located at 148 Marina Plaza, Dunedin, Pinellas County, Florida 34698 ("Concessionaire").

WHEREAS, Chapter 258, Part I, Florida Statutes, grants to the Department's Division the duties to preserve, protect, manage, supervise, administer, regulate, and control all state Parks in the State of Florida for the use of the public for the purposes expressed in that Chapter;

WHEREAS, Section 258.007(3), Florida Statutes, gives the Division the authority to enter into contracts for visitor services without competitive bid;

WHEREAS, the Department agrees to grant the privilege of providing the visitor services described more fully herein within the boundaries of Hillsborough River 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 Multi-Year Concession Agreement ("Agreement"), the Department and the Concessionaire agree as follows:

1. The Department grants to the Concessionaire, and the Concessionaire accepts from the Department, an Agreement to provide those certain visitor services within the Park as are described in this Agreement and pursuant to the terms and conditions set forth herein. The Concessionaire shall provide services in conformance with: Chapter 258, Part I, Florida Statutes; Rule 62D-2, Florida Administrative Code ("F.A.C."); Chapter Seven of the Division's Operations Manual regarding concession operations ("Division's Operations Manual"); and, the Multi -Year Concession Agreement Call for Business Plan Packet No. SUP-BP# 04-11 ("Business Plan Packet"). The Concessionaire shall be responsible for compliance with: 1) all applicable federal, state, and local laws, rules, regulations and ordinances, such as those listed above and as further specified in this Agreement; 2) 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 3) 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. The Department and the Concessionaire agree that, in the event of a conflict between the terms and conditions of this Agreement and the terms and conditions stated in the Business Plan Packet, as submitted by the Department to the Concessionaire, or the Concessionaire's Business Plan, all of which are incorporated by reference as if fully set forth herein, the language of this Agreement shall prevail over the language of the Business Plan Packet, and the language of the Business Plan Packet shall prevail over the Concessionaire's Business Plan, unless otherwise stated herein.

3. Dates and extension or renewal discretion. The term of this Agreement shall commence upon execution by all parties and shall end on the 30<sup>th</sup> day of September, 2017, subject to all terms, conditions, and provisions contained herein. 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 as to whether to consent to an 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, conditions, and provisions of this Agreement, as well as any other agreement, contract or written document to which the Department and the Concessionaire may agree; 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 (as defined in paragraph 13 of this Agreement) made by the Concessionaire; and other factors relevant to Park operations and planning of the individual Park. The Department, in its sole discretion, reserves the right not to extend or renew this Agreement beyond the initial term specified above. The Concessionaire shall not book Events, as defined in paragraph 14, below, after the Agreement end date, until the Department provides written consent to an Agreement extension or renewal. The Concessionaire may provisionally book Events that will occur after the Agreement end date; however, the Concessionaire must: a). disclose to the Event host that the Concessionaire can not guarantee that the Concessionaire will be operating under an agreement with the Department after the Agreement end date; b). transfer the Event deposit to the Department to be held in escrow until such time as a renewal, an extension or a new Agreement is executed; and, c). provide the original Event contract and a consent to assignment to the Department and retain a copy for Concessionaire's files until such time as a renewal, an extension or a new Agreement is executed. In the event the Department does not grant an extension or a renewal of this Agreement, the Concessionaire shall not be entitled to any deposit, fee or revenue resulting from the provisionally booked Events. If the Department grants the Concessionaire an extension or renewal of this Agreement, the deposit and original Event contracts shall be returned to the Concessionaire.

4. Six month trial period. The Concessionaire acknowledges and agrees that: its operation within the Park is a privilege, not a right; the Department has high standards for all such operations in state parks. All Concessionaires given the privilege to operate within the Park are on a trial basis for a six (6) month period; and, notwithstanding the termination provisions of paragraph 29, if the Department, in its sole discretion, determines that the Concessionaire's operations are not suitable for any reason and terminates this Agreement within the initial six (6) months of this Agreement, (the "Six (6) Month Trial Period"), the Concessionaire agrees to save and hold the Department harmless from any kind of claim, administrative action, damages, attorney's fees, or causes of action whatsoever arising from such termination. The Department will not require or expect the Concessionaire to expand services or make any Capital Improvements (see paragraph 13) during the Six (6) Month Trial Period, unless such services or Capital Improvements are agreed to by both parties in writing. If this Agreement is terminated prior to expiration of the Six (6) Month Trial Period, all such Capital Improvements shall become the property of the Department and the Concessionaire shall receive no compensation or payment for

the cost or value of said Capital Improvements, nor shall the Concessionaire be afforded any additional time beyond the Six (6) Month Trial Period for full amortization of the Capital Improvements. The Concessionaire is encouraged to not agree to make any such Capital Improvements unless it can amortize them, make full use of them, or otherwise fully benefit from them during the Six (6) Month Trial Period.

5. Operations. The Concessionaire shall operate out of the facilities and space that are described in paragraph 6, below, and provide the services to the public that are set forth in paragraph 14, below, during the minimum hours of operation outlined in **Exhibit A**, 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**, which is attached hereto and incorporated herein. 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 terms found in Exhibit A.

6. Use of facilities, space and equipment. The Department hereby provides to the Concessionaire the following facilities, space and equipment, which are further specified in Exhibit A:

- a. Concession Building (2,596 square foot building/number 60); includes a dining area, kitchen, office, restroom, covered patio, and storage areas.
- b. Storage Facility (approximately 1,000 square foot building/number 27).
- c. Canoe Launch Area located adjacent to parking lot number four.
- d. Three resident sites designated by the Park Manager, which include:
  1. One resident mobile home site for the life of the Agreement,
  2. One resident volunteer camping site for the life of the Agreement, and
  3. One resident volunteer camping site that is available through September 30, 2011.

