

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Commercial Use Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 258.007(3), Florida Statutes:

1. Parties.	State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard Tallahassee, Florida 32399-3000	(Department)
Concessionaire Name:	Lisa's Kayaks, LLC	Entity Type: Limited Liability Company
Principle Address:	1105 Seaway Drive Fort Pierce, Florida	FEID: 26-0140901 (Concessionaire)

2. Park Name (Park): Fort Pierce Inlet State Park	Agreement Number: CU-2019
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3. Services:
Water-based Recreation Equipment Rental as indicated below:

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td><input checked="" type="checkbox"/> Kayaks, with paddles</td></tr> <tr><td><input checked="" type="checkbox"/> Canoes, with paddles</td></tr> <tr><td><input checked="" type="checkbox"/> Stand-up paddleboards, with paddles</td></tr> <tr><td><input type="checkbox"/> Other</td></tr> </table>	<input checked="" type="checkbox"/> Kayaks, with paddles	<input checked="" type="checkbox"/> Canoes, with paddles	<input checked="" type="checkbox"/> Stand-up paddleboards, with paddles	<input type="checkbox"/> Other	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td colspan="2">Auxiliary Management Services:</td></tr> <tr><td><input checked="" type="checkbox"/> Offering Guided tours</td></tr> <tr><td><input type="checkbox"/> Collecting vessel launch fee</td></tr> <tr><td><input type="checkbox"/> Providing carts or other equipment for portaging vessels</td></tr> <tr><td><input type="checkbox"/> Other</td></tr> </table>	Auxiliary Management Services:		<input checked="" type="checkbox"/> Offering Guided tours	<input type="checkbox"/> Collecting vessel launch fee	<input type="checkbox"/> Providing carts or other equipment for portaging vessels	<input type="checkbox"/> Other
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<input type="checkbox"/> Collecting vessel launch fee											
<input type="checkbox"/> Providing carts or other equipment for portaging vessels											
<input type="checkbox"/> Other											

4. Agreement Begin Date: October 1, 2019	Date of Expiration: December 31, 2019
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<p>5. Department's Agreement Manager Name: <u>Steven Eibl</u> or successor</p> <p>Address: <u>905 Shorewinds Drive Fort Pierce, Florida 34949</u></p> <p>Phone: <u>772-468-4007</u></p> <p>Email: <u>Steven.Eibl@FloridaDEP.gov</u></p>	<p>Concessionaire's Agreement Manager Name: <u>Lisa Fasnacht</u> or successor</p> <p>Address: <u>1630 Seaway Drive #108 Fort Pierce, FL 34949</u></p> <p>Phone: <u>772-468-4007</u></p> <p>Email: <u>lisakayaks@gmail.com</u></p>
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6. Operating Hours.
The Concessionaire will operate the Services during the hours and days outlined below. Any deviations in Operating Hours may be granted with written pre-approval from the Department.

<input checked="" type="checkbox"/> Monday	from: 9:00 a.m.	to: 5:00 p.m.
<input type="checkbox"/> Tuesday	from: N/A	to: N/A
<input type="checkbox"/> Wednesday	from: N/A	to: N/A
<input checked="" type="checkbox"/> Thursday	from: 9:00 a.m.	to: 5:00 p.m.
<input checked="" type="checkbox"/> Friday	from: 9:00 a.m.	to: 5:00 p.m.
<input checked="" type="checkbox"/> Saturday	from: 9:00 a.m.	to: 5:00 p.m.
<input checked="" type="checkbox"/> Sunday	from: 9:00 a.m.	to: 5:00 p.m.

7. Compensation.
The Concessionaire will compensate the Department for the privilege of conducting the Services at the Park by providing \$150.00 flat fee per month, plus applicable State Use Tax.

8. Facilities.
The Concessionaire is authorized to use the following Park facilities and equipment (Facilities) in providing the Services: Space at the Launch Area.

9. Department-approved Fee Schedule.

The Concessionaire's approved prices and fees charged for merchandise and/or Services offered (Fee Schedule) are outlined in Attachment 3.

