

MULTI-YEAR CONCESSION AGREEMENT – AMENDMENT #4

THIS AMENDMENT #4 TO MULTI-YEAR CONCESSION AGREEMENT (“Amendment #4”) 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 Anderson’s Outdoor Adventures, LLC (“Concessionaire”).

RECITALS

WHEREAS, on March 14, 2013, the Department and Concessionaire entered into a Concession Agreement (DEP Agreement No. MY-0912) (the “Original Concession Agreement”).

WHEREAS, pursuant to the Original Concession Agreement, the Concessionaire agreed to provide certain goods and services at Manatee Springs State Park and Fanning Springs State Park (the “Parks”), 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 12/12/2013	(“Amendment #1”)
Multi-Year Concession Agreement - Amendment #2	dated 3/18/2015	(“Amendment #2”)
Multi-Year Concession Agreement - Amendment #3	dated 2/16/2016	(“Amendment #3”)

WHEREAS, the Original Concession Agreement as modified by the Amendments, and all exhibits/attachments referenced therein (collectively, the “Agreement”), is incorporated in this Amendment #4 by reference.

WHEREAS, pursuant to Paragraph 3 of the Agreement, the term of the Agreement expires on October 31, 2018, and the parties wish to extend the expiration date as set forth in this Amendment #4.

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 midnight Eastern on October 31, 2018, to midnight

Eastern on February 28, 2019, or until a new concessionaire agreement is executed, whichever occurs first.

- 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 execution by all parties through April 30, 2014 (“Period 1”), the Concessionaire shall pay a commission equal to 2% of Total Gross Sales each month, 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);

2. Period 2:

From May 1, 2014 through April 30, 2015 (“Period 2”), the Concessionaire shall pay a commission equal to 3% of Total Gross Sales each month, 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);

3. Period 3:

From May 1, 2015 through December 31, 2015 (“Period 3”), the Concessionaire shall pay a commission equal to 4% of Total Gross Sales each month, plus the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages); and

4. Period 4:

From January 1, 2016 through February 28, 2019 (“Period 4”), the Concessionaire shall pay a commission equal to 3% of Total Gross Sales each month, plus the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).

“Total Gross Sales” for 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. Public Records: The following is hereby added to Paragraph 27 of the Agreement:

1. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term "contract" means the "Agreement." If the Concessionaire is a "contractor" as defined in section 119.0701(1)(a), F.S., the following provisions apply and the Concessionaire shall:

- a. Keep and maintain Public Records required by the Department to perform the service.
- b. Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to the Department.
- e. Upon completion of the contract, transfer, at no cost, to the Department all Public Records in possession of the contractor or keep and maintain Public Records required by the Department to perform the service. If the contractor transfers all Public Records to the Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

d. Inspector General Audit Cooperation: The following is hereby added to the Agreement as Paragraph 59:

The Concessionaire understands its duty, pursuant to subsection 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Concessionaire will comply with this duty and ensure that its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.

3. Ratification:

Except as modified by this Amendment #4, the Agreement remains in full force and effect and is hereby ratified and confirmed. This Amendment #4 shall be attached to and incorporated into the Agreement. In the event of a conflict between the Agreement and this Amendment #4, this Amendment #4 shall control. Henceforth, the term "Agreement" shall mean the Agreement as further amended by this Amendment #4.

4. Merger:

The Agreement constitutes the entire agreement between the parties with respect to the Concessionaire's services at or within the Parks, 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 Parks and may not be modified except by written instrument signed by both the Department and the Concessionaire.

5. Execution in Counterparts:

This Amendment #4 may be executed in two identical counterparts, each of which shall be deemed an original. The two, executed, identical counterparts shall constitute this Amendment #4. 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 #4 to be executed as of the day and year last set forth below.

ANDERSON'S OUTDOOR ADVENTURES, LLC
By: [Signature]
Authorized Representative

Date: 10/29/2018

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
By: [Signature]
Secretary's signature or designee
Printed Name: Clifton L. Maxwell
Title: Bureau Chief
Division of Recreation and Parks
Date: 10/31/18

Approved as to form and legality:

Angela Desmond 10/22/2018
DEP Attorney