The fee for the resident mobile home site shall be \$100 per month, plus the cost of utilities paid directly to the utility company. The fee for each resident volunteer camping site shall be \$15, including tax and utilities, per night. Resident site fees shall be paid by the Concessionaire to the Department on, or prior to, the 30<sup>th</sup> of each month as payment in advance for the ensuing month. In exchange for the Concessionaire establishing Wi-Fi services at the Concession Building and pool area, these fees shall be waived through December 31, 2012. An Agreement of Occupancy shall be signed by both the Department and the Concessionaire for the occupied mobile home site prior to the Concessionaire's occupancy of such site. The Department and the Concessionaire agree that upon execution of such Agreement of Occupancy, the Agreement of Occupancy shall be incorporated by reference as if fully set forth herein, and in the event of a conflict between the terms and conditions of this Agreement and the terms and conditions in such Agreement of Occupancy, the language of this Agreement shall prevail over the language of Agreement of Occupancy, unless otherwise stated herein.

- e. Department-owned equipment authorized for use by the Concessionaire shall be identified in Exhibit A of this Agreement.

The Concessionaire accepts the previously identified physical facilities, space and equipment "as is" and with no warranties of suitability for Concessionaire's intended use. Current maintenance or repair needs that have been specifically identified by the Department are identified in Exhibit A and

shall be remediated by the Concessionaire pursuant to the maintenance and repair schedule agreed to by the Concessionaire and the Department in Exhibit A. The Concessionaire shall be responsible for the exterior routine maintenance and repair of the previously identified list of physical facilities, space and equipment. Exterior routine maintenance and repair shall include, but not be limited to: the plumbing system, electrical system, HVAC systems, sewage systems; roof, windows, doors and exterior painting. In addition to the foregoing, the Concessionaire shall be responsible for the interior routine maintenance and repair of the previously identified list of physical facilities, space and equipment, which shall be at Concessionaire's sole cost and expense. Interior maintenance and repair shall be performed as a result of the Concessionaire's daily use and operational impact on the facilities, space and equipment, and shall include, but not be limited to: the interior electrical system, the interior plumbing system, interior drain pipe systems, interior painting, and the interior components of the HVAC systems. The Concessionaire shall perform cleaning of all restrooms in the previously identified list of facilities, space and equipment; and shall perform visitor service sign maintenance and repair and may provide interior modifications at the previously identified list of physical facilities, space and equipment with pre-approval, in writing, from 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 fifty (50) feet of all facilities and space occupied by the Concessionaire pursuant to this Agreement. All construction or alterations of facilities, and all new equipment such as tour vehicles, buildings, tour boats, and other similar facilities, vehicles or equipment shall be consented to by the Department and comply with all applicable federal, state, county, and local laws.

7. Use of premises and government law. The Concessionaire shall not use, nor offer or permit any person to use the business premises 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 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.

8. 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.

9. Inspection of facilities, space and premises. The Concessionaire agrees that the facilities and space occupied by the Concessionaire pursuant to this Agreement 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 any deficiency cited by such inspectors.

10. Utilities and Maintenance Costs. The Concessionaire shall pay for garbage disposal, alarm systems, grease removal, telephone services, the servicing of kitchen equipment and for all utilities used in connection with its operations under this Agreement, including the services itemized below and at the following rates:

- a. Electricity: Concessionaire shall make payment directly to the utility company.
- b. Propane: Concessionaire shall make payment directly to the propane supplier.
- c. Garbage: Concessionaire shall make payment directly to the utility company.
- d. Telephone: Concessionaire shall make payments directly to the telephone company.

- e. Internet: Concessionaire shall make payments directly to the internet service provider.
- f. Kitchen hood and fire extinguisher inspections: Concessionaire shall make payment directly to the service company.
- g. Alarm/Security System: Concessionaire shall make payment directly to the service company.
- h. Grease Removal: Concessionaire shall make payment directly to the service company.
- i. Vending Machines: Concessionaire shall pay a monthly fee to the Park of \$20.00 per machine not requiring heating element or refrigeration, and \$30.00 per machine requiring heating element or refrigeration, unless the machine is located in an area where electricity is paid for by the Concessionaire.

11. 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 Concessionaire's facilities, space, and services. Further, the Concessionaire shall provide the Department a nominal amount of space for Florida State Park marketing and promotional materials.

12. Leasing and lessee; Full compliance. The Concessionaire understands and agrees that no parcel, building, structure, equipment or space is leased to the Concessionaire; that it is a contractor and not a lessee; and that the Concessionaire's right to occupy the facilities and space referenced in paragraph 6, above, and to operate its business (as referenced in paragraph 14, below) shall continue only so long as the Concessionaire and its operations are in full compliance with the terms and conditions of this Agreement.

13. 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 space, and shall bear the full cost for such construction, alterations, or additions, which shall become state-owned assets upon completion (heretofore and hereinafter called "Capital Improvements"). The Concessionaire is responsible for applying for and paying all costs associated with required permits. The Concessionaire shall submit sealed architectural specifications and plans for all construction projects, which shall include details on plumbing, electrical, mechanical and other required utility systems, including floor plan, elevations, and material specifications, all of which must be pre-approved, in writing, by the Department, in its sole discretion, prior to commencement of any construction or alterations. The Concessionaire shall provide all of the specifics of all projects that involve construction in the Park, including: timelines, critical paths, methods of construction, approval of plans, amenities, signage, color schemes, advertising, subcontractors, amortization period for the 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 begin with the construction. Upon completion of all capital improvement projects, the above information shall be incorporated herein as **Exhibit B** by way of a formal amendment to this Agreement.

14. 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, that are subject to all terms, conditions and provisions of this Agreement:

- a. Concessionaire shall offer the sale of food, both prepared and unprepared, snacks, cold drinks, ice, ice cream, beer and wine by the bottle, can, or glass, with the purchase

of snacks or meal food items, daily between the hours of 9:00 A.M. and 5:00 P.M. at the Concession Building, souvenirs, camping supplies, groceries and sundries. All merchandise shall be of high quality, and environmentally friendly and reflective of the Florida Park Service mission.