10. Additional Terms.
None.

11. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

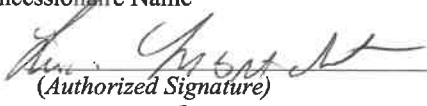
<input checked="" type="checkbox"/> Attachment 1: Standard Terms and Conditions Applicable to All Commercial Use Agreements
<input checked="" type="checkbox"/> Attachment 2: Use Area
<input checked="" type="checkbox"/> Attachment 3: Fee Schedule
<input type="checkbox"/> Additional Attachments (if necessary):
<input checked="" type="checkbox"/> Exhibit A: Monthly Report of Concessionaire's Total Gross Sales
<input checked="" type="checkbox"/> Exhibit B: State Use Tax Exempt Certification
<input type="checkbox"/> Additional Exhibits (if necessary):

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Lisa's Kayaks, LLC
Concessionaire Name

CONCESSIONAIRE

By


(Authorized Signature)

Lisa Fasnach

President,


7/26/19
Date Signed

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By


Secretary or Designee

Kevin Jones Bureau Chief

8/17/2019
Date Signed

Print Name and Title of Person Signing

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO ALL COMMERCIAL USE AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Commercial Use Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter.

2. Commercial Use Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation the Agreement is as follows:
 - i. Commercial Use Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Commercial Use Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Commercial Use Agreement
- b. Notices. Any notices required by this Agreement are sufficient if delivered to the parties by electronic mail, facsimile, certified mail or hand-delivery. The parties agree to provide notice to the other within thirty (30) days of any change to contact information, and the Concessionaire shall also inform the Department within thirty (30) days of any change to its name, business organization, ownership, address, Registered Agent, or other contact information.

3. Authorized Services.

- a. Limited Privilege. This Agreement grants the Concessionaire the privilege of providing the Services described in this Agreement, subject to the terms of this Agreement. This privilege is revocable at the sole discretion of the Department. This Agreement does not vest any rights in the Concessionaire in the Park. This Agreement does not lease any part, parcel, building, or structure, including trails, equipment, or space to the Concessionaire. The Concessionaire's authorization to provide Services will continue only if Concessionaire complies with the terms and conditions of this Agreement.
- b. Use Area. The Concessionaire shall provide the Services outlined in the Commercial Use Agreement. The Department authorizes Concessionaire's Services within the areas of the Park or along the Park's roadways identified in Attachment 2, Use Area. The Department has absolute discretion to determine the Use Area, and the area is subject to change without advanced notice. The Concessionaire accepts the Use Area in its "as is" condition. The Concessionaire will not alter or damage the Park, Use Area, Facilities, or resources through operation of the Services and will fully repair all damages caused by their operations.
- c. Operation. The Concessionaire will begin providing Services on the Agreement Begin Date, outlined in the Commercial Use Agreement or upon fulfillment of the insurance requirements of this Agreement, whichever occurs later.

4. Use of Department Facilities.

If the use of Facilities is authorized by the Commercial Use Agreement, the Concessionaire shall:

- a. submit a Repair and Maintenance Plan prior to commencing operations under this Agreement;
- b. implement the Department-approved Repair and Maintenance Plan prior to commencing operations under this Agreement; and
- c. maintain and repair the Facilities pursuant to the maintenance and repair schedule agreed between the Concessionaire and the Department, as more particularly detailed in the Department-approved Repair and Maintenance Plan.

5. Plans.

Except as exempted below, the Concessionaire will provide Safety, Environmental, Repair and Maintenance, and Interpretive Plans (collectively, Plans), that will be evaluated by and approved by the Department prior to execution of this Agreement. The Concessionaire will implement the approved Plans prior to providing Services under this Agreement. The Department's Agreement Manager will provide the Concessionaire with requirements for Plans, according to the following:

- a. Safety Plan. The Concessionaire's draft Safety Plan will be evaluated by the Department's Safety Officer, District staff and Department's Agreement Manager. Upon approval by the Department, the

Concessionaire will implement the approved Safety Plan. The Safety Plan will be revised prior to the commencement of any new service and once a year before the anniversary date. The Concessionaire will submit the proposed revision to the Department's Safety Officer and Department's Agreement Manager for evaluation and approval. The Safety Plan will include guidelines for all aspects of the Concessionaire's operation, with special attention to traffic control, first aid, security, fire prevention, and water related activities and equipment. A section of the Safety Plan will be devoted to Emergency Action, which will cover proper preparations and responses to all natural and human-caused emergencies. Notwithstanding the above, the Concessionaire is not required to have a Safety Plan if they are providing Vending Services, Laundry Services, Merchandise Resale, or Wi-fi Services only.

