

MULTI-YEAR CONCESSION AGREEMENT – AMENDMENT #3
 (Manatee Springs State Park and Fanning Springs State Park)

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 Anderson’s Outdoor Adventures, LLC, organized as a Florida Limited Liability Company (“Concessionaire”).

RECITALS

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

WHEREAS, pursuant to the 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 Concession Agreement.

WHEREAS, the Concession Agreement was modified by the following contract amendments entered into by and between the Department and the Concessionaire:

Document Title	Document Date	Short Reference
Multi-Year Concession Agreement Amendment #1	dated December 12, 2013	(“Amendment #1”)
Multi-Year Concession Agreement – Amendment #2	dated March 18 2015	(“Amendment #2”)

WHEREAS, the 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, at the Concessionaire’s request, the Department has conducted a review of terms per the Concession Agreement and has determined the compensation and capital improvement due dates agreed to are not sustainable.

WHEREAS, the parties wish to memorialize a change in minimum hours of operation, and a change in the visitor services Concessionaire is authorized to provide in accordance with the Concession Agreement and to update certain provisions in the Concession Agreement, all as more particularly set forth in this Amendment #3.

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

1. Recitals:

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

2. Agreement:

The term “Agreement” shall collectively refer to the Concession Agreement, as amended by the Amendments. The Agreement supersedes any prior agreement between the parties, oral or

written, with respect to Concessionaire's services for the Department.

3. Paragraph 14 of the Concession Agreement is hereby deleted in its entirety and replaced with the following language:

"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, subject to all terms, conditions, and provisions of this Agreement (collectively, the "Services"):

- a. Food and Beverage Service
- b. Merchandise Resale Operation
- c. Recreational Equipment Rental
- d. Interpretive Boat Tours
- e. Event Planning Services
- f. Wi-Fi Service

The following Additional Services are authorized, but not required. The Concessionaire may provide Vending Machine Services with pre-approval, in writing, by the Department or their Designee."

4. Paragraph 24 of the Concession Agreement is hereby deleted in its entirety and replaced with the following language:

"24. Compensation: The Concessionaire shall pay the Department a monthly fee based on the following schedule:

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 October 31, 2018 ("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 the purpose of this Agreement, shall be defined as all sales of goods, merchandise, food, vending, and services generated as a result of the Concessionaire's operations at or associated with the Park. This includes all sales made or advertised within the Park, advertised on the Concessionaire's website associated with the Park, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its Park operations, and sales generated by subcontractors or related entities whose sales are associated with the Concessionaire's authorized operations at the Park. Total Gross Sales shall not include:

1. tax collections, or
2. gratuities, or
3. funds collected on food consumed by the Concessionaire's employees, or
4. pass through fees, which include:
 - a. admission fees collected by the Concessionaire on behalf of the Department,
 - b. events fees collected by the Concessionaire on behalf of the Department, and
 - c. security fees collected by the Concessionaire to pay Park staff 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."

5. Paragraph 34 as previously amended in Amendment #1 of the Concession Agreement is hereby deleted in its entirety and replaced with the following language:

"34. Insurance Coverage. The Concessionaire's failure to comply with any part of the insurance requirements is considered a material breach and shall be grounds for "termination for cause", by the Department. 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.

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, coverage for factors relevant to Concessionaire's business, personal and property damage, and/or provide coverage for contents of the Facilities and space as stated herein, as amended or expanded from time to time, including additional products, services and expansion of Concessionaire's operation(s). Insurance coverage must include coverage for all claims which may arise from the services and/or operation(s) provided under this Agreement, whether such services and/or operations are by the Concessionaire or anyone directly or indirectly employed by the Concessionaire. The minimum limits of liability shall be \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

b. Automotive. The Concessionaire shall secure and maintain Commercial Automobile Liability insurance for company-owned vehicles and for hired and

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

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

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

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

6. Paragraph 1 of Exhibit A of the Concession Agreement is hereby deleted in its entirety and replaced with the following language:

"1. Operations:

- a. The minimum hours of operation at the Parks shall be as follows:
 - 1) Manatee Springs State Park:
 - a) 9:00 a.m. to 6 p.m. daily, including holidays, from May 1st to September 30th, and
 - b) 10:00 a.m. to 4:00 p.m. Friday through Sunday from October 1st to April 30th.
 - 2) Fanning Springs State Park: Daily as needed.
- b. Any deviation from the minimum hours of operation shall be pre-approved, in writing, by the Park Manager.
- c. Operating hours shall be clearly posted near the main entrance of the business.
- d. Concessionaire shall maintain a telephone as a public vendor contact point, which shall be staffed during operating hours. If an answering device is used, calls must be returned within 24 hours.
- e. Concessionaire shall provide adequate staffing and oversight to operate the Services authorized under this Agreement.
- f. The Concessionaire's advertising, including online, brochures, signs, and other forms of advertisement, shall be consistent with the Florida Park Service Mission. The Department shall have the right to require removal of all or part of any advertising the Department deems inappropriate or reflects poorly on the Department.
- g. All paper products and serving containers shall contain post-consumer recycled content."

7. Paragraph 2.g. of Exhibit A of the Concession Agreement is hereby deleted in its entirety and replaced with the following language:

"g. Vending Machine Service

Financial records pertaining to this service during the time Concessionaire provided vending machines at Parks shall be retained for a period of 5 years from the date of submission of the final gross sales and commission statement or until final resolution of any matters resulting from any litigation, claim, or audit which started prior to the expiration of this period. The Concessionaire agrees to make his records available to the Department auditors upon reasonable advance notice."

8. Paragraph 7 Exhibit B, of the Concession Agreement and amended in Amendment #1, Exhibit B, paragraph 7(a) and 7(b) is hereby deleted in its entirety and replaced with the following language:

"7. Concessionaire shall submit for pre-approval a proposed Capital Improvement Plan, and fund \$11,200 in funding to pay Capital Improvements costs for the purpose of enhancing the Facilities at the Parks ("Capital Improvement Funding") in the following manner:

- a. The Concessionaire shall provide at least \$9,800 in Capital Improvement Funding

to replace the roof of the Concession Building (Building #BL053003) at Manatee Springs State Park. All Capital Improvements shall be permitted and performed by a licensed contractor. Concessionaire shall fund and complete this Capital Improvement on or before September 30, 2016.

b. The Department confirms the Concessionaire has already completed and funded \$1,400 toward the Capital Improvement Funding to install a stockade fence around the storage area on the East side of Concession Building (Building #BL053003) at Manatee Springs State Park by the deadline of December 31, 2015.

c. If the Department does not approve the Concessionaire's proposed Capital Improvement Plan, and/or the parties cannot agree on the Capital Improvements to occur at the Parks, which shall total \$11,200, the Concessionaire is obligated to pay to the Department prior to December 31, 2016 the Capital Improvement Funding of \$11,200.

d. If the parties agree on the Capital Improvements, and the agreed upon Capital Improvements are valued at less than \$11,200, Concessionaire shall pay to the Department prior to December 31, 2016 the remaining balance of the Capital Improvement Funding to total \$11,200.

e. Constructed, in progress, and/or unfinished Capital Improvements shall immediately become the property of the Department with no amortization due to the Concessionaire."

9. Ratification:

This Amendment #3 shall be attached to the Agreement. Except as modified by this Amendment #3, the Agreement and its attachments shall remain in full force and effect and are hereby ratified and confirmed. In the event of a conflict between the Agreement and this Amendment #3, this Amendment #3 shall control. Hereinafter, the "Agreement" shall refer to the Agreement as amended by this Amendment #3.

10. 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.

11. 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. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature 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, month, and year last written below.

ANDERSON'S OUTDOOR ADVENTURES,
LLC

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 
President's signature or designee

By: 
Secretary's signature or designee

Printed Name: Paul G Spillers

Printed Name: ~~Donald Forgiato~~ Clif Maxwell

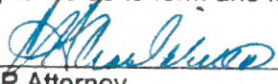
Title: Owner

Title: ~~Director~~ Bureau Chief, District 2
Division of Recreation and Parks

Date: 2/14/16

Date: 2/16/16

Approved as to form and legality:

 2/10/2016
DEP Attorney