

CONCESSION AGREEMENT – AMENDMENT #1
(Dr. Von D. Mizell-Eula Johnson State Park)

THIS AMENDMENT #1 TO CONCESSION AGREEMENT (“Amendment #1”) is entered into between the State of Florida Department of Environmental Protection (“Department”), a state agency, by and through its Division of Recreation and Parks (“Division”), 3900 Commonwealth Boulevard, Tallahassee, Florida 32399, and Recreation Outdoor Adventure Management, LLC (“Concessionaire”), organized as a Florida Limited Liability Company, whose headquarters is located at 11800 S. Highway 475, Ocala, FL 33480.

RECITALS

WHEREAS, on or about February 27, 2015, the Department and Concessionaire entered into a Concession Agreement (DEP Agreement No. CA-0215) (the “Concession Agreement”); and

WHEREAS, pursuant to the Concession Agreement, the Concessionaire agreed to provide certain goods and services at John U. Lloyd State Park, now known as Dr. Von D. Mizell – Eula Johnson State Park (the “Park”), as such goods and services are more particularly described in the Concession Agreement; and

WHEREAS, the Concession Agreement, and all exhibits/attachments referenced therein (collectively, the “Agreement”), is incorporated in this Amendment #1 by reference, and

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. Recitals:

The Recitals are true and correct and are incorporated herein by reference.

2. Modifications to the Agreement:

- a. Use of Facilities, Space and Equipment: Paragraph B of the Special Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ B. Use of Facilities, Space and Equipment. The Department hereby provides to the Concessionaire the following facilities, space and equipment (collectively, the “Facilities”) for use during the term of this Agreement:

1. Concession Building (Building Number: BL107015), containing approximately 2,900 square feet more or less, which includes a restaurant, deck, walk-in refrigerator and freezer.
2. Storage building located adjacent to Concession Building (Building Number: BL107015), sized approximately 20’ 3” x 12’ 4”.
3. Space on beach for rental of recreational equipment. The exact size and location of such space will be as determined by the Park Manager.
4. Space for canoe/kayak rentals along the creek adjacent to the Concession Building (Building Number: BL107015). The exact size and location of such space will be as determined by the Park Manager.
5. Manatee Pavilion (Building Number: BL 107023).
6. Dock space on the east side of the marina. The exact size and location of such space will be as determined by the Park Manager.
7. Space in the marina parking lot for PWC storage and staging. The exact size and location of such space will be as determined by the Park Manager.

8. Equipment as listed in Exhibit A, which is attached hereto and incorporated by reference.

The Concessionaire accepts the Facilities “as is” “where is” and with no warranties as to the fitness of the Facilities for any particular purpose or the suitability of the Facilities for Concessionaire’s intended use(s). Concessionaire will maintain and repair the Facilities pursuant to the maintenance and repair schedule agreed to by and between the Concessionaire and the Department, as more particularly detailed in the Repair and Maintenance Plan which must be submitted and finalized in accordance with the provisions of Exhibit A prior to Concessionaire’s commencement of operations under this Agreement. The Concessionaire will be responsible for, and the Repair and Maintenance Plan will, at minimum, encompass the following:

1. interior routine maintenance and repair of the Facilities, including, but not limited to: interior electrical systems, interior plumbing systems, interior drain pipe systems, and interior painting; and
2. routine maintenance of interior and exterior components of the Facilities; and
3. damage to Facilities caused by the Concessionaire or their customers, which will be at the Concessionaire’s sole cost and expense; and
4. maintenance and repair of Concessionaire’s signage; and
5. nonstructural and/or cosmetic interior improvements to the Facilities if pre-approved, in writing, by the Park Manager.

All cleaning, maintenance and repair supplies (chemicals and compounds) and all insecticides, rodenticides and herbicides will be approved by the Department prior to use by the Concessionaire. The Concessionaire will perform daily removal of litter within 50 feet of the Concession Building (BL107015), excluding all restrooms. All construction or alterations of Facilities must be pre-approved in writing by the Park Manager and the Department provided Concessionaire delivers a description and details pertinent to the proposed construction and/or alteration; and if duly approved, Concessionaire may proceed with such work in compliance with all applicable federal, state, and local laws.

The Department will be responsible for the repair and, if necessary, replacement of the external and structural elements of the Facilities including, but not limited to: roof and other similar items, as applicable.”