- b. Environmental Plan. The Environmental Protection Plan will cover all operations in the Park, including, but not limited to:
 - i. Use of recyclable or biodegradable materials where possible, with preference given to use of non-disposable materials;
 - ii. Natural resource impact minimization;
 - iii. Solid waste reduction and recycling, including the provision of recycle bins for plastics, paper, aluminum, and glass for use by park visitors;
 - iv. Waste management, including the provision of garbage bins for use by park visitors and preventing wildlife from accessing waste;
 - v. Use of cleaning and maintenance supplies/compounds, insecticides, rodenticides, and herbicides; and
 - vi. Any other information that would allow a reviewer to evaluate and understand the total Environmental Protection Plan.
- c. Repair and Maintenance Plan. The Maintenance and Repair Plan will include guidelines for all aspects of the Concessionaire's maintenance and repair responsibilities. At a minimum, the Maintenance and Repair Plan will include:
 - i. Maintenance and cleaning on facilities, grounds and systems;
 - ii. Schedule;
 - iii. Standards;
 - iv. Concessionaire staff and positions with assigned maintenance and cleaning responsibilities.
- d. Interpretive. The Interpretation Plan will include guidelines for all aspects of the Concessionaire's interpretation of the Park in delivery of the Services. At a minimum, the Interpretive Plan will be consistent with the Florida Park Service mission and pre-approved, in writing, by the Department.

6. Compensation.

- a. Payments and Monthly Report. The Concessionaire will make monthly payments in accordance with the Compensation method outlined in the Commercial Use Agreement. Every month, the Concessionaire will pay the Department (Monthly Payment) and submit the Monthly Report attached as Exhibit A. The Monthly Payment and Exhibit A are due no later than the 20th of each month, for Services provided in the preceding month.
- b. Late Payment. If the Concessionaire submits the Monthly Payment or Exhibit A late, the Department will assess a late fee of one percent (1%) of the current amount due for each day late. The Department may waive the late fee based on documented circumstances beyond the Concessionaire's reasonable control. If the Concessionaire fails to pay the Monthly Payment and accumulated late fees within thirty (30) days of the normal deadline, the Department may either suspend the Concessionaire's performance of Services or terminate this Agreement for cause.
- c. State Use Tax. The Concessionaire's revenue is subject to State Use Tax, unless the Concessionaire is exempt from paying Use Tax on commission fees to the Department. If it is tax exempt, the Concessionaire will provide verification of its tax-exempt status by completing Exhibit B, State Use Tax Exempt Certification Form. State Use Tax is calculated as a percentage of the amount paid to the Department, equals to the sum of the state sales tax and applicable county discretionary sales tax percentages.
- d. Electronic Payments. When the Department completes a system for accepting electronic payment from concessionaires, the Concessionaire agrees to use the system for making or delivering its monthly payments to the Department.
- e. Total Gross Sales. If the Concessionaire is providing the Park a percentage of the Total Gross Sales each month, the following provisions and definition apply:

- i. “Total Gross Sales” means all sales of goods, merchandise, food and beverages, equipment rentals, event management, and other permissible Services described in the Commercial Use Agreement, 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. Total Gross Sales does not include:
 - 1. Sales tax collections,
 - 2. Gratuities,
 - 3. Pass through fees
- ii. “Pass through fees” include:
 - 1. Park admission fees collected by the Concessionaire on behalf of the Department, and
 - 2. other fees collected by the Concessionaire on behalf of the Department, or
 - 3. Funds that were collected but have been refunded to the customer.
- iii. The Concessionaire will account for sales of goods and services and collections of sales tax separately at the point of sale. If the Concessionaire is unable to do this, it will calculate sales tax from gross receipts using a method approved by the Florida Department of Revenue.

7. Department-approved Fee Schedule.

The Concessionaire agrees the prices and fees charged for merchandise and Services as outlined on the Department-approved Fee Schedule are consistent with those charged by similar businesses for similar merchandise and services in the general vicinity of the Park. “General vicinity” means 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 means the nearest similar business. The Concessionaire may request, in writing, changes to the Department-approved Fee Schedule. Such request must include market analysis supporting the requested fee schedule change.

8. Special Terms for Recreational Equipment Rental:

- a. The Concessionaire will provide recreational equipment rentals as indicated in the Commercial Use Agreement, including all required safety equipment.
- b. The Concessionaire will provide an employee to work at the recreational equipment rental operation facility who will remain there until all visitors have left for the day or are otherwise accounted for. Visitors are considered “accounted for” when (1) they been located; (2) all cars have left the parking lot; (3) or until all cars remaining in the parking lot have been positively identified, owner confirmed, and the Park Management notified.

