

CONCESSION AGREEMENT
(Sebastian Inlet State Park)

This Concession Agreement ("Agreement") is between the State of Florida Department of Environmental Protection ("Department"), a state agency, through its Division of Recreation and Parks ("Division"), whose address is 3900 Commonwealth Boulevard, Tallahassee, Leon County, Florida 32399, and BG Sebastian Inlet, LLC ("Concessionaire") organized as a Limited Liability Company, whose headquarters is located at 9700 South Highway A.1.A., Melbourne Beach, Brevard County, Florida 32951.

RECITALS

WHEREAS, the Department agrees to grant the privilege of providing the visitor services described more fully herein within the boundaries of Sebastian Inlet State Park ("Park") to Concessionaire;

WHEREAS, the Concessionaire agrees to accept the responsibility of providing such visitor services at the Park;

WHEREAS, such visitor services will require investment by the Concessionaire and will involve certain risks of financial loss;

WHEREAS, the Concessionaire agrees not to interfere with the daily operations of the Park and agrees to promote the Park by all means possible and practicable; and

WHEREAS, the Concessionaire will work concurrently with the Citizen Support Organization ("CSO") and not interfere with the CSO's operations;

NOW THEREFORE, in consideration of the promises and the mutual covenants and conditions contained in this Agreement, the Department and the Concessionaire agree as follows:

SPECIAL CONDITIONS

A. Dates and extension or renewal discretion. The term of this Agreement shall commence on July 1, 2017 ("Effective Date"), and shall end at midnight June 30, 2032, ("Term"), subject to all terms, conditions, and provisions contained herein. This Agreement may be extended by written amendment hereto, upon agreement by both parties. The Department may consent to an extension or renewal of this Agreement, and the decision whether to consent to such extension or renewal and the length of such extension or renewal, if any, shall depend upon an analysis of various factors, including specifically but not limited to: the needs and goals of the State Park system, as determined by the Department; the ability and willingness of the Concessionaire to perform under this Agreement, as well as any other agreement, contract or written document to which the Department and the Concessionaire may agree; the good standing of the Concessionaire (including any entity related to or affiliated with the Concessionaire) under any other agreement with the Department; the Concessionaire's past record of performance, including annual, quarterly, and other evaluation reports, and any audits; the past revenues paid to the Department; the nature and extent of capital improvements made by the Concessionaire; and other factors relevant to Park operations and planning of the individual Park (collectively, the "Factors"). The Department, reserves the right not to extend or renew this Agreement beyond the initial term specified above.

B. Use of Facilities, Space and Equipment. The Department shall provide to the Concessionaire the following facilities, space, and equipment ("Facilities") for use during the Term of the Agreement:

1. Marina Area, including docks, 24 slips and 10 primitive camping sites;
2. Marina Store and Office Building, including restrooms (Building No. BL106030);
3. Concession Building including restaurant, banquet room and restrooms (Building No. BL072021);
4. Bait and Tackle Building (Building No. BL072055);
5. Outdoor Canoe and Kayak Storage Area in the Marina Area, approximately 2,250 square feet;
6. Metal Shed in the Marina Area, approximately 120 square feet;
7. Wood-framed Shed in the Marina Area, approximately 120 square feet;
8. Vending Machine space; and
9. Additional space as identified and authorized in writing by the Department or its designee.

An area map is attached as Exhibit I to this Agreement to illustrate the location of the above listed Facilities. If deemed necessary, the exact location and size of the Facilities shall be clarified, in writing, by the Department or its designee. Prior to Concessionaire's commencement of operations under this Agreement, Concessionaire must finalize and submit to the Department for approval, the Repair and Maintenance Plan in accordance with the provisions of Exhibit A. Concessionaire shall 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. Prior to the Concessionaire's commencement of operations under this Agreement, the Concessionaire must submit and finalize the Repair and Maintenance Plan in accordance with the provisions of Exhibit A. The Concessionaire's Repair and Maintenance Plan shall encompass the following:

1. 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;
2. Routine maintenance and repair of interior and exterior components of the HVAC systems, fire detection systems, elevator, and other similar systems;
3. Cleaning of all restrooms in the Facilities;
4. Intentional or negligent damage to Facilities caused by the Concessionaire or its customers, which shall be at the Concessionaire's sole cost and expense;
5. Maintenance and repair of Concessionaire's signage;
6. Nonstructural and/or cosmetic interior improvements to the Facilities, if pre-approved, in writing as by the Department or its designee; and
7. Routine landscaping and grounds maintenance surrounding the Facilities.

All cleaning, maintenance and repair supplies (chemicals and compounds) and all insecticides, rodenticides and herbicides shall be pre-approved by the Department. The Concessionaire shall perform daily removal of litter within 50 feet of the Facilities.

The Department shall be responsible for the repair and, if necessary, replacement of:

1. The major components comprising the HVAC systems (including the air handler units, compressors, fans, blowers, and evaporator coils) and elevator; and

2. The roofs, exterior walls, and other structural elements of the Facilities, unless such items are part of Concessionaire's capital improvements and the parties mutually agree that the repair and replacement thereof shall be undertaken by Concessionaire and the associated expenses included as part of the Concessionaire's capital improvements (as defined in Paragraph 8 below).

The Concessionaire shall deliver to the Department a written description of any proposed construction and/or alteration of the Facilities. If the Concessionaire obtains written approval by the Department, any such construction/alteration shall be in compliance with this Agreement, and any applicable federal, state, and local laws.

C. Services Provided. The Concessionaire is hereby authorized to conduct, and does hereby agree to operate the following business and to provide the following services, which are further specified in Exhibit A, (collectively, the "Services"), subject to all terms, conditions, and provisions of this Agreement:

1. Food and Beverage Operation, including selling alcoholic beverages;
2. Merchandise Resale Operation;
3. Recreational Equipment Rental;
4. Special Event Management;
5. Guided Eco-Tours;
6. Marina Operation and Overnight Accommodations;
7. Wi-Fi Service; and
8. Automatic Teller Machine Service

The Concessionaire may provide additional services if the Concessionaire obtains written pre-approval from the Department or its designee.

D. Utilities. The Concessionaire shall be responsible for the costs of all utilities associated with its operations within the Park, including, but not limited to:

1. Electricity: The Concessionaire shall contract with and make payment directly to the provider.
2. Water/Sewer: The Department shall be responsible for water/sewer service.
3. Garbage: The Concessionaire shall contract directly with the service provider for adequate dumpster capacity. Location of dumpsters and frequency of pick-ups shall be pre-approved, in writing, by the Department or its designee. The Concessionaire shall provide, for use by Park visitors, recycle bins for plastics, paper, aluminum, and glass, at a minimum.
4. Propane: The Concessionaire shall contract with and make payment directly to the provider.
5. Telephone (including the telephone line in the elevator/Internet: The Concessionaire shall contract with and make payment directly to the provider.
6. Vending Machines: The Concessionaire shall obtain written pre-approval from the Department or its designee to provide vending machines. If vending machines will be provided, the Concessionaire shall pay a monthly fee to the Park of \$20.00 per machine not requiring heating element or refrigeration, and \$30.00 per machine requiring a heating element or refrigeration, unless the machine is located in an area where the Concessionaire pays for the electricity.

E. Security Deposit for Concessionaire's Performance. Upon execution of this Agreement, the Concessionaire shall post with the Department a security deposit in the amount of \$31,500.00 ("Security Deposit") to assure compliance with this Agreement and serve as liquidated damages in the event the Concessionaire defaults on the terms and conditions of this Agreement. The Security Deposit shall be in the form of one of the following: (1) a verified payment bond, issued by a surety company with twice the minimum surplus and capital required by and in compliance with the Florida Insurance Code and holds a certificate of authority authorizing it to write surety bonds in the State of Florida and the United States Department of Treasury; (2) a verified, original, current letter of credit from a bank authorized to do business in the State of Florida containing terms and conditions satisfactory to the Department; or (3) establishment of a security deposit account which is administered by the Department.

No interest shall be payable on deposited funds. Any letter of credit or performance bond shall include provisions allowing for automatic renewal upon its expiration. The Concessionaire must provide written notice to the Department at least 120 days before a letter of credit's or security bond's expiration date if it wishes to terminate or cancel the letter of credit or performance bond.

The Security Deposit shall be returned to the Concessionaire upon termination for convenience pursuant to the Termination paragraph of this Agreement or upon expiration of this Agreement if all terms and conditions of the Agreement have been satisfied.

In the event where: (a) the Department terminates this Agreement for cause or (b) the Concessionaire abandons this Agreement, the Department shall call upon or collect the full amount of the Security Deposit as liquidated damages for the default.

The Security Deposit shall be maintained continuously throughout the term of this Agreement. If the Department receives notice the Security Deposit will expire, be terminated, cancelled or is scheduled for renewal, proof of its reinstatement, renewal, or substitution of an otherwise acceptable Security Deposit shall be submitted to the Department or its designee at least 90 days prior thereto.

The amount of the Security Deposit shall be re-assessed by the Department or its designee on an annual basis when the Concessionaire's total gross sales are submitted in the Concessionaire's Annual Profit and Loss Statement (Exhibit F) and upon any renewal, extension, modification, or amendment to this Agreement. The Concessionaire shall obtain written pre-approval for any changes to the Security Deposit. Any requested increases in the Security Deposit by the Department shall not exceed the Concessionaire's monthly average commission payment from the 12 months preceding the requested increase.

F. Compensation. The Concessionaire shall pay to the Department a commission fee based on the following schedule and pursuant to the terms set forth in this Agreement, including, but not limited to, Special Conditions, Section F, and General Conditions, Sections 17 and 18 herein:

1. Period 1:

From the Effective Date through June 30, 2019 ("Period 1"), the Concessionaire shall pay a commission equal to 10% of Total Gross Sales each month, but not less than \$63,000.00 annually ("Period 1 Minimum Guarantee"), which shall be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage

of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages);

2. Period 2:

From July 1, 2019 through June 30, 2027 ("Period 2"), the Concessionaire shall pay a commission equal to 12% of Total Gross Sales each month, but not less than \$87,000.00 annually ("Period 2 Minimum Guarantee"), which shall be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages); and

3. Period 3:

From July 1, 2027 through June 30, 2032 ("Period 3"), the Concessionaire shall pay a commission equal to 13% of Total Gross Sales each month, but not less than \$144,000.00 annually ("Period 3 Minimum Guarantee"), which shall be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages).

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

1. Sales tax collections,
2. Gratuities,
3. Funds collected on food consumed by the Concessionaire's employees,
4. Pass through fees, which include:
 - a. Park admission fees collected by the Concessionaire on behalf of the Department, and
 - b. fees collected by the Concessionaire on behalf of the Department, or
5. Funds that were collected but have been refunded to the customer.

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

G. Notices. All notices and written communication between the Department and Concessionaire shall be sent by electronic mail, U.S. Mail, a courier delivery service or delivered in person. Notices shall 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 shall be in writing and shall be delivered to the parties at the following addresses:

Concessionaire

Dane White, Director of Operations
BG Sebastian Inlet, LLC
1250 South Pine Island, Suite 500
Plantation, Florida 33324

Department

Kevin Jones, Park Manager
Sebastian Inlet State Park
9700 South Highway A.1.A.
Melbourne Beach, Florida 32951

With a copy to:

Partnerships Section, Section Leader
3900 Commonwealth Boulevard, MS 535
Tallahassee, Florida 32399-3000

The Concessionaire shall inform the Department or its designee in writing within 30 days of any change to its name, business organization, ownership, address, Registered Agent, or other contact information.

H. Agreement Managers. Kevin Jones, Park Manager, who can be reached by telephone at (321) 984-4853 or by email at Kevin.Jones@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 by telephone at (954) 952-2061 or by email at dwhite@bgfloridaparks.com.

I. Special Events. During the Term of the Agreement, the Concessionaire may schedule events to occur up to 12 months after this Agreement's end date. For all events scheduled during this period, the Concessionaire shall provide a copy of the original event contract to the Department. All contracts entered into by the Concessionaire for events occurring during this period shall provide notice that the contract may be assigned to another concessionaire at the Department's request. The Department may either issue a permit authorizing the Concessionaire to fulfill event obligations or require the Concessionaire to assign contracts and deposits to another concessionaire. In the event of a cancellation, the Concessionaire shall not pursue or accept a replacement date or event, unless the Department's Agreement Manager gives written pre-approval. After this Agreement's end date, the Concessionaire shall not schedule any additional events or reschedule existing events.

GENERAL CONDITIONS

1. Agreement to provide Services in compliance with all laws and regulations. The Concessionaire shall provide the Services in conformance with: Chapter 258, Part I, Florida Statutes; Rule 62D-2, Florida Administrative Code; and Category 5 of the Division's Operations Manual regarding concession operations ("Division's Operations Manual"); and the Concession Agreement Call for Business Plan Packet No. SUP-BP # 05-17 ("Business Plan Packet"). The Concessionaire shall comply with: (a) all applicable federal, state, and local laws, rules, regulations, and ordinances, such as those listed above and as further specified in this Agreement; (b) the Division's Operations Manual under that version currently in effect as of the date of this Agreement, as well as any subsequent version, modification, amendment, or update; and (c) all other terms and conditions contained in this Agreement. It is the Concessionaire's responsibility to be apprised of any subsequent version, modification, amendment, or update of any of the foregoing statutes and rules. The most updated version of the Division's Operations Manual may be obtained from the Park Manager.

2. Operations. The Concessionaire shall use the Facilities, and provide the Services to the public throughout the daily hours the Park is open (Operating Hours), in full compliance with all terms, conditions, and provisions of this Agreement. Minimum Operational Requirements and Procedures, including Park Operating Hours, are outlined in Exhibit A. The Concessionaire shall obtain written pre-approval from the Park Manager for any closings of the Concessionaire's operations, including holidays, and any changes made to the Minimum Operational Requirements and Procedures.

3. Use of premises and governing law. The Concessionaire shall not use, offer, or permit any other person to use, the Facilities for any purpose that violates any law, ordinance, or applicable governmental rule or regulation. The Concessionaire shall be responsible for supervising, managing and controlling the Concessionaire's officers, employees, agents, and/or person(s) the Concessionaire is providing Services for, during times of said Services.