- b. Concessionaire shall rent and maintain a maximum combination of 30 canoes, kayaks and paddleboats to be located at the canoe launch area adjacent to parking lot number four.
- c. Concessionaire shall rent and maintain a minimum combination of 40 bicycle and surreys and shall supply the necessary safety equipment required to comply with Chapter 316.2065, Florida Statutes on bicycle regulations for State law regulating the use of bicycle helmets.
- d. Concessionaire shall monitor the entrances to the pool located within and adjacent to the Concession Building during its hours of operations and shall collect pool use fees from the visitors to pass-through directly to the Park.
- e. Concessionaire shall rent and maintain pool-related equipment that is distinctly different from the equipment currently provided by the Park. Such rental equipment shall be pre-approved, in writing, by the Park Manager.
- f. Concessionaire shall provide Wi-Fi services in the Concession Building and pool area at no charge.
- g. Concessionaire shall operate and maintain a minimum of five vending machines within the Park. The vending machines shall be kept clean and stocked at all times. Vending machines shall be placed in areas approved by the Park Manager.
- h. Upon receiving pre-approval, in writing from the Park Manager and upon compliance with the specifications in Exhibit A, the Concessionaire may hold catered and non-catered events in the Park, and may offer specialized canoe, nature and tram tours.

15. Permits and licenses. The Concessionaire shall obtain and maintain all permits and licenses necessary for the operation of the business referenced in paragraph 14 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 and space referenced in paragraph 6, above.

16. 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 change or terminate services referenced in this Agreement 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. If the Department, in its sole discretion, approves the assignment, the Concessionaire shall pay to the Department a processing fee of one hundred dollars (\$100.00), unless such processing fee is waived for good cause by the Department.

17. Subcontractor. The Concessionaire shall be responsible for providing all services referenced in paragraph 14, above, and required under the terms of this Agreement. The Concessionaire may subcontract, as necessary, to perform the services, provided that the Department has consented to the subcontractor by written Amendment to this Agreement prior to execution of the subcontract. The Department reserves the right to disapprove 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 authorized to be performed by the Concessionaire under this Agreement. 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 that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract. It is understood by the Concessionaire that the Concessionaire is solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract and that the Concessionaire is solely responsible for the subcontractor's performance under the subcontract. The Concessionaire shall include a provision in its subcontract that requires the subcontractor to comply with the terms of this Agreement, and to submit reports in the form required by paragraph 25, below. 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 in paragraph 24, below. 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 gross sales, as stated in paragraph 25. In the event a subcontractor refuses to comply with the terms and conditions of this Agreement, such refusal shall immediately and automatically terminate the subcontract and this Agreement without further notice.

18. Competition. Unless otherwise provided herein, the Department agrees not to authorize any services in the Park that are in conflict or in direct competition with the Concessionaire's services as specified in paragraph 14 except as further provided in this paragraph. The Department may propose competing services if it first gives the Concessionaire not less than 30 days notice of its intent to authorize such services, and the Concessionaire is allowed to submit a proposal to provide such services within fourteen (14) days of receipt of such notice. The Concessionaire's proposal may be accepted or rejected by the Division, in its sole discretion, after reviewing, among other things, the factors set forth in paragraph 3, above. 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; and , c) the delivery of goods or services in the Park which sales or service transactions originated outside the Park. This paragraph is not intended to make the Department responsible to take any actions to prevent or remedy any competition that occurs or originates outside of the Park, even if such competing persons lawfully enter the Park. The Concessionaire recognizes that members of the public have a right to boat upon and otherwise lawfully enjoy the navigable waters of the State and have a right to walk below the high water mark of a navigable water body, including within Florida State Parks, so long as they do not land in or enter the Park's uplands without payment of admission fees. The Concessionaire agrees to take no action which hinders, impedes or interferes with such rights.

19. Conflict of Interest. The Concessionaire covenants that it presently has no interest and shall not acquire any interest that 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.

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

21. Fees and merchandise. The Concessionaire agrees that 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 and shall be pre-approved, in writing, by the Park Manager. For the purposes of this Agreement, "general vicinity" is defined as being located or charging for merchandise or services within five (5) miles of the Park. If there are no similar businesses that market similar merchandise or services within five (5) 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 the Division's Operations Manual.

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.

22. Security for Concessionaire's Performance. The Concessionaire shall post with the Department, upon execution of this Agreement, one of the following types of security in the amount of \$12,000.00 to assure compliance with this Agreement and serve as liquidated damages in the event that Concessionaire defaults on the terms and conditions of this Agreement: a verified payment bond issued by a surety company authorized to do business in the State of Florida; a verified, current letter of credit from a bank authorized to do business in the State of Florida (both bond and letter of credit shall be in a form acceptable to the Department); or 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 that 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 notice to the Department. The additional terms and conditions applicable to this security are attached hereto as **Exhibit C**, "Security and Limitation of Damages Criteria", 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 paragraph 29(b) or upon expiration of this Agreement, if all terms and conditions of the Agreement have been satisfied. In the event that: (a) the Department terminates this Agreement for cause pursuant to paragraph 29(a), below, 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. Concessionaire's security for performance shall be maintained continuously throughout the term of this Agreement. If the Department receives notice that the security for this Agreement 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 security required under this Agreement shall be re-assessed by the Department based on total gross sales reported by the Concessionaire on an annual basis, as the total gross sales are submitted by the Concessionaire in the Concessionaire's Annual Profit and Loss Statement, see paragraph 26(c); and, upon any renewal, extension, modification, or



amendment to this Agreement. All changes in the security for this Agreement shall be approved by the Department, in writing, in advance.

23. 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.

24. Compensation. The Concessionaire shall pay the Department as compensation for this Agreement: a monthly base fee; and, a monthly commission fee based on gross sales for all its operations within the Park; 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), which shall be implemented on a sliding scale, as follows:

- Upon commencement of operations through September 30, 2012: a monthly base fee equal to \$200, plus, a monthly commission fee equal to three (3%) percent of gross sales.
- October 1, 2012 through September 30, 2017: a monthly commission fee equal to four (4%) percent of gross sales.