9. Special Terms for Water-Based Recreational Equipment Rental:

- a. The Concessionaire will provide recreational equipment rentals as indicated in the Commercial Use Agreement, including all required safety equipment.
- b. The Concessionaire will provide an employee to work at the recreational equipment rental operation facility who will remain there until all visitors have left for the day or are otherwise accounted for. Visitors are considered “accounted for” when (1) they been located; (2) all cars have left the parking lot; (3) or until all cars remaining in the parking lot have been positively identified, owner confirmed, and the Park Management notified.
- c. Any vessel launch fees which are provided as an auxiliary management services, as indicated in the Commercial Use Agreement must be pre-approved, in writing, by the Department.
- d. The Concessionaire will require all visitors launching a vessel to participate in a safety and environmental orientation program administered by the Concessionaire. The program and materials will be pre-approved, in writing, by the Department.
- e. Watercraft Requirements.
 - i. Watercraft shall be provided by means of safe, comfortable, well-maintained, Coast Guard-approved watercraft compatible with the launching and docking facilities provided at the Park.
 - ii. The Concessionaire will not change the vessels or the number of vessels without receiving written pre-approval from the Department.
- f. The Concessionaire will provide a small service boat or motorized watercraft to aid its employees in the location and in the recovery of overdue vessel rentals and emergency situations.

10. Special Terms for Food & Beverage Services:

The Concessionaire will provide prepared and prepackaged food and beverage service, such as: meal items, non-alcoholic beverages, snacks, ice cream and similar items according to the following conditions:

- a. The Concessionaire will maintain a standard menu with prices as part of the Concessionaire's Fee Schedule.
- b. The Concessionaire will provide alternative menu items such as vegetarian and gluten-free options, if viable.
- c. The Concessionaire will not use, or provide to guests, the following: individually packaged condiment packs, Styrofoam serving containers, or plastic straws.
- d. The Concessionaire will meet all applicable federal, state, and local regulations governing concession food service, the Florida Department of Health, Food Safety and Sanitation regulations, the Department of Business and Professional Regulation (DBPR) mandates, including inspection and regulation of food service establishments in Florida under Chapter 509, Florida Statutes, and Florida Administrative Code, Rule 61C-4. For additional information, visit websites: Florida Department of Health: <http://www.floridahealth.gov/> and Department of Business and Professional Regulation: <http://www.myfloridalicense.com/dbpr/>.
- e. The Concessionaire will meet inspection standards set by the Florida DBPR Routine Food Inspections, and the Fire Marshal. If either DBPR or the Fire Marshal report a violation, the Concessionaire will correct the violation in a timely manner and prior to the next routine inspection. For more information, please visit the website: <http://www.myfloridalicense.com/dbpr/index.html>.

11. Special Terms for Merchandise Resale:

The Concessionaire will provide items for resale such as: ice, groceries, snacks, T- shirts, hats, sunglasses, sunscreen, bug repellants, souvenirs, gifts, toys, books, sundries, personal convenience items, assorted pain relievers, toiletries, personal hygiene products, paper products, cups, plastic utensils, charcoal, Park-themed products and other appropriate items pre-approved, in writing, by the Department.

- a. Merchandise items and prices will be identified in the Concessionaire's Fee Schedule.
- b. All merchandise will be of high quality, environmentally friendly (to the extent practicable) and reflective of the Florida Park Service mission.
- c. Inventory levels will be maintained to meet daily visitor demands.

12. Special Terms for Guided Tours:

The Concessionaire will provide Guided Tours at authorized areas of the Park, as identified on Attachment 2. Guided Tours are subject to the following conditions:

- a. The Concessionaire will obtain written approval from the Department prior to modifying authorized tour routes identified on Attachment 2.
- b. The Concessionaire shall provide guided tours on the following indicated on the Commercial Use Agreement.
- c. Interpretive narratives will be consistent with the Interpretive Plans requirement of this Agreement.

13. Special Terms for Ferry Services:

The Concessionaire shall provide Ferry Services at the locations and on the schedule indicated in the Commercial Use Agreement, subject to the following conditions:

- a. Vessel Requirements.
 - i. Ferry Services shall be provided by means of safe, comfortable, well-maintained, Coast Guard-approved watercraft compatible with the launching and docking facilities provided at the Park.
 - ii. If the United States Coast Guard requires a Certificate of Inspection for the vessel, the Concessionaire must have one and it must be presented to the Department prior to starting any operation under this Agreement. If the United States Coast Guard does not require a Certificate of Inspection for the vessel, the Concessionaire will present to the Department a current Florida Vessel Registration for the vessel, prior to the execution of this Agreement
 - iii. The Concessionaire will not change the vessels or the number of vessels without receiving written pre-approval from the Department.
- b. Any vessels approved by the Department for operations under this Agreement will comply with Vessel Requirements of this Agreement.
- c. The Concessionaire and the vessel operator are liable for any damage to the Concessionaire's vessels or adjacent vessels if those vessels are improperly secured to the Park's docks. It will be the Concessionaire's responsibility to protect the Concessionaire's vessels during inclement weather. The Concessionaire will be responsible for compliance with the Division's Emergency Action Component (EAC).
- d. The Concessionaire will adhere to waste disposal guidelines and resource protection guidelines. The Concessionaire and the vessel operator will be responsible for abiding by Chapter 403, Florida Statutes entitled "Public Health: Environmental Control" and Chapter 376, Florida Statutes entitled "Pollution

Discharge Prevention and Removal.” Additional information is available at the following website:
<http://www.flsenate.gov/Statutes/index.cfm>.

