

CONCESSION AGREEMENT - AMENDMENT #2
(Big Talbot Island State Park)

THIS AMENDMENT #2 TO CONCESSION AGREEMENT (“Amendment #2”) is entered into between the State of Florida Department of Environmental Protection (“Department”), an agency of the State of Florida, by and through its Division of Recreation and Parks (“Division”), and Kayak Amelia, Inc., organized as a Florida Profit Corporation (“Concessionaire”).

RECITALS

WHEREAS, on or about January 8, 2019, the Department and Concessionaire entered into a Concession Agreement (DEP Agreement No. CA-1817) (the “Concession Agreement”).

WHEREAS, pursuant to the Concession Agreement, the Concessionaire agreed to provide certain goods and services at Big Talbot Island State Park (the “Park”), as such goods and services are more particularly described in the Concession Agreement.

WHEREAS, the Concession Agreement was modified by the following contract amendment entered into by and between the Department and the Concessionaire:

Document Title	Document Date	Short Reference
Concession Agreement – Amendment #1	March 10, 2021	(“Amendment #1”)

WHEREAS, the Concession Agreement, as modified by the Amendment, and all exhibits/attachments referenced therein (collectively, the “Agreement”) is incorporated in this Amendment #2 by reference.

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

1. Recitals:

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

2. Modifications to the Agreement:

a. Compensation: Paragraph F of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ F. Compensation. The Concessionaire will pay the Department a commission fee based on the following schedule and General Conditions, Sections 17 and 18 herein:

1. Compensation Period 1: From February 1, 2019 through January 31, 2020, (“Compensation Period 1”), Concessionaire will pay a commission equal to 12% of Total Gross Sales each month, but not less than \$30,000 annually (“Compensation Period 1 Minimum Guarantee”). Concessionaire will also pay the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages); and

2. Compensation Period 2: From February 1, 2020 through January 31, 2024 ("Compensation Period 2"), Concessionaire will pay a commission equal to 12% of Total Gross Sales each month, but not less than \$18,750 annually ("Compensation Period 2 Minimum Guarantee"). Concessionaire will also pay 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. Compensation Period 3: From February 1, 2024 through January 31, 2028 ("Compensation Period 3"), the Concessionaire will remit a commission equal to 12% of Total Gross Sales each month, but not less than \$30,000 annually ("Compensation Period 3 Minimum Guarantee"). Concessionaire will also pay 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).

Each Compensation Period Minimum Guarantee above represents the minimum amount due for each 12-month period in each listed Compensation Period. The Department will determine if an amount is owed by comparing the amount of commission fees paid for each 12-month period within each Compensation Period listed above to the corresponding Compensation Period Minimum Guarantee. If a shortfall exists, the Department will notify the Concessionaire of the amount owed within 90 days of the end of the 12-month period. The Concessionaire will remit any shortfall within fifteen (15) days of receiving a notice from the Department.

The Department will adjust the Compensation Period Minimum Guarantee during any Compensation Period in which: (a) the Park is closed, or (b) other Force Majeure Event (defined below) prevents Concessionaire from conducting its operations; in which event the Period Minimum Guarantee for the effected Compensation Period will be reduced by a fraction, the numerator of which is the number of days such events prevent Concessionaire from conducting its operations in the Park and the denominator of which is 365.

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

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

Sales of goods and services and collections of sales tax 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."

3. Ratification:

Except as modified by this Amendment #2, the Agreement remains in full force and effect and is hereby ratified and confirmed. This Amendment #2 shall be attached to the original Agreement. In the event of a conflict between the Agreement and this Amendment #2, this Amendment #2 shall control. Henceforth, the term "Agreement" shall collectively mean the Agreement, as amended by this Amendment #2.

4. Merger:

The Agreement constitutes the entire agreement