

Document Approved By:
General Counsel
Arkansas Department of
Parks, Heritage, and Tourism
(Concessionaire Lease Agreement Rev 06282023)



ARKANSAS DEPARTMENT OF PARKS, HERITAGE, AND TOURISM
PARKS DIVISION

CONCESSIONAIRE LEASE AGREEMENT

This Concessionaire Lease Agreement ("Agreement") is entered into this ____ day of _____, 20____ by and between, _____ (also "Concessionaire"), and the STATE PARKS DIVISION of the ARKANSAS DEPARTMENT OF PARKS, HERITAGE, AND TOURISM (also "Parks"), for the exchange of promises and consideration as herein recited. Parks owns, leases, or otherwise controls certain lands and/or public facilities at _____ State Park. Accordingly, Concessionaire and Parks hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to set out the terms and conditions under which Concessionaire shall have a concession lease from Parks to conduct Concessionaire's operations on Parks property, as herein described, for the benefit of the Concessionaire, Parks, and the Parks' visitors. Permitted concession operations shall be only as described in this Agreement. At all times, Concessionaire shall be an independent contractor in the conduct of its concession operations but shall always be subject to the terms and conditions of this Agreement. Nothing herein shall be construed as creating a partnership or joint business venture as between Parks and Concessionaire.

2. **CONCESSION OPERATIONS.** Parks and Concessionaire agree that Concessionaire shall be permitted to operate specific concession operations, which are generally described as follows:

A more specific description of, or additional information relating to, Concessionaire's permitted concession operations may be attached hereto and incorporated by reference as an exhibit to this Agreement. Unless otherwise expressly provided in this Agreement, or in any exhibit, addendum, or amendment hereto, nothing herein shall provide Concessionaire with exclusive rights to perform concession operations anywhere else within the State Parks system or at other properties of the State of Arkansas. Accordingly, Parks reserves the right to enter into other Concession Lease(s) Agreements which it, in its sole and absolute discretion, deems beneficial to the State Parks system and its visitors.

3. **OPERATING HOURS.** The Concessionaire is an independent contractor but agrees as material consideration to Parks that it shall operate the concessions leased by this Agreement a minimum of the following date(s):

From _____ and to _____. Day(s) and hours of operation will be as follows:

Periods of operation outside of these shall be as coordinated in writing with the Park Superintendent in advance.

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4. **CONCESSION LOCATION.** The location for which Parks Concessionaire’s lease operations as herein described is limited to and described as:

A more specific description of, or additional information (e.g., maps) relating to, Concessionaire’s concession location may be attached hereto and incorporated by reference as an exhibit to this Agreement. Parks reserves the right, in its sole and absolute discretion, to change the concession location at any time upon reasonable notice to the Concessionaire.

5. **ADDITIONAL INFORMATION.** Parks and Concessionaire additionally agree as follows:

6. **TERM OF AGREEMENT.** The term of this Agreement shall begin on the date first stated above, or thereafter upon the date of approval by the Arkansas State Parks, Recreation, and Travel Commission and shall naturally expire on _____, 20_____.

7. **STANDARD TERMS AND CONDITIONS.** Parks’ standard terms and conditions as expressed in the document titled “Concessionaire Lease Agreement Terms and Conditions” shall be attached hereto and is hereby incorporated by reference as a part of this Agreement. In the event of a conflict between the other information contained in this Agreement and said terms and conditions, the latter shall be controlling except in the event Parks and Concessionaire have entered into and executed a separate written amendment document signed by the Director of Arkansas State Parks in which case said amendment shall control and shall be attached as part of this Agreement. This Agreement as well as any changed to said standard terms and conditions shall not become effective and binding unless and until it is signed by the Director of State Parks or the Deputy Director of State Parks.

Signature and Title

[Mailing Address] _____

[Contact Name of Entity] _____

[Phone Number] _____

[Email Address] _____

Park Superintendent

State Parks Division Director

Shea Lewis, Director
Arkansas State Parks
One Capitol Mall
Little Rock, Arkansas 72201



CONCESSIONAIRE LEASE AGREEMENT TERMS AND CONDITIONS

For purposes of these terms and conditions, “Parks” shall refer to the State Parks Division of the Arkansas Department of Parks, Heritage, and Tourism, “Concessionaire” shall refer to the party with which Parks has entered into a concessionaire agreement, and “Agreement” shall refer to such concessionaire agreement for which these terms and conditions are incorporated by reference as well as any mutually agreed amendments, exhibits, or addenda to the concessionaire agreement.