Gross sales, for the purpose of this Agreement, shall be defined as all sales of goods and services by the Concessionaire and its subcontractors, agents, and employees pursuant to this Agreement, excluding tax collections, discounts, exchanges, refunds, or food consumed by Concessionaire's employees. Sales of goods and services and collections of sales tax shall be accounted for separately at the point of sale. If the Concessionaire is not able to do this, it shall calculate sales tax from gross receipts using a method approved by the Florida Department of Revenue.

25. Monthly fee payment. The monthly base fee and monthly commission fee referenced in paragraph 24, above, plus the State Use Tax and any other fees due, shall be submitted to the Department, through the Park Manager, along with the monthly report of gross sales, such that they will be received by the Park Manager not later than the twentieth (20<sup>th</sup>) day of the following month. Late payments shall result in a late fee being assessed in the amount of ten dollars (\$10.00) for each day the payment is late. If the monthly fee and accumulated late fees are not received within thirty (30) days after the normal monthly payment deadline, then 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 according to paragraph 29(a) and begin procedures to collect under the security referenced in paragraph 22, above.

26. 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 attached hereto and incorporated herein as **Exhibit D**. 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 (5) 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 fifteen (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 that 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 sixty (60) days by the Department.

b. Monthly report of gross sales. The Concessionaire shall provide to the Department a Monthly Report of Concessionaire's Gross Sales, which shall include gross sales attributable to any and all subcontracts, as referenced in paragraph 17, above; the monthly base fee; and, the monthly commission payment in the form attached hereto and incorporated herein as **Exhibit E**. The statement shall contain the total gross sales for the previous calendar month by point of sale and shall be delivered to the Park Manager no later than the twentieth (20<sup>th</sup>) day of the following month. Gross sales shall be defined as all sales of goods and services pursuant to this Agreement, but excluding tax collections, discounts, exchanges, refunds, or food consumed by employees.

c. Annual profit and loss statement. The Concessionaire shall provide an Annual Profit and Loss Statement to the Department, in the form attached hereto and incorporated herein as **Exhibit F**, for its operations pursuant to this Agreement for each calendar year or portion thereof that this Agreement is in effect. The statement shall be delivered to, or sent so that it is received by, the Park Manager no later than April 30<sup>th</sup> of the following calendar year, or within ninety (90) days of the expiration or termination of this Agreement, whichever is sooner.

d. Books of original entry. Both the monthly report of gross sales reports and the annual profit and loss statement shall be based on source documents and books of original entry. The Concessionaire shall retain books of original entry and source documents for five (5) years, or until final resolution of matters resulting from any litigation, claim, or audit that started prior to the expiration of the five (5) year retention period, whichever is later. The retention period commences from the date of submission of the annual profit and loss statement required above.

e. Engagement document. If annual gross sales from the Concessionaire's operations under this Agreement exceed \$400,000.00, 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 G**, 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 April 30<sup>th</sup> of the following calendar year or within ninety (90) 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 (see paragraph 24) 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 according to the State Use Tax Exempt Certification, in the form attached hereto and incorporated herein as **Exhibit H**, with the executed Agreement.

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 sixty (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.

27. 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.

28. 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 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 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 written notice of said default and afford the Concessionaire ten (10) days to cure said default. Upon failure of the Concessionaire to bring the operations into compliance with the terms and provisions of the 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 pursuant to paragraph 29(a), below.

29. Termination. Unless otherwise stated herein, this Agreement may be terminated prior to the expiration of the term stated in paragraph 3, as follows:

- a. Termination for cause. The Department may terminate this Agreement for cause upon giving 30 days notice to Concessionaire, in writing. In such notice of termination, the Department, in its sole discretion, may give the Concessionaire a reasonable amount of time to cure the deficiencies cited by the Department in the notice. If the

Concessionaire does not fully cure the deficiencies within the time limit prescribed in the notice, then this Agreement shall terminate the following calendar day. Upon such termination, the Concessionaire shall immediately remove itself and all other parties who may be present upon or occupy any part of the premises for its operations conducted hereunder. Continued occupancy of the premises after termination of this agreement shall constitute trespass by the Concessionaire and may be prosecuted as such. Requests for extension of time to cure shall be submitted to the Department in writing and the Department, in its sole discretion, may grant or deny such request.

b. Termination for convenience. The Department or the Concessionaire may terminate this Agreement for convenience by giving 90 days notice to the other party.

1. If the Concessionaire terminates this Agreement for convenience before the end of the term specified in paragraph 3, above, Concessionaire shall pay to the Department a \$100.00 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 Concessionaire shall pay to the Department an expedited termination fee equaling five percent (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.

2. 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 (as defined in paragraph 13, above) to the Park, which have not been fully amortized (as defined by the Amortization Schedule in Exhibit B, 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. 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 that calendar year. Proration shall be calculated using a 360 day calendar year. Concessionaire agrees that such payment shall constitute liquidated damages for termination for convenience by the Department.

30. 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 that are not fixtures of state property (subject to paragraph 40 of this Agreement), 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 that 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.

31. Review every five (5) years. This Agreement shall be reviewed by the Department every five (5) years to determine whether the compensation agreed to herein is sufficient. Factors

to be considered are: 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 factors. If the Department determines that 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, the Department shall terminate the Agreement after ninety (90) days written notice to the Concessionaire.

32. 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

Peter W. Kreuziger, President  
Advantus Leisure Management  
Services, Inc.  
148 Marina Plaza  
Dunedin, FL 34698

Department

Kimberlee Tennille, Park Manager  
Hillsborough River State Park  
15402 US HWY, 301 North  
Thonotosassa, FL 33592  
And  
Visitor Services Section Planning  
Manager  
Bureau of Operational Services  
Division of Recreation and Parks  
3900 Commonwealth Blvd., MS 535  
Tallahassee, Florida 32399-3000

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

33. Agreement managers. Kimberlee Tennille, Park Manager, who can be reached by telephone at (813)987-6870 or by email at Kimberlee.Tennille@dep.state.fl.us, or her successor, is hereby designated as the Department's Agreement Manager. The Agreement Manager shall: be responsible for ensuring compliance with the terms and conditions of this Agreement; conduct regularly scheduled performance inspections of the Concessionaire's operation; and, report all findings to the Department. The Agreement Manager for the Concessionaire is Peter Kreuziger who can be reached by telephone at (727)733-4121 or by email at [pwk@pwkxv.com](mailto:pwk@pwkxv.com).

