



Maricopa County

Parks and Recreation

**Commercial Management Concessions Agreement
Between
Maricopa County
And**



Comment [t1]: Insert name of Concessionaire

**To Manage, Operate and Maintain a Commercial
Concession within the Maricopa County Regional
Park System**

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Commercial Management Concessions Agreement

Between

Maricopa County

And

[Redacted]

Comment [t2]: Insert name of Concessionaire

For the Management, Operation and Maintenance of a Commercial Concession within the Maricopa County Regional Park System

This Commercial Management Concessions Agreement hereinafter referred to as "Agreement," is entered into between Maricopa County, a political subdivision of the State of Arizona (hereinafter referred to as "County," and [Redacted], (hereinafter referred to as "Concessionaire"). County and Concessionaire are collectively referred to as "Parties" or individually as a "Party."

Comment [t3]: Insert name of Concessionaire

RECITALS

WHEREAS, County is authorized to enter into this Agreement pursuant to A.R.S. §§§11-201, 11-251 and 11-933; and

WHEREAS, the Recitals by this reference shall be incorporated herein and made a part of this Agreement; and

WHEREAS, the provisions of the Maricopa County Parks and Recreation Department Park Rules ("Park Rules") are hereby incorporated herein and made a part of this Agreement; and

WHEREAS, pursuant to the Land Patents or management rights, the County is authorized to enter into direct agreements with Concessionaire to manage, operate and maintain a commercial concession within the Maricopa County Regional Park System ("System"); and

WHEREAS, the County believes the public interest can best be served by contract operation of the Concession lying within the areas known as the Maricopa County Regional Park System; and

WHEREAS, the Parties agree the intent of this Agreement is solely for the operation, management and maintenance of the Concession described within this Agreement and is not intended to convey any interests in any property rights, except those specifically provided for in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements hereinafter contained, the County and the Concessionaire agree as follows:

1. **General Terms.**

1.1 Scope

Regional Park System.

The County hereby grants the Concessionaire the right to manage, operate, and maintain a [REDACTED] Concession ("Concession") within the Park System, subject to the terms of this Agreement. For purposes of this Agreement, the Park System consists of the following parks: Cave Creek Regional Park, Estrella Mountain Regional Park, Lake Pleasant Regional Park, McDowell Mountain Regional Park, San Tan Mountain Regional Park, Utery Mountain Regional Park and White Tank Mountain Regional Park. (See **Exhibit 1.1 – Regional Park System**) Proposed changes or modification to the Concession as stated in this Agreement will be concurred with by County in writing.

Comment [t4]: Insert specific type of concession

1.2 Operational Area.

The respective Park Supervisor will coordinate with the Concessionaire as to the area of the Park where the Concession will be operated from. Site selection will be determined by, but not all inclusive of, such consideration as required utilities, required facilities need to support operations; other activities or concessions during the same period; the nature of the event to be supported, etc.

1.3 Other Concession Activities.

The Concessionaire shall be restricted to Concession activities as stated in this Agreement or as modified as stated in **Section 1.1**.

2. **Term and Termination.**

2.1 Effective Date.

The effective date of this Agreement will be the date executed by the Maricopa County Board of Supervisors (the "Effective Date").

2.2 Contract Year.

Contract Year 1 of this Agreement will be from the Effective Date through December 31, 2011. Subsequent Contract Years will be from January 1st through December 31st.

2.3 Term and Renewal Option.

The term for this Agreement will be for a period of approximately one (1) year (Effective Date – December 31, 2011) (the "Term") with ten (10) one (1) - year renewal options ("Renewal Options"). If Concessionaire desires to exercise the Renewal Options, Concessionaire shall provide written notice to the County on or before October 1st of the ending Contract Year. Approval of the Renewal Option shall be at the sole discretion of the County and the Parties hereby agree that County shall not be liable to Concessionaire or any of its officers, employees, agents or

Comment [t5]: This date will change when new concessions are added in later years.

contractors at law or in equity for not approving the Renewal Option. If Concessionaire exercises the Renewal Option and it is accepted by the County, this Agreement shall continue in force for an additional period of one (1) year commencing on January 1st of the new Contract Year with an expiration of December 31st of the respective Contract Year. All terms and provisions of this Agreement shall remain in full force and effect throughout the renewal term unless otherwise stated as part of the renewal agreement. If Concessionaire fails to exercise the Renewal Option, the Term shall expire on December 31st of the respective Contract Year.

2.4 Ownership of Property and Equipment upon Event Completion, Expiration or Termination.

2.4.1 Upon event completion, expiration, or termination all property and equipment brought on to the Concession Site by the Concessionaire in support of the Concession will be removed from the Site within a period of forty eight (48) hours and the site cleaned of all garbage and debris and restored to a condition acceptable to the respective Park Supervisor unless otherwise authorized, in writing, by said Park Supervisor. Any property or of Concessionaire not removed within said forty eight (48) hour period shall be deemed to have been abandoned by Concessionaire and County may use it or dispose of such property or equipment in any fashion it may deem desirable. Concessionaire shall be solely responsible for paying any and all reasonable costs incurred by the County to remove any property, equipment, garbage or debris required to be removed by Concessionaire hereunder which Concessionaire fails to remove within the time herein described.