1. **RIGHT OF ENTRY.** The right of entry is hereby reserved to Parks, its officers, agents, representatives, contractors, and employees to enter upon the concession area at any time and for any purpose necessary or convenient in connection with Parks’ operations. Concessionaire shall have no claim for damages of any character on account thereof against Parks, or its officers, agents, representatives, contractors, and employee’s incident to Parks’ exercise of its reserved right of entry.

2. **PROHIBITED ACTIVITIES.** Parks strives to provide a welcoming and family-friendly environment for everyone at all of its locations. Concessionaire is expected to conduct its concession operations in a similar manner while on Parks property. Prohibited Concessionaire activities at Parks properties include, without limitation, illegal discriminatory conduct (*e.g.*, based on race, color, sex, religion, or national origin, *etc.*), display or promotion of illegal, immoral, offensive, or adult themes, and engaging in any nuisance or activity that disrupts Parks’ harmony, decorum, and usual and customary operations or causes embarrassment to Parks or the State of Arkansas. The installation of lights, sound devices, signs, or objects at the concession location (other than those reasonably required for safety) which would create a carnival-like atmosphere is also expressly prohibited. Any and all final decisions regarding prohibited activities, whether or not expressed herein, shall be at the sole and absolute discretion of the State Parks Director.

3. **COMPLIANCE WITH LAWS.** Concessionaire agrees that it will keep fully informed of all laws, ordinances, rules, and regulations in any manner affecting its operations under this Agreement, and of all orders and decrees of bodies and tribunals having jurisdiction or authority over same. Concessionaire will at all times observe and comply with and cause its agents and employees to observe and comply with such existing and future laws, ordinances, regulations, orders, and decrees, and will protect Parks and other state and federal government agencies against any claim or liability arising from any failure to so comply. Concessionaire will procure all permits and licenses, pay any charges, license fees, or taxes incident to its operations, and give all notices necessary and incident to the lawful and proper prosecution of its operations hereunder. Concessionaire agrees that it will at all times carry Workers Compensation insurance protection under the laws of the State of Arkansas on all persons employed by it in connection with its operations thereon, and will also comply with all minimum wage, maximum hours, and other laws, rules, and regulations applicable to conditions of employment upon or in connection with the concession.

4. **PAYMENTS.** As specified herein, the Concessionaire agrees to pay a percentage of the gross receipts from its concession operations to the Park Superintendent where the concession is located. Such payment is material consideration to Parks without which there would be no agreement. Such payment shall be by company check, made payable to ARKANSAS DEPARTMENT OF PARKS, HERITAGE, AND TOURISM, and shall be accompanied by a properly completed Concession Cash Receipt Report in three (3) copies; such forms to be provided by the Park Superintendent. Concessionaire shall document each time the Concessionaire’s agent or employee removes monies from its cash registers,



cash boxes, or machines and Concessionaire agrees to furnish the Park Superintendent a copy of an appropriate cash accounting form, duly authenticated, and verifying the amount and date of the removal of such monies.

Gross receipts shall be the total amount of cash or credits received by Concessionaire from all business as a result of this Agreement. Arkansas sales or use taxes are exempt from the gross receipts for Park's payment purposes and shall be deducted from the gross receipts per instructions on the reporting forms. Gross income monthly payment from all sources with a reporting of daily receipts summarized by income type along with supporting documentations is due no later than 15 calendar days following the end of the preceding month.

5. **RECORDS.** All records of the Concessionaire, financial and otherwise, relating to the concession operations provided under this Agreement shall be kept on file for a period of three (3) years from date the record is made, and the Concessionaire agrees to make such records available to the State at any reasonable time and lend its assistance in inspecting, examining, and auditing such records.