34. 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 and space referenced in paragraph 6, as amended or expanded from time to time, products, and completed operations. This insurance shall provide coverage for all claims that 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 \$500,000 for each occurrence and \$1,000,000 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 in the Park as allowed under this Agreement, at a minimum combined single limit of \$300,000.00. Commercial automobile liability insurance coverage may be provided 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 that 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 this paragraph. 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 the DEP Agreement No. My-0511 on the certificate. Insurance policy certificates shall be submitted to the Park Manager, and shall list the Park Manager at Hillsborough River State Park, 15402 US HWY, 301 North, Thonotosassa, FL 33592, 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 thirty (30) days 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. 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. 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.

35. Workers' Compensation. The Concessionaire shall secure and maintain during the life of this Agreement, Worker's 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 Worker's 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 at Hillsborough River State Park, 15402 US HWY, 301 North, Thonotosassa, FL 33592, as the insurance policy certificate holder. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida.

36. 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 (5) days of all legal actions filed against the Concessionaire related to the Park or that may adversely affect or reflect on the Department.

37. Force majeure event. The Concessionaire hereby waives all claims for compensation for loss or damage sustained by reason of any force majeure event that 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 (7) 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 that 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 that 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.

38. 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.

39. 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.

40. 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 sixty (60) days of operations under this Agreement.

41. Works for hire. Works for hire is defined as a 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 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.

42. 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 by the Department, pursuant to paragraph 29(a) of this Agreement.

- 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 that the Concessionaire offers to the public. It is the intent of the Department that 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 that 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 that 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, in paragraph 34. If the Department is a co-defendant in such suit, the Department shall only pay for those attorney's fees and costs attributable to its violation of the ADA, as determined by the plaintiff's records. In the event that the time records do not reflect whether counsel's work was attributable to the Department's or the 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 (5) days of service of process, in the event that 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 (5) 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 Bureau of Operational Services at (850) 245-3076.
1. On or before the first (1<sup>st</sup>) day of operations under this Agreement, the Concessionaire must identify one or more officers or employees to act as their Accessibility and Inclusion Liaison ("A & I Liaison"), and will promptly provide their names and contact information to the Department's A & I Coordinator and the Park Manager.
  2. The Department shall send notice 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 sixty (60) calendar days of receiving such notice of course availability/update from the Park Manager.
  3. If offered, the Concessionaire shall attend training on ADA practices when a Concessionaire Meeting is held.
  4. 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 Department's A & I Coordinator; educate and direct other Concessionaire staff in ADA matters and issues; and, cooperate with the Department's A & I Coordinator.

- d. Accessibility and inclusion policy. On the first (1<sup>st</sup>) 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.
- e. 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.
- f. Compliance with ADA terms and conditions. The Concessionaire shall comply with ADA provisions of this Agreement beginning on its first (1<sup>st</sup>) 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 Liaison and the Park Manager. The Department shall also include ADA compliance as a component of the Concessionaire's Quarterly Evaluation Report. (See the Division's Operations Manual referenced in paragraph 1).

43. 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.

44. 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.

45. 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.

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

47. 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.

48. DEP employees act in representative capacity. It is understood and agreed that 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 that 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.

49. 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 and space allotted for the Concessionaire, the Department may terminate this Agreement upon giving the Concessionaire thirty (30) days notice in writing.

50. Limitation of damages. The Concessionaire is aware that 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 the Concessionaire has made no Capital Improvements in the Park, and if a court of competent jurisdiction determines that the Department is legally liable to Concessionaire by reason of the Department's breach of this Agreement, the Concessionaire agrees that damages for any such breach shall be limited to the security amount indicated in paragraph 22 or actual damages, whichever is less. See also **Exhibit C**, which is attached hereto and incorporated herein. If the Concessionaire has made Capital Improvements in the Park, paragraph 29(c) shall apply.

51. 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, but 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.

52. 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.

53. 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.

54. Bona fide employee. The Concessionaire warrants that 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 that 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.

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

56. 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.

57. Entire agreement. This Agreement represents the entire agreement of the parties and supersedes all previous agreements. Any alterations, variations, changes, modifications, or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

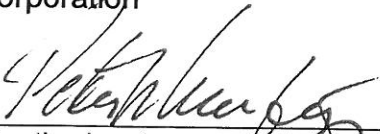
58. Acceptance of terms per signature. The Concessionaire agrees with and accepts the terms and conditions of this Agreement by its signature below.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

ADVANTUS LEISURE  
MANAGEMENT SERVICES, INC.,  
a Florida corporation

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By:   
President's signature or designee

By:   
Secretary's signature or designee

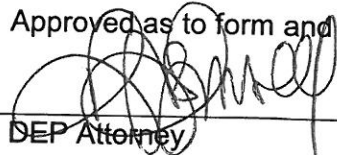
Printed Name: Peter Kreuziger  
Title: President

Printed Name: Scott D. Robinson  
Title: Assistant Division Director

Date: August 1, 2011

Date: 8-5-11

Approved as to form and legality:

  
DEP Attorney

List of Exhibits incorporated as part of this Agreement:

- Exhibit A Minimum Operational Requirements and Procedures
- Exhibit B Schedule and Scope of Capital Improvements (if applicable)
- Exhibit C Security and Limitation of Damages Criteria
- Exhibit D Minimum Accounting Requirements
- Exhibit E Monthly Report of Concessionaire Gross Sales
- Exhibit F Profit and Loss Statement
- Exhibit G Agreed-Upon Procedures for a Certified Public Accountant
- Exhibit H State Use Tax Exempt Certification

## EXHIBIT A

### Minimum Operational Requirements and Procedures

#### 1. Operations:

- a. The minimum hours of operation for the food service concession and camping store are: 9:00 a.m. to 5:00 p.m., daily, Memorial Day through Labor Day and 9:00 a.m. to 5:00 p.m. weekends only during the remainder of the year. Any deviation from these 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 the minimum hours of operation hours. If an answering machine is used, calls shall be returned promptly.
- c. Business hours shall be posted near the main entrance of the business.
- d. The Concessionaire shall submit to the Department for prior approval all proposed advertising, brochures, and signs. The Department shall have the right to require removal of all or part of any advertising that the Department deems inappropriate or reflects badly on the Department.