2.4.2 Concessionaire will be required to restore any modifications to existing park utilities, buildings, roads, parking lots and other infrastructure to its original condition upon occupation of the Site within forty eight (48) hours of event completion, or expiration or termination of the Agreement. Any restoration not completed within forty eight (48) hours of event completion or expiration or termination of the Agreement shall permit County to complete required actions. Concessionaire shall be solely responsible for paying any and all reasonable costs incurred by the County.

2.5 Termination due to Conflict of Interest.

The Parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511.

2.6 Termination for Cause.

This Agreement may be terminated in whole or in part, at any time, by the County, upon sixty (60) days prior notice to the Concessionaire without any penalty or liability to County. Concessionaire and its employees, agents, officers, directors, members, successors, or assigns hereby waive any and all rights to bring any claim against County or its employees, agents, officers, directors, members, successors or assigns from or relating in any way to County's termination of this Agreement pursuant to this **Section 2.6**. Representative reasons for "cause" include, but are not limited to:

- 2.6.1 New requirements make a continuation of the Agreement infeasible, i.e. licensing or permitting requirements.
- 2.6.2 New Park operational or recreational requirements make a continuation of the Agreement infeasible.
- 2.6.3 Unsatisfactory performance on the part of the Concessionaire or failure to comply with the provisions of this Agreement.

2.7 Termination by the Parties.

This Agreement may be terminated without cause with mutual agreement of both Parties. The Party requesting the termination must submit its request, in writing, a minimum of thirty (30) days in advance of the requested termination date. Said request for termination will be sent to the intended other Party by U.S. Postal Service, certified, return receipt requested. Delivery will not be complete until the U.S. Postal Service has notified the sender the request as been delivered to the other Party.

2.8 Holder Over.

Should the Concessionaire, with the consent of the County, continue to provide the services described herein after the expiration of the Term, without having entered into a subsequent Agreement of like nature and content to this Agreement, such continued service shall be deemed a holder over of the licensed facility on a month-to-month basis, with all of the terms and conditions of this Agreement to continue in full force and effect.

3. **Accounting and Fees.**

3.1 Accounting Records.

The Concessionaire will maintain an accounting system which conforms to the Generally Accepted Accounting Principles (GAAP) and which accurately reflects the results of the entire operation of the Concession. These financial records will be retained for a seven (7) year period from the current Contract Year. These financial records will be made available for inspection or audit by county, federal, or state government, their agents or employees once per Contract Year.

3.2 Fee and Revenue Reporting.

3.2.1 Administrative Fees and Additional Fees.

During the term of this Agreement, the Concessionaire will pay the County a fee schedule as outlined in **Exhibit 3.2.1 –Fee Reporting and Payment Schedule**. By definition, the fee is defined as the payment due County (“Fee”).

3.2.2 Income Statement.

An Income Statement (a form developed by County to be used to report gross revenue at the Concession) will accompany the fee payment. (See **Exhibit 3.2.1 – Fee Reporting and Payment Schedule** and **Exhibit 3.2.2 – Income Statement**)

3.2.3 Fee payment will be made out to Maricopa County Parks and Recreation Department.

3.2.4 Fee payment and Income Statement will be mailed to:

Maricopa County Parks and Recreation Department
Attn: Accounts Receivable
234 N. Central Avenue, Suite 6400
Phoenix, AZ 85004

3.2.5 Late Payment Fee.

A Late Payment Fee shall be ten percent (10%) of the invoiced amount or amount due. Invoiced late fees are due County within twenty (20) days of the date of the invoice. Should the County's Due Date fall on a Saturday, Sunday or legal holiday, then said Due Date shall be at the close of business on the first day thereafter which is not a Saturday, Sunday or holiday.

3.2.6 Failure to pay required fees shall be considered a breach of this Agreement. In the event of litigation to enforce this provision (collection or default), the County is entitled to recover its attorney's fees and costs in such proceedings.

3.2.7 County has the right to audit payment records received for timeliness and accuracy a minimum of once per Contract Year. Any fees determined to be due County will be invoiced to the Concessionaire with payment due within twenty (20) days. Should the Due Date fall on a Saturday, Sunday or legal holiday, then said Due Date shall be at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.

4. **Services and Facilities.**

4.1 Required Services and Facilities.

The Concessionaire is required to provide the services, facilities and amenities provided in **Exhibit 4.1 - Required Services and Facilities** by events of Force Majeure (defined in **Section 10**). Changes from **Exhibit 4.1 – Required Services and Facilities**, as published, shall require prior written approval of the County.

4.2 Performance Standards.

The Concessionaire shall furnish services as stated in this Agreement in a diligent, professional and creditable manner satisfactory to the County in compliance with all applicable statutes, laws, ordinances, rules and regulations. Evaluations will be made by the respective Park Supervisor of the quality of operation of the Concession; the Contract Administrator for Maricopa County Parks and Recreation Department is responsible for audits, a minimum of one time per Contract Year, of the Agreement to ensure compliance with all terms of this Agreement and if areas are determined to be deficient, these areas will be identified to the Concessionaire for correction. The Concessionaire shall give full cooperation to the County in this evaluation process. Failure to correct deficiencies will result in default on the part of the Contractor of which **Section 6.4** will apply.