Personal property of the Concessionaire's officers, employees, agents, or acquaintances shall not be stored in the Park. Concessionaire-owned vehicles or equipment used while conducting Services under this Agreement may be stored in the Park with the Park Manager's written permission.

4. Fire insurance standards. The Concessionaire shall not permit the use or storage of any materials that are prohibited by the standard policies of fire insurance companies in the State of Florida in any Facilities or space occupied or used by the Concessionaire pursuant to this Agreement.

5. Inspection of facilities, space and premises; Concessionaire's failure to maintain. The Concessionaire agrees the Facilities may be inspected at any time during Park Operating Hours without additional notice by authorized representatives of the Department or by any other state, county, or municipal officer or agency who is authorized to inspect such operations. The Concessionaire shall immediately undertake the correction of any deficiency cited by such inspectors at Concessionaire's sole expense, unless the Department is the responsible party for the deficiency. If the Concessionaire fails to correct any such deficiency, or, if after two inspections by the Department's Agreement Manager, or their designee, the Concessionaire fails to meet the minimum maintenance or repair standards identified in Paragraph B above or contained in the Repair and Maintenance Plan, the Department reserves the right to correct the deficiency and issue an invoice to the Concessionaire for payment of the cost thereof. If the Concessionaire fails to deliver payment of such invoice to the Department within 30 days of invoice receipt, the Department may suspend the Concessionaire's Services under this Agreement until full payment has been received by the Department, or may terminate this Agreement for cause and begin procedures to state a claim on the Security Deposit.

6. Surveys and reports. The Concessionaire shall cooperate with the Department in conducting surveys, providing reports of visitor contacts, and responding to Department inquiries regarding public usage of the Facilities and Services. Further, the Concessionaire shall provide the Department a nominal amount of space in, at or on the Facilities for Florida State Park marketing and promotional materials.

7. Leasing and lessee; Full compliance. The Concessionaire understands and agrees: no parcel, building, facility, structure, equipment, or space is leased to the Concessionaire; the Concessionaire is an independent contractor and not a lessee; and the Concessionaire's right to occupy the Facilities and to conduct the Services shall continue only so

long as the Concessionaire and its operations are in full compliance with the terms and conditions of this Agreement.

8. Construction. The Concessionaire shall obtain written pre-approval from the Department for any construction of new facilities and for all improvements, alterations or additions to existing Facilities. The Concessionaire shall bear the full cost for such Department-approved construction, improvements, alterations, or additions. All construction, improvements, alterations, or additions described in this Paragraph shall become state-owned assets upon completion. Any incomplete constructions, improvements, alterations, or additions shall become state-owned assets if either the Concessionaire abandons construction or this Agreement is terminated prior to full completion of construction. The Concessionaire is responsible for obtaining all required permits and paying all costs associated with such required permits. The Concessionaire is responsible for all costs associated with design, site survey, geotechnical, environmental and other site testing, including but not limited to: asbestos and lead based paint surveys, and preparation of construction documents necessary for the successful completion of the project. The Concessionaire shall submit all necessary documentation for any proposed construction, including permits, sealed plans, construction documents, test reports, product submittals, budget estimates, and sketches, to the Department for review and comment prior to commencement of any construction or alterations. Additionally, prior to construction, the Concessionaire shall attend a preconstruction meeting with the Park Manager, a representative from the Division's Bureau of Operational Services, a representative from the Division's Bureau of Design and Construction, and any other additional personnel required to properly document and coordinate the construction activities and agreement requirements. The Concessionaire shall provide the Department with the specifics of all projects which involve construction in the Park, including: timelines, critical paths, methods of construction, approval of plans, amenities, signage, color schemes, advertising, subcontractors, cost estimates, amortization period for the capital improvements, etc. either before or at the preconstruction meeting. Once the permits have been reviewed and final plans have been approved by the Department, the Department shall provide to the Concessionaire a Notice to Proceed. Upon receipt of the Notice to Proceed, the Concessionaire shall commence construction and diligently pursue the full completion thereof. Any Department obligation to pay or reimburse the Concessionaire for unamortized capital improvements, including pre-construction phase costs and fees, that may otherwise arise pursuant to the terms of this Agreement shall not arise if the Department has not issued its Notice to Proceed.

9. Permits and licenses. The Concessionaire shall obtain and maintain all permits, licenses, and professional education necessary for the operation of the Services referenced in this Agreement and agrees to comply with all laws governing the responsibility of an employer with respect to persons it employs. All required permits and licenses must be obtained and presented to the Department prior to commencement of any Services under this Agreement by the Concessionaire and prior to the Concessionaire's occupation of the Facilities.

10. Expansion of operations and assignment. The Department may, by formal amendment hereto, authorize the Concessionaire to expand or change the Services provided, if the Department determines that such expansion or change would be beneficial to the Park, Park visitors, or the Department. The Concessionaire may not occupy or use additional Facilities, discontinue use of Facilities, or expand, change, or terminate Services without the prior written consent of the Department and the execution of a formal amendment to this Agreement. This Agreement shall not be assigned in whole or part, without prior written approval of the Department, which approval may be granted, conditioned, or denied, in the Department's sole discretion. If the Department approves the assignment, the Concessionaire shall pay to the Department a processing fee of \$100, unless such processing fee is waived for good cause by the Department.

11. Subcontracting The term subcontract, as used in this Agreement, shall include any written or oral agreement, license, or other arrangement in which any other entity undertakes to perform any of the Services. The term subcontractor, as used in this Agreement, shall include any entity or person offering goods or services in the Park by written or oral agreement, license, or other arrangement with the Concessionaire.

The Concessionaire shall be responsible for providing all Services as set forth herein. The Concessionaire may subcontract, as necessary, to perform the Services, provided the Concessionaire gives notice and delivers to the Department all pertinent information concerning the subcontractor with a copy of the proposed subcontract and obtains the Department's written consent thereto prior to the Concessionaire's execution of the subcontract. Once the subcontract is executed by the parties, the Department shall receive a copy of the subcontract. The Department shall be notified if any changes are made to the subcontract, and shall receive a copy of the revised subcontract with any amendment or modification. Unless otherwise granted by amendment, only the Florida Park Service District Bureau Chief or his or her superior may grant consent to utilize a subcontractor. Consent to use a subcontractor must be in writing. The Department reserves the right to withhold its consent to use any proposed subcontract or subcontractor.

Failure to obtain pre-approval of a subcontract or subcontractor may result in termination of this Agreement. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract. The Department is not liable to the subcontractor for any expenses or liabilities incurred under the subcontract and is not responsible for the subcontractor's performance under the subcontract. The Concessionaire shall include a provision in its subcontract which requires the subcontractor to comply with the terms of this Agreement, and to submit reports in the form required by this Agreement. Failure by any subcontractor to perform or to pay the Concessionaire shall not be grounds for excusing the Concessionaire's obligations to the Department.

The Concessionaire shall be solely responsible for verifying the subcontractors' reports and for reporting gross sales attributable to any and all subcontracts, and computing and remitting the monthly fee based on Total Gross Sales, as required by this Agreement. By execution of a subcontract between the Concessionaire and subcontractor, each agrees to be bound by the terms of this Agreement, including but not limited to: the requirements of Chapter 119, Florida Statutes; Audit and Minimum Accounting requirements; and the commission on Total Gross Sales, as stated in this Agreement. In the event a subcontractor refuses to comply with the requirements of this Agreement under obligation to the Department, the Concessionaire is accountable to the Department to remedy the subcontractor's non-compliance, up to and including termination of subcontractor. If Concessionaire fails to remedy the subcontractor's non-compliance, the Department may terminate this Agreement.

12. Competition. Unless otherwise provided herein, the Department agrees not to authorize any services in the Park which are in conflict or in direct competition with the Concessionaire's Services, except as further provided in this paragraph. The Department may propose competing services if it first gives the Concessionaire not less than 30 days advance written notice of its intent to authorize such services. If the Concessionaire desires the Department to consider the Concessionaire as the vendor to provide such services, it must submit a sufficiently-detailed written proposal to the Department within 14 days of receipt of such notice. The Concessionaire's proposal may be accepted or rejected by the Department, after reviewing, among other things, the Factors. Notwithstanding the foregoing, the parties agree that the

following services or uses are not subject to this paragraph and shall not constitute competition: (a) the Department and the Park's Citizen Support Organization selling Florida State Park promotional merchandise; (b) private persons hiring outside caterers or carrying in their own food and refreshments for individual events; (c) the delivery of goods or services in the Park, the sales or service transactions of which originated outside the Park; (d) Park management of events; or (e) the Department's online retail and merchandise concessionaire. This paragraph is not intended to make the Department responsible for taking any actions to prevent or remedy any competition which occurs or originates outside of the Park, even if such competing persons lawfully enter the Park.

13. Conflict of Interest. The Concessionaire covenants it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of Services to be provided under this Agreement. The Concessionaire agrees to use its best efforts to maximize the profitability of this Agreement and to refrain from any self-dealing or other activity which would usurp opportunities of the Park associated with the Services provided hereunder. The Concessionaire further agrees not to conduct any activity that would be injurious or cause disrepute to the Park.

14. Independent contractor. It is acknowledged the Concessionaire is performing at all times as an independent contractor and not as an employee, representative, or agent of the State of Florida, the Department, or the Division, and neither the Concessionaire nor its employees are entitled to accrue any benefits of state employment.

15. Fees and merchandise. The Concessionaire agrees the prices and fees charged for merchandise and Services offered by the Concessionaire pursuant to its operations under this Agreement shall be consistent with those charged by similar businesses for similar merchandise and services in the general vicinity of the Park. For the purposes of this Agreement, "General Vicinity" is defined as being located or charging for merchandise or services within five miles of the Park. If there are no similar businesses which market similar merchandise or services within five miles of the Park, General Vicinity shall be expanded to include the nearest such similar business. The Concessionaire shall not sell or rent any types of merchandise or equipment prohibited by the Department and shall sell or rent only the types of merchandise or equipment approved by the Department. The Concessionaire shall maintain an adequate supply of all merchandise and equipment (including Florida State Park merchandise), which the Park Manager deems appropriate for the Park or necessary to accommodate Park visitors. The Concessionaire shall ensure that all merchandise and equipment sold or rented is of good quality, safe, and clean. The Concessionaire's schedule of fees for the sale of goods and Services authorized by this Agreement shall be pre-approved in writing by the Department or its designee. Price and fee adjustments may be requested by the Concessionaire and any requests must be in writing. Such requests will be reviewed by and may be approved, in writing. The Park Manager's approval shall be based on the Concessionaire's written request for a fee schedule change, which shall include market analysis supporting the requested fee schedule change.

16. Concessionaire employee standards. The Concessionaire shall provide continuing training and evaluation of all employees assigned to the Concessionaire's Services operations under this Agreement to ensure an appropriate level of proficiency, a public service attitude, and a good understanding and use of the principles of hospitality. All of the Concessionaire's employees shall be required to wear a visitor service uniform and name tag at all times while on duty in the Park. The Concessionaire shall obtain written pre-approval from the Park Manager for all service uniforms and name tags. The Concessionaire shall replace any employee at the request of the Park Manager for good cause. No Department employee or close relative of an

employee of the Department shall be employed by the Concessionaire or subcontractor, or otherwise compensated by the Concessionaire or subcontractor, without prior written approval of the Department.

17. Monthly fee payment. The monthly commission fee, plus the State Use Tax and any other fees or payments due ("Monthly Payment"), shall be submitted to the Department, through the Park Manager, along with the Monthly Report of Concessionaire's Total Gross Sales ("Monthly Report"), detailed in Exhibit D. The Concessionaire shall submit the aforementioned funds and report(s) to the Park Manager no later than the 20th day of each month following the month the Gross Sales were collected by the Concessionaire. Any late submittals shall result in a late fee being assessed in the amount of 1% of the current amount due for each day the Monthly Payment is late. A late fee may be waived based on documented circumstances beyond the Concessionaire's reasonable control. If the Monthly Payment and accumulated late fees are not received within 30 days after the normal monthly payment deadline, the Department may either suspend the Concessionaire's performance of Services under this Agreement until full payment has been received by the Department or terminate this Agreement for cause and begin procedures to collect the Security Deposit. When the Department completes a system for accepting electronic payments from concessionaires, the Concessionaire agrees to use such system for making or delivering its monthly payments to the Department. Concessionaire's agreement to use the system is contingent upon there being no fee or a nominal fee to use the system.

