

**MULTI-YEAR CONCESSION AGREEMENT AMENDMENT #3**

THIS AMENDMENT #3 TO MULTI-YEAR CONCESSION AGREEMENT ("Amendment #3") is entered into between the State of Florida Department of Environmental Protection ("Department"), an agency of the State of Florida, by and through its Division of Recreation and Parks ("Division"), and Hillsborough Park, LLC ("Concessionaire").

**RECITALS**

WHEREAS, on or about August 5, 2011, the Department and Concessionaire entered into a Concession Agreement (DEP Contract No. MY-0511) (the "Original Concession Agreement").

WHEREAS, pursuant to the Original Concession Agreement, the Concessionaire agreed to provide certain goods and services at Hillsborough River State Park (the "Park"), as such goods and services are more particularly described in the Original Concession Agreement.

WHEREAS, the Original Concession Agreement was modified by the following amendments entered into by and between the Department and Concessionaire (collectively, the "Amendments"):

Document Title	Document Date	Short Reference
Multi-Year Concession Agreement Amendment #1	dated 11/29/2011	("Amendment #1")
Multi-Year Concession Agreement Amendment #2	dated 7/18/2012	("Amendment #2")

WHEREAS, the Original Concession Agreement as modified by the Amendments, and all exhibits/attachments referenced therein (collectively, the "Agreement"), is incorporated in this Amendment #3 by reference.

WHEREAS, pursuant to Paragraph 3 of the Agreement, the term of the Agreement expires on September 30, 2017 and the parties wish to extend the expiration date as set forth in this Amendment #3.

WHEREAS, the parties wish to exercise the extension discretion afforded by Paragraph 3 of the Agreement.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. Recitals:

The Recitals are true and correct and are incorporated herein by reference.

2. Modifications to the Agreement:

- a. Extension: Paragraph 3 of the Agreement is hereby amended to change the Agreement expiration date from September 30, 2017, to midnight Eastern on June 30, 2018.
- b. Compensation: Paragraph 24 of the Agreement is hereby deleted in its entirety and replaced with the following language:

Compensation. The Concessionaire shall pay the Department a commission fee based on the following schedule and pursuant to the terms set forth in this Agreement, including, but not limited to, Paragraph 25 and 26, and Exhibit G herein:

1. Period 1:  
Upon commencement of operations through September 30, 2012 ("Period 1"), the Concessionaire shall pay to the Department a monthly base fee equal to \$200, plus, a monthly commission fee equal to three (3%) percent of Total Gross Sales each month; and
2. Period 2:  
From October 1, 2012 through September 30, 2017 ("Period 2"), the Concessionaire shall pay to the Department a monthly commission fee equal to four (4%) percent of Total Gross Sales each month; and
3. Period 3:  
From October 1, 2017 through June 30, 2018 ("Period 3"), the Concessionaire shall not be obligated to pay any commission fee for operations within the Park. However, the Concessionaire and its subcontractors shall continue to adhere to the Minimum Accounting Requirements, Audit, and reporting requirements contained in this Agreement.

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

1. Sales tax collections,
2. Gratuities,
3. Funds collected on food consumed by the Concessionaire's employees,
4. Pass through fees, which include:
  - a. Park admission fees collected by the Concessionaire on behalf of the Department, and
  - b. fees collected by the Concessionaire on behalf of the Department, or
5. Funds that were collected but have been refunded to the customer.

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

- c. Construction: Paragraph 13 of the Agreement is hereby deleted in its entirety and replaced with the following language:

Construction. The Concessionaire shall obtain written pre-approval from the Department for any construction of new facilities and for all improvements, alterations or additions to existing Facilities. The Concessionaire shall bear the full cost for such Department-approved construction, improvements, alterations, or additions. All construction, improvements, alterations, or additions described in this Paragraph shall become state-owned assets upon completion. Any incomplete

constructions, improvements, alterations, or additions shall become state-owned assets if either the Concessionaire abandons construction or this Agreement is terminated prior to full completion of construction, The Concessionaire is responsible for obtaining all required permits and paying all costs associated with such required permits. The Concessionaire is responsible for all costs associated with design, site survey, geotechnical, environmental and other site testing, including but not limited to: asbestos and lead based paint surveys, and preparation of construction documents necessary for the successful completion of the project. The Concessionaire shall submit all necessary documentation for any proposed construction, including permits, sealed plans, construction documents, test reports, product submittals, budget estimates, and sketches, to the Department for review and comment prior to commencement of any construction or alterations. Additionally, prior to construction, the Concessionaire shall attend a preconstruction meeting with the Park Manager, a representative from the Division's Bureau of Operational Services, a representative from the Division's Bureau of Design and Construction, and any other additional personnel required to properly document and coordinate the construction activities and agreement requirements. The Concessionaire shall provide the Department with the specifics of all projects which involve construction in the Park, including: timelines, critical paths, methods of construction, approval of plans, amenities, signage, color schemes, advertising, subcontractors, cost estimates, amortization period for the capital improvements, etc. either before or at the preconstruction meeting. Once the permits have been reviewed and final plans have been approved by the Department, the Department shall provide to the Concessionaire a Notice to Proceed. Upon receipt of the Notice to Proceed, the Concessionaire shall commence construction and diligently pursue the full completion thereof. Any Department obligation to pay or reimburse the Concessionaire for unamortized capital improvements, including pre-construction phase costs and fees, that may otherwise arise pursuant to the terms of this Agreement shall not arise if the Department has not issued its Notice to Proceed.