14. Special Terms for Laundry Services:

The Concessionaire will provide Laundry Services to the guests in the Use Area, subject to the following conditions:

- a. The Concessionaire will place the number of washers and dryers indicated on the Commercial Use Agreement within the Use Area at the location(s) designated in Attachment 2.
- b. The Concessionaire post their contact information, including phone number, in a visible location on the machine.
- c. The Concessionaire will ensure that the machines are operational and that all repairs are made within forty-eight (48) hours.
- d. The Concessionaire will be responsible for maintenance and repair of the machines at its expense.

15. Special Terms for Vending Services:

The Concessionaire will provide Vending Services to the guests in the Use Area, subject to the following conditions:

- a. The Concessionaire will provide the number of beverage vending machines and food vending machines as indicated on the Commercial Use Agreement within the Use Area at the location(s) designated in Attachment 2.
- b. The Concessionaire post their contact information, including phone number, in a visible location on the machine.
- c. The Concessionaire will ensure that the machines are operational and that all repairs are made within forty-eight (48) hours.
- d. The Concessionaire will be responsible for maintenance and repair of the machines at its expense.

16. Special Terms for Wi-fi Services:

The Concessionaire will provide standard Wi-Fi services, free of charge, to guests in the Use Area. The Concessionaire may provide premium Wi-Fi at a charge to the guests.

17. Quality of Equipment.

The Concessionaire will sell or rent only the types of equipment approved by the Department. The Concessionaire will maintain an adequate supply of all equipment, that the Department’s Agreement Manager deems appropriate for the Park or necessary to accommodate Park visitors. The Concessionaire will ensure that all equipment sold or rented is of good quality, safe, and clean.

18. Safety Equipment.

For recreational equipment rental and guided tours, the Concessionaire will provide appropriate safety equipment, as identified in the Safety Plan.

19. Equipment, Vessels and Vehicles.

The Concessionaire will obtain written approval by the Department’s Agreement Manager prior to placing passenger or tour vehicles, vessels, and rental equipment in use. The division's 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 Americans with Disabilities Act (ADA), and aesthetic factors, such as compatible colors.

20. Identification.

The Concessionaire’s vehicles, and equipment used in operations are to be of the same color, with the company logo on each vehicle. The color of the Concessionaire’s vessels, vehicles, equipment, and the company logo will be pre-approved, in writing, by the Department. All Concessionaire employees will be identified with the Concessionaire’s company uniform or shirt, nametag, and will be neat and clean.

21. Staffing.

The Concessionaire will provide adequate staffing and oversight to operate the Services. Staffing levels will be by mutual agreement of the parties and to the standards acceptable to the Department. The Concessionaire will ensure that all employees will display a courteous, friendly, and helpful attitude.

22. Contact.

The Concessionaire will maintain a telephone as a public and vendor contact point that will be staffed during operating hours. If an answering device is used, calls must be returned within twenty-four (24) hours. The Concessionaire will post contact information and instructions at identified Facilities for visitors to report concerns with maintenance and cleaning.

23. Advertising, Marketing and Signage.

The Concessionaire’s advertising, including online, brochures, signs, and other forms of advertisement will be consistent with the Florida Park Service mission and will be pre-approved, in writing, by the Department. The

Department will have the right to require removal of all or part of any advertising the Department deems inappropriate or that reflects poorly on the Department.

24. Paper Products.

All paper products and serving containers will contain post-consumer recycled content.

25. Reports.

The Concessionaire will establish and maintain books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles (GAAP). The Department, and other appropriate government agencies, will have access to these records for audit purposes during the term of this Agreement and for five (5) years following the Agreement's expiration or termination. At the Department's election, the Concessionaire will be required to submit Profit and Loss Statements, audits, ledgers, surveys and any other reports generated from files used in the management of the Services. Monthly Reports of Total Gross Sales and the Annual Profit and Loss Statements will be based on source documents and books of original entry. At the Department's election, Concessionaires providing Ferry Services or Guided Tours will submit weekly passenger/participant figures to the Department in a format acceptable to the Department. The Concessionaire understands its duty, pursuant to Section 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.