18. Accounting. Accounting requirements shall be as follows:

a. Minimum Accounting Requirements including Subcontractors and Audit Requirements. The Concessionaire and any subcontractors shall comply with, and document compliance with, the Minimum Accounting Requirements detailed in Exhibit C, attached hereto and incorporated herein by reference. The Concessionaire, and any subcontractors, shall establish and maintain books, records, and documents directly pertinent to performance under this Agreement in accordance with the Minimum Accounting Requirements and with the generally accepted accounting principles, which shall be consistently applied. The Department, and other appropriate government agencies, or their authorized representatives, as provided by law, shall have access to all such records for audit purposes during the Term of this Agreement and for five years following the Agreement's expiration or termination. Audits will be conducted at locations and at a frequency determined by the Department or other state agency and communicated to the Concessionaire and any subcontractor. The Concessionaire and any subcontractor shall provide materials for the audit at the designated place within 15 days after the Department's or other government agency's notice is received. In addition, the Department may require the Concessionaire and any subcontractor to procure an annual financial audit of the Concessionaire's or subcontractor's operations conducted by a Certified Public Accountant, at the Concessionaire's or subcontractor's sole cost and expense. If requested, the Concessionaire and any subcontractor agrees such an audit shall be conducted in accordance with generally accepted auditing and accounting principles and shall be completed within a reasonable time frame, which shall not be set at less than 60 days by the Department.

b. Monthly Report of Total Gross Sales. The Concessionaire shall provide to the Department a Monthly Report of Concessionaire's Total Gross Sales, which shall include gross sales attributable to all subcontracts, in the form attached hereto as Exhibit D and incorporated herein by reference, as it may be modified by the Department from time to time. Each monthly report shall contain the required detail based upon Total Gross Sales for such

month by point of sale. The Concessionaire shall deliver such report and required payment(s) to the Park Manager no later than the 20th day of the succeeding month.

c. Monthly Profit and Loss Statement. The Concessionaire shall provide a Monthly Profit and Loss Statement to the Department, in the form attached hereto as Exhibit E and incorporated herein by reference. Such statement shall include the results of the Concessionaire's operations pursuant to this Agreement for each calendar month or portion thereof for which this Agreement is in effect. The Concessionaire shall deliver such statement to the Park Manager no later than the 20th day of the succeeding month.

d. Annual Profit and Loss Statement. The Concessionaire shall provide an Annual Profit and Loss Statement to the Department, in the form attached hereto as Exhibit F and incorporated herein by reference. Such statement shall include the results of the Concessionaire's operations pursuant to this Agreement for each calendar year or portion thereof for which this Agreement is in effect. The statement shall be delivered to, or sent so it is received by, the Park Manager no later than April 30th of the succeeding calendar year, or within 90 days of the expiration or termination of this Agreement, whichever is sooner.

e. Books of original entry. Both the Monthly Reports of Total Gross Sales and the Annual Profit and Loss Statements shall be based on source documents and books of original entry. The Concessionaire shall retain books of original entry and source documents for five years, or until final resolution of matters resulting from any litigation, claim, or audit that started prior to the expiration of the five-year retention period, whichever is later. The retention period commences from the date of submission of the last Annual Profit and Loss statement required in Paragraph 18 d. above.

f. Limited Engagement document. If during any year this Agreement is effective the annual Total Gross Sales from the Concessionaire's Services under this Agreement exceed \$400,000, the Concessionaire shall obtain and submit, at its sole cost and expense, a limited engagement document, prepared in accordance with the Agreed - Upon Procedures for a Certified Public Accountant as stated in Exhibit G, attached hereto and incorporated herein. Such limited engagement document shall be conducted in accordance with generally accepted auditing and accounting principles. This limited engagement document shall be submitted to the Park Manager no later than June 30th of the following calendar year or within 120 days after the expiration or termination of this Agreement, whichever is sooner.

g. Revenue subject to sales tax. The Concessionaire's revenue is subject to State Use Tax, unless the Concessionaire is exempt from paying such tax on commission fees to the Department. If it is tax exempt, the Concessionaire shall provide verification of its tax-exempt status by completing the State Use Tax Exempt Certification form attached hereto as Exhibit H and incorporated herein by reference. The Concessionaire shall provide its completed certification form to the Department contemporaneously with its delivery of the executed Agreement to the Department.

h. Purchasing card industry ("PCI"). The Concessionaire shall be responsible for complying with the PCI Data Security Standards ("PCI DSS"), which include a set of comprehensive requirements for enhancing payment account data security, at the Concessionaire's sole cost and expense. The PCI DSS standards can be found at the PCI Security Standards Council website, which is linked through: <https://www.pcisecuritystandards.org/>. Additional information can be obtained through the Florida Department of Financial Services ("DFS"), which coordinates the State of Florida's efforts directly with the PCI Security Standards

Council. The Concessionaire shall ensure that the required data security measures are in place no later than 60 days after the Effective Date of this Agreement or prior to the commencement of operations, whichever is sooner, by submitting a completed Self-Assessment Questionnaire ("SAQ") to the Department or its designee. The Concessionaire shall submit an updated SAQ to the Park Manager annually on the anniversary of the commencement date through the expiration or termination of this Agreement. The SAQ can be found on the PCI DSS website listed above. During the term of this Agreement, it shall be the Concessionaire's responsibility to be apprised of any subsequent version, modification, amendment, or update of the PCI DSS, and, if necessary, in order to comply with the most current version of the PCI DSS, to modify its annual SAQ as it pertains to its operations under the Agreement, at the Concessionaire's sole cost and expense.

19. Public records.

a. Concessionaire shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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**

20. No vested real property right; Violation of grant terms. This Agreement shall not vest any real property right or interest in the Concessionaire, and shall be deemed to only be the grant of a privilege to perform the Services in full compliance with this Agreement. In the case of state parks acquired or developed with Land and Water Conservation Fund (LWCF) grants, the Concessionaire shall also comply with all terms and provisions of the LWCF Grant Agreement regarding standards of maintenance, public use, and accessibility. Failure to comply with the LWCF Grant Agreement's terms and provisions shall be considered a default under the terms of this Agreement. A copy of the LWCF Grant Agreement may be obtained through the Park Manager. If the Concessionaire fails to comply with any of the material terms and conditions of the LWCF Grant Agreement, the Department shall provide the Concessionaire written notice of said default and allow the Concessionaire 10 days to cure. The Department may terminate this Agreement for cause if the Concessionaire fails to either bring the operations into compliance with the terms and provisions of the LWCF Grant Agreement or to show a good faith effort to comply within the time limit specified therein.

21. Termination. In addition to the Department's right(s) of termination contained elsewhere in this Agreement, this Agreement may be terminated prior to the expiration of the Term of the Agreement stated in Special Conditions, as follows:

a. Termination for cause.

i. Upon the Concessionaire's default, breach, or deficiency in performing any obligation under this Agreement ("Default"), the Department may terminate this Agreement for cause.

ii. If a cure period is expressly provided under any provision of this Agreement for a Default specified in the Department's notice, or if the Department elects to provide the Concessionaire a specific amount of time to cure a Default, then the Department's notice of termination shall provide such amount of time for the Concessionaire to cure the Default(s) ("Cure Period"). Unless otherwise specified herein, the Concessionaire will have fifteen (15) days to cure a monetary Default and thirty (30) days to cure any other default. The Concessionaire shall promptly commence and diligently pursue the full and complete cure of the Default(s) without interruption. Should the Concessionaire desire an extension of the Cure Period, then on or before the expiration of the initial Cure Period: (a.) the Concessionaire shall have commenced actions to cure the Default(s), and (b.) the Concessionaire shall submit a notice in writing to the Department stating the curative actions it has undertaken to date, with a request to extend the Cure Period to a later date (which cannot be greater than the 90th day following the Concessionaire's receipt of the Department's written notice of Default). The Concessionaire's request shall include an explanation of the need for an extension of the Cure Period. The Department may grant, deny, or condition its approval of the Concessionaire's extension request. If the Concessionaire does not fully and timely cure the Default(s) prior to the expiration of the Cure Period (or the extended Cure Period, if so requested and granted) then this Agreement shall automatically terminate at 12:01 AM Eastern on the first calendar day following the expiration of the Cure Period.

Upon such termination for cause, the Concessionaire shall immediately remove itself and all other parties who may be present upon or occupy any part of the premises or Facilities for its operations conducted hereunder. Continued occupancy of the premises or Facilities after termination of this Agreement shall constitute trespass and may be prosecuted as such. The Concessionaire will forfeit any unamortized costs for capital improvements upon termination for cause.

b. Termination for convenience. The Department or the Concessionaire may terminate this Agreement for convenience at any time by giving 90 days' advance written notice to the other party.

i. If the Concessionaire terminates this Agreement for convenience before the end of the Term of the Agreement, the Concessionaire shall pay to the Department a \$100 processing fee in conjunction with such termination. If the Concessionaire gives less than the 90 days' notice required above, then, in addition to the processing fee above, the Department may require the Concessionaire to pay an expedited termination fee equaling 5% of its previous 12 months average monthly commission for each month remaining in the Term of this Agreement as liquidated damages to the Department. This provision does not preclude the Department from pursuing any other available legal remedies.

ii. If the Department terminates this Agreement for convenience, it shall not be liable to the Concessionaire for any direct, indirect, or consequential damages arising therefrom, save and except for any obligation to reimburse the Concessionaire for unamortized capital improvements. If the Concessionaire has made capital improvements to the Park, which have not been fully amortized (as defined by the Amortization Schedule in Exhibit B, attached hereto and incorporated herein, if applicable), the Department shall pay the Concessionaire the remaining unamortized amount of the capital improvements, as of the termination date, within 90

days following the termination date. However, this obligation shall not arise if the Department does not issue its Notice to Proceed referenced in Paragraph 8 of the General Conditions herein. No capital improvements under this Agreement shall be considered to have an amortization period longer than five years. The amortization rate and period for capital improvements shall be as stated in Exhibit B, if applicable, and reimbursements shall be pro-rated based on the date of termination during the calendar year. Proration shall be calculated using a 360 day calendar year. The Concessionaire agrees such payment shall constitute liquidated damages for termination for convenience by the Department.

c. Termination rights cumulative. Notwithstanding anything in this Paragraph 21 which may be construed to the contrary, the Department's termination rights in this Paragraph 21 are cumulative and in addition to termination rights which may be contained elsewhere in this Agreement, and to remedies available at law and in equity. There are specific circumstances expressly stated in this Agreement where termination occurs automatically without notice or with notice, and this Paragraph 21 does not alter nor affect the Department's use and reliance on those specific contractual termination rights contained elsewhere in this Agreement. All rights and remedies of the Department, whether under this Agreement or at law or in equity, are cumulative, and may be used by the Department singularly or concurrently.

22. Equipment and other tangible property. Upon termination or expiration of this Agreement for any reason, neither the Department nor any of its agents, officers, or employees, shall be obligated to purchase any of the Concessionaire's equipment or remaining inventory, unless otherwise provided herein. Within 30 days of receipt of a Notice of Termination, or sooner if specified by the Department, the Concessionaire shall remove or dispose of all assets which are not fixtures of state property, at the Concessionaire's sole cost and expense. Notwithstanding the foregoing, the Department or its designee may elect not to require the Concessionaire to remove assets which are not fixtures of state property and all such assets not removed by the Concessionaire prior to expiration or termination of this Agreement shall become the property of the Department. The Department or its designee shall give written notice of any such election, prior to the termination or expiration of this Agreement.

23. Review of terms. This Agreement shall be reviewed by the parties periodically to determine whether the value of compensation, services provided, and capital improvements are appropriate. Reasons to be considered for altering the compensation include: whether capital improvements were made by the Concessionaire, significant increase or decrease in use by the public, the Concessionaire's contributions to the Park other than capital improvements, significant increase in the Concessionaire's profits without a comparable increase in value to the Park, decrease in overhead costs, competitive rates in the marketplace, and other relevant reasons. If the parties mutually determine the value of compensation, Services provided, or capital improvements are inappropriate, the parties shall negotiate until agreement is reached and written amendment to this Agreement executed by both parties is made. If the parties cannot agree upon the amount to be paid the Department, then the Department shall terminate the Agreement after 90 days written notice to the Concessionaire.

24. Insurance coverage. The Concessionaire's failure to comply with any part of the insurance requirements is considered a material breach and shall be grounds for "termination for cause" by the Department. All insurance policies shall name the Florida Department of Environmental Protection and the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("Board of Trustees") as Additional Named Insureds for the entire Term of the Agreement, including all extensions, if any.

The Concessionaire shall secure and maintain the following types of insurance covering its operations under this Agreement:

a. Liability. The Concessionaire shall secure and maintain Commercial General Liability insurance, including bodily injury, property damage, personal and advertising injury, coverage for factors relevant to the Concessionaire's business, personal and property damage, and/or provide coverage for contents of the Facilities and space as stated herein, as amended or expanded from time to time, including additional products, services, and expansion of the Concessionaire's Services. Insurance coverage must include coverage for all claims which may arise from the Services and/or operation(s) provided under this Agreement, whether such Services and/or operations are by the Concessionaire or anyone directly or indirectly employed by the Concessionaire. The minimum limits of liability shall be \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.

b. Automotive. The Concessionaire shall secure and maintain Commercial Automobile Liability insurance for company-owned vehicles and for hired and non-owned vehicles, which are used to transport equipment, merchandise, food products, customers, employees, or otherwise provide operational support or deliver services to the day-to-day or incidental operations or otherwise used to conduct business and provide the Services in the Park at a minimum combined single limit of \$1,000,000. Commercial Automobile Liability insurance coverage may be provided as either vehicle specific coverage or as a coverage for the business use as a rider on the Concessionaire's general liability insurance policy.

c. Other as needed. Other insurance required under this Agreement shall be insurance for the unique or particular type of operations, recreation, or facilities provided and any unique hazards arising therefrom, such as liability for the operation of vessels, water sports, operation of other motorized vehicles, and diving and snorkeling. The Concessionaire must provide its own insurance for such things as boat hulls, building contents, theft, vehicle comprehensive, and any other applicable insurance. The Concessionaire understands the State's insurance does not cover the Concessionaire's personal property or business losses in the Park. The Concessionaire is advised to thoroughly research its insurance needs prior to executing this Agreement.

d. Workers' Compensation. The Concessionaire shall secure and maintain, during the life of this Agreement, Workers' Compensation insurance for all of its employees connected with the work to be performed under this Agreement. The Concessionaire shall provide evidence of such coverage to the Department prior to the Concessionaire signing the Agreement. The Concessionaire's self-insurance or insurance coverage shall comply fully with Florida Workers' Compensation Law. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation Law and the Merchant Marine Act of 1920 (P.L. 66-261), commonly known as the Jones Act, including any subsequent amendments or conditions. In case any class of the employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Concessionaire shall provide adequate insurance, satisfactory to the Department, for the protection of its employees not otherwise protected. Insurance policy certificates shall be submitted to the Park Manager, and shall list the Park Manager's name, Sebastian Inlet State Park, and mailing address, as listed in Paragraph G of the Special Conditions of this Agreement, as the insurance policy certificate holder. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida.

e. General Insurance Provisions, including Services Cannot Begin Without Insurance and Filing Requirements. No Services under this Agreement shall begin prior to

compliance with these insurance requirements. Compliance with the foregoing shall not relieve the Concessionaire of its liability under this paragraph or under any other portion of this Agreement. All insurance obtained by the Concessionaire in accordance with this Agreement shall include a Hold Harmless Agreement in favor of the Department and the Board of Trustees. All insurance policies shall name the Department and the Board of Trustees as Additional Named Insureds for the entire Term of the Agreement, including any extensions. All insurance policies shall include this Agreement's DEP Agreement No. on the certificate. Insurance policy certificates shall be submitted to the Park Manager, and shall list the Park Manager's name, Sebastian Inlet State Park, and mailing address, Paragraph G of the Special Conditions of this Agreement, as the insurance policy certificate holder. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida. The Concessionaire's current certificate of insurance shall contain a provision that the insurance will not be canceled for any reason except after 30 days prior written notice to the Department or its designee, except for nonpayment of insurance premium, which shall be handled in accordance with Florida law. The Concessionaire shall provide evidence of its current insurance coverage to the Department prior to commencement of any activity permitted or required by this Agreement. All required insurance policies shall remain in full force and effect throughout the term of this Agreement. Evidence of all policy renewals shall be provided to the Park Manager at the time of every renewal of such policy and prior to any extension of this Agreement. The Department reserves the right to request copies of insurance policies for examination and copying at any time during the Term of the Agreement. Required per occurrence and aggregate loss limits for insurance coverage of the Concessionaire's services under this Agreement shall not be subject to dilution or reduction by any other insurable loss or interest of the Concessionaire under such policy, and if requested, the Concessionaire will provide proof thereof from its insurance provider. Any releases required by the Concessionaire's insurer to be signed by members of the public may be used in accordance with applicable law. To the extent releases are used, the release shall also release the Department and the Board of Trustees, in addition to the Concessionaire, and must be pre-approved in writing by the Department. If, at any time, the Department deems it necessary, the Concessionaire shall obtain liability waivers signed by members of the public. Waivers seeking parents' or guardians' signature on behalf of a minor shall comply with the form requirements set forth in Section 744.301, Florida Statutes.