4.3 Non-Exclusive Use.

4.3.1 The County may operate or permit the operation of similar concessions that offer “like” services throughout the Parks System. At the option of the County, similar concessions may be operating during the same event.

4.3.2 County does not guarantee the Concessionaire any minimum number of events throughout the Contract Year or any guaranteed revenue amount throughout the Contract Year.

4.4 Operating Season.

The intent is that the Operating Season will be three hundred sixty five (365) days per year, seven (7) days per week in support of scheduled events or as agreed upon in the Operations Schedule as referenced in **Section 1.2.2**.

4.5 Emergency Evacuation.

The Concessionaire will be required to take direction from the respective Park Supervisor in event of emergency evacuation. In event of evacuation, items needed to support the Concession may be directed to remain on-site; County will not be liable for any loss or damage incurred.

5. **Operation, Maintenance, Improvements, Construction and Utilities.**

5.1 Operations and Maintenance.

5.1.1 The Concessionaire is responsible for all operational maintenance costs associated with the Concession.

5.1.2 The Concessionaire shall be required, at Concessionaire expense, to obtain all required permits and licenses necessary for any planned operations, or maintenance.

5.1.3 The Concessionaire shall provide, at its own expense, all equipment, furnishings and supplies necessary to fulfill its obligations under the terms and conditions of this Agreement.

- 5.1.4 County is not responsible for the providing of any security of the Concession Site.
- 5.1.5 County is not responsible for the providing of telecommunication lines, fax lines or any other communication support.
- 5.1.6 The Concessionaire agrees to maintain the Concession and Concession Site so that there is a neat, presentable appearance at all times.
- 5.1.7 County is responsible for all infrastructure repair or maintenance unless Concessionaire's actions are determined to be negligent in the causing of required repair or maintenance.

5.2 Improvements and Construction.

No site improvements or construction will be completed by the Concessionaire that will be permanent in nature or that will require formal planning and permitting. Temporary structures, i.e. shade structures, tables, etc. will require the approval of the respective Park Supervisor and will be removed upon vacating the Concession Site.

5.3 Utilities.

County agrees to provide water and electricity (dependent upon availability at the site) as outlined in **Exhibit 3.2.1 – Fee Reporting and Payment Schedule**. County will not make special provisions for providing water or electricity or other utilities if they are not available to other users of the Park. If, in the opinion of the Park Supervisor, water or electricity usage is excessive, the Concessionaire will be responsible for the payment of additional fees as outlined in **Exhibit 3.2.1 – Fee Reporting and Payment Schedule**.

5.4 Condition of Property.

The Concessionaire agrees to accept the property on which the Concession will be operated in its condition as of the date of occupation, “as is”. The County does not imply or provide any warranty with respect to the physical aspects of the Concession Site except as set forth herein. “Date of Occupation” is defined as the day the Concessionaire physically occupies the Concession Site. County reserves the right to change the location on which the Concessionaire will conduct its operations during the term of the Agreement.

5.5 Environmental Compliance.

- 5.5.1 The Concessionaire will be responsible for ensuring compliance with the Maricopa County air, water and waste control regulations as well as any other applicable federal, state and local statutes, regulations and ordinances as they pertain to environmental protection for their areas of responsibility within the Concession.

- 5.5.2 Management and proper disposal of all hazardous material is the responsibility of the Concessionaire. The Concessionaire must keep appropriate and required documentation relating to the management and disposal of all hazardous material.
- 5.5.3 The Concessionaire will report to the County within twenty four (24) hours of knowledge of any event or occurrence at the Concession Site which may or does result in pollution or contamination affecting lands, water or facilities owned or managed by the County.
- 5.5.4 The Concessionaire shall protect, defend, indemnify and hold harmless the County from and against any and all liabilities, costs, charges and expenses, including civil or criminal penalties, arising out of, or related to, an activity involving or use of a regulated substance under any applicable federal, state, or local environmental laws, regulations, ordinances or amendments thereto because of:
 - A. Any such substance that came to be located on the Concession Site due to the Concessionaire's use or occupancy of the Concession Site after occupation of the Concession Site in support of an event; or
 - B. Any release, threatened release or escape of any substance in, on, under or from the Concession Site to the extent that it is caused by any willful conduct, action or negligence of the Concessionaire.

6. **General Provisions.**

6.1 Indemnification and Insurance.

6.1.1 Indemnification.

- A. In addition to the indemnification provisions provided for elsewhere in this Agreement, the Concessionaire shall indemnify and hold harmless the County, its departments, agencies, officers and employees, from and against all claims, demands, judgments, actions, settlements, liens, penalties, damages, losses, injuries, costs and expenses, including attorney's fees and court costs and court costs by third parties in connection with construction, use, operation, expansion and maintenance of facilities at the Concession Site.
- B. The Concessionaire or any of its contractors or subcontractors shall not have any authority to create any lien against the County for labor, materials, or services furnished by the Concessionaire, its contractors or subcontractors. If, because of any act or omission (or alleged act or omission) of the Concessionaire, any mechanic's, materialman's or other lien, charge or order for the payment of money shall be filed or recorded against the County (whether or not such lien, charge or order is valid or enforceable as such), the Concessionaire shall immediately notify the County. The Concessionaire will, at its own expense, cause the same to

be canceled and discharged of record within thirty (30) days after the Concessionaire will have received notice of the filing thereof, or the Concessionaire may, within said period of time, furnish to the County a bond satisfactory to the County against said lien, charge or order, in which case the Concessionaire will have the right in good faith to contest the validity or amount thereof.