6. **HEALTH & SAFETY.** Concessions provided by Concessionaire must meet all federal, state and county health, sanitation, and safety requirements including, without limitation, those pertaining solely to the Concessionaire as well as those pertaining to any public health concern or emergency. A copy of the Concessionaire's valid Arkansas Department of Health permit, if applicable, as well as any other health or safety permit or certificate required by any governmental authority for the provision of the concessions under this Agreement must be provided to the State Parks Director prior to beginning any operations on Parks' property. Any issues related to the health and safety of Concessionaire's operations while on Parks' property shall be remediated promptly and thoroughly. Parks reserves the right, in its sole and absolute judgment, to curtail, suspend, or terminate Concessionaire's operation on Parks property due to any concerns related to the health or safety of the concession operation. It shall be the duty of the Concessionaire to keep the concession area clean, well-maintained, safe, and presentable at all times.

7. **ADVERTISING & PROMOTION.** Any material in any format to be used in the advertising and promotion of the leased concession services provided under this Agreement, whether on Parks property or elsewhere, shall be submitted to the Park Superintendent at least thirty (30) days in advance of public release. The Concessionaire agrees not to display, post, transmit, broadcast, distribute, promote, or advertise such without prior written approval. Use of any tradename, logo, or trademark of any state park without the prior express written permission of Parks is strictly prohibited.

8. **INSURANCE.** At all times during the term of this Agreement, Concessionaire shall maintain in full force and effect general liability insurance from a reputable insurer with an A+ rating or higher in an amount no less than \$100,000 per person in any single claim and no less than \$2,000,000 in the aggregate with respect to any death, bodily injury, property damage or loss. Such policy shall name the "Arkansas Department of Parks, Heritage, and Tourism and its agencies" as an

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additional insured and Concessionaire hereby waives subrogation against the same. Proof of such insurance, and any subsequent alterations, renewals, cancellations thereof, shall be furnished to the Park Superintendent at issuance or cancellation and within five (5) calendar days of any subsequent alteration or renewal. Concessionaire shall also provide proof of insurance for any vehicle, trailer, or "rolling stock" it may be permitted to bring upon Parks property under this Agreement.

9. **RISK & LIABILITY.** All concession operations conducted by the Concessionaire under this Agreement shall be conducted solely at Concessionaire's risk. Concessionaire's entry and operation upon Parks property shall be "as is", "where is", and "with all faults". Parks makes no representation or warranty, express or implied, as to: (a) any level of business volume; (b) profits or losses that may be expected; (c) future renewals of, or amendments to, this Agreement. Concessionaire shall take all reasonable and proper safeguards to prevent any and all injuries or death to persons or any and all damage or loss to property. Concessionaire shall be liable for any injury, death, damage or loss resulting from Concessionaire's operations. Concessionaire hereby agrees, upon Parks' written demand, to indemnify, defend, protect and save harmless Parks, to include its agents, employees, representatives, and Commissioners (collectively "indemnitees") from and against any and all claims of loss, liability, and damages resulting from any act, error, or omission of the Concessionaire and its owners, employees, agents, and representatives, together with all costs, expenses, and attorney's fees incurred with respect to any such claims, demands, or proceedings brought against Parks or any or all of the indemnitees.

10. **CONCESSIONAIRE'S PROPERTY.** Any and all of the Concessionaire's equipment, supplies, inventory, effects and other property of every kind, nature, and description that may be placed upon Parks property under this Agreement shall be done so at the sole risk of the Concessionaire. Should the whole, or any part thereof, be lost, stolen, vandalized, damaged, or destroyed by any cause, no part of such loss or damage is to be charged to or borne by Parks or any agency of the State of Arkansas. Concessionaire hereby agrees to hold Parks harmless from, and waive all claims against Parks, for any and all loss cost, debt, claim, judgment, or expenses suffered and incurred by Concessionaire. Parks shall have no duty to indemnify Concessionaire for any such losses and shall have no duty to insure Concessionaire against any such losses.

The Concessionaire agrees to maintain all its concession-related gear, machinery, equipment, and inventory in a high state of performance and safety at all times. In the case of food or beverage concessions, Concessionaire shall ensure all food and beverage products are within the freshness date and rotated at sufficient intervals to provide a fresh and wholesome product. Although Concessionaire is an independent contractor, Concessionaire agrees it will provide a menu to the Park Superintendent to be jointly agreed between Parks and the Concessionaire prior to beginning food and beverage concession operations. Such will ensure, where possible, a diversity of healthy food options is offered to the Parks' visitors. Concessionaire agrees to sell only products that have been jointly agreed.