- b. Compensation: Paragraph F of the Special Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ F. Compensation. The Concessionaire will pay the Department as compensation for this Agreement, a monthly commission fee for all its operations on behalf of the Department; which will be implemented on the following schedule:

1. \$4,166 per month from March 1, 2016 through February 29, 2020, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages); and
2. 8% of Total Gross Sales per month from March 1, 2020 through December 31, 2020, plus, the applicable State Use Tax (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).
3. 3% of Total Gross Sales per month from January 1, 2021 through February 28, 2030, but not less than \$28,500 annually plus, the applicable State Use Tax (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages). The \$28,500 annual amount constitutes the minimum fee due each twelve-month period between January 1, 2021

through February 28, 2030, which when divided by 12 equals \$2,375 per month (the minimum "Monthly Base Fee"). Accordingly, the monthly fee due from January 1, 2021 through February 28, 2030, will be: 3% of Total Gross Sales for the month, or, the minimum Monthly Base Fee, whichever is greater, plus applicable State Use Tax.

The Concessionaire will not be required to pay the full Monthly Base Fee during any period in which (a) the Park is closed, or (b) a Force Majeure Event (defined below) prevents the Concessionaire from conducting operations. If such an event occurs, the Monthly Base Fee will be reduced by a fraction, the numerator of which is the number of days such events prevented the Concessionaire from conducting operations in the Park and the denominator of which is the number of days in the month.

"Total Gross Sales," for the purpose of this Agreement, will be defined as all sales of goods, merchandise, food, vending and services generated as a result of the Concessionaire's operations at or associated with the Park. This includes all sales made or advertised within the Park, advertised on the Concessionaire's website associated with the Park, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its Park operations, and sales generated by subcontractors or related entities whose sales are associated with the Concessionaire's authorized operations at the Park. Total Gross Sales will not include:

1. tax collections, or
2. gratuities, or
3. pass through fees, which include:
 - a. admission fees collected by the Concessionaire on behalf of the Department, and
 - b. events fees collected by the Concessionaire on behalf of the Department, or
4. funds that were collected but have been refunded to the customer.

Sales of goods and services and collections of sales tax will be accounted for separately at the point of sale. If the Concessionaire is unable to do this, it will calculate sales tax from gross receipts using a method approved by the Florida Department of Revenue."

- c. Notices: Paragraph G of the Special Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

" G. Notices. All notices and written communication between the Department and Concessionaire will be sent by electronic mail, U.S. Mail, a courier delivery service or delivered in person. Notices will be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by the recipient. All notices required by this Agreement will be in writing and will be delivered to the parties at the following addresses:

Concessionaire

Dane White
BG John U. Lloyd, LLC
11800 S. Highway 475
Ocala, FL 33480

Department

Steven Dale, Park Manager
Dr. Von D. Mizell-Eula Johnson State Park
6503 N. Ocean Drive
Dania Beach, Florida 33004

With a copy to:

Jim Brook, Chief, Bureau of Operational
Services
3900 Commonwealth Boulevard, MS 535

Tallahassee, Florida 32399-3000
Jim.Brook@FloridaDEP.gov

The Concessionaire will inform the Department in writing within 30 days of any change to its name, business organization, ownership, address, Registered Agent, or other contact information. Either party may provide notice to the other party by email identifying a change of a designated contact person, or designating additional contact persons, and must provide the new contact information for any newly designated Agreement Manager or additional contact persons. Such notice is sufficient to effectuate this change without requiring a written amendment to this Agreement.”

- d. Agreement Managers: Paragraph H of the Special Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ H. Agreement Managers. Steven Dale, Park Manager, who can be reached by telephone at (954) 924-3859 or by email at Steven.Dale@dep.state.fl.us, or his successor, is hereby designated as the Department's Agreement Manager. The Agreement Manager for the Concessionaire is Dane White, who can be reached at (954) 952-2061 or DWhite@ROAMManagement.com. Such persons and information may be updated by either party, from time to time during the Term hereof, upon written notice to the other party.”