- C. The Concessionaire agrees to indemnify and hold harmless the County, its departments, agencies, officers and employees, from and against any and all claims, demands, actions, judgments, settlements, liens, penalties, damages, losses, injuries, costs and expenses, including reasonable attorney's fees, arising out of or in any way caused by or related to any activity, condition or event arising out of the performance or non-performance of the provisions of this Agreement, except to the extent caused by the gross negligence or willful misconduct of the County or any of its departments, agencies, officers, employees or agents.

6.1.2 Insurance.

The Concessionaire shall maintain the following insurance coverage:

- A. Public liability insurance, including bodily injury/property damage, auto liability, Concession Site liability, products and completed operations liability, bailee legal liability and contractual liability, providing limits of no less than [REDACTED] million dollars (\$ [REDACTED]) per claim and [REDACTED] million dollars (\$ [REDACTED]) aggregate limits, or evidence of self-insurance acceptable to the County, for injuries or damage received or sustained by any person(s), or property at the Concession. The insurance policy must include coverage for environmental clean-up unless documentation is provided by the Concessionaire that this is not available or feasible.
- B. The Concessionaire is required to carry Worker's Compensation within statutory limits.

Comment [t6]: Insert specified amount from list approved by Risk Management for SUP's.

6.1.3 Additional Requirements.

The County will be named as "additional insured" under all policies of insurance with the exception of Worker's Compensation policy. Copies of all insurance policies or certificates thereof will be made available to the County upon request. Copies of the Certificate of Insurance (COI) will be furnished annually to the County. The County will be given thirty (30) days advance written notice of cancellation of a policy, non-renewal, or change in coverage or limits.

6.1.4 Concessionaire Property Losses.

The Concessionaire assumes all risk of loss and shall be responsible for any and all losses to the Concessionaire's property and all

Concessionaire improvements within the Concession Site. Loss to the property may result from, but is not limited to, theft, vandalism, fire and any fire-fighting activities (including prescribed burns), landslides, rising waters, winds, falling limbs or trees and acts of God.

6.2 Default, Insolvency, Remedies.

6.2.1 Default by Concessionaire.

It shall be a default and breach of this Agreement if any of the following shall occur at any time during the Term:

- A. Concessionaire shall fail to make payment of any monetary sums specified to be paid by Concessionaire under this Agreement on or before the date the same shall become due, and such failure shall be continued for a period of twenty (20) days after notice of such default is given to Concessionaire.
- B. Concessionaire shall fail to observe or perform any of Concessionaire's other covenants, agreements or obligations hereunder, and such failure shall continue for a period of thirty (30) days after notice of such default is given to Concessionaire, provided, however, that if such default is of a nature that it cannot reasonably be cured within said thirty (30) days, then the cure period may be extended by mutual agreement by the Parties, in writing, for such longer time as may be reasonably necessary, so long as Concessionaire commences to cure failure within said thirty (30)-day period, in good faith and with due diligence, and thereafter diligently and continuously pursues the same to completion; or
- C. If (i) a petition to have Concessionaire adjudicate a bankrupt or other proceeding under any Federal or State law relating to bankruptcy, bankruptcy reorganization, insolvency or relief of debtors is filed or instituted by Concessionaire or is filed or instituted against Concessionaire, debtor, and not be dismissed within ninety (90) days from the date of such filing or institution, or Concessionaire fails to notify the County of any such filing within twenty (20) days of the filing date of the petition, or (ii) a receiver, guardian, conservator, trustee or assignee, or any other similar officer or person shall be appointed to take charge of all of the property of Concessionaire, and such appointment is not vacated within ninety (90) days after the date of filing, or (iii) Concessionaire shall make any general assignment for the benefit of creditors, or (iv) all of Concessionaire's assets located at the Concession Site or interest in the Concession is subjected to attachment, execution or other judicial seizure.

6.2.2 County's Remedies on Default.

Upon default hereunder by Concessionaire, the County shall be entitled to exercise the following remedies:

- A. The County may, at the election of the County, terminate this Agreement by giving Concessionaire notice of termination. On the giving of the notice of termination, all of Concessionaire's rights in the Concession and under this Agreement shall terminate. Promptly after notice of termination, Concessionaire shall surrender and vacate the Concession Site, and County may re-enter and take possession of the Concession and eject all parties in possession, or eject some and not others, or eject none. Termination under this Section shall not relieve Concessionaire from the payment of any sums then due to County or from any claim for damages previously accrued or then accruing against Concessionaire. If the Agreement is terminated in accordance with these provisions, Concessionaire hereby covenants to peaceably and quietly surrender the Concession to the County and to execute and deliver to the County such instruments as shall be required by the County, as will properly evidence termination of Concessionaire's rights hereunder and its interest herein.
- B. The County may sue for specific performance and/or exercise any other remedy available to the County at law or in equity.