Concessionaire agrees that all prices charged for concessions on Parks property will be jointly agreed between Parks and Concessionaire prior to implementation. Such will ensure that prices are fair for both the Concessionaire and for the Parks' visitors.

The Concessionaire agrees to hold the State harmless against any and all losses or damage to the Concessionaire's equipment or product, and to defend the State against any and all claim" resulting from injury, sickness, or disease rising out of the use of the Company's equipment, or from the consumption of products vended.



All Concessionaire property, whether gear, machinery, equipment, or inventory, shall at all times be regarded as personal property regardless of any manner in which it may be placed upon, or affixed to, any Parks property. Concessionaire shall neither cause, nor permit, any lien to be filed against Parks property.

Upon any termination of this Agreement, Concessionaire shall have thirty (30) days after such termination within which to remove all its property from the Parks property. Unless other arrangements are made between Concessionaire and the State Parks Director, any property not removed within this thirty (30) day timeframe shall become the property of Parks and Parks may dispose of such property as it in its sole discretion deems best and shall invoice the Concessionaire for any and all reasonable costs of disposal. Concessionaire hereby waives any and all claims against Parks should it resort to such self-help remedy in the removal and disposal of Concessionaire's property.

11. **CONCESSIONAIRE EMPLOYEES.** The Concessionaire shall provide sufficiently qualified agents and employees to adequately service the concession. Employees must be trained and competent in the safe operation of the concession and in compliance with the requirements of the appropriate federal, state, county, and municipal regulations. Concession employees shall wear neat dress while on duty and shall conduct themselves with courtesy toward patrons and others visiting the concession. Discourteous or objectionable conduct by concession employees shall be reasonable grounds to be removed by the Concessionaire upon verbal or written request of Parks.

12. **REFUSE AND WASTE.** The Concessionaire is responsible for lawfully disposing of its own gray water and other wastes and is required to dump such at an approved dump station or disposal facility. Gray water and wastes will not be permitted to be disposed on the surface of Parks' property. Trash is the sole responsibility of and must be properly disposed of by Concessionaire. Trash will not be left in the concession area after closing each day.

13. **UTILITIES.** Unless otherwise agreed by Parks in writing, utilities including without limitation electrical capabilities (electricity, phone, internet, etc.), gas and running water will not be provided by Parks. Approved electrical generators and LP gas containers may be used by the Concessionaire to service any self-contained units required in providing the concession services. This Agreement does not permit Concessionaire to run any utilities of any kind to the concession location without the prior written consent of the Park Superintendent. Parks staff will not be utilized to install utilities or make repairs to any part of Concessionaire's operations. Concessionaire agrees that only licensed Arkansas contractors will be utilized in making authorized utility installations and repairs for Concessionaire. The use of the concession location by Concessionaire including, without limitation, the placement of machinery, structures or capital improvements shall be only as approved in writing in advance by the Director of the State Parks Division.

14. **SUBORDINATION & SURRENDER.** Use of the concession location covered by this Agreement is subject to all existing easements, and easements subsequently granted, for roadways, parking areas, and utilities located or to be located on Parks' property. This Agreement and leasing concession is not intended, nor shall it be construed, to vest in Concessionaire any title, estate, or property right in Parks' property or any part thereof, and Parks does not, by this instrument, relinquish or qualify in any degree its possession, title, control and management of concession location. Concessionaire hereby waives any and all claim to any and all interest, rights, or title to Parks' property and shall peacefully surrender the concession location upon any termination of this Agreement.



15. **REVOCATION FOR CAUSE.** In the event the Concessionaire violates any of these terms and conditions of this Agreement and continues and persists in such violation for a period of thirty (30) days after being advised in writing of such violation, this Agreement may be revoked at any time thereafter by the State Parks Director. Upon cancellation, the Concessionaire shall have thirty (30) days to remove all capital improvements and restore the Parks grounds to their original condition. Should the Concessionaire fail to comply, Parks may take possession of the improvements, without payment therefore, or cause the Concessionaire to pay the cost of such removal and restoration.

16. **RELINQUISHMENT.** The concession leased under this Agreement may be relinquished by Concessionaire at the end of any lease year by giving six (6) months prior written notice to Parks.