26. Inspection of Use Area.

The Concessionaire agrees the Use Area may be inspected at any time during Park Operating Hours without additional notice by the Department or by any other authorized state, county, or municipal officer. The Concessionaire will immediately correct any deficiency cited by inspectors at Concessionaire's sole expense, unless the Department is responsible for the deficiency. Failure by the Concessionaire to take the required corrective actions is grounds for the Department to terminate this Agreement.

27. Liability.

The Concessionaire assumes all risk in any activity permitted or required by this Agreement and will be solely responsible for any damages from accidents or injuries to persons or property arising out of its operations. Concessionaire is liable for any damage arising from the carelessness, negligence, or improper conduct of the Concessionaire and their employees, representatives, or agents. The Concessionaire will save and hold harmless and indemnify the Department and the Board of Trustees, and their officers, employees, and agents, against any liability, claims, judgments, attorney's fees, or costs for:

- a. Injury to, or death of, any person; or
- b. The loss of or damage to any property resulting from the use, service, operation, or performance of work under the terms of this Agreement; or
- c. Damages resulting from any act, or failure to act, by the Concessionaire, their respective employees, agents, or representatives to the extent allowed by law.

Within five (5) days of receiving service of process, the Concessionaire will notify the Department's Agreement Manager of any legal actions filed against the Concessionaire related to the Park, to Concessionaire's Services, or that may adversely affect the Department. The Department, the State of Florida, and the Board of Trustees do not waive sovereign immunity or the provisions of Section 768.28, Florida Statutes (F.S.). Nothing herein will be construed as consent to be sued by third parties.

28. Liability Waivers.

For recreational equipment rental and guided tours, the Concessionaire will ensure each customer, or the parent or guardian of a minor, signs a liability waiver. The Concessionaire will obtain liability waivers signed by customer for other services if the Department deems it necessary. Waivers seeking parents' or guardians' signature on behalf of a minor will comply with the form requirements set forth in Section 744.301, F.S.

29. Insurance.

The Concessionaire's failure to comply with any part of these insurance requirements is considered a material breach and will be grounds for termination for cause by the Department. The Concessionaire may not begin Services under this Agreement prior to complying with these insurance requirements. The Concessionaire's compliance with these requirements does not relieve the Concessionaire of its liability. All insurance obtained by the Concessionaire in accordance with this Agreement will include the following provisions:

- a. Hold Harmless Agreement in favor of the Department and the Board of Trustees.
- b. Insurance policies will name the Department and the Board of Trustees as Additional Named Insureds for the entire term of the Agreement, including any extensions.
- c. Insurance policies will include this Agreement's DEP Contract No. on the certificate.
- d. Insurance policies will list the Department's Agreement Manager's name and mailing address.
- e. Insurance policies will be with insurers licensed or eligible to do business in the State of Florida.

- f. Certificates of Insurance will contain a provision that the insurance will not be canceled for any reason except after 30 days prior written notice to the Department or its designee, except for nonpayment of insurance premium, which will be handled in accordance with Florida law.

All required insurance policies will remain in full force and effect throughout the term of this Agreement. The Concessionaire will provide evidence of all policy renewals to the Department's Agreement Manager at the time of renewal 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 the Agreement. Required per occurrence and aggregate loss limits for insurance coverage of the Concessionaire's services under this Agreement will not be subject to dilution or reduction by any other insurable loss or interest of the Concessionaire under such policy, and if requested, the Concessionaire will provide proof thereof from its insurance provider.

The Concessionaire will secure and maintain the following types of insurance covering its operations under this Agreement:

- a. Liability. The Concessionaire will secure and maintain Commercial General Liability insurance, including bodily injury, property damage, personal and advertising injury, coverage for factors relevant to the 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 the Concessionaire's Services. Insurance coverage must include coverage for all claims that 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 will be \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automotive. The Concessionaire will secure and maintain Commercial Automobile Liability insurance for company-owned vehicles, and for hired and non-owned vehicles, that are used to conduct business and provide Services. For these vehicles, the Concessionaire will have 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. Workers' Compensation. The Concessionaire will secure and maintain, during the life of this Agreement, Workers' Compensation insurance for its employees. The Concessionaire will provide evidence of the coverage to the Department prior to the Concessionaire signing the Agreement. The self-insurance program or insurance coverage will 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 will provide adequate insurance, satisfactory to the Department, for the protection of its employees.
- d. Other as needed. The Department may require other insurance under this Agreement for the unique type of operations, recreation, or facilities provided and any unique hazards arising from them. Examples include 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 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.