6.2.3 Concessionaire's Remedies.

The County shall be in default under this Agreement if the County fails to perform any of its obligations hereunder and such failure to perform continues for a period of thirty (30) days after written notice thereof from Concessionaire to the County (unless such failure cannot reasonably be cured within thirty (30) days, in which event the County shall have commenced to cure said breach or failure within said thirty (30) day period and shall diligently pursue cure of the failure or breach to completion to avoid being in default). Should County be in default pursuant to the terms of this **Section 6.4.3**, Concessionaire may terminate this Agreement with ninety (90) days written notice to County.

6.3 Assignment.

The Concessionaire may not assign or subcontract any of the Concessionaire's rights or interests in the Agreement.

6.4 Park Closure.

The County reserves the right to close any area of the Park, including the area in which the Concession is located, when deemed necessary for public safety and health purposes without any liability to County for any compensation to the Concessionaire for losses, including, but not limited to, lost income, wages or other

compensation which may be claimed by the Concessionaire. The County may establish limits of visitation at any portion of the Concession Site, based on public health and safety, availability of parking spaces, or any other reason deemed by the County to be in the public interest, in the judgment of the County, without any liability to County for any compensation to the Concessionaire for losses, including, but not limited to, lost income, wages or other compensation which may be claimed by the Concessionaire.

6.5 Compliance.

The Concessionaire hereby agrees and shall comply with all applicable federal, state, county and city statutes, laws, ordinances, rules, regulations and instructions, including Maricopa County Parks and Recreation Department's rules and regulations (attached as **Exhibit 6.7 – Park Rules**), in effect now or as may be amended or added, which apply to the development, management, operation and maintenance of the Concession and to keep fully informed of, and in compliance with, any changes or revisions thereto. The Concessionaire shall also pay all taxes, assessments, fees and other expenses of any nature associated with the Concession.

6.6 Public Access.

6.6.1 The Concessionaire may restrict public access within the Concession during hours of operation and non-operation for reasons of security or health and safety.

6.6.2 The Concession will be open to the public. No person shall be denied use of the Concession because of race, sex, age, handicap, disability, color, religion, sexual orientation or national origin. Concessionaire reserves the right to deny any person use of those portions of the Concession when it reasonably believes that such use poses a direct threat to the health or safety of others.

6.7 Accident Reporting.

The Concessionaire will immediately report to the County any event which results in death or injury medical transport or requiring medical attention. Reporting will be to the Park Supervisor or the Regional Superintendent in the Supervisor's absence. In event an unsafe operation of the Concession is noted by the Park Supervisor or park staff, operation will immediately be suspended until the risk or threat has been resolved to the reasonable satisfaction of the Park Supervisor or park staff. Such suspension will be without liability to County for any compensation to the Concessionaire for losses, including, but not limited to, lost income, wages or other compensation which may be claimed by the Concessionaire.

6.8 Concession Site Occupancy.

No equipment or property will be stored outside of the Concession Site.

6.9 Advertising and Media Releases.

- 6.9.1 Advertisements, signs, circulars, brochures, letterheads and other media or materials shall not misrepresent in any way the accommodations or services provided as pertains to this Agreement.
- 6.9.2 Signs or other advertising posted on County land outside the Concession will be subject to County and any other applicable administrative agency approval as to location, design, size, color and content prior to construction or use. All such signs will comply with all applicable statutes, laws, ordinances, rules and regulations.
- 6.9.3 The Concessionaire is authorized to accept advertising from vendors not located ("Outside Vendors") at the Park that desire to advertise their respective business to visitors of the Concession.
- 6.9.4 The Concessionaire is authorized to assess a fee for advertising requested by outside vendors. Advertising revenue generated will be reported as Gross Revenue.
- 6.9.5 Major Media Releases.

Concessionaire will coordinate media releases with County prior to release. Parks' PIO will receive a copy of all press releases and media distribution.

6.10 Notices, Current Addresses and Points-of-Contact.

All notices required or permitted under this Agreement shall be in writing and given by United States Post Office certified mail, return receipt requested, to each Party's following address, or to such other address as either Party may notify the other in writing. Any such notice shall be considered served when communication is received and signed for or delivery is refused.

For the County: Maricopa County Parks & Recreation Department
Attn: Contract Administrator
234 N. Central Avenue, Suite 6400
Phoenix, AZ 85004

For the Concessionaire:

Attn: _____

Telephone: _____
E-Mail: _____

Comment [t7]: Insert appropriate information for Concessionaire

Notifications required to be made to the respective Park Supervisor will be made telephonically to the phone numbers listed in **Exhibit 1.1 – Regional Park System**.

6.11 Equal Opportunity Employment Requirements.

The Concessionaire shall not discriminate against any employee or applicant for employment because of race, age, handicap, disability, color, religion, sex, sexual orientation or national origin. The Concessionaire shall comply with Title VI and Title VII of the Federal Civil Rights Act; the Federal Rehabilitation Act; the Age Discrimination in Employment Act; the Americans with Disabilities Act of 1990, A.R.S. §41-1461 *et. seq.*, A.R.S. §41-1492 *et. seq.*, 29 U.S.C. §721 (Section 504), and Arizona Executive Order 75-5 which mandates that all persons shall have equal access to employment opportunities.

6.12 Immigration Reform and Control Act of 1986 (I.R.C.A.).

The Concessionaire understands and acknowledges the applicability of the I.R.C.A. The Concessionaire agrees to comply with the I.R.C.A. and Arizona statutes, in the performance of this Agreement and, upon request, permit the County to inspect personnel records to verify such compliance.

