

CONCESSION AGREEMENT – AMENDMENT #1

THIS AMENDMENT #1 TO CONCESSION AGREEMENT ("Amendment #1") 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 Friends of Highlands Hammock State Park, Inc., organized as a Florida Not for Profit Corporation ("Concessionaire").

RECITALS

WHEREAS, on or about February 15, 2017, the Department and Concessionaire entered into a Concession Agreement (DEP Agreement No. CA-0816) (the "Agreement").

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

WHEREAS, the Agreement, and all exhibits/attachments referenced therein, is incorporated in this Amendment #1 by reference.

WHEREAS, the parties wish to modify the terms and conditions of the Agreement, as more particularly set forth in this Amendment #1.

WHEREAS, the parties wish to exercise the discretion afforded by General Conditions, Paragraph 10 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. Compensation: Special Conditions, Paragraph F of the Agreement is hereby deleted in its entirety and replaced with the following language:

F. Compensation. The Concessionaire shall pay the Department a commission fee, pursuant to the terms set forth in this Agreement, equal to 10% of Total Gross Sales each month, but not less than \$9,000.00 annually ("Minimum Guarantee"), which shall be assessed and any shortfall remitted at the end of each year of this Agreement, 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 and beverage, vending, and other permissible services including but not limited to equipment rentals and ticket sales, generated as a result of 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, or
2. Gratuities, or
3. Funds collected on food consumed by the Concessionaire's employees, or
4. Pass through fees, which include:
 - a. Park admission fees collected by the Concessionaire on behalf of the Department,
 - b. Other 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."

3. Ratification:

Except as modified by this Amendment #1, the Agreement remains in full force and effect and is hereby ratified and confirmed. This Amendment #1 shall be attached to and incorporated into the Agreement. In the event of a conflict between the Agreement and this Amendment #1, this Amendment #1 shall control. Henceforth, the term "Agreement" shall mean the Agreement as further amended by this Amendment #1.

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 #1 may be executed in two identical counterparts, each of which shall be deemed an original. The two, executed, identical counterparts shall constitute this Amendment #1. 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.

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WHEREFORE, the parties hereto have caused this Amendment #1 to be executed as of the day and year last set forth below.

FRIENDS OF HIGHLANDS
HAMMOCK STATE PARK, INC., A
FLORIDA NOT FOR PROFIT
CORPORATION

By: 
Authorized Representative

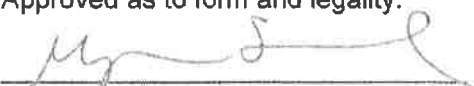
Date: 3-24-17
President FHSP

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 
Secretary's signature or designee

Printed Name: Valinda Subic
Title: Bureau Chief
Division of Recreation and Parks
Date: 5-5-17

Approved as to form and legality:


DEP Attorney

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