#### 2. Services and Events

- a. Concessionaire shall offer the sale of food both prepared and unprepared, snacks, cold drinks, ice, ice cream, beer and wine by the bottle, can, or glass, with the purchase of snacks or meal food items, daily between the hours of 9:00 A.M. and 5:00 P.M. at the Concession Building, souvenirs, camping supplies, groceries and sundries. All merchandise shall be of high quality, and environmentally friendly and reflective of the Florida Park Service mission. The Concessionaire shall coordinate directly with the Park Manager regarding the acquisition of existing food and camp store inventory.
- b. Concessionaire shall rent and maintain a maximum combination of 30 canoes, kayaks and paddleboats to be located at the canoe launch area adjacent to parking lot number four.
- c. Concessionaire shall rent and maintain a minimum combination of 40 bicycle and surreys and shall supply the necessary safety equipment required to comply with Chapter 316.2065, Florida Statutes on bicycle regulations for State law regulating the use of bicycle helmets.
- d. Concessionaire shall monitor the entrances to the pool located within and adjacent to the Concession Building during its hours of operations and shall collect pool use fees from the visitors to pass-through directly to the Park.
- e. Concessionaire shall rent and maintain pool-related equipment that is distinctly different from the equipment currently provided by the Park. Such rental equipment shall be pre-approved, in writing, by the Park Manager.
- f. Concessionaire shall provide Wi-Fi services at the Concession Building and pool area at no charge.
- g. Concessionaire shall operate and maintain a minimum of five vending machines within the Park. The vending machines shall be kept clean and stocked at all times. Vending machines shall be placed in areas approved by the Park Manager.
- h. Upon receiving pre-approval, in writing from the Park Manager and upon compliance with the specifications in this Exhibit A, the Concessionaire may hold catered and non-catered events in the Park, and may offer specialized canoe, nature and tram tours.

3. Canoe and kayaks

- a. Canoe and kayak rental operations shall be provided by means of a safe, comfortable, well maintained, watercraft that is compatible with the launching and docking facilities provided at the Park. The Concessionaire shall not change the vessels or the number of vessels without receiving pre-approval, in writing, from the Park Manager. Any vessels approved by the Park Manager for operations under this Agreement shall comply with the terms and conditions of this Agreement.
- b. The Concessionaire shall obtain pre-approval, in writing, from the Park Manager prior to placing passenger vehicles, vessels and rental equipment in use. Approval of equipment will be based on public safety, resource protection, design and capacity of the vehicle or equipment, compatibility with other activities, compliance with the American with Disabilities Act, and aesthetic factors, such as compatible colors.

4. Alcoholic beverage licenses

The Concessionaire shall be required to purchase an alcoholic beverage license from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco; 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, Hillsborough County Ordinances that regulates the alcoholic beverage license.

5. Maintenance of Facilities

- a. Facility maintenance and cleaning shall be performed on a schedule and to standards acceptable to the Park Manager.
- b. Ground maintenance and cleaning shall be performed on a schedule and to standards acceptable to the Park Manager.
- c. Concessionaire shall maintain a pest control contract for all facilities.
- d. All roofs shall be kept free of pine needles and leaf litter.
- e. The maintenance and repair schedule of the facilities, appliances and space listed in paragraph 6 of the Agreement, and for the facilities provided by the Concessionaire shall be in compliance with the American with Disabilities Act; the United States Department of Interior's, Secretary's Standards for Rehabilitation as implemented by the Florida Department of State, Division of Historical Resources guidelines for historic buildings; enabling statute Section 267.061, 267.115 Florida Statutes, and by DRP, enabling statute Section 258.037, Florida Statutes.

6. Environmental Protection Plan

- a. Within the first thirty (30) days of operation under this Agreement, the Concessionaire shall provide a draft Environmental Protection Plan which shall be evaluated by a Department biologist. This Environmental Protection Plan shall cover all operations in the Park, and shall include, but not be limited to:
  1. Use of recyclable or biodegradable materials where possible, with preference given to use of non-disposable materials;
  2. natural resources impact minimization;
  3. solid waste reduction and recycling;
  4. waste management;
  5. use of cleaning and maintenance supplies/compounds, insecticides, rodenticides and herbicides; and,

6. any other information which would allow a reviewer to evaluate and understand the total Environmental Protection Plan.
  - b. A final Environmental Protection Plan which incorporates all comments from the Department must be approved by the Park Manager and implemented within the first sixty (60) days of operation under this Agreement.
7. Safety Plan

Within the first thirty (30) days of operation under this Agreement, the Concessionaire shall provide a draft Safety Plan which will be evaluated by the Park Manager. A final Safety Plan which incorporates the District and Park Manager's comments and shall be approved by the Park Manager; shall be implemented within the first sixty (60) days of 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 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.
8. Department Property
  - a. The Concessionaire shall be responsible for the maintenance and repair of the Department-owned equipment listed below during the life of this Agreement. If such equipment is damaged or wears out beyond reasonable maintenance or repair, the Concessionaire shall replace such equipment at its sole cost and expense. Upon termination or expiration of this Agreement for any reason, all equipment shall be returned to the Department in a similar condition in which it was received by the Concessionaire, subject to normal wear and tear, with the exception of the Rental Equipment referenced below, which shall be returned to the Department on or before September 30, 2012. Furthermore, in regards to any such equipment owned and installed by the Concessionaire, the Department in its sole discretion may require the Concessionaire to comply with the terms and conditions in paragraph 30 of this Agreement.