6.13 Employer Sanctions Law.

The Concessionaire warrants that it is in compliance with A.R. S. § 41-4401 and further acknowledges:

6.11.1 That the Concessionaire and its subcontractors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. §23-214, Subsection A;

6.11.2 That a breach of a warranty under Subsection A above, shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement;

6.11.3 That the contracting government entity retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Agreement to ensure that the Contractor or subcontractor is complying with the warranty provided under Subsection A above and that the Contractor agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection;

6.11.4 That nothing herein shall make any Contractor or subcontractor an agent or employee of the contracting government entity.

6.14 Verification Regarding Compliance with A.R.S. §§ 35-391.06 and 35-393.06, Business Relations with Sudan and Iran.

6.14.1 By entering into the Agreement, the Concessionaire certifies it does not have scrutinized business operations in Sudan or Iran. The Concessionaire shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.

- 6.14.2 The County may request verification of compliance for any Contractor or subcontractor performing work under the Agreement. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work; termination of the Agreement for default; and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.
- 6.15 Taxes.
- 6.15.1 The Concessionaire shall pay taxes of whatever character which may be levied or charged upon:
- A. The Concessionaire's rights under this Agreement; or
 - B. Upon the Concessionaire's furniture, equipment or other property; or
 - C. Upon the Concessionaire's operations under this Agreement.
- 6.15.2 No leasehold or other real property interest is being created or conveyed upon which tax consequences may exist.
- 6.16 Covenants against Contingent Fees.
- The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingency fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty, County shall have the right, as its exclusive remedy, to recover the full amount of such commission, percentage, brokerage or contingency fee.
- 6.17 Organization – Employment Disclaimer.
- 6.17.1 The Agreement is not intended to constitute, create, give to, or otherwise recognize a joint venture agreement or partnership or formal business organization of any kind between the County and the Concessionaire and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.
- 6.17.2 The Parties agree that no persons supplied by the Concessionaire in the performance of obligations under the Agreement are considered to be the County's employees and that no rights of the County's civil service, retirement, or personnel rules apply to such persons.
- 6.17.3 The Concessionaire shall have total responsibility for determining employee eligibility, all salaries, wages, insurance or any type, bonuses, retirement withholdings, worker's compensation, other employee benefits

and all taxes and premiums appurtenant thereto concerning such persons and shall save and hold the County harmless with respect thereto.

6.18 Waiver.

The waiver by either Party of any breach of any one or more of the covenants, conditions or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of said covenants, conditions or provisions of this Agreement. Any failure on the part of either Party to require or exact full and complete compliance with any of the covenants, conditions or provisions of the agreement shall not be construed to, in any manner, change the terms hereof or preclude such Party from enforcing the full provisions of this Agreement.

6.19 Agent, Employees, Contractors, Subcontractors.

The Concessionaire will ensure full compliance with all applicable terms and conditions of this Agreement by its agents, employees and contractors (including sub-contractors of any tier) and their respective employees. Failure or refusal of the Concessionaire or its agents, employees, contractors, sub-contractors or their employees to comply with these terms and conditions will be deemed a breach of this Agreement.

6.20 Suspension and Debarment and Executive Orders 12549 and 12689.

6.20.1 The March 2004 OMB Circular A-133 Compliance Supplement pertaining to the U.S.C. Code has been changed. Before November 26, 2003, contractors receiving individual awards for one hundred thousand dollars (\$100,000) or more and all sub-recipients have to certify that the organization and its principals were not suspended or debarred. As of November 26, 2003, when the County enters into a covered transaction with an entity (contracts for goods and services expected to equal or exceed twenty five thousand dollars (\$25,000) and sub-awards to sub-recipients), the Federal Entities are prohibited from contracting with or making sub-awards under covered transactions to Parties that are suspended or debarred or whose principals are suspended or debarred.

6.20.2 Effective November 26, 2003, when a Non-Federal Entity (the County) enters into a covered transaction with an Entity at a lower tier, the Non-Federal Entity (the County) must receive verification that the Entity is not suspended or debarred or otherwise excluded. As such, each prospective concessionaire must submit a certification (e.g. certified letter) within sixty (60) days of award that it is not currently under such suspension or debarment. Requirements for suspension and debarment are contained in the Federal codification of the government-wide non-procurement debarment and suspension common rule, which implements Executive Orders 12549 and 12689, Debarment and Suspension.

6.21 Consents and Approvals.

The Parties agree to act in good faith and with fair dealing with one another in the execution, performance and implementation of the terms and provisions of this Agreement. Whenever the consent, approval or other action of a Party is required under any provision of this Agreement, such consent, approval or other action shall not be unreasonably withheld, delayed or conditioned by a Party unless the provision in question expressly authorizes such Party to withhold or deny consent or approval or decline to take action in accordance with a different standard, in which case the consent or approval or the decision to not take action may be withheld, delayed or conditioned in accordance with the different standard.

6.22 Further Assurances; Cooperation.

Each of the Parties hereto shall execute and provide all additional documents and other assurances that are reasonably necessary to carry out and give effect to the intent of the Parties reflected in this Agreement.

6.23 No Third Party Beneficiaries.

Except as may be otherwise expressly and specifically set forth in this Agreement, no person or entity shall be deemed a third party beneficiary of any of the provisions of this Agreement.