- e. Concessionaire employee standards: Paragraph 16 of the General Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ 16. Concessionaire employee standards. The Concessionaire will provide continual training and evaluation of all employees assigned to the Concessionaire's Service operations to ensure an appropriate level of proficiency, a public service attitude, and a good understanding of the principles of hospitality. All Concessionaire's employees and/or those acting on behalf of or providing services under the supervision of the Concessionaire will be required to wear a visitor service uniform and name tag while on duty in the Park. The Concessionaire will obtain written pre-approval from the Park Manager for all service uniforms and name tags. The Concessionaire has a duty to replace any employee and/or those persons acting on behalf of or providing services under the supervision of the Concessionaire if the Park Manager so requests. No Department employee or close relative of a Department employee is permitted to be employed by the Concessionaire or a subcontractor, or otherwise compensated by the Concessionaire or a subcontractor, without the prior written approval of the Department's Bureau of Human Resources Management and the Office of General Counsel.”

- f. Public Records: Paragraph 19 of the General Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“19. Public records.

a. Concessionaire will comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. Concessionaire will keep and maintain public records required by the Department to perform the services under this Agreement.

b. This Agreement may be unilaterally canceled by the Department if the Concessionaire fails to either provide to the Department all public records relating to this Agreement upon request or allow the records to be inspected or copied within a reasonable time.

c. If Concessionaire meets the definition of "Contractor" found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

1. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement must be made directly to the Department. If the Department does not possess the requested records, the Department will immediately notify the Concessionaire of the request, and the Concessionaire must provide the records to the Department or allow the records to be inspected or copied within a reasonable time. If Concessionaire fails to provide the public records to the Department within a reasonable time, the Concessionaire may be subject to penalties under s. 119.10, F.S.
2. Upon request from the Department's custodian of public records, Concessionaire will provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
3. Concessionaire will identify and ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the Term of the Agreement and following completion of the Agreement if the Concessionaire does not transfer the records to the Department.
4. Upon completion of the Agreement, Concessionaire will either transfer, at no cost to the Department, all public records in possession of Concessionaire or keep and maintain public records required by the Department to perform the Services under this Agreement. If the Concessionaire transfers all public records to the Department upon completion of the Agreement, the Concessionaire will destroy any duplicate public records that are exempt or confidential and exempt from public disclosure requirements. If the Concessionaire keeps and maintains public records upon completion of the Agreement, the Concessionaire will meet all applicable requirements for retaining public records. All records that are stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is accessible by and compatible with the information technology systems of the Department.

d. IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS by telephone at (850) 245-2118, by email at ombudsman@dep.state.fl.us, or at the mailing address below:

Department of Environmental Protection

**ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Blvd, Mail Slot 49
Tallahassee, FL 32399**

- g. Review of terms: Paragraph 23 of the General Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ 23. Review of terms. This Agreement will be reviewed by the parties periodically to determine whether the value of compensation, services provided, and required Capital Improvements are appropriate. The Department may consider the following reasons for altering the compensation: whether the Concessionaire has made Capital Improvements, a significant increase or decrease in use by the public, the Concessionaire's contributions to the Park other than Capital Improvements, a significant increase in the Concessionaire's profits without a comparable increase in value to the Park, a decrease in overhead costs, competitive rates in the marketplace, and other relevant reasons. If the parties mutually determine the value of compensation, Services provided, and Capital Improvements are no longer appropriate, the parties will negotiate until agreement is reached and the parties execute a written amendment to this Agreement. If the parties cannot agree upon the amount to be paid the Department, then the Department will terminate the Agreement after 90 days' written notice to the Concessionaire.”

- h. Sexual predator and offender check: Paragraph 36 of the General Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ 36. Sexual predator and offender check. The Concessionaire will not employ within the Park any person who is listed on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement (“FDLE”) or maintained by the U.S. Department of Justice's Dru Sjodin National Sex Offender Public Website (“NSOPW”).

- A. The Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors. The Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors hired subsequent to execution of this Agreement. The Concessionaire will keep a copy of its investigation records in the Concessionaire's personnel files and have those files available to the Department during the Concessionaire's regular office hours.
- B. At the Department's election, the Concessionaire will at its sole cost and expense, conduct criminal and civil, and sexual predator and sexual offender background investigations on all officers. All background investigations of the Concessionaire's officers required under the provisions of this paragraph will be conducted by an independent third-party entity and the Concessionaire will authorize the investigating entity to release the investigation results directly to the Department's Agreement Manager.
- C. If the Concessionaire or any subcontractor employs a sexual predator or sexual offender or fails to perform the required research of the FDLE list or the NSOPW, the Department may immediately terminate this Agreement for cause.

D. The Concessionaire will be responsible for including all of the provisions of this paragraph in all subcontracts entered into under this Agreement.”