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b. Department-owned equipment authorized for use by the Concessionaire:

<b>Quantity:</b>	<b>Equipment Description:</b>
1	GE Profile refrigerator/freezer
1	GE stand up freezer
1	Excellence chest freezer (sliding doors)
1	Chest freezer
1	TRUE commercial cooler
1	Champion commercial grill
1	Southbend commercial gas stove
1	Vulcan commercial fryer
1	Merco commercial heat lamp
1	TRUE commercial refrigerator
1	Superior commercial freezer
1	Large white chest freezer
1	Admiral refrigerator/freezer
1	BUNN commercial coffee maker
1	Otis Spunkmeyer confection oven
1	Food warmer
1	Superior commercial toaster
1	GE microwave
1	Black microwave
5	Round patio tables
40	Plastic patio chairs
1	GE stackable washer/dryer
2	Green metal shelves
1	Tan plastic shelf
5	Wooden bookcases
2	Red/white metal display shelves
1	Five compartment metal locker
1	Black plastic shelving
<b>Rental Equipment</b>	
15	Canoes
42	Paddles
52	Life jackets
3	Kayaks
3	Kayak paddles
3	Life jackets for kayaks

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**EXHIBIT B**

**SCHEDULE AND SCOPE OF CAPITAL IMPROVEMENTS**  
(This exhibit will be completed if applicable to the Agreement)

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## EXHIBIT C

### Security and Limitation of Damages Criteria

1. Security Criteria.

Dollar amounts for securities shall be set according to the following criteria:

- a. Security should be sufficient for the Division to recover any reasonably conceivable loss due to the Concessionaire's non-compliance with the terms and conditions of this Agreement.
- b. In the event of an Agreement Extension, the amount of the security shall be based on the Concessionaire's actual gross sales data from the past five (5) operating years, or for a new Concessionaire Agreement, the amount shall be based on estimated annual gross sales and shall be sufficient to cover at least 4% of the annual gross sales made by the Concessionaire.

c. The amount of security shall change with the increase of gross sales realized by the Concessionaire over each fiscal year period.

d. Annual Gross Sales and Security Amount

\$0 - \$100,000.00	\$4,000
\$100,000.01 - \$200,000.00	\$8,000
\$200,000.01 - \$300,000.00	\$12,000
\$300,000.01 - \$400,000.00	\$16,000
\$400,000.01 - \$500,000.00	\$20,000
\$500,000.01 - \$600,000.00	\$24,000
\$600,000.01 - \$700,000.00	\$28,000
\$700,000.01 - \$800,000.00	\$32,000
\$800,000.01 - \$900,000.00	\$36,000
\$900,000.01 - \$1,000,000.00	\$40,000

above \$1,000,000.00 determined on individual basis utilizing the 4% of the annual gross sales made by the Concessionaire

2. Limitation of Damages Criteria.

Dollar amounts shall be set according to the following criteria:

a. Damages should be sufficient for the Division to cover any reasonably conceivable loss due to the Concessionaire due to the Department's non-compliance with the terms and conditions of this Agreement.

b. The amount of the damages paid shall be based on the Concessionaire's actual gross sales data from the past five (5) operating years, or in the case of new Concessionaire, which has been operating for less than five (5) fiscal years, the amount shall be based on estimated annual gross sales and shall be sufficient to cover at least 4% of the annual gross sales made by the Concessionaire.

c. The amount of damages paid shall be in concurrence with the security amount provided by the Concessionaire in paragraph 22, and may change with the increase of gross sales realized by the Concessionaire over each fiscal year period.

d. Annual Gross Sales and Damages Paid

\$0 - \$100,000.00	\$4,000
--------------------	---------

\$100,000.01 - \$200,000.00	\$8,000
\$200,000.01 - \$300,000.00	\$12,000
\$300,000.01 - \$400,000.00	\$16,000
\$400,000.01 - \$500,000.00	\$20,000
\$500,000.01 - \$600,000.00	\$24,000
\$600,000.01 - \$700,000.00	\$28,000
\$700,000.01 - \$800,000.00	\$32,000
\$800,000.01 - \$900,000.00	\$36,000
\$900,000.01 - \$1,000,000.00	\$40,000

above \$1,000,000.00 determined on individual basis utilizing the 4% of the annual gross sales made by the Concessionaire.

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**EXHIBIT D**  
**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.

For the purpose of this document, any reference to a Concessionaire is also considered a reference for any visitor service provider, VSP, or Permittee.

**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 concession Agreement operations and are separate from any 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. If receipts exceed \$2,000.00, they shall be deposited intact daily. If receipts do not exceed \$2,000.00 a day, they shall be deposited intact periodically, which shall be no more than a five day working period. Un-deposited receipts shall be stored in a secure manner – a safe is preferable. Validated deposit slips and bank statements supporting amounts deposited shall be retained by the Concessionaire.
6. 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.
7. 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 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.

8. 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.

9. 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.

10. 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 that 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 that 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 that 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 that 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. Vending Machine Sales

1. If the Concessionaire maintains and operates the vending machines, then the Concessionaire shall provide at a minimum; cash receipts removed from vending machines which shall be reconciled, once a month, with the receipts expected from the sold or depleted inventory. As an alternative, counters could be installed on machines. Counters will identify quantities sold which can be reconciled to cash receipts. Sample reconciliation worksheets are attached hereto. Receipts from vending purchases, which include a date stamp and time, shall be maintained.
2. If the Concessionaire subcontracts vending machines, the Concessionaire shall be solely responsible for verifying the subcontractors' reports and for reporting gross sales attributable to any and all vending machine subcontracts, and for computing and for remitting the monthly fee to the Department based on the subcontractor's total gross sales.

D. 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 that 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. The Concessionaire shall provide the Park Manager with a copy of all contracts developed or modified in a month period as an attachment to the Monthly Report of Gross Sales.
7. 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 that 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 that cannot be accurately or completely transferred to the electronic recordkeeping system.

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SAMPLE FORM (for cans where no counter is used) Use a separate form for each item or group of items sold at a different price.