30. Public Records

- a. If the Concessionaire is acting on behalf of the Department in its performance under the Agreement, the Concessionaire must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Concessionaire in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if the Concessionaire refuses to allow public access to Public Records as required by law.

31. 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:

Attachment 1

- 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

32. Illegal, Unlawful, or Improper Use.

Prior to commencing business under this Agreement, the Concessionaire is required to possess all local, state and federal licenses and permits required to operate the Services and will provide to the Department or Department's Agreement Manager copies of the same. The Concessionaire will comply with all policies, rules, and laws governing the operation of the Park, including Chapter 62D-2, F.A.C., and Chapter 258, Part I, F.S. The provision of the Services under this Agreement must comply with the Park's Unit Management Plan. The Concessionaire will comply with all applicable federal, state and local laws, rules, regulations and ordinances in providing services. The Concessionaire acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules, regulations, the American with Disabilities Act, and Purchasing Card Industry Data Security Standards. The Concessionaire's failure to comply with any part of this provision will be grounds for the Department's termination of this Agreement pursuant to the Termination Section of this Agreement. The Concessionaire and its employees will not discriminate, by segregation or otherwise, against any person on the basis of race, color, religion, sex, national origin, age or disability in its operations under this Agreement.

33. E-Verify.

Pursuant to State of Florida Executive Order Number 11-116, Concessionaire is required to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment of all new employees hired by the Concessionaire during the Agreement term.

34. Sexual Predator and Offender Check.

The Department will conduct a sexual predator and sexual offender check on the Concessionaire’s Agreement Manager and officers. The Concessionaire will conduct a sexual predator and sexual offender check on all employees and subcontractors prior to executing this Agreement and will conduct a sexual predator and sexual offender check on all employees and subcontractors hired subsequent to execution of this Agreement. The Concessionaire will keep a copy of its investigation records in the Concessionaire’s personnel files and have that file available to the Department during the Concessionaire’s regular office hours. The Concessionaire will not employ any person within the Park who is listed on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement (“FDLE”) or maintained by the U.S. Department of Justice’s Dru Sjodin National Sex Offender Public Website (“NSOPW”). The Concessionaire will be responsible for including this provision in all subcontracts entered into under this Agreement. The Department has the right to conduct criminal background checks and additional sexual predator and sexual offender checks on the Concessionaire’s Agreement Manager, officers, employees, and subcontractors during the term of this Agreement. If the Concessionaire or any subcontractor knowingly employs a sexual predator or sexual offender or fails to perform the required research of the FDLE list or the NSOPW, the violation will be cause for the Department’s immediate unilateral termination of this Agreement.

35. Facilities Development.

The Department must pre-approve any improvements or additions to the Facilities in writing. The Florida Park Service District Bureau Chief or their superior must pre-approve any construction or capital improvements. The Department’s specific requirements for construction or capital improvements will be included in the written pre-approval. The Concessionaire may not plant or remove landscape material from the premises without written pre-approval from the Department’s Agreement Manager. Any planted material must be native to the park and be pre-approved, in writing, by the Department’s Agreement Manager.

36. Termination for Cause.

If the Concessionaire fails to comply with any of the terms and conditions of this Agreement, the Department will provide written notice of termination to the Concessionaire delivered to the Concessionaire's addresses as set forth in the Notices section of this Agreement, above. The termination will be effective three (3) calendar days from the Concessionaire's receipt of the Department's notice.

a. Option to Cure Default

The Department may, in its sole discretion off the afford the Concessionaire the opportunity to cure any non-compliance that results in termination within a specified timeframe. If the Department chooses to exercise this right, it will be indicated on the Notice of Termination. Upon failure of the Concessionaire to cure the non-compliance within the timeframe specified, the Agreement will automatically terminate three (3) calendar days from expiration of the cure period.

37. Termination for Convenience.

This Agreement may be terminated by either party without cause by giving thirty (30) days written notice to the other party's address as set forth in the Notices section of this Agreement.

38. Emergency Termination.

If at any time during the term of this Agreement the Department determines Services are unsafe or detrimental to the Park’s resources, the Department has the right to terminate this Agreement. Upon receipt of the written notice of termination, the Concessionaire shall immediately suspend Services.

39. Obligations upon Termination.

The Concessionaire will remove themselves and all other parties who may be present upon, or occupy, any part of the Park premises within the three (3) calendar days prior to the effective date of termination. Continued occupancy of the Park premises after expiration or termination of the Agreement will constitute trespass by the Concessionaire and may be prosecuted as such.