25. Risk in operation. The Concessionaire assumes all risk in the operation of any activity permitted or required by this Agreement and shall be solely responsible and answerable in damages for accidents or injuries to persons or property, whether direct or indirect, arising out of its operations or arising by the carelessness, negligence, or improper conduct of the Concessionaire or its subcontractors, and their respective employees, representatives, or agents. The Concessionaire shall save and hold harmless and indemnify the Department and the Board of Trustees, and their respective officers, employees, and agents, against any and all liability, claims, judgments, attorney's fees, or costs of whatsoever kind and nature for injury to, or death of, any person or persons and for the loss of or damage to any property resulting from the use, service, operation, or performance of work under the terms of this Agreement or resulting from any act, or failure to act, by the Concessionaire or its subcontractors, and their respective employees, agents, or representatives to the extent allowed by law. The Concessionaire shall notify the Park Manager of all legal actions filed against the Concessionaire related to the Park, Services of Concessionaire, or which may adversely affect or reflect on the Department, within five days of service of process.

26. Force majeure event. A force majeure event shall be an act of God or nature, strike, lockout or other industrial disturbance, act of a public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary governmental or third party approvals,

governmental restraint, terrorism, threat to homeland security, tornado, hurricane or other severe storms, civil commotion, criminal activity, or any other cause, whether of the kind specifically enumerated herein or otherwise, which is not reasonably within the control of the Concessionaire. Failures of the Concessionaire's subcontractor to perform are not a force majeure; nor are business losses a force majeure; nor are equipment failures a force majeure.

Any such event shall not relieve the Concessionaire from performance of any terms of this Agreement which can be performed. No payment from the Concessionaire shall be due for the time period during which its operations are totally suspended due to a force majeure event.

The Concessionaire hereby waives all claims for compensation arising from loss or damage sustained by reason of any force majeure event that takes place in or affects the Park, except as outlined in Paragraph E of the Special Conditions of this Agreement. If a force majeure event causes delay or a reasonable likelihood of delay in the Concessionaire's performance under this Agreement, the Concessionaire shall promptly notify the Park Manager orally, and, within seven calendar days, notify the Park Manager in writing of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay, and the Concessionaire's intended timetable for implementation of such measures. If the parties agree that a delay or anticipated delay has been or will be caused by a force majeure event, time for performance of this Agreement may be extended for a period of time equal to the delay resulting from the force majeure event. Except as outlined in Paragraph E of the Special Conditions of this Agreement, such extension shall be the Concessionaire's sole remedy under this Agreement for a delay caused by a force majeure event. Such extension shall be confirmed by an amendment to this Agreement, reduced to writing and executed by both parties.

27. Waiver in light of force majeure event. The Concessionaire also hereby waives all rights, claims, and demands and forever releases and discharges the Department and the Board of Trustees and their respective employees, officers and agents from all demands, attorney's fees, claims, actions, and causes of action arising from a force majeure event.

28. Natural and cultural resources. The Concessionaire shall abide by all local, state, and federal regulations and statutes governing the protection of natural and cultural resources and be considered liable for violation of such regulations or statutes.

29. Recyclable or biodegradable materials. When disposable serving supplies are utilized by the Concessionaire, they shall be produced from recyclable or biodegradable materials. Preference should be given to using non-disposable serving supplies. The Concessionaire shall develop and implement a Solid Waste Reduction Plan, as part of the Environmental Protection Plan required by Exhibit A, for solid waste generated by the Services. In areas where recycling programs exist, this solid waste reduction plan shall include provisions for the recycling of all appropriate materials, and shall be approved, in writing, by the Park Manager during the first 60 days of operations under this Agreement.

30. Works for hire. "Works for Hire" is defined as contributions to a collective work; part of a motion picture or other audiovisual work; a translation; a supplementary work; a compilation; an instructional text; a test; an answer for a test; and an atlas. For this Agreement, the definition of Works for Hire shall be expanded to include: any marketing materials and websites generated by the Concessionaire utilizing a state park name for the purpose of providing the Services authorized by this Agreement, and whether such works for hire are patentable or copyrightable or not, such works for hire shall belong to the Department and shall be subject to the terms and conditions of this Agreement.

31. Federal, state and local laws. The Concessionaire shall comply with all applicable federal, state and local laws, rules, regulations, and ordinances in providing services to the Department under this Agreement. The Concessionaire acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state, and local health and safety rules and regulations. The Concessionaire further agrees to include this provision in all subcontracts issued as a result of this Agreement. The Concessionaire's failure to comply with any part of this provision is material and shall be grounds for termination of this Agreement for cause by the Department.

a. Compliance with the Americans with Disabilities Act. The Concessionaire must comply with the Americans with Disabilities Act ("ADA"), and Chapter 760, Part I, Florida Statutes, the "Florida Civil Rights Act," and must provide facilities that provide accommodations to persons with disabilities and program access to each program and activity the Concessionaire offers to the public. It is the intent of the Department that the Concessionaire offer access to all its facilities and programs, and not merely to the minimum extent mandated by law.

b. Violation of ADA. If the Concessionaire is sued for violation of the ADA and either a court of competent jurisdiction determines the Concessionaire is in violation of the ADA or the Concessionaire settles the case with the understanding that ADA changes must be made, the Concessionaire shall pay all of its own attorney's fees and costs as well as the plaintiff's attorney's fees and costs, as required by law. The Concessionaire may seek insurance for such risk, and, if it obtains a policy which covers such risk, the Concessionaire shall name the Department and the Board of Trustees as Additional Named Insureds under such policy, and shall comply with such requirements, as applicable. If the Department is a co-defendant in such suit, the Department shall only pay for those attorney's fees and costs attributable to its violation of the ADA, as determined by judgement, court order and/or settlement agreement. In the event the time records do not reflect whether counsel's work was attributable to the Department's or the Concessionaire's violations, or the parties cannot agree on a split, the attorney's fees and costs shall be split equally between the Concessionaire and the Department.

c. A & I Coordinator. The Division of Recreation and Parks employs an Accessibility and Inclusion Coordinator ("A & I Coordinator"), who shall be consulted by the Concessionaire each time an ADA issue arises. The A & I Coordinator will be the Division's contact for all public complaints and questions related to the ADA. The Concessionaire shall inform the A & I Coordinator and the Park Manager within five days of service of process if it is sued for an ADA violation. The Concessionaire shall inform the A & I Coordinator and the Park Manager of all ADA disputes or claims in writing within five days of the event. If there is a dispute between the Concessionaire and a visitor related to the ADA, an accommodation shall be negotiated between the parties by the A & I Coordinator. The A & I Coordinator can be contacted through the Department's Agreement Manager.

i. A & I Liaison. On or before the first day of Services under this Agreement, the Concessionaire shall identify one or more officers or employees to act as their Accessibility and Inclusion Liaison ("A & I Liaison"), and will promptly provide their names and contact information to the Park Manager. The Concessionaire's A & I Liaison shall: act as liaison with the A & I Coordinator; educate and direct other Concessionaire staff in ADA matters and issues; and cooperate with the A & I Coordinator.

ii. ADA Training.

(a) The Department shall send notice to the Concessionaire's A & I Liaison when the Department's online ADA training is available or updated. The Concessionaire's A & I Liaison and the Concessionaire's Agreement Manager shall take the Department's online ADA training within 60 calendar days of receiving such notice of course availability/update from the Park Manager.

(b) If offered, the Concessionaire shall attend training on ADA practices when a Concessionaire meeting is held.

iii. Visitor Complaints. The Concessionaire's A & I Liaison and the Concessionaire's Agreement Manager shall make themselves familiar with the ADA requirements related to the Concessionaire's operations. The Concessionaire shall follow guidelines as provided by the Park Manager for accessibility and follow the Department's complaint procedure found on the Division's website at www.FloridaStateParks.org for any visits, calls, or complaints from visitors to initiate the resolution of the complaint to the visitor's and the Department's satisfaction.

iv. Accessibility and inclusion policy. On the first day of Services under this Agreement, the Concessionaire shall make the Concessionaire's Accessibility and Inclusion Policy available to everyone, including the Concessionaire's employees, the Park Manager and Park visitors. The policy shall include, but is not limited to: the Concessionaire's responsibility towards individuals with disabilities; the degree of access available to the Concessionaire's operational facilities, programs, and activities; the Concessionaire's policy for visitor requests or inquiries for access to the Concessionaire's operational facilities, programs, and activities; and the Concessionaire's policy for handling a complaint on access and inclusion. The Concessionaire must post on its premises and its website, if it provides one, the Concessionaire's Accessibility and Inclusion policy in a highly visible location that will be visible to the public and the Concessionaire's employees at all times.

v. Written publications. If the Concessionaire provides written publications, such as a website and brochures for its operations, the Concessionaire shall include accessibility information in such publications.

vi. Compliance with ADA terms and conditions. The Concessionaire shall comply with ADA provisions of this Agreement beginning on its first day of operations within the Park, unless otherwise specified herein. Compliance with the above-listed terms and conditions shall be monitored by the Concessionaire's A & I Liaison and the Park Manager. The Department shall also include ADA compliance as a component of the Concessionaire's Quarterly Evaluation Report.

32. Civil Rights Act. The Department receives Land and Water Conservation Funds. Under Title VI of the 1964 Civil Rights Act, the U.S. Department of Interior prohibits discrimination on the basis of race, creed, color, national origin, age, sex, or disability. The Concessionaire shall not discriminate, in the providing of services to the public or through its employment practices, on the basis of race, creed, color, national origin, age, sex, or disability. Requests for information regarding Title VI or registering of complaints under Title VI may be made to: The Office of Equal Opportunity, U.S. Department of the Interior, Office of the Secretary, 1849 C Street N.W., Washington, DC 20240.

33. Unauthorized aliens. The employment of unauthorized aliens by any contractor/vendor is considered a violation of Section 274A(e) of the Immigration and Nationality

Act. If the Concessionaire knowingly employs unauthorized aliens, such violation shall be cause for immediate unilateral termination of this Agreement by the Department. The Concessionaire shall be responsible for including this provision in all subcontracts with private persons or organizations entered into as a result of this Agreement.

34. E-Verify Employment Eligibility Verification. The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. The Concessionaire shall only employ individuals who may legally work in the United States (either U.S. citizens or foreign citizens who are authorized to work in the U.S). The Concessionaire shall use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification system to verify the employment eligibility of:

a. All persons employed by the Concessionaire, during the term of this Agreement, to perform employment duties within Florida; and,

b. All persons (including subcontractors) assigned by the Concessionaire to perform work pursuant to this Agreement. The Concessionaire shall include this provision in all subcontracts it enters into for the performance of work under this Agreement.

35. Sexual predator and offender check. The Concessionaire shall conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and all other officers, employees, and subcontractors of the Concessionaire prior to executing this Agreement. The Concessionaire shall keep a copy of its investigation records in the Concessionaire's personnel files that will be available to the Department during the Concessionaire's regular office hours. The Concessionaire shall not employ any person within the Park 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 National Sex Offender Public Registry ("NSOPR"). The Concessionaire shall be responsible for including this provision in all subcontracts with private persons or organizations entered into as a result of this Agreement. The Department has the right to conduct criminal background checks and additional sexual predator and sexual offender checks on the Concessionaire's Agreement Manager, officers, employees, and subcontractors during the term of this Agreement. If the Concessionaire or any subcontractor of the Concessionaire employs a sexual predator or sexual offender, either with knowledge or without knowledge due to failure to perform the required research of the FDLE list or the NSOPR, such violation shall be cause for immediate unilateral termination of this Agreement by the Department.

36. Public Entity Crime; Convicted Vendor. "Public Entity" means the State of Florida, any of its departments or agencies, or any political subdivision. "Public Entity Crime" means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any Public Entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

The Concessionaire confirms that, as of the execution date of this Agreement, and will re-affirm annually no later than July 1 of each year of the Agreement, neither the Concessionaire nor any of its officers, directors, executives, partners, shareholders, employees, members, and agents (as applicable) who are active in the management of the Concessionaire, have been placed on the convicted vendor list maintained by the State of Florida following a conviction for a Public Entity

Crime or on any similar list maintained by any other state or the federal government. A person or affiliate who has been placed on the convicted vendor list following a conviction for a Public Entity Crime, among other things, may neither be awarded work nor perform work as a contractor, supplier, subcontractor, or consultant under a contract with any Public Entity; and may not transact business with any Public Entity in excess of a specified threshold amount for a period of 36 months following the date of being placed on the convicted vendor list.

The Concessionaire must notify the Department within 30 days after any conviction of a Public Entity Crime applicable to the Concessionaire, its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the Concessionaire, or any affiliates of the Concessionaire. In such event, this Agreement is voidable.

37. Indemnification. The Concessionaire shall save and hold harmless and indemnify the State of Florida, the Department, the Board of Trustees, and their respective officers, employees, and agents from any lawsuit, claim or action arising out of its operations and Services under this Agreement.