6.24 Right of Entry.

6.25.1 There is reserved to the County and its successors or agents, the right of the officers, agents, employees, licensees, and Permittee's, or the designees of public bodies, at all proper times and places, freely to have ingress to, passage over, and egress from all of said lands, for the purpose of exercising, enforcing, and protecting their rights and the terms and conditions described in and reserved by this Agreement, including the right of physical entry to the area for inspection, monitoring, or any other purpose consistent with any right or obligation of the County under any law or regulation, or for the purposes of surveying Park users and customers at the Concession.

6.26.2 The County will notify the Concessionaire of any unsatisfactory condition relative to the management, operation and maintenance of the Concession. The Concessionaire shall take immediate action to correct such conditions at the Concessionaire's expense.

7. **Entire Agreement; Modification.**

This Agreement, together with any supplemental provisions attached hereto, constitutes the entire agreement between the Parties and sets forth all of the covenants, promises, agreements, conditions or understandings, either oral or written, between the Concessionaire and County, other than as set forth herein, and those agreements that are executed contemporaneously herewith. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be

modified or changed except by a written instrument executed by the Concessionaire and County. The Concessionaire and County have reviewed this Agreement and have had the opportunity to have it reviewed by legal counsel.

8. **Attorney Fees.**

If suit or action is commenced to enforce compliance with any term, covenant or condition of this Agreement, including any action undertaken in the context of bankruptcy proceedings, the Party not prevailing shall pay to the Prevailing Party a sum which the trial judge determines is reasonable as attorney fees to be allowed in the suit or action, and court costs, and if appeal is taken from any judgment or decree in the suit or action, the Party not prevailing on the appeal shall pay to the Prevailing Party such further sum as the appellate court shall adjudge reasonable as attorney fees on appeal, and court costs.

9. **Severability.**

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

10. **Force Majeure.**

The occurrence of any of the following events shall excuse performance of such obligations of a Party as are rendered impossible or reasonably impracticable to perform while such continues: strikes; lockouts; acts of God; inability to get materials; governmental restrictions; enemy or hostile governmental action; fire or other casualty; and other causes beyond the reasonable control of the Party obligated to perform (all events of "Force Majeure").

11. **Authority.**

Each Party covenants and warrants to the other Party that: (a) it is duly authorized to execute this Agreement; and (b) the execution of this Agreement has been duly authorized by the Applicable Party.

12. **Legal Effect of the Agreement.**

This Agreement is terminable only in accordance with the express and specific provisions hereof. This Agreement does not create a leasehold estate and County shall at all times remain the title holder of the real property.

13. **Delegation of Authority.**

The Department Director, Maricopa County Parks and Recreation Department, is authorized to conduct required administrative actions as may be necessary to carry out the spirit and intent of the Agreement.

14. **Representation and Warranties of County.**

14.1 County represents and warrants to Concessionaire that the following statements are true, correct and complete:

14.1.1 County has complete and full authority to execute this Agreement and to grant to Concessionaire the rights contemplated by this Agreement. All governmental actions required to be taken by County to authorize execution of this Agreement by County and performances by County of its obligations hereunder have been taken and this Agreement is binding upon and enforceable against County in accordance with its terms;

14.1.2 To the best of the County's knowledge, there are no lease agreements, maintenance contracts, service agreements or other contracts of any nature which pertain to, cover or affect the Concession except as disclosed in this Agreement.

14.2 In the event of a breach of a representation or warranty as set forth herein, Concessionaire shall notify County of same and deliver to County such information as is necessary to enable County to remedy the breach. Concessionaire shall cooperate with County to remedy the breach.

15. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed and copied signatures are acceptable as original signatures.

16. Time is of the Essence.

Time is of the essence of this Agreement. If the date for performance of any obligation hereunder or the last day of any time period provided herein shall fall on a Saturday, Sunday or legal holiday, then said date for performance or time period shall expire on the first day thereafter which is not a Saturday, Sunday or legal holiday.

DATED this ____ day of _____, 2010.

**MARICOPA COUNTY
BOARD OF SUPERVISORS**



Comment [t8]: This year will change as appropriate.

Comment [t9]: Respective Concession signature block

Chairman Date

By: Date

ATTEST

Clerk of the Board Date

Approved as to Form:

Attorney for Maricopa County Date

EXHIBIT 1.1 – REGIONAL PARK SYSTEM



Exhibit 1.1 – Regional Park System (Continued)

Park Notification Numbers:

Cave Creek Regional Park:	623-465-0431
Estrella Mountain Regional Park:	623-932-3811
Lake Pleasant Regional Park:	602-372-7460
McDowell Mountain Regional Park:	480-471-0173
San Tan Mountain Regional Park:	480-655-5554
Usery Mountain Regional Park:	480-984-0032
White Tank Mountain Regional Park:	623-935-2505

EXHIBIT 3.2.1 – FEE REPORTING AND PAYMENT SCHEDULE

Concessionaire will pay County the following fees according to the payment schedule listed below.