- d. Subcontractor: Paragraph 17 of the Agreement is hereby deleted in its entirety and replaced with the following language:

Subcontracting. The term subcontract, as used in this Agreement, shall include any written or oral agreement, license, or other arrangement in which any other entity undertakes to perform any of the Services. The term subcontractor, as used in this Agreement, shall include any entity or person offering goods or services in the Park by written or oral agreement, license, or other arrangement with the Concessionaire.

The Concessionaire shall be responsible for providing all Services as set forth herein. The Concessionaire may subcontract, as necessary, to perform the Services, provided the Concessionaire gives notice and delivers to the Department all pertinent information concerning the subcontractor with a copy of the proposed subcontract and obtains the Department's written consent thereto prior to the Concessionaire's execution of the subcontract. Once the subcontract is executed by the parties, the Department shall receive a copy of the subcontract. The Department shall be notified if any changes are made to the subcontract, and shall receive a copy of the revised subcontract with any amendment or modification. Unless otherwise granted by amendment, only the Florida Park Service District Bureau Chief or his or her superior may grant consent to utilize a subcontractor. Consent to use a subcontractor must be in writing. The Department reserves the right to withhold its consent to use any proposed subcontract or subcontractor.

Failure to obtain pre-approval of a subcontract or subcontractor may result in termination of this Agreement. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract. The Department is not liable to the subcontractor for any

expenses or liabilities incurred under the subcontract and is not responsible for the subcontractor's performance under the subcontract. The Concessionaire shall include a provision in its subcontract which requires the subcontractor to comply with the terms of this Agreement, and to submit reports in the form required by this Agreement. Failure by any subcontractor to perform or to pay the Concessionaire shall not be grounds for excusing the Concessionaire's obligations to the Department.

The Concessionaire shall be solely responsible for verifying the subcontractors' reports and for reporting gross sales attributable to any and all subcontracts, and computing and remitting the monthly fee based on Total Gross Sales, as required by this Agreement. By execution of a subcontract between the Concessionaire and subcontractor, each agrees to be bound by the terms of this Agreement, including but not limited to: the requirements of Chapter 119, Florida Statutes; Audit and Minimum Accounting requirements; and the commission on Total Gross Sales, as stated in this Agreement. In the event a subcontractor refuses to comply with the requirements of this Agreement under obligation to the Department, the Concessionaire is accountable to the Department to remedy the subcontractor's non-compliance, up to and including termination of subcontractor. If Concessionaire fails to remedy the subcontractor's non-compliance, the Department may terminate this Agreement.

- e. Public Records: Paragraph 27 of the Agreement is hereby deleted in its entirety and replaced with the following language:

Public records.

a. Concessionaire shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. Concessionaire shall keep and maintain public records required by the Department to perform the services under this Agreement.

b. This Agreement may be unilaterally canceled by the Department if the Concessionaire fails to either provide to the Department all public records relating to this Agreement upon request or allow the records to be inspected or copied within a reasonable time.

c. If Concessionaire meets the definition of "Contractor" found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

1. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement must be made directly to the Department. If the Department does not possess the requested records, the Department shall immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the Department or allow the records to be inspected or copied within a reasonable time. If Concessionaire fails to provide the public records to the Department within a reasonable time, the Concessionaire may be subject to penalties under s. 119.10, F.S.
2. Upon request from the Department's custodian of public records, Concessionaire shall provide the Department with a copy of the requested records or allow the records to be inspected or copied within

a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

3. Concessionaire shall identify and ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the Term of the Agreement and following completion of the Agreement if the Concessionaire does not transfer the records to the Department.
4. Upon completion of the Agreement, Concessionaire shall either transfer, at no cost to the Department, all public records in possession of Concessionaire or keep and maintain public records required by the Department to perform the Services under this Agreement. If the Concessionaire transfers all public records to the Department upon completion of the Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire shall meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the Department.

**d. IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS by telephone at (850) 245-2118, by email at [ombudsman@dep.state.fl.us](mailto:ombudsman@dep.state.fl.us), or at the mailing address below:**

**Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Blvd, Mail Slot 49  
Tallahassee, FL 32399**

3. Ratification:

Except as modified by this Amendment #3, the Agreement remains in full force and effect and is hereby ratified and confirmed. This Amendment #3 shall be attached to and incorporated into the Agreement. In the event of a conflict between the Agreement and this Amendment #3, this Amendment #3 shall control. Henceforth, the term "Agreement" shall mean the Agreement as further amended by this Amendment #3.



4. Merger:

The Agreement constitutes the entire agreement between the parties with respect to the Concessionaire's services at or within the Park, and integrates all understandings and agreements between the parties, whether oral or written, with respect thereto. The Agreement supersedes any prior agreement regarding the Concessionaire's services at or within the Park and may not be modified except by written instrument signed by both the Department and the Concessionaire.

5. Execution in Counterparts:

This Amendment #3 may be executed in two identical counterparts, each of which shall be deemed an original. The two, executed, identical counterparts shall constitute this Amendment #3. If any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. Any party transmitting an electronic signature shall provide the inked original thereof to the receiving party, at the receiving party's request.

WHEREFORE, the parties hereto have caused this Amendment #3 to be executed as of the day and year last set forth below.

HILLSBOROUGH PARK, LLC, A  
LIMITED LIABILITY COMPANY

By: [Signature]  
Authorized Representative

Printed Name: KAELZIGER

Title CEO

Date: 9/21/17

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: [Signature]  
Secretary's signature or designee

Printed Name: Chuck Hatcher

Title: Acting Director

Date: 9/29/17

Approved as to form and legality:

Sharon Wyskiel 09/18/2017  
DEP Attorney