- i. Safety Plan: Paragraph 7. in Exhibit A of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ 7. Safety Plan: The Concessionaire will provide a draft Safety Plan to be evaluated by the Department's Safety Officer and Department's Agreement Manager. Prior to commencing operations under this Agreement, the Concessionaire will implement a final Safety Plan incorporating the District's and Department's Agreement Manager's comments. The Safety Plan will be revised at least once a year before the Agreement anniversary date, prior to the commencement of any new services, or as otherwise requested by the Department, and the Concessionaire will submit the proposed revision to the Department's Safety Officer and Department's Agreement Manager for evaluation and approval. The Safety Plan will include guidelines for all aspects of the Concessionaire's operation, with special attention to traffic control, first aid, security, fire prevention, health safety and water related activities and equipment. A section of the Safety Plan will be devoted to Emergency Action, which will cover proper preparations and responses to all natural and human-caused emergencies.”

- j. Capital Improvements: Paragraphs 7. And 8. in Exhibit B of the Agreement are hereby deleted in their entirety and replaced with the following language:

“7. Concessionaire agrees to refurbish Concession Building BL107015 to standards acceptable to the Park Manager for providing the Services authorized under this Agreement. At its sole cost and expense, Concessionaire will complete, at minimum, \$100,000 in Capital Improvements to Concession Building BL107015 and the surrounding area. Concessionaire will provide a draft Capital Improvement Plan to the Department, no later than March 22, 2015, which will include, at minimum, a schedule and target completion dates for each of the Capital Improvements identified for Concession Building BL107015. A final Capital Improvement Plan, which incorporates the District and Park Manager's comments and will be approved by the Park Manager, will be implemented and completed prior to December 31, 2017. The Capital Improvements will immediately become property of the Department with no amortization of the costs due to Concessionaire.”

“8. Concessionaire will provide at least \$500,000 in Capital Improvements to enhance Facilities at the Park ("Direct Investment Capital Improvements") as follows:

- a. Conceptual projects as Direct Investment Capital Improvements include: renovate the Concession Building (Building Number: BL107015), enclose and upgrade the Manatee Pavilion (Building Number: BL 107023) to create office space, storage space and indoor event space.
- b. The Direct Investment Capital Improvements will be identified and agreed to in writing by both parties no later than April 30, 2021, unless the parties mutually agree to extend this deadline.
- c. The Concessionaire will complete the Direct Investment Capital Improvements no later than December 31, 2021, or such later date as the parties may agree.
- d. If the parties cannot agree on the Direct Investment Capital Improvements, or any portion thereof, the Concessionaire will pay the Department \$500,000, or such portion thereof that has not been agreed to as Direct Investment Capital Improvements, on or prior to December 31, 2021.

- e. Failure to make improvements or, if no improvements can be agreed upon, make the payment required before December 31, 2021, will constitute a material breach of the Agreement.
- f. Completed Direct Investment Capital Improvements will immediately become property of the Department with no amortization of the costs due to Concessionaire."

Paragraph 9 in Exhibit B of the Agreement is hereby deleted in its entirety and intentionally left blank as a placeholder.

- k. Minimum Accounting Requirements: The following language is added to Paragraph A of Exhibit C of the Agreement:

" 10. If receipts exceed \$2,000.00, they will be deposited intact daily. If receipts do not exceed \$2,000.00 a day, they will be deposited intact periodically, which will be no more than a five-day working period. Un-deposited receipts will be stored in a secure manner – a safe is preferable. Validated deposit slips and bank statements supporting amounts deposited will be retained by the Concessionaire."

3. Ratification:

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

4. Execution in Counterparts:

This Amendment #1 may be executed in two identical counterparts, each of which will be deemed an original. The two, executed, identical counterparts will constitute this Amendment #1. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. Any party transmitting an electronic signature will provide the inked original thereof to the receiving party, at the receiving party's request.

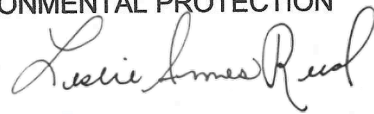
WHEREFORE, the parties hereto have caused this Amendment #1 to be executed as of the day and year last set forth below.

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BG JOHN U. LLOYD, LLC

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 
Authorized Signature

By: 
Secretary's signature or designee

Printed Name: Dane White

Printed Name: Leslie Reed, Chief of Staff

Title: COO

Title: _____

Date: 10-13-20

Date: 12/04/2020