

STATE OF TEXAS
PARKS AND WILDLIFE DEPARTMENT

FRIEND'S OF LOST PINES STATE PARKS
CONCESSIONAIRE

Bastrop
STATE PARK

COVERING THE PERIOD
SEPTEMBER 01, 2006 THROUGH AUGUST 31, 2011

THE STATE OF TEXAS §
KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF TRAVIS §

This Contract made and entered into by and between the Texas Parks and Wildlife Department hereinafter referred to as "Department" and the Friend's of Lost Pines State Parks hereinafter acting as and referred to as the "Concessionaire," organized to support Bastrop Park Complex.

WITNESSETH:

THAT WHEREAS, the Department is an agency of the State of Texas, authorized to and charged with the responsibility of acquiring and maintaining a system of public parks for the benefit of the people generally; and

WHEREAS, the accomplishment of the said purposes requires that facilities and services be provided for the public visiting the public parks; and

WHEREAS, the State of Texas has not itself provided such necessary facilities and services and desires the Concessionaire to establish and operate the same at reasonable rates under the supervision and regulation of the Department;

NOW THEREFORE, pursuant to the authority contained in Parks and Wildlife Code, Section 13.015, and other laws supplemental thereto and amendatory thereof, the said parties, in consideration of the mutual promises herein expressed, covenant and agree to and with each other as follows:

SECTION 1. Term of Contract

A. This Contract shall become effective on September 1st, 2006 and shall terminate on August 31, 2011 except as it may be modified or terminated as herein provided. No right of renewal is granted herein.

SECTION 2. Accommodations, Facilities, and Services Authorized

A. The Department authorizes the Concessionaire, during the term of this Contract, to provide facilities and services for the public within Bastrop State Park Complex, herein referred to in this Contract as "Park Complex", situated in Bastrop County, State of Texas, as follows:

1. Offer limited retail sales of approved educational, interpretive and commemorative products for park visitors.
2. Provide limited retail sales of other approved goods (e.g. Camping Supplies).
3. Conducts special paid participant swimming classes at Bastrop State Park during the pool operating season.
4. Provides Canoe rentals at Buescher Unit.
5. The Concessionaire in the conduct of any business that is governed by the Texas Boating Laws and the Texas Water Safety Act must comply with all aspects of these laws. Concessionaire shall maintain all water recreation equipment in a safe condition to meet safety rules, applicable laws and regulations. Each person riding on or in boat equipment must be furnished and outfitted with a U.S. Coast Guard approved life jacket.
6. The Concessionaire may provide Department approved special activities and events that are appropriate to the Park Complex and its programs.

7. Operation of concession (i.e. canoe rentals, swimming lessons and retail sales) should coincide with high visitation times and customer service needs. Operating days and times must be posted and are subject to the approval of the Park Manager. Any alteration of operating days and times must be requested in writing in advance of implementation.

B. The Department reserves the right to determine and control the nature and type of merchandise and services, which are sold or provided within the Park Complex by the Concessionaire. Conformance to the following quality standards for all resale merchandise is required.

1. Non-consumable resale products should conform to the following quality standards:

- a) Non-renewable natural and cultural resources are not for sale.
- b) Stocked resale merchandise items should fit into the following categories:
 - 1) Provide education/interpretation of park resources
 - 2) Commemorate or (commemoration of past) park special events
 - 3) Promote the Park Complex, state park system, or Department
 - 4) Communicate parks theme or related park activity – limited to the authority granted within this document.
- c) Resale merchandise should have a natural look that reflects the appearance and/or environment of the park.
- d) Resale merchandise should be of the highest quality for the price point.
- e) The Park Complex Manager or a designee will determine suitability of resale merchandise.
- f) Requests for approval of resale merchandise that fall outside the quality standards or is merchandise that is restricted should be directed in writing to the Park Complex Manager.

C. Concessionaire may not install, operate, provide, or maintain any additional service not authorized under this Contract without first making full application in writing to the Department and securing approval from the Department on said application. Said written approval shall be attached to this Contract.

D. Concessionaire shall not conduct any activity, which in the determination of the Department is not consistent with the mission of the Department or is otherwise not in the best interest of the Department.

SECTION 3. Plant, Personnel, and Rates

A. The Concessionaire shall maintain and operate at Concessionaire's own cost, risk, and expense, the said services to such extent and in such manner as the Department may deem satisfactory and necessary for the successful operation of the Park.