VENDING MACHINE ACCOUNTABILITY FORM

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

Report Period: \_\_\_\_\_ TO: \_\_\_\_\_

Date Taken: \_\_\_\_\_ Prepared by: \_\_\_\_\_

A.	Beginning Inventory (Cans)		_____
B.	Plus: Purchases (Cans)	+	_____
C.	Plus: Transfers In (Cans)	+	_____
	Less: Transfer Out (Cans)	-	_____
D.	Less: End of Month Inventory		
	Drink in Machines	_____ Cans	
	Drinks in Storage:	+ _____ Cans	
	Total on Hand:	= _____ Cans	- _____
E.	Accountability (Cans)	=	_____
F.	Expected Receipts (E. x \$ _____)	\$	_____
G.	Less: Reported Receipts from Machine	-\$	_____
H.	Over/(Short)	=\$	_____

- A. Beginning Inventory: Previous month's ending inventory.
- B. Purchases: Total number of cans purchased and received for resale during the month.
- C. Any vendor credits (in) or transfers (out) to other parties.
- D. Ending Inventory: The number of cans at the Concessionaire's operation on the day Inventory is taken (total on hand).
- E. Accountability: Beginning inventory plus purchases, plus transfers in, less transfers (credits) out, less ending inventory.
- F. Expected receipts: Accountability (E) multiplied by the retail price.
- G. Reported receipts: Cash receipts removed and counted from the vending machine for the month.
- H. Over/(Short): Expected receipts minus reported receipts.

SAMPLE FORM (where counter is used) Use a separate form for each item or group of items sold at a different price.

### VENDING MACHINE COUNTER RECONCILIATION WORKSHEET

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

Ending Reading \_\_\_\_\_  
 Beginning Reading \_\_\_\_\_  
 Accountability = \_\_\_\_\_  
 Retail Price x\$ \_\_\_\_\_  
 Expected Receipts = \$ \_\_\_\_\_  
 Reported Receipts - \$ \_\_\_\_\_  
 Over/(Short) = \$ \_\_\_\_\_

Date Taken: \_\_\_\_\_  
 Report Period: \_\_\_\_\_ to \_\_\_\_\_  
 Prepared by: \_\_\_\_\_

Ending Reading \_\_\_\_\_  
 Beginning Reading \_\_\_\_\_  
 Accountability = \_\_\_\_\_  
 Retail Price x\$ \_\_\_\_\_  
 Expected Receipts = \$ \_\_\_\_\_  
 Reported Receipts - \$ \_\_\_\_\_  
 Over/(Short) = \$ \_\_\_\_\_

Date Taken: \_\_\_\_\_  
 Report Period: \_\_\_\_\_ to \_\_\_\_\_  
 Prepared by: \_\_\_\_\_

Ending Reading \_\_\_\_\_  
 Beginning Reading \_\_\_\_\_  
 Accountability = \_\_\_\_\_  
 Retail Price x\$ \_\_\_\_\_  
 Expected Receipts = \$ \_\_\_\_\_  
 Reported Receipts - \$ \_\_\_\_\_  
 Over/(Short) = \$ \_\_\_\_\_

Date Taken: \_\_\_\_\_  
 Report Period: \_\_\_\_\_ to \_\_\_\_\_  
 Prepared by: \_\_\_\_\_

Ending Reading \_\_\_\_\_  
 Beginning Reading \_\_\_\_\_  
 Accountability = \_\_\_\_\_  
 Retail Price x\$ \_\_\_\_\_  
 Expected Receipts = \$ \_\_\_\_\_  
 Reported Receipts - \$ \_\_\_\_\_  
 Over/(Short) = \$ \_\_\_\_\_

Date Taken: \_\_\_\_\_  
 Report Period: \_\_\_\_\_ to \_\_\_\_\_  
 Prepared by: \_\_\_\_\_

Ending Reading:	Counter reading as of inventory
Beginning Reading:	Previous inventory period's ending counter reading
Accountability:	Difference between the beginning and ending readings
Retail Price:	Vending machine selling price
Expected Receipts:	Accountability multiplied by the retail price
Reported Receipts:	Cash receipts removed and counted from the vending machine
Over/ (Short):	Difference between the expected receipts and reported receipts

Return this form to the Park Manager.

**EXHIBIT E**

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 \_\_\_\_\_

<u>Point of Sale/Location of Cash Receipt (excluding base fee amount)</u>	<u>Gross Sales Subtotal</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
Subcontractor Gross Sales _____	\$ _____

Subcontractor is defined in paragraph 17 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	\$ _____

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

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

	<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>
1. Services	_____	_____	_____	_____	_____	_____
Comments:						
2. Services	_____	_____	_____	_____	_____	_____
Comments:						
3. Services	_____	_____	_____	_____	_____	_____
Comments:						
4. Services	_____	_____	_____	_____	_____	_____
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 that 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 G**

<b>Agreed-Upon Procedures For a Certified Public Accountant</b>			
<b>Review of Florida State Park Contracted Visitor Services</b>			
<b>Item No.</b>	<b>Procedures</b>	<b>Done 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 contract. 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. Visitor Services contract</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 Park Manager 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 contractor provided a Monthly Statement of Gross Sales to DEP in the format established in Exhibit E of the contract 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 ten dollars (\$10.00) for each day the payment is late.</li> </ol> <p>B. Has the contractor based the Monthly Statement of Gross Sales on source documents and books of original entry?</p>		

Item No. (cont.)	Procedures	Done 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 contractor.</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 that 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> <li>6. Evaluate vending sales to ensure there is adequate documentation to support receipts. (Use of counters, comparisons of vending purchases to sales, etc.)</li> </ol> <p>C. Determine whether a subcontractor operated during the review period. If so:</p> <ol style="list-style-type: none"> <li>1. Determine if the contractor 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 subcontractor sales.</li> </ol> <p>D. Determine whether contractor 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> <p>E. 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. (cont.)	Procedures	Done 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 visitor service 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 H

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, the Department's Agreement 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 at the Park 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.

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