40. Choice of Law and Venue.

This Agreement has been delivered in the State of Florida and will be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement will be interpreted to be effective and valid under applicable law, but if any provision of this Agreement is invalid under applicable law, that provision will be ineffective without invalidating the remaining provisions of this Agreement. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts, and venue will be in a court of competent jurisdiction, in Leon County, Florida. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

41. No Wavier.

No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or default by either party under this Agreement will impair any such right, power, or remedy of either party; nor will such delay or omission be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

42. Independent Contractor.

The Concessionaire is an independent contractor, and not a contractor, lessee, or licensee.

43. No Assignment.

This Agreement is granted to the Concessionaire and may not be assigned, in whole or in part. If the Concessionaire fails to comply with this paragraph the Department will immediately terminate this Agreement.

44. No Third Party Beneficiaries.

This Agreement is not intended to grant any rights, privileges, or interest to any third party.

45. Department's Marks.

The Concessionaire understands that the Department's name, logos, trademarks and service marks (collectively the "Department's Marks") are the sole and exclusive property of the Department and will not be used in any fashion without the prior expressed written consent of the Department.

46. Marketing and Intellectual Property.

- a. Websites. The Department agrees to allow the Concessionaire to post content relating to the Services on its website. However, if the Concessionaire obtains any domain names that contain the Park name associated to the Services at the Park, the Concessionaire will discontinue the use of the Park upon termination or expiration of the Agreement. The Concessionaire agrees to assign ownership of any marketing materials, websites, or social media accounts using the Park name, whether or not they can be copyrighted, to the Department. The Concessionaire is responsible for monitoring of their websites and social media accounts and reporting complaints or inappropriate posts to the Department's Agreement Manager. The Concessionaire agrees to provide the Department's Agreement Manager with administrator log-ins and passwords to all websites and social media accounts using the Park name upon their creation. Any changes to the administrator log-ins and passwords must be immediately reported to the Department's Agreement Manager, along with the revised log-in and password.
- b. Liquidated Damages. Failure to comply with these responsibilities constitutes a Default under this Agreement and entitles the Department to claim liquidated damages. The Concessionaire acknowledges the actual damages to be suffered by the Department by failing to transfer or discontinue the use of the domain name are incapable of accurate calculation. Therefore, the parties agree that \$100 a day is a reasonable amount of liquidated damages, which are not intended to be a penalty and are solely intended to compensate for unknown and unascertainable damages.

47. Headings.

The headings contained herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

48. Amendments.

The Agreement may be amended only by a written agreement between both parties.

49. Execution in Counterparts.

This Agreement and any amendments related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature.

50. Warranty of Authority to Sign.

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

ATTACHMENT 2

USE AREA



ATTACHMENT 3

FEE SCHEDULE

Rental Description	Hourly Charge	Daily Charge
Single Kayak	\$10.00	\$40.00
Double Kayak	\$20.00	\$80.00
Stand up Paddleboard ("SUP")	\$20.00	\$80.00

EXHIBIT A
 Monthly Report of Concessionaire's Total Gross Sales
 (Due by the 20th of each month)

Park: _____ Date: _____

Concessionaire Name: _____

Period Covered: From _____ To _____

Gross Sales

Sale Location(s): _____ \$ _____

If there are multiple point of sale locations, please include the total sales for all locations on this line; and, list the name and total sales of each location on an attached second sheet.

Total Taxes Collected: - \$ _____

Total Customer Refunds: # of Refunds: _____ - \$ _____

Total Gross Sales = \$ _____

Monthly Compensation

Monthly Commission (_____ % rate x Total Gross Sales) \$ _____

Flat Fee + \$ _____

Monthly Utility Fee(s) to Park + \$ _____

Pass through fees (entrance fees, pavilion rentals, etc.) + \$ _____

Other Payments (*identify*) _____ + \$ _____

Use Tax (if applicable) + \$ _____

Total Monthly Compensation Due: = \$ _____

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 records available for review/audit by the Department.

Signature of Concessionaire Date

Signature of Preparer Date

Preparer Name

Return this form to the Department's Agreement Manager.

EXHIBIT B

STATE USE TAX EXEMPT CERTIFICATION

Re: Commercial Use Agreement between

_____ and
(Insert name of Park)

(Insert name of Concessionaire per Agreement)

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

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

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

_____ Other (explain and provide proof of exemption):

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

_____ Date
Park Manager's Signature

_____ Date
Concessionaire's Agreement Manager's Signature

Return this form to the Park Manager.