Fee	Amount
Administrative Fee	\$150.00
Concession Fee	20% of Gross Revenue
Utility Fee	\$5.00 per day of event up to a maximum monthly fee of \$100.00.
Additional Utility/Excess Fees (Based on determination of Park Supervisor)	\$20 per day (in addition to the regular fee schedule outlined above);
Impact Fee	TBD

Administrative Fee, by definition, is the fee assessed by County for the development of and management of the Agreement. **The Administrative Fee is payable within thirty (30) days of the Effective Date, the date approved by the Board of Supervisors.**

Concession Fee, by definition, is the fee assessed by County for such things as to offset for impact to the respective Park and use of Park property in which the Concessionaire received payment from users of the Concession. Payment is due County according to the following schedule:

Exhibit 3.2.1 – Fee Reporting and Payment Schedule (Continued)

Utility Fee, by definition, is the fee assessed by County as a flat rate if Concessionaire requires access to water and electricity. The respective Park Supervisor will determine if the additional or excess fee rate will apply. Utilities will be invoiced by County and payable within twenty (20) days of invoice date. Should the County's Due Date fall on a Saturday, Sunday or legal holiday, then said Due Date shall be at the close of business on the first day thereafter which is not a Saturday, Sunday or holiday.

Impact Fee, by definition, is the fee assessed by County to offset the effects of usage of Park lands. Areas to be included would be such as use of land, equipment, facilities, Park staff, etc.

Gross revenue is defined as all revenue collected by the Concessionaire related to the Concession operation with no authorized deductions.

The Fee Payment Period is as shown. Date payment is due County is as indicated. The Income Statement will accompany payment made to County for the respective period.

Period	Date Due County
July 1 st – September 30 th	November 15th
October 1 st – December 31 st	January 15th
January 1 st – March 31 st	April 15th
April 1 st – June 30 th	July 15th

If Agreement is terminated during a reporting period, payment is due County within thirty (30) days of termination date.

Should the County's Due Date fall on a Saturday, Sunday or legal holiday, then said Due Date shall be at the close of business on the first day thereafter which is not a Saturday, Sunday or holiday.

There will be a ten percent (10%) late payment fee of the amount due if payment is not received by the Due Date.

All checks for payment due will be made out to: Maricopa County Parks and Recreation Department and mailed to:

Maricopa County Parks and Recreation Department
Attn: Accounts Receivable
234 N. Central Avenue, Suite 6400
Phoenix, AZ 85004

EXHIBIT 3.2.2 - INCOME STATEMENT

Reporting Period: _____		
Event Participated In	Date(s) of Event	Gross Revenue Received
Total Amount Due Parks		

Submission of the Income Statement is in accordance with **Exhibit 3.2.1 – Fee Reporting and Payment Schedule**.

If no sales or revenue is generated during the Reporting Period, Concessionaire is still required to submit the Income Statement; however indicate “No Events” and “Zero Revenue”.

EXHIBIT 4.1 – REQUIRED SERVICES AND FACILITIES

Exhibit 4.1 is designed to identify required services, facilities, amenities or maintenance requirements for the Concession. There will be no additional services or products dispensed other than stated in this Exhibit.

1. Concession **Description:** _____
2. The Concession can be located in the areas designated by the respective Park Supervisor at the following Parks: Cave Creek Regional Park, Estrella Mountain Regional Park, Lake Pleasant Regional Park, McDowell Mountain Regional Park, San Tan Mountain Regional Park, Utery Mountain Regional Park and White Tank Mountain Regional Park. The Concessionaire shall be responsible for coordination and development of an operational timeline and identifying availability with each respective Park Supervisor.
3. Services Overview (Concept):
 - A. Service to be provided and period on-site: | _____
 - B. Product Dispensed: | _____
 - C. Equipment to be brought on **site:** _____
 - D. Proposed Site **Improvements:** _____
 - E. Utilities **Required:** _____
 - F. Additional Facilities Required or to be Provided by **Parks:** _____
 - G. Additional Amenities Required or to be Provided by **Parks:** _____
4. Park Support Requirements/Impact Fees.
 - A. Traffic Control Plan/Barricades/Traffic **Cones:** _____
 - B. Signage in Support of **Concession:** _____
 - C. Physical Space Required (Square Foot) for **Concession:** _____
5. Maintenance Responsibilities.
 - A. Concessionaire is responsible for the providing of trash receptacles and the removing of trash and receptacles at the end of the event or the end of each day, whichever occurs first. The Park Supervisor may increase the frequency of trash being emptied.
 - B. Tables, eating areas, shaded areas, etc. will be kept clean, neat and sanitary at all times.

Comment [t10]: Need to expand for each Concession as to the specific type of Concession (description thereof)

Comment [t11]: Specific for each Concessionaire.

Comment [t12]: Specific for each Concessionaire.

Comment [t13]: Details will be Concessionaire specific.

Comment [t14]: Details will be Concessionaire Specific

Comment [t15]: Details will be Concessionaire Specific; also used for Fee Payment Schedule.

Comment [t16]: Specific for each Concession.

Comment [t17]: Specific for each Concession

Comment [t18]: Specific for each Concession.

Comment [t19]: Specific for each Concession.

Comment [t20]: Specific for each Concession.

Comment [t21]: Specific for each Concession.

Requirements such as equipment maintenance, food storage, etc. shall be in compliance will all applicable rules, guidelines and standards applicable to the Concession.

EXHIBIT 6.7 – PARK RULES
(Published Separately)