B. Concessionaire rates and charges should be set considering marketplace factors: Concessionaire's profitability, customer price value and satisfaction. The reasonableness of the Concessionaire's rates and charges to the public shall be judged primarily through comparison with current charges for services of comparable character under similar conditions.

C. All rates and charges to the public by the Concessionaire must have written approval by the Department 60 days in advance of the proposed implementation of the rates or charges.

SECTION 4. Land and Improvements

A. The Department will assign for use by the Concessionaire during the term of this Contract, such pieces and parcels of land and as may be, in the Department's judgment, necessary and appropriate for the operations authorized hereunder, and generally described as follows:

1. Use of the Swimming Pool – Property Number 897325 during the hours of 7 a.m.-12 noon and 7 p.m.-9 p.m. for a fifteen week period during the operational season for the facility.

B. Said assigned lands, buildings, structures, fixtures, improvements, and equipment therein and thereon shall be operated and maintained by the Concessionaire for the use and benefit of the public as a recreational area in a manner satisfactory to the Department.

C. The Concessionaire shall not make any alterations, additions, or any changes upon said assigned lands without securing prior written approval from the Department of the location, plans, and specifications thereof.

1. The Concessionaire must secure environmental, historical, and archaeological approvals and permits, adhere to and comply with all local, state and federal laws related to construction, and secure all Department approvals before beginning any construction project. Concessionaire must also secure any applicable access and zoning approvals or permits as required by law. All related costs, unless otherwise specified, will be at the expense of the Concessionaire.

D. The Department shall have the right at any time to enter upon any lands and improvements assigned under the terms of this Contract for any purpose it may deem reasonably necessary for the administration of the Park Complex and the government services therein.

E. All lands assigned under the terms of this Contract to the Concessionaire, and all buildings, structures, fixtures, improvements, and equipment therein and thereon shall be maintained in a safe, clean, sanitary, and attractive condition, acceptable to the Department.

F. "Government improvements," as used herein, are any buildings, structures, fixtures, equipments or other improvements upon the lands assigned hereunder, constructed or acquired by the government and provided by the government for the purposes of this Contract.

G. The Department hereby grants to the Concessionaire the right to occupy and use government improvements during the term and subject to the conditions of this Contract, and subject to the general supervision and approval of the Department.

SECTION 5. Concessionaire's Improvements

A. "Concessionaire's improvements," as used herein, means fixed improvements such as buildings, structures, fixtures, and mobile improvements, such as equipment, furniture and other improvements affixed to or resting upon the lands assigned hereunder, authorized by the Department and constructed or otherwise provided by the Concessionaire for the purposes of this Contract. Concessionaire shall furnish to Department a full and complete list of all of Concessionaire's improvements as herein defined. This list shall indicate all items which are new, and the invoice cost of each and all items which are used and the original cost and present age of each used item. Said list shall attach to and become a part of this Contract at the time of execution of this Contract. Any Concessionaire's improvements added after the execution of this Contract shall also be listed and described by Concessionaire and furnished to Department immediately after being acquired by Concessionaire; and said list shall also be attached to and become a part of this Contract.

Canoe Shed	Date Installed	<u>1999</u>	Value \$	<u>1,500.00</u>
Canoes	Date Installed	<u>1999</u>	Value \$	<u>1,100.00</u>
Amphitheater	Date Installed	<u>2003</u>	Value \$	<u>5,251.00</u>

B. In the event that the Concessionaire's fixed improvement is removed, abandoned, demolished, or substantially destroyed, and no other improvement is constructed on the site, the Concessionaire shall, promptly, restore the site as nearly as possible to a natural condition.

C. Upon the termination of this Contract for any cause whatsoever, the Concessionaire shall remove immediately from the lands assigned hereunder all of the Concessionaire's improvements, provided that:

1. The Concessionaire must give a full and complete accounting of all receipts and other data required by the Department, and has paid to the Department all sums of money due and accrued to the Department under the terms of this Contract; and

2. The Concessionaire has accounted for all government improvements. Should the Concessionaire fail to remove all of the Concessionaire's improvements within 30 days after the termination of this Contract, said Concessionaire's improvements shall become the property of the State without compensation.

SECTION 6. Utilities

A. The department will furnish utilities to the Concessionaire for use in connection with the operations authorized in this Contract.

B. As reimbursement to the Department for resources utilized, the Concessionaire shall credit the Department a one time sum of \$ 300.00. Payment shall be made directly to the Park Complex utility service provider in the amount of \$300.00. Copies of such transactions must be submitted as an attachment to the annual financial reporting.

SECTION 7. Accounting Records and Reports

A. The Concessionaire shall maintain such accounting records as may be prescribed by the Department, the Office of the State Auditors, and the Department's Internal Auditors, subject to generally accepted accounting principles and standards. The Concessionaire shall make itemized detailed reports to the Department of all gross receipts from every source whatsoever, and in such form and at such times as required by the Department. Concessionaire shall submit to the Department reports giving such information about the Concessionaire's business and operations under this Contract, as prescribed by the Department, and such other reports and data as may be required by the Department. Said reports shall be submitted to the Department in such form and at such times as required by the Department. The Department shall have the right to verify all such reports from the books, correspondence, memoranda, and other records of the Concessionaire during the period of the Contract and for such time thereafter as may be necessary to accomplish such verification.

1. The Concessionaire will provide a detailed General Ledger of all costs and Profit and Loss Report by October 15th of each year to the Park Complex Manager and the Department Business Management Section, 4200 Smith School Road, Austin, Texas 78744.

2. The Concessionaire will provide required reports as outlined in Section III of the attached Memorandum of Agreement.

SECTION 8. Payments to the Department

A. The Concessionaire shall pay to the Department the following sums (for the purpose of this Section, a monthly payment will be referred to as a "Franchise Fee"), said payments to be made at the time and place and in the manner required by the Department as set out below:

1. Gross income, less reasonable operational expenses, generated by the Concessionaire shall be dedicated to the operation and improvement of the Park Complex as described in the attached Memorandum of Agreement.

2. The Concessionaire will reimburse the Department for use of the Swimming Pool in the following manner:

a. The Concessionaire will reimburse the Department \$ 250.00 by purchasing \$250.00 of non-capitalized equipment for the Park Complex. All equipment purchased for the Park Complex is subject to the approval of the Park Complex Manager. Copies of such transactions must be submitted as an attachment to the annual financial reporting.

b. The Concessionaire will also provide restitution to the park budget for the purchase of pool chemicals during the swimming pool operating season in the amount of \$ 750.00. Reimbursement check will be placed in the Bastrop State Park operating budget.

SECTION 9. Termination

A. This Contract may be cancelled by the Department, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature or otherwise not made available to the Department or if subsequent law or regulations prohibit the Department from continuing its performance under any term of this Contract.

B. In addition to the rights of termination for non-compliance previously stated, the Department upon discovery of any hazardous conditions within an area controlled by the Concessionaire that presents an immediate threat to health and/or danger to life or property, will notify the Concessionaire and the Concessionaire will close the affected part or all of the premises to the public until such condition is corrected and the danger to the public eliminated to the satisfaction of the Department. If the condition is not corrected, the Department will terminate the Contract.

C. Upon any default or unsatisfactory performance by the Concessionaire, Department may in its sole discretion terminate this Contract by giving written notice to the Concessionaire and may take immediate possession of the assigned lands and all property located therein.

SECTION 10. Assignment

A. No transfer or assignment by the Concessionaire of this Contract or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made without the advance written approval of the Department. No bonds, shares of stock, or other evidence of interest in, or indebtedness upon, the assets of the Concessionaire in the Park Complex shall be issued. However, nothing herein shall prohibit Concessionaire from hiring contractor(s) to assist in the operation of the Concession at the Park Complex.

SECTION 11. Preferential Right

A. The Concessionaire neither is granted a preferential right, or an exclusive or monopolistic right, to provide additional services in the Park Complex.

B. Nothing contained in this section or elsewhere in this Contract shall be construed as interfering with any lease, easement, permit, right, or privilege heretofore entered into or granted by the Department on the lands comprising the Park Complex.

SECTION 12. Insurance

A. The Concessionaire shall carry public liability, employee liability and other insurance as is customary among prudent operators of similar businesses under comparable circumstances, and also in an amount satisfactory to the Department. The Concessionaire shall provide the Park Complex Manager and the Department Business Management Section, 4200 Smith School Road, Austin, Texas 78744 proof of an insurance policy with a minimum of \$500,000.00 liability and such policy shall name the Department as an additional insured.

B. In addition, policies must contain the following special endorsement: The insurance policy will not be canceled or reduced without thirty (30) day's written notice to the Department.

SECTION 13. Concessionaire's Employees

A. The Concessionaire will require Concessionaire's employees who come in direct contact with the public, so far as practicable to wear a uniform or name plate by which they may be known and distinguished as the employee of said Concessionaire.

B. All Concessionaires' employees must receive training to include an orientation to the Department, the State Park System, the Park Complex, and area points of interest. Such orientation is intended to permit Concessionaire's employees to reply adequately to inquiries from the visiting public. Training will also include customer service and specific job or task training necessary to ensure job performance in a manner consistent with the protection and preservation of the natural and cultural resources of the Park Complex and in accordance with all relevant regulations for the activity. Concessionaire's employees should exemplify hospitality, consideration and courtesy in all relations with the public.

C. The Concessionaire will require Concessionaire's employees to observe a strict impartiality as to rates and services.

D. The Concessionaire shall not employ park employees, park volunteers and members of park employee's families.

SECTION 14. Notification and Communication

A. Whenever notification is required or necessary under this Contract, unless otherwise specifically stated, it should be addressed to the following persons at the following place:

1. If to the Department:

Park Complex Manager
Bastrop State Park Complex
P.O. Box 518
Bastrop, Texas 78602-0511

2. If to the Concessionaire:

Friend's of Lost Pines State Parks
President
P.O. Box 1714
Bastrop, Texas 78602

SECTION 15. Indemnity

A. The Concessionaire covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the Department and the officials, employees, officers, directors, volunteers, and representatives of the Department, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Department directly or indirectly arising out of, resulting from or related to the activities to be carried out pursuant to the obligations of this Contract, including any acts or omissions of the Concessionaire, or any agent, officer, director, representative, employee, or consultant of the Concessionaire, regardless of any cause or any fault or negligence of the Department, Department's agents, successors, assigns, employees, or otherwise.

B. The Department shall, to the extent authorized under the Constitution and laws of the State of Texas, indemnify and hold Concessionaire harmless from liability resulting from the negligent acts or omissions of the Department, its agents or employees pertaining to the activities to be carried out pursuant to the obligations of this Contract.

SECTION 16. General Provisions

A. Concessionaire shall perform all activities and operations under this Contract in accordance with applicable laws, including, but not limited to, Federal, State, City, County and Department laws, regulations, ordinances and orders governing, but not limited to construction, sanitation, licenses, permits, employment and public accommodations.

B. The Concessionaire agrees to use its best efforts in the promotion of the park and the Concessionaire's operation to sustain and build park visitation and to provide a financial benefit to the Concessionaire and the Department. The Department must give prior written approval to any advertising copy that contains its name, program name or logo.

C. Concessionaire shall not limit, segregate, classify or otherwise discriminate in any way against any person because of race, color, national origin, sex, or religion.

D. Reference in this Contract to the "Department" shall mean and include the members of the Parks and Wildlife Commission, its duly appointed Executive Director, and all duly authorized representatives of said Commission, Executive Director, and the Department.

E. This Contract cannot be changed, altered or amended except by written instrument properly executed by all principals, and any such amendment or supplement shall attach to and become a part of this original Contract or by rule or regulation promulgated by the Texas Parks and Wildlife Commission or Department. No employee of the Department shall have authority to grant either a temporary or permanent exclusion or exemption to any of the terms or provisions contained in this Contract.

F. This Contract sets forth the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements between the parties except as herein set forth.

G. No term or provision of this Contract will be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the Executive Director or his or her designee. Any consent by the Department to, or waiver of, a breach by the Concessionaire, whether express or implied, will not constitute a consent to, or waiver of, or excuse for any other different or subsequent breach.

H. In the ongoing goal of providing the best possible experiences to State Park Visitors, the Concessionaire agrees to attend and participate in education and training programs designed to provide greater awareness of the Parks and Wildlife mission and State Parks Division goals and initiatives. Participation is required in annual training for Concessionaires and/or other designated programs.

I. Headings or Section Titles are for convenience only and do not change or affect the language following.

J. Unless an applicable state statute or applicable federal law establishes another procedure for the resolution of disputes, the dispute resolution process provided for in Texas Government Codes, Chapter 2260, shall be used by the Department and the Concessionaire to resolve all disputes arising under this Contract.

K. This contract shall be governed by the laws of the State of Texas. Venue is in Travis County, Texas for all purposes related to this Contract.