17. **NO ASSIGNABILITY RIGHTS.** The rights and responsibilities of the Concessionaire under this Agreement shall not be assigned to any third party without the express written consent of the Director of State Parks.

18. **NO WAIVER.** The failure by Parks to insist in any instances on strict performance of any term or condition of this Agreement, or to exercise any right herein shall not have the effect of or be construed as a waiver of such condition or right in any other instance or preclude Parks from demanding punctual performance from Concessionaire.

19. **WARRANTY DISCLAIMER.** PARKS MAKES NO WARRANTIES TO CONCESSIONAIRE OTHER THAN THOSE THAT MAY BE EXPRESS WITHIN THE WRITTEN AGREEMENT DOCUMENTS. PARKS DISCLAIMS ALL WARRANTIES IMPLIED IN LAW INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

20. **CONFIDENTIALITY.** Unless otherwise expressly agreed in a separate writing executed by the Arkansas State Parks Director, Parks is under no duty of confidentiality with regard to this Agreement or any matters related to this Agreement. With limited exception, this Agreement and any records pertaining to this document including, without limitation, emails, invoices, cash reports, etc., are generally subject to public disclosure under the Arkansas Freedom of Information Act.

21. **APPROVAL AUTHORITY.** Parks is authorized by A.C.A. 22-4-105 to grant concession rights on lands under its jurisdiction. Parks shall follow its policies and procedures, defined currently in Policy Statement No. 1030, regarding negotiation and approval of concession leases, contracts, and agreements entered into by the division. Entry into this Agreement, as well as any amendments thereto, by Parks is expressly subject to a final approval by the Arkansas State Parks, Recreation, and Travel, Commission. By executing the Agreement, Concessionaire's agent represents that he or she is fully authorized to execute the Agreement for and in the name of the Concessionaire.

22. **FORCE MAJEURE.** Neither Parks nor Concessionaire will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of utilities, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

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23. **NOTICES.** Unless otherwise agreed in writing, any and all written notices that may be required under the Agreement shall be deemed properly dispatched when sent to the signatory shown in the Agreement and to the address shown for the signatory in the Agreement.

24. **COMPLETE AGREEMENT.** This Agreement, to include these terms and conditions, contains the final, complete, and exclusive statement of the agreement between the parties with respect to the transactions contemplated herein and all prior or contemporaneous written or oral agreements with respect to the subject matter hereof are herein merged. No change, modification, or waiver in or of any of the terms, provisions or conditions of this Agreement shall be in any way valid or binding on either of the parties hereto unless the same be dated after the date hereof and be in writing and signed by all parties hereto. This Agreement shall be controlling as to any additional terms as may be found in any documents of the Concessionaire and Parks does not assent to any such additional terms, or assent to any modifications of these terms and conditions (e.g., strikes or handwritten additions), unless such changes are expressly agreed in a separate writing signed by the Arkansas State Parks Director.

25. **HEADINGS & SEVERABILITY.** Headings used in the Agreement, to include any amendments or exhibits thereto, are intended for the convenience of the parties and shall not, standing alone, be enforceable as a term or condition. Should any part of the Agreement be determined to be invalid or unenforceable by operation of law, it is the mutual intent of Parks and the Concessionaire that such part not affect the validity and enforceability of the remainder of the Agreement.

26. **ARKANSAS LAW, DAMAGES & ATTORNEY FEES.** This Agreement and the interpretation and enforcement of the terms and conditions thereof shall be subject to the laws of the State of Arkansas. The performance of Parks under this Agreement may be affected by subsequent changes in law, budget, or appropriations from the Arkansas General Assembly or by Executive Orders by the Governor of Arkansas. In the event of any dispute regarding this Agreement or the subject matter hereof, both Parks and Concessionaire hereby waive claim against the other for recovery of their respective attorney fees and waive claim for damages that are not considered actual damages under law. Further, both Parks and Concessionaire understand and agree that monetary claims asserted against Parks must, by law, be presented to, and adjudicated by, the Arkansas Claims Commission.

27. **SIGNATURES & COUNTERPARTS.** This Agreement may be executed by written or electronic signatures in any number of counterparts each of which taken together shall constitute one in the same instrument.