38. State of Florida Department of Environmental Protection employees act in representative capacity. It is understood and agreed that the persons constituting the Department and the Board of Trustees, and their respective employees, officers, and agents are acting in a representative capacity and not for their own benefit, and neither the Concessionaire nor any of its subcontractor's employees, officers, or agents shall have any claim against any such Department employees, officers, or agents as individuals in any event whatsoever, when they are acting within the guidelines, terms, and conditions set forth herein or when complying with applicable laws, rules, ordinances or Department directives and procedures.

39. Appropriation by Legislature. The Department's performance and obligation to pay under this Agreement, as applicable, is contingent upon an annual appropriation by the Legislature. If funds are not appropriated or available for the Department to operate the Park or maintain the Facilities allotted for the Concessionaire, the Department may terminate this Agreement upon giving the Concessionaire 30 days' written notice.

40. Limitation of damages. The Concessionaire is aware this Agreement is for management purposes and may be revenue generating or revenue neutral. Therefore, there are no funds appropriated by the Legislature to pay damages. If a court of competent jurisdiction determines the Department is legally liable to the Concessionaire by reason of the Department's breach of this Agreement and the Concessionaire has made no capital improvements to the Park, the Concessionaire agrees that damages for any such breach shall be limited to the amount of the Security Deposit. However, if the Concessionaire has made capital improvements to the Park which were not fully amortized as of the date of the Department's breach, damages for any such breach shall be limited to the amount of the Security Deposit and Paragraph 21.b.ii. shall apply to the Department's repayment of any remaining unamortized capital improvements. The aforementioned unamortized amount is based upon the date of the Department's breach as determined by judgment, order, or settlement agreement.

41. Delivered under laws of Florida and action brought in Leon County. This Agreement has been delivered in the State of Florida and shall be construed in accordance with the laws of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision

or the remaining provisions of this Agreement. Any legal action hereon or in connection herewith shall be brought in Leon County, Florida.

42. Delay and failure to exercise right shall not impair right. No delay or failure to exercise any right, power, or remedy accruing to either party upon breach or default by either party under this Agreement, shall impair any such right, power, or remedy of either party; nor shall such delay or failure be construed as a waiver of any such breach or default, or any similar breach or default thereafter.

43. No interest given to any third party. This Agreement is not intended nor shall it be construed to grant any rights, privileges, or interest to any third party without the mutual written agreement of the parties hereto.

44. Bona fide employee. The Concessionaire warrants it has not employed or retained any company or person, other than a bona fide employee working solely for the Concessionaire to solicit or secure this Agreement and it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Concessionaire, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

45. Time is of the essence. Time is of the essence in the performance of this Agreement.

46. Severability. If a court deems any provision of this Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

47. Conflict. Unless otherwise stated herein and in the event of any internal conflict among the terms of this Agreement and the exhibits, the Special Conditions and Exhibit A shall control over any conflicting terms in the General Conditions.

48. Entire agreement. This Agreement, and all exhibits annexed hereto, which are incorporated herein by reference, collectively represent the entire agreement of the parties and the same supersedes any and all previous agreements of any kind. Any alterations, variations, amendments, changes, modifications, or waivers of provisions of this Agreement shall be valid only if reduced to writing, duly signed by all the parties hereto, and attached to the original of this Agreement.

49. Acceptance of terms per signature. The Concessionaire agrees with and accepts the terms and conditions of this Agreement by its signature below.

50. Counterparts; electronic signature. This Agreement may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which when taken together shall constitute the Agreement. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature was an original thereof. Any party transmitting an electronic signature shall provide the inked original thereof to the receiving party, at the receiving party's request.

The parties hereto have caused this Agreement to be executed as of the day, month and year last written below, as stated in Paragraph A of the Special Conditions.

CONCESSIONAIRE:

BG SEBASTIAN INLET, LLC

DEPARTMENT:

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: [Signature]
Managing Member or Authorized Signatory

Print Name: Darc White

Print Title: Director of Operations

Date: 6-20-17

By: [Signature]
Secretary's Signature or Designee

Print Name: Noah Valenstein

Print Title: Secretary

Date: _____

Approved as to form and legality:

By: Sharon Wyskiel
DEP Attorney

Date: 06/20/2017

Revised 5/22/17

List of Exhibits incorporated as part of this Agreement:

- | | |
|-----------|--|
| Exhibit A | Minimum Operational Requirements and Procedures |
| Exhibit B | Schedule and Scope of Capital Improvements |
| Exhibit C | Minimum Accounting Requirements |
| Exhibit D | Monthly Report of Concessionaire's Total Gross Sales |
| Exhibit E | Monthly Profit and Loss Statement |
| Exhibit F | Annual Profit and Loss Statement |
| Exhibit G | Agreed-Upon Procedures for a Certified Public Accountant |
| Exhibit H | State Use Tax Exempt Certification |
| Exhibit I | Area Map |
| Exhibit J | Department-owned Inventory |

EXHIBIT A
Minimum Operational Requirements and Procedures

1. Operations:
 - A. Concessionaire's operating hours:
 - 1) Minimum operating hours shall be 9 a.m. to 5 p.m. Eastern, daily, 365 days a year, including weekends and holidays, with the exception of the Marina Overnight Accommodations, which shall be 24 hours a day, 365 days a year, including weekends and holidays ("Operating Hours").
 - 2) Operating Hours shall be posted near the main entrance of the Facilities.
 - 3) Any deviation in Operating Hours shall be pre-approved, in writing, by the Department or its designee.
 - B. The Concessionaire shall maintain a telephone as a public and vendor contact point, which shall be staffed during operating hours. If an answering device is used, calls must be returned within 24 hours.
 - C. The Concessionaire's advertising, including online, brochures, signs, and other forms of advertisement shall be consistent with the Florida Park Service mission and shall be pre-approved, in writing, by the Department or its designee. The Department shall have the right to require removal of all or part of any advertising the Department deems inappropriate or reflects poorly on the Department.
 - D. The Concessionaire shall provide adequate staffing and oversight to operate the Services authorized in this Agreement. Staffing levels shall be by mutual agreement of the Parties and to the standards acceptable to the Department or its designee.
 - E. All paper products and serving containers shall contain post-consumer recycled content.

2. Services:
 - A. Food and Beverage Services

Locations for Food and Beverage Services shall be pre-approved, in writing, by the Department or its designee. The Concessionaire may provide prepared and prepackaged food and beverage service, including, but not limited to: meal items, non-alcoholic beverages, alcoholic beverages, snacks, ice cream and other similar items according to the following conditions:

 - 1) The Concessionaire shall maintain a standard menu with prices which shall be preapproved, in writing, by the Department or its designee.
 - 2) Alternative menu items such as vegetarian and gluten-free options are encouraged, if viable.
 - 3) Individually packaged condiment packs, Styrofoam serving containers and straws shall not be utilized.
 - 4) The Concessionaire shall meet all applicable federal, state and local regulations governing concession food service, the Florida Department of Health, Food Safety and Sanitation regulations, the Department of Business and Professional Regulation (DBPR) mandates, which includes inspection and regulation of food service establishments in Florida under Chapter 509, Florida Statutes, and Florida Administrative Code, Rule 61C-4. For additional information, visit websites: Florida Department of Health: <http://www.floridahealth.gov/> and Department of Business and Professional Regulation: <http://www.myfloridalicense.com/dbpr/>.
 - 5) The Concessionaire shall meet inspection standards set by the Florida DBPR Routine Food Inspections, and the Fire Marshal. If there is a report of a violation, the Concessionaire shall correct the violation in a timely manner and prior to the

next routine inspection. For more information, please visit the website:

<http://www.myfloridalicense.com/dbpr/index.html>.

- 6) Alcoholic Beverages Requirements
 - a. The Concessionaire shall obtain an alcoholic beverage license from DBPR, Division of Alcoholic Beverages and Tobacco prior to selling any alcoholic beverage at the Park;
 - b. The Concessionaire shall be responsible for complying with Chapters 561, 562, 563 and 564, Florida Statutes, and Rule 61A-3, Florida Administrative Code, the Division's Operations Manual, and Brevard County Ordinances that regulate the alcoholic beverage licenses; and
 - c. Prior to implementation of the serving of alcoholic beverages, Concessionaire shall submit a written plan of action, including hours of service and control methods, to the Park Manager for approval.
- 7) The Concessionaire may provide food and beverage sales via mobile carts. Mobile cart locations and menus shall be pre-approved, in writing, by the Department or its designee.
- 8) This Agreement shall not preclude Park personnel or visitors from using alternate sources of food, such as bringing their own or having events catered, should they so desire.

B. Merchandise Resale

Locations for Merchandise Resale shall be pre-approved, in writing, by the Department or its designee. The Concessionaire shall provide the following items for resale including, but not limited to: bait and tackle, ice, snacks, T- shirts, hats, sunglasses, sunscreen, bug repellants, souvenirs, gifts, toys, books, Park-themed products and other appropriate items which shall be pre-approved, in writing, by the Department or its designee. Inventory levels shall be to the standards acceptable to the Department or its designee. All merchandise shall be of high quality, environmentally friendly and reflective of the Florida Park Service mission.

C. Recreation Equipment Rental

- 1) Concessionaire shall provide recreational equipment rentals, including all required safety equipment. Types, models, and minimum and maximum inventory levels shall be pre-approved, in writing, by the Park Manager. The types of equipment shall include, but not be limited to:
 - a. kayaks, with paddles;
 - b. paddleboards, with paddles;
 - c. beach chair setups, each of which consists of two chairs and one umbrella; and
 - d. fishing equipment.
- 2) As part of the management of the water-based recreation operation, the Concessionaire shall:
 - a. offer guided tours;
 - b. at the Department's election, collect a Vessel Launch Fee, which shall be pre-approved, in writing, by the Department or its designee; and
 - c. make available carts or other equipment for portaging vessels.
- 3) Concessionaire shall provide an employee to work at the recreational equipment rental operations until all visitors have returned, or have been accounted for. The employee shall work at the recreational equipment rental operation facility until all visitors are located, and until either all cars have left the parking lot, or until all

cars remaining in the parking lot have been positively identified, owner confirmed and Park Management notified.

- 4) The Concessionaire shall provide appropriate safety equipment with each rental activity.
- 5) The Concessionaire shall ensure each rental customer, or their parent or guardian, signs a liability waiver.
- 6) The Concessionaire shall require all visitors launching a vessel to participate in a safety and environmental orientation program administered by the Concessionaire. The program and materials shall be pre-approved, in writing, by the Department or its designee.
- 7) Water-based recreational equipment rentals shall be provided by means of safe, comfortable, well maintained, Coast Guard approved watercraft that is compatible with the docking facilities provided at the Park. U.S. Coast Guard Inspection Certifications shall be presented prior to commencing any vessel operation under this Agreement.
- 8) The Concessionaire shall obtain written approval by the Park Manager prior to placing passenger or tour vehicles, vessels and rental equipment in use. The Division's approval of equipment will be based on public safety, resource protection, design and capacity of the vehicle or equipment, compatibility with other activities, compliance with the Americans with Disabilities Act ("ADA"), and aesthetic factors, such as compatible colors.
- 9) The Concessionaire shall comply with all Federal and manufacturer's requirements regarding carrying capacity.
- 10) The Concessionaire shall adhere to waste disposal guidelines and resource protection guidelines. The Concessionaire and the vessel operator shall be responsible for complying with Florida Statutes, the guidelines established by the Code of Federal Regulations, Administrative Code Rules, and the Department and the Division Operations Manual.
- 11) Discharge of garbage, debris and litter or other waste material into Park waters is strictly forbidden pursuant to Chapter 403 Florida Statute entitled "Public Health: Environmental Control", <http://www.flsenate.gov/Statutes/index.cfm>.
- 12) Spilling or discharge of oil or other fuels and lubricants is strictly forbidden pursuant to Chapter 376, Florida Statute entitled "Pollution Discharge Prevention and Removal", <http://www.flsenate.gov/Statutes/index.cfm>.
- 13) The Concessionaire and the vessel operator shall be liable for any damage to the Concessionaire's vessels or adjacent vessels as a result of improper securing to the Park dock. It shall be the Concessionaire's responsibility to protect the Concessionaire's vessels during inclement weather. The Concessionaire shall be responsible for compliance with the Division's Emergency Action Component (EAC).
- 14) The Concessionaire shall provide a small service boat or motorized watercraft to aid in the location and in the recovery of overdue vessel rentals and emergency situations.

D. Special Event Management Services

The Concessionaire shall provide special event services for appropriate events which shall be operated according to the following:

- 1) Identify, evaluate, recommend, and recruit special events to be held in the Park including, but not limited to: weddings, receptions, family reunions, business meetings and conferences, consumer shows and other park-friendly events or

activities as pre-approved, in writing, by the Department or its designee ("Special Events").

- 2) Obtain written pre-approval from the Department or its designee for the type of event, location, date, time and duration for all Special Events.
- 3) Coordinate all Special Events through the Department or its designee to ensure availability of adequate Facilities, including but not limited to event space and parking.
- 4) Manage all aspects of the Special Event planning process including, but not limited to: booking and scheduling of Special Events; establishing appropriate fees for Special Events related services (such fee schedule shall be pre-approved by the Department or its designee); cleaning of all Facilities and space utilized for Special Events; arranging for external vendors; and arranging for adequate parking.
- 5) Manage all aspects of conducting Special Events, including, but not limited to: setting up and removing all tables, chairs, and other equipment to be used for the Special Events; coordinating external vendors, security, and safety; ensuring compliance with the Americans with Disabilities Act; obtaining additional temporary facilities as needed; and cleaning up after the Special Events have concluded.
- 6) Ensure all Facilities are cleaned, presentable and safe for public use by 8:00 a.m. the following day, and returned to their original condition within 24 hours after each Special Event, unless otherwise pre-approved, in writing, by the Department or its designee.
- 7) Manage and adequately document third party vendors, including, but not limited to catering, entertainment, and rental equipment vendors.
- 8) Provide and manage marketing and promotion efforts for all Special Events booked by the Concessionaire. The Concessionaire shall submit to the Department all proposed advertising, brochures, and signs for written pre-approval by the Department or its designee.
- 9) Provide proper signage for each Special Event to ensure proper identification of the Special Event, and appropriate traffic flow for the Special Event guests and general Park visitors. Special Event signage must be pre-approved by the Department or its designee. Concessionaire shall maintain all signage to standards acceptable to the Department or its designee.
- 10) Ensure each Special Event has adequate staffing for proper management, security and access to Facilities. The Concessionaire may be required to utilize Park employees and/or law enforcement to provide Park security for Special Events held during or after hours at the Park. For each Special Event, the Concessionaire will provide direct payment to the Park or as directed by the law enforcement agency used.
- 11) After hours Events in the Park shall not be booked for periods in excess of four hours following the close of the Concessionaire's Operating Hours unless pre-approved, in writing, by the Park Manager.
- 12) The Department shall have access to use Facilities at no cost, including, but not limited to, the Banquet Room when not in use.
- 13) This Agreement shall not preclude Department personnel, the Park's Citizen Support Organization ("CSO"), or visitors from hosting their own Events within the Park, should they so desire. The Department and CSO may elect to use caterers and service providers other than the Concessionaire.

E. Guided Eco-Tours

The Concessionaire shall provide Guided Eco-Tours at authorized areas of the Park. Guided Eco-Tours shall be offered according to the following:

- 1) The Concessionaire shall obtain written approval from the Department or its designee prior to establishing or modifying authorized tour routes.
- 2) The number of tours per day and passengers per tour shall be pre-approved, in writing, by Department or its designee.
- 3) If at any time during the Term of this Agreement the Department determines Guided Eco-Tours are unsafe or detrimental to the Park's resources, the Concessionaire shall discontinue Guided Eco-Tours immediately upon written notification by Department or its designee.
- 4) Interpretive narratives shall be consistent with the Florida Park Service mission and pre-approved, in writing, by the Department or its designee.
- 5) Boat Tour requirements:
 - a. Number of vessels, types of vessels, shore points, routes, trip frequency, total number of trips per day and schedule shall be pre-approved, in writing, by the Department or its designee .
 - b. Boat Tours shall be provided by means of safe, comfortable, well maintained, Coast Guard approved watercraft compatible with the launching and docking facilities provided at the Park.
 - c. Coast Guard certifications must be presented to the Department or its designee prior to commencing any operation under this Agreement. If the United States Coast Guard does not require a Certificate of Inspection for the vessel, the Concessionaire shall present to the Department, prior to the execution of this Agreement, a current Florida Vessel Registration for the vessel.
 - d. The Concessionaire shall not change the vessels or the number of vessels without receiving written pre-approval from the Department or its designee . Any vessels approved by the Department or its designee for operations under this Agreement shall comply with the terms and conditions of this Agreement.
 - e. The Concessionaire shall obtain the Department or its designee's written approval prior to placing vehicles, vessels and rental equipment in use. Approval of equipment will be based on public safety, resource protection, design and capacity of the vehicle or equipment, compatibility with other activities, compliance with the Americans with Disabilities Act ("ADA"), and aesthetic factors, such as compatible colors.
 - f. The Concessionaire and the vessel operator shall be liable for any damage to the Concessionaire's vessels or adjacent vessels as a result of improper securing to the Park's docks. It shall be the Concessionaire's responsibility to protect the Concessionaire's vessels during inclement weather. The Concessionaire shall be responsible for compliance with the Division's Emergency Action Component ("EAC").
 - g. The Concessionaire's vehicles, trams, and equipment used in operations on the tram road are to be of the same color, with the company logo on each vehicle. The color of the Concessionaire's vessels, vehicles, trams and equipment, and the company logo shall be pre-approved, in writing, by the Park Manager.
 - h. The Concessionaire shall adhere to waste disposal guidelines and resource protection guidelines. The Concessionaire and the vessel operator shall be responsible for abiding by Chapter 403, Florida Statutes entitled "Public Health: Environmental Control" and Chapter 376, Florida Statutes entitled

"Pollution Discharge Prevention and Removal". Additional information is available at the following website: <http://www.flsenate.gov/Statutes/index.cfm>.

- 6) Personal Water Craft ("PWC") Tour requirements:
 - a. PWC guided tours shall only originate from the Marina Area (Building No. BL106030).
 - b. Visitors shall load and unload PWC by way of a floating ramp.
 - c. The Concessionaire shall mechanically limit PWC to a safe and appropriate speed as determined by the Department or its designee.
 - d. The Concessionaire shall provide an aerial map of the approved use area to all PWC tours.
 - e. The Concessionaire shall establish visual landmarks for the approved use area.
 - f. The Concessionaire shall provide a safety/training orientation prior to operation of PWC by users, which shall be pre-approved, in writing, by the Department or its designee.
 - g. The Concessionaire shall require a security deposit from all PWC users.
 - h. The Concessionaire shall determine a safe number of PWC for tours, which shall be pre-approved, in writing, by the Department or its designee.
 - i. If at any time PWC guided tours are determined by the Department to be unsafe or detrimental to the Park's resources, the Concessionaire shall discontinue the service immediately.
- F. Marina Operations and Overnight Accommodations
1. The Concessionaire agrees and understands that if a Department approved ((Rule 62-312.420 (2) (g) Florida Administrative Code and Rule 64E-6.010 Florida Administrative Code), attached hereto and incorporated herein as Attachment A, and referenced on website <https://www.flrules.org/Default.asp>) suitable permanent sewage pump out device/facility, or Department approved alternative, is provided by the Concessionaire for each vessel that desires to camp on board at the Park's Marina, that vessel may be allowed to camp on board at the Park's Marina for up to fourteen (14) consecutive days. The fourteen (14) consecutive day stay is the Division's standard length of stay for camping on board vessels. The vessel stay may extend during periods of low demand once the vessel is registered and the vessel is on-site with written approval by the Department or its designee. Vessels may stay up to twenty-eight (28) consecutive nights. After the vessel's consecutive night stay, the vessel shall leave the slip for two (2) nights before the vessel can return. The same vessel may return and stay for up to eight (8) weeks aggregate occupancy in any one slip in a six (6) month period.
 2. Grant funding for a pump out system is available through the Department of Environmental Protection's Clean Vessel Act ("CVA") program. For more information on the CVA, please reference website: http://www.dep.state.fl.us/cleanmarina/cva/apply_grant.htm.
 3. If the Concessionaire opts not to provide the pump out device/facility, or approved alternative, then vessels that desire to stay overnight at the Park's Marina shall be allowed to stay for three (3) consecutive days out of five (5) consecutive days or a total of ten (10) staggered days within a consecutive thirty (30) day period.
 4. The Concessionaire shall provide and explain the following camping conditions to each vessel operator or owner for camping on board or for

- overnight stays in the Park's Marina. The Concessionaire and the vessel operator or owner shall be responsible for abiding by the below listed Florida Statutes. Appropriate use and camping on board at the Park's Marina is not limited to these Florida Statutes, the Concessionaire and vessel operators or owners that use or camp at the Park's Marina shall comply with the guidelines established by the Code of Federal Regulations, State of Florida Rule, the Department, the Department's Florida Clean Marina program and Division's operation manual.
5. Discharge of garbage, debris and litter or other waste material into Park waters is strictly forbidden pursuant to Chapter 403 Florida Statute entitled "Public Health: Environmental Control", <http://www.flsenate.gov/Statutes/index.cfm>.
 6. Spilling or discharge of oil or other fuels and lubricants is strictly forbidden pursuant to Chapter 376, Florida Statute entitled "Pollution Discharge Prevention and Removal", <http://www.flsenate.gov/Statutes/index.cfm>.
 7. The vessel operator or owner shall be liable for any damage to his vessel or adjacent vessels as a result of improper securing at the Park's Marina. It shall be the vessel operator's or owner's responsibility to protect his vessel during inclement weather. The vessel operator or owner shall be responsible for compliance with the Division's Emergency Action Component (EAC).
 8. Liveaboards, boat storage and commercial use: The Concessionaire shall not allow or rent dock space to liveaboard vessels at the Park's Marina. A liveaboard vessel is an overnight stay for five (5) consecutive days.
 - a. Concessionaire shall not permit long term rentals, which exceed the above listed parameters for camping on board, at the Park's Marina.
 - b. A minimum of two (2) slips shall be reserved for overnight stays and the remaining twenty (22) slips may be reserved for approved commercial use and slip rental for a fee. The Division understands as visitor demand changes and new facilities are provided, this ratio may change as well, allowing more slips to be provided for overnight stays or camping. The Concessionaire shall monitor visitor demand and propose any changes to this ratio for the Department or its designee's review and approval.
 - c. The Concessionaire shall rent slips for a fee for public use; however, the fee shall be pre-approved, in writing, by the Department or its designee. A slip rental shall be for either a day use rental or overnight docking without an occupant. The rental of a slip shall follow the same stay guidelines applied to camping on board, which is stated above.
 - d. The Concessionaire shall ensure parking, including trailers, on the land portion of the Marina Area shall comply with the same conditions approved for slip rentals. Parking locations shall be pre-approved, in writing, by the Department or its designee.
 - e. The Concessionaire shall limit commercial use at the Marina to chartered deep-sea fishing (off-shore and in-shore charters), power boat rentals, canoe and kayak rentals, water taxi service, guided river fishing trips, daily sailing rental and instruction, party fishing boat, a ferry service or other appropriate ecoadventures compatible with Division standards.
 9. The Concessionaire shall be responsible for its subcontractors' compliance with state law that prohibits the subcontracted commercial

vessels, and other commercial vessels allowed to dock at the Marina, from pumping out into the Marina waters or into State managed waters. It shall be the responsibility of the Concessionaire and the commercial vessels to find alternative and legal pump out facilities.

10. The Concessionaire shall comply with the Department guidelines that leasing or renting of the slips to any For Profit entities, for any commercial gain, to any liveaboards, or for any private use, is not authorized notwithstanding the exemptions outlined in this document.
11. The Concessionaire shall make available and provide one (1) vessel slip to the Department for Department use on an as needed basis.
12. The Concessionaire shall maintain and operate ten (10) primitive camping sites at the Marina Area.
 - a. The Concessionaire shall rent sites for a fee, which shall be pre-approved, in writing, by the Department or its designee.
 - b. The aforementioned length of stay restriction of fourteen (14) consecutive days during the Park's peak season applies to the above primitive camping sites.
 - c. Maximum continuous length of stay in any one park is 28 nights with written approval by the Department or its designee.
 - d. Campers at the primitive camping sites are permitted up to 56 nights total occupancy in each six-month period, defined as October 1st - March 31st and April 1st - September 30th.
13. At the Department's election, the Concessionaire shall collect Park entrance fees and Vessel Launch Fees per one of the following methods, which shall be at the Department's discretion:
 - a. Collect entrance fees on behalf of the Department using Department point of sale systems and credit card terminals. Exact money handling protocol shall be pre-approved, in writing, by the Department or its designee; or
 - b. Collect entrance fees on behalf of the Department and Vessel Launch Fees using Concessionaire-owned point of sale systems and credit card terminals, per the following:
 - i. All entrance fees shall be remitted to the Department with the Monthly Report of Total Gross Sales
 - ii. Exact money handling protocol shall be pre-approved, in writing, by the Department or its designee; or
 - c. In a manner mutually agreed to by both parties, which shall be reduced to writing and signed by the Agreement Managers.

G. Wi-Fi Service

The Concessionaire shall provide Wi-Fi services, free of charge, to guests at the Concession Building (Building No. BL072021) and Marina Store and Office Building (Building No. BL106030). The Concessionaire may provide Wi-Fi services to visitors in other areas of the Park, as pre-approved, in writing, by the Department or its designee.

H. Automatic Teller Machine (ATM) Service

The Concessionaire shall provide ATM Services to the guests at the Concession Building (Building No. BL072021) and Marina Store and Office Building (Building No. BL106030). The Concessionaire may provide ATM services to visitors in other areas of the Park, as pre-approved, in writing, by the Department or its designee.

3. Additional Services: Additional Services, if provided, shall be in compliance with the Park's Unit Management Plan and the Division's Operations Manual and be pre-approved, in writing, by the Department or its designee. The foregoing notwithstanding, the Concessionaire may participate in test and pilot projects on behalf of the Department, with written pre-approval by the Department or its designee.

The Concessionaire shall provide staff augmentation at the Department's election. Staffing levels and areas of support shall be mutually agreed to by both Parties and reduced to writing, and may include, but are not limited to, pier operation. If the Department elects for Concessionaire to provide staff augmentation, the Department shall notify Concessionaire and, within 30 days of such notification, Concessionaire shall provide a draft Staffing Augmentation Plan to the Department. The draft Staffing Augmentation Plan will be evaluated by the Department or its designee. A final Staffing Augmentation Plan, which incorporates the District's and Park Manager's comments and is approved by the Department or its designee, shall be implemented prior to commencement of staff augmentation. Any commission offset or increase attributed to implementation of the staff augmentation or pier operation shall be mutually agreed to in writing. If at any time during the Term of this Agreement the Department determines Staffing Augmentation is unsafe, detrimental to the Park's resources, or is inefficient, the Concessionaire shall discontinue Staffing Augmentation immediately upon written notification by Department or its designee.

4. Website: The Concessionaire, at its sole cost and expense, shall maintain a website to promote the Park and activities and Special Events within the Park according to the following:
 - A. Concessionaire shall use only Department-approved domain names and social media accounts. Pursuant to General Conditions, Paragraph 30 of this Agreement, Concessionaire understands and agrees any websites, including web addresses and domain names, or social media accounts created, used and/or maintained in conjunction with this Agreement, shall immediately become and remain the property of the Department.
 - B. The website design and content shall be pre-approved, in writing, by the Department or its designee.
 - C. The website shall include a link to the Park page on the Department's online Park Guide (www.floridastateparks.org).
 - D. Concessionaire may offer a mobile-optimized version of the website and/or mobile application.
 - E. At the Department's request, Concessionaire agrees to edit or adapt the website such that reservations for Services can be made via the Department's Central Reservation System website or other Department website.

5. Maintenance and Repair Plan:
Prior to commencement of Services under this Agreement, the Concessionaire shall provide a draft Maintenance and Repair Plan, which will be evaluated by the Department or its designee. A final Maintenance and Repair Plan, which incorporates the District and Park Manager's comments and is approved by the Department or its designee, shall be implemented prior to commencement of Services under this Agreement. The Maintenance and Repair Plan shall be revised periodically, through mutual agreement of the Concessionaire and the Department or its designee, to ensure Facilities are maintained for a quality visitor experience. This Maintenance and Repair Plan shall include guidelines for all aspects of the Concessionaire's maintenance and repair

responsibilities. At a minimum, the Maintenance and Repair Plan shall comply with Special Conditions, Paragraph B of this Agreement and shall include:

- A. Facilities and grounds maintenance and cleaning.
 - 1) Schedule
 - 2) Standards
- B. Concessionaire staff and/or positions, assigned maintenance, and cleaning responsibilities.
- C. Contact information and instructions posted as signs at identified Facilities for visitors to contact and report to the Concessionaire concerns with maintenance and cleaning.
- D. No landscape material may be planted or removed from the premises without written pre-approval from the Park Manager. Any planted material shall be pre-approved, in writing, by the Park Manager and the species must be native to the Park.

6. Environmental Protection Plan:

Prior to commencement of Services under this Agreement, the Concessionaire shall provide a draft Environmental Protection Plan, which will be evaluated by a Department biologist. A final Environmental Protection Plan, which incorporates the Department biologist's, the District's, and the Park Manager's comments and is approved by the Department or its designee, shall be implemented prior to commencement of Services under this Agreement. The Environmental Protection Plan will cover all operations in the Park, including, but not limited to:

- A. Use of recyclable or biodegradable materials where possible, with preference given to use of non-disposable materials;
- B. Natural resource impact minimization;
- C. Solid waste reduction and recycling, including the provision of recycle bins for plastics, paper, aluminum, and glass for use by park visitors;
- D. Waste management, including the provision of garbage bins for use by park visitors;
- E. Use of cleaning and maintenance supplies/compounds, insecticides, rodenticides, and herbicides; and,
- F. Any other information which would allow a reviewer to evaluate and understand the total Environmental Protection Plan.

7. Safety Plan:

Prior to commencement of Services under this Agreement, the Concessionaire shall provide a draft Safety Plan which will be evaluated by the Department's Safety Officer and Park Manager. A final Safety Plan, which incorporates the District's and Park Manager's comments and is approved by the Department's Safety Officer, shall be implemented prior to commencement of Services under this Agreement. The Safety Plan shall be revised once a year by the Agreement execution anniversary date and shall be submitted to Department's Safety Officer and Park Manager for evaluation and approval. This Safety Plan shall include guidelines for all aspects of the Concessionaire's operation, with special attention to traffic control, first aid, security, fire prevention and water related activities and equipment. A section of the Safety Plan shall be devoted to Emergency Action, which shall cover proper preparations and responses to all natural and man-caused emergencies.

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EXHIBIT B
Schedule and Scope of Capital Improvements

In the event the Concessionaire is authorized to perform capital improvements, they shall be completed per the following guidelines.

1. The Concessionaire shall adhere to the Americans with Disabilities Act ("ADA") for remodeling and construction. The costs incurred because of such requirement shall be the sole responsibility of the Concessionaire.
2. Any demolition or construction performed under this Agreement shall comply with all applicable federal, state, county, and local laws.
3. The Concessionaire is responsible for applying and paying for all costs of any required permits. The Concessionaire shall obtain permits according to the below schedule for Improvements.
4. Prior to commencement of construction of capital improvements pursuant to this Agreement, the Concessionaire shall submit to the Park Manager copies of all required permits and copies of the final construction documentation. The Park Manager will facilitate the review of the permits, final sealed last documents by the Bureau of Parks District 3 Administrative Office and the Bureau of Design and Construction ("BDC"). The Department shall have 30 days to review and approve the scope of work identified in the final construction documents and ensure all required permits have been obtained.
5. Once the permits and the final plans have been approved by the BDC, the Department shall provide the Concessionaire a written Notice to Proceed. Unless and until the Department issues its Notice to Proceed, the Concessionaire shall not charge and the Department shall not be obligated to pay or reimburse the Concessionaire for pre-construction phase costs and/or fees. Upon receipt of the Notice to Proceed, the Concessionaire shall commence construction and diligently pursue the full completion thereof.
6. Upon receipt of the Notice to Proceed, the Concessionaire shall begin with the construction as agreed to below.
7. The Concessionaire shall provide at least a total of \$100,000.00 in funding, allocated as more fully described herein, to pay for capital improvements for the purpose of enhancing the Facilities at the Park per the following schedule: capital improvements to be completed no later than June 30, 2018, with the specific projects identified and agreed to in writing by both parties no later than December 31, 2017, unless the parties mutually agree to extend this deadline.
8. In addition to the capital improvement costs, the Concessionaire shall establish a Capital Improvement Account ("CIA"), to create a fund for future capital improvements. The Concessionaire shall make a monthly deposit as follows: From July 1, 2017 to June 30, 2032, Concessionaire shall deposit three percent (3%) of monthly total gross sales for all operations in the Park into this fund no later than the twentieth (20th) day of the following month. Concessionaire shall provide documentation to the Department, which verifies establishment of the CIA. Disbursements from the CIA shall require written pre-approval from the Department or its Designee. Disbursement decisions shall be made jointly by the Concessionaire and the Department or its designee. CIA funds shall not be used for routine

maintenance, but shall be used for major capital repairs, replacements, or improvements. All funds in the CIA shall be expended on or before July 31, 2032, unless the parties mutually agree to extend this deadline. Upon termination or expiration of this Agreement for any reason, any remaining funds in the CIA shall be forfeited by the Concessionaire and remitted to the Department, and the CIA shall be closed with a zero balance within 30 days of termination or expiration of this Agreement.

9. Constructed capital improvements shall immediately become the property of the Department. Capital improvement costs and funds expended from the CIA shall amortize each year on July 1 based upon the capitalized costs then incurred at a rate of one fifth (1/5) thereof for a period of five years, provided all such capital improvement costs are fully amortized by June 30, 2032.

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EXHIBIT C
Minimum Accounting Requirements

The Concessionaire shall comply with the general Minimum Accounting Requirements detailed in this attachment. Every sale shall be accounted for by use of computerized or electronic cash registers, pre-numbered receipts, or pre-numbered tickets unless the Concessionaire has received prior written authorization from the Department to use some other method.

A. Minimum Accounting Requirements Regardless of Method Used to Document Sales

1. The Concessionaire shall establish and maintain bank accounts (checking, savings, etc.) that are used solely for operations for this Agreement and are separate from any other concession agreement and non-concession agreement operations.
2. All checks written on the Concessionaire's checking account, whether voided or not, shall be retained.
3. Sales receipts shall always be offered to customers regardless of the amount involved. Sales receipts may be in the form of cash register slips, electronic receipts, pre-numbered receipts, or pre-numbered tickets, depending on the method employed to document sales. Signs reminding customers to ask for a receipt shall be conspicuously posted at or near all collection stations.
4. Customer refunds shall be supported by customer signed documents or alternative method for electronic and online transactions. Transaction voids shall be documented and approved by the Concessionaire's Agreement Manager or designated employee.
5. Daily entries, to account for gross sales and sales tax collections by point of sale and/or collection station, shall be made to a ledger, an automated ledger, a journal, or by an automated entry. Entries shall equal amounts deposited by period. All adjustments to gross sales, such as customer refunds, shall be recorded in the ledger or journal using a separate entry. Source documents, such as daily cash register tapes, the Concessionaire's copy of pre-numbered receipts, and use schedules for pre-numbered tickets, shall be retained to support recorded gross sales and sales tax collections. Adjustments to gross sales shall be supported by source documents such as customer signed receipts and cancelled checks.
6. Duties associated with handling, recording, and reconciling receipts and disbursements shall be assigned to different employees, whenever possible. Employees who handle cash or cash-like items shall be adequately supervised. Daily cash register totals should be verified, at the end of the day, by a person not having access to cash. If a person, other than the employee handling the cash or cash-like items, is not available to verify and reconcile the cash register at the end of a day, the Concessionaire shall designate the General Manager as the alternative internal control. Prior to any changes in the internal controls, the Concessionaire shall provide to the Park Manager written notification of the change.
7. Purchases shall always be made by check or through use of an imprest fund. The imprest fund, if used, shall always be replenished by check. Only under extremely unusual circumstances may daily receipts be used to make purchases. If daily receipts are used to make refunds or purchases, the Concessionaire shall document both the occurrence and the reason. The Department is amenable to discuss and may approve an alternate method of purchase, such as a credit card dedicated for the sole purchase of supporting business operations.

8. Purchases shall always be supported by vendor invoices and cancelled checks payable to either the vendor or the imprest fund. Receipts for purchases shall be maintained.

9. A custodian shall be assigned by the Concessionaire to have physical possession of the imprest fund, whenever possible. If it is not possible to assign a custodian, the Concessionaire shall provide in writing to the Park Manager an alternative internal control. Prior to any changes in the internal controls, the Concessionaire shall provide to the Park Manager written notification of the change.

B. Acceptable Methods of Documenting Sales and Minimum Accounting Requirements

1. Electronic Cash Registers and computerized software systems

At a minimum, the register and software shall:

- a) Have a visual display that faces customers.
- b) Produce customer's copy of sales receipt.
- c) Contain a locked-in tape and sequential numbering system for such tapes.
- d) If the Concessionaire uses a computerized software system, the system shall contain an electronic record of each daily transaction by point of sale and/or by collection station and provide sequential numbered printed receipts for each transaction. Additionally, each record of transaction shall be date stamped and timed and identify the cashier making the transaction.
- e) Record and accumulate sales and sales tax amounts.

The Concessionaire shall:

- a) Provide daily supervision over employees using the registers.
- b) Clear or close all cash registers at the end of the day and retain all tapes.
- c) If the Concessionaire uses a computerized software system, the system shall clear and close all transactions at the end of the day, maintain transactions electronically in the computer by date and time, and identify the person closing the system daily.
- d) Approve all refunds and voids or delegate this duty to an employee who normally does not handle cash.

At a minimum, customer refunds shall be documented by customer signed sales slips indicating receipt of the refund or alternative method for electronic and online transactions. The document shall state the reason for the refund; identify the cashier making the refund; date stamp and time the refund; and be maintained electronically within the point of sale system. If the customer does not have his copy of the sales receipt, a pre-numbered refund receipt signed by the customer shall be issued (see minimum requirements for pre-numbered receipts).

2. Cash Register Receipts (electronic or computerized software system)

At a minimum, cash register receipts shall:

- a) Clearly state the attraction, rental, or service purchased.
- b) Be designed to capture all pertinent sales data, such as: receipts for date and time; items or service purchased; amount of sale; amount of sales tax collected; total collected; and cashier's identification.
- c) Have a numbering sequence by point of sale and/or by collection station that is continuous and does not repeat itself any more often than every three years.

- d) Be issued to customers sequentially. Any breaks in the numbering sequence shall be explained.

The Concessionaire shall:

- a) Retain the record copy of all issued receipts and all copies of voided receipts.
- b) All receipts and copies of voided receipts shall identify the cashier making the void and provide the reason for the void.
- c) Maintain a work sheet or schedule that reports the numbering sequences of receipts used and money collected by day.
- d) Provide adequate security over unused receipts and periodically inventory these receipts at least every six months.
- e) Provide adequate supervision over employees to assure previously issued receipts are not resold.

At a minimum, customer refunds should be documented by the customer's signature on the original receipt. If the customer does not have the original receipt (his copy), then a refund receipt shall be issued.

3. Pre-numbered Receipts and Tickets

At a minimum, pre-numbered receipts and tickets shall:

- a) Clearly state the attraction or service purchased.
- b) Be designed to capture all pertinent sales data, such as: receipts for date; customer's name; items or service purchased; amount of sale; amount of sales tax collected; total collected; and salesperson's name or initials.
- c) Be at least two-copied (customer and record copy), each clearly identified.
- d) Have a numbering sequence that is continuous and does not repeat itself any more often than every three years. Numbering sequence shall be supported by vendor's invoice at a minimum.
- e) Be issued to customers sequentially. Any breaks in the numbering sequence shall be explained.

The Concessionaire shall:

- a) Retain the record copy of all issued receipts and all copies of voided receipts.
- b) All receipts and copies of voided receipts shall identify the cashier making the void and provide the reason for the void.
- c) Maintain a work sheet or schedule that reports the numbering sequences of receipts/tickets used and money collected by day.
- c) Provide adequate security over unused receipts and periodically inventory these receipts at least every six months.
- d) Provide adequate supervision over employees to assure that previously issued tickets are not resold.

At a minimum, customer refunds should be documented by the customer's signature on the original pre-numbered receipt. If the customer does not have the original pre-numbered receipt (his copy), then a pre-numbered refund receipt shall be issued.

C. Wedding, Memorial Services and Event ("Special Events")

1. The Concessionaire shall provide the customer a written contract for each Special Event it books and organizes at the Park. The contract shall be pre-numbered, dated, and time

stamped. The contract shall include, but is not limited to: details of booking fees requested and collected; amount of balance due and date balance is due; client name; address; phone number; date of Special Event; number of people expected to attend; any and all subcontractors; client requirements; and any other pertinent information needed to organize the Special Event.

2. The Concessionaire shall adequately report, and pay the Park any Park entrance fees or Park use fees collected for each contract. Park entrance fees and use fees shall not be waived for the Special Event, unless pre-approved by the Park Manager.

3. The Concessionaire shall record all contracts by date and maintain records by the Special Event date. The records shall document any deposits, booking fees, fees charged for organizing the Special Event, fees in arrears, and late fees.

4. If a contract is canceled or voided, it shall be logged as canceled and any refunded amounts shall be documented.

5. The Concessionaire shall provide the Park Manager copies of all contracts which document, monthly, each Special Event contract booked and organized in the Park by the Concessionaire. The copies shall be submitted with the Monthly Report of Gross Sales and shall support the subcontract and contract revenue reported on the Monthly Report of Gross Sales.

6. When contracted Special Events are held in the Park, payments shall go through the Concessionaire's bank account that is used solely for concession Agreement operations and is separate from any non-concession agreement operations.

D. Transfer to Electronic Format

1. The Department supports the Concessionaire's transfer of original paper documents to an electronic record-keeping system. This shall be supported if the Concessionaire uses a record keeping system that: (1) accurately reproduces the paper original records; (2) manages electronic records as a duplicate or substitute copy of the original paper records; and (3) converts the electronic records back into legible, readable, and capable-of-being-copied, paper documents; and can be provided upon the Department's request.

2. The Department shall have access to the electronic records and the electronic recordkeeping system for inspection and copying during Park Manager quarterly evaluations, Division compliance evaluations, Department audits, or compliant investigations.

3. In general, the original paper record may be disposed of any time after it has been transferred to an electronic recordkeeping system. However, the original paper record shall not be disposed of if the electronic copy would not accurately reproduce the original record.

4. If records are maintained electronically, the Concessionaire shall ensure the electronic records comply with this Agreement's record retention and access regulations pursuant to Chapter 119, Florida Statutes, which requires at a minimum the Concessionaire make available and retain the records for the life of this Agreement.

5. The Concessionaire shall ensure that their electronic recordkeeping system:

- a) Has reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of the records kept in electronic format;
- b) Is capable of retaining, preserving, retrieving, and reproducing the electronic records;
- c) Is able to readily convert paper originals stored in electronic format back into legible and readable paper copies; and
- d) Has adequate records management practices in place.

6. The Concessionaire shall manage, at a minimum, their electronic recordkeeping system according to these best management practices:

- a) Labeling electronically maintained records;
- b) Providing secure storage of electronic data;
- c) Providing internal controls of the system to prevent manipulation of data and information;
- d) Creating back-up electronic file copies;
- e) Observing quality assurance for electronic recordkeeping through regular evaluations of the system; and
- f) Retaining paper copies of records which cannot be accurately or completely transferred to the electronic recordkeeping system.

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EXHIBIT D

Monthly Report of Concessionaire's Total Gross Sales
 (Due by the 20th of each month)

Park: _____ Date: _____

Concessionaire Name: _____

Period Covered: From _____ To _____

Gross Sales

Sale Location(s): _____ \$ _____

If there are multiple point of sale locations, please include the total sales for all locations on this line; and, list the name and total sales of each location on an attached second sheet.

Subcontractor(s): _____ + \$ _____

Subcontractor is defined in paragraph 11 of this Agreement. If there are multiple subcontractors, please include the total gross sales for all subcontractors on this line; and, list the name and total gross sales of each subcontractor on an attached second sheet.

Total Taxes Collected: - \$ _____

Total Funds from Concessionaire Employee Food Consumption: - \$ _____

Total Customer Refunds: # of Refunds: _____ - \$ _____

Total Gross Sales = \$ _____**Monthly Compensation**

Monthly Commission (____ % rate x Total Gross Sales) \$ _____

State Use Tax (____ % rate x Monthly Commission) + \$ _____

State Use Tax Exempt Amount (enter \$0.00 if not exempt) - \$ _____

Monthly Vending Machine Fee: # of Machines: _____ + \$ _____

Monthly Utility Fee(s) to Park + \$ _____

Pass through fee Pavilion rentals + \$ _____

Other Payments (identify) _____ + \$ _____

Total Monthly Compensation Due: = \$ _____**Capital Improvement Account**

Monthly Deposit Amount: ____ % x Total Gross Sales \$ _____

Monthly Spending \$ _____

Total Deposits, Year to Date \$ _____

Total Disbursements, Year to Date \$ _____

End of month balance \$ _____

CERTIFICATION: I certify that this monthly gross sales statement is true and correct and is based upon actual gross receipts for the period covered and recorded in the accounting records available for review/audit by the Department.

Signature of Concessionaire

Date

Signature of Preparer

Date

Preparer Name

Return this form to the Department's Agreement Manager.

EXHIBIT E

Monthly Profit and Loss Statement for _____ (month) _____ (year)
(due with each Monthly Report of Concessionaire's Total Gross Sales)

Concessionaire: _____ Park: _____

	Services	Gross Sales	Less Commissions Paid	Less Cost of Goods Sold	Less Operating Expenses	Less Taxes	Net Profit/Loss
1		_____	_____	_____	_____	_____	_____
	Comments: _____						
2		_____	_____	_____	_____	_____	_____
	Comments: _____						
3		_____	_____	_____	_____	_____	_____
	Comments: _____						
4		_____	_____	_____	_____	_____	_____
	Comments: _____						

Add a second page, as needed, to provide an inclusive list of services, including revenue from subcontractors.

5 **Totals:** _____

Prepared by: _____

Capacity: _____

Date Submitted: _____

CERTIFICATION: I certify this annual profit and loss statement is true and correct and is based upon actual gross receipts for the period covered and recorded in the accounting records available for review/audit by the Department.

Signature of Concessionaire: _____ Date: _____

EXHIBIT F
Profit and Loss Statement for _____ (year)
(due April 30 of the following year)

Concessionaire: _____ Park: _____

	Services	Gross Sales	Less Commissions Paid	Less Cost of Goods Sold	Less Operating Expenses	Less Taxes	Net Profit/Loss
1		_____	_____	_____	_____	_____	_____
	Comments: _____						
2		_____	_____	_____	_____	_____	_____
	Comments: _____						
3		_____	_____	_____	_____	_____	_____
	Comments: _____						
4		_____	_____	_____	_____	_____	_____
	Comments: _____						

Add a second page, as needed, to provide an inclusive list of services, including revenue from subcontractors.

5 **Totals:** _____

Prepared by: _____

Capacity: _____

Date Submitted: _____

CERTIFICATION: I certify this annual profit and loss statement is true and correct and is based upon actual gross receipts for the period covered and recorded in the accounting records available for review/audit by the Department.

Signature of Concessionaire: _____ Date: _____

EXHIBIT G

Agreed-Up Upon Procedures For a Certified Public Accountant			
Review of Florida State Park Concession Operations			
Item No.	Procedures	Done By	Date
I.	<p>OVERALL OBJECTIVES AND TIME PERIOD</p> <p><u>Objective:</u> To determine the accuracy of the gross sales reported to the Department of Environmental Protection (DEP) for the audit period and compliance with the Minimum Accounting Requirements included in the Agreement. The audit time period is the calendar year.</p> <p><u>Reports are due to the Park Manager no later than the date indicated in the Minimum Accounting Requirements paragraph found in the Agreement.</u></p> <p>Required records for review:</p> <ol style="list-style-type: none"> 1. Concession Agreement 2. Monthly Reports of Gross Sales 3. Cash register tapes (select a sample of several days to form an opinion) 4. Cash receipts or sales journals 5. Bank statements, including validated deposit slips 6. General ledger 7. Sales tax forms (DR-15) 8. Quarterly evaluation reports. 9. Other financial records, including expenditure documentation, if records listed above are not available or are not adequate to form an opinion on the accuracy of reported gross sales. 		
II.	<p><u>OBJECTIVE:</u> To determine if gross sales have been properly reported and commission fees properly remitted to DEP. In addition, determine compliance with the Minimum Accounting Requirements.</p> <p>A. Review source documents to determine if the Concessionaire provided a Monthly Statement of Gross Sales to DEP in the format established in Exhibit D of the Agreement by the 20th of the following month.</p> <ol style="list-style-type: none"> 1. If payments were late, the late payments shall result in the assessed amount of 1% of the current amount due for each day the payment is late. <p>B. Has the Concessionaire based the Monthly Statement of Gross Sales on source documents and books of original entry?</p>		

Item No. (cont.)	Procedures	Done By	Date
	<ol style="list-style-type: none"> 1. Obtain and examine daily cash journals, general ledger, and bank statements which reflect gross sales reported by the Concessionaire. 2. Schedule this information on a spreadsheet. Note any differences. 3. Create a spreadsheet of point-of-sales documentation (daily cash register tapes or receipts) for sales. Search for revenues which may not have been reported to the DEP. 4. Compare point-of-sales (typically cash register tapes) with sales amounts reported in the cash journal. Depending on the volume of transactions, pick a judgmental sample of days for detailed testing. Test until an opinion is formed regarding the accuracy of the cash journal based on daily sales receipts. 5. Evaluate rental transactions to ensure there is adequate documentation to support use of equipment. <p>C. Determine whether a subcontractor operated during the review period. If so:</p> <ol style="list-style-type: none"> 1. Determine if the Concessionaire included gross sales from the subcontract operation in the gross sales reported on the Monthly Statement of Gross Sales. 2. Create a spreadsheet of point-of-sale documentation (daily cash register tapes or receipts) for subcontractor sales. 3. Compare subcontractor point-of-sales source documentation with monthly sales reports to DEP to determine the accuracy of sub-contractor sales. <p>D. Determine whether the Concessionaire paid the monthly visitor service fees equal to the established percentage of gross sales for all operations of the Concessionaire.</p> <ol style="list-style-type: none"> 1. Compare amounts reported on the Monthly Reports of Gross Sales to amounts obtained from source documents and scheduled in step II-B above. Note differences. <p>E. Does the gross sales reported to the Department on monthly reports agree with gross sales listed in other reports?</p> <ol style="list-style-type: none"> 1. Use spreadsheet of gross sales figures obtained from the Monthly Gross Sales reports. Compared to amounts reported on quarterly evaluation reports, Profit and Loss Statements, and DR-15 forms. Analyze the DR-15 gross sales forms and evaluate whether the reported amount is equal to gross sales reported to the Department. 		

Item No. (cont.)	Procedures	Done By	Date
F.	<p>Evaluate internal control for cash handling and accounting. Prepare a conclusion on the adequacy of internal controls and any deficiencies noted.</p> <ol style="list-style-type: none"> 1. Are sales receipts offered to customers regardless of the amount? 2. Are signs posted reminding customers to ask for a receipt? 3. Is a bank account maintained for the sole purpose of the concession operations? 4. Are bank deposits made in compliance with chapter 10, paragraph 1.2 of the Operations Procedures Manual? <ol style="list-style-type: none"> a. If receipts exceed \$2000, are they deposited intact daily? 5. Are customer refunds supported by customer signed documents? 6. Are duties associated with handling, recording, and reconciling receipts and disbursements assigned to different employees whenever possible? 7. Are cash boxes secured? 8. Determine whether the cash register and other methods of revenue collection account for all items available for sale. Is there a register category for all items? 		
G.	<p>Summarize findings and prepare calculations of fees owed to DEP if gross sales were under reported. Prepare a report that includes a conclusion on the accuracy of gross sales reported to DEP, compliance with the Minimum Accounting Requirements, and a summary of monthly gross sales based on this review.</p>		

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EXHIBIT H
STATE USE TAX EXEMPT CERTIFICATION

Re: Concessionaire Agreement between

_____ and
(Insert name of Park)

_____.
(Insert name of Concessionaire per Agreement)

I, _____ as the Park Manager, attest that the above named Concessionaire is Exempt from paying state use tax to the Department on commission fees based on the following.

_____ The Concessionaire has provided a valid Florida Tax Exemption Certificate. A copy has been retained by the Department and a copy is attached herein.

_____ The Concessionaire sells food and beverage, through a means **other than a vending machine**, and is therefore exempt from paying state use tax on commission fees paid to the Department.

_____ Other (explain and provide proof of exemption):

_____ None of the above exemptions apply, therefore the commission fees paid to the Department are subject to state use tax.

Park Manager's Signature

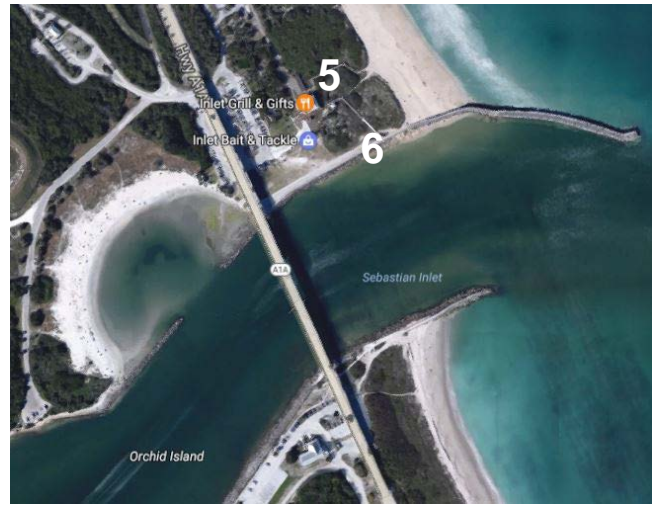
Date

Concessionaire's Agreement Manager's Signature

Date

Return this form to the Park Manager.

EXHIBIT I Area Map



Facilities, space and equipment:

1. Marina Area, including boat ramp, docks, 24 slips and 10 primitive camping sites;
2. Marina Store and Office Building, including restrooms (Building No. BL106030);
3. Outdoor Canoe and Kayak Storage Area in the Marina Area, approximately 2,250 square feet;
4. Metal Shed and Wood-framed shed in the Marina Area, approximately 240 square feet;
5. Concession Building, including restaurant, banquet room and restrooms (Building No. BL072021); and
6. Bait and Tackle Building (Building No. BL072055).

Exhibit J
Department-owned Inventory

1. The Concessionaire shall be responsible for the maintenance and repair of the Department-owned equipment it uses during the life of this Agreement. If such equipment is damaged or wears out beyond reasonable maintenance or repair, the Concessionaire shall notify the Department or its designee and shall replace such equipment at its sole cost and expense.
2. Upon termination or expiration of this Agreement for any reason, all Department-owned equipment shall be returned to the Department in a similar condition in which it was received by the Concessionaire, subject to normal wear and tear.
3. Existing Department-owned equipment located within the Facilities and space outlined in this Agreement, which is not desired for use by the Concessionaire, shall be jointly removed, if feasible, by the Concessionaire's staff and park staff to a location determined by the Department or its designee.
4. The below list sets forth the Department-owned equipment believed to be currently available for Concessionaire's use at the Park pursuant to the terms of this Agreement. The actual equipment and quantity of equipment present at the Park and available for Concessionaire use may differ from what is set forth below. Thus, the Concessionaire shall perform an on-site inspection to identify and request any desired Department-owned equipment for its use during the life of this Agreement. The Concessionaire shall provide its request in writing to the Department or its designee prior to commencing Services under this Agreement. The Department or its designee will approve a final, written list of Department-owned equipment authorized for use by the Concessionaire during the life of this Agreement and subject to the terms of this Agreement.
5. The Concessionaire may submit written requests to the Department or its designee for additional Department-owned equipment to be added to the approved list at any time during this Agreement, pending available equipment and/or funding. Approval or denial of such a request shall be at the sole discretion of the Department and shall be reduced to writing.

Department-owned equipment authorized for use by the Concessionaire:

DEP Property Number:	Quantity:	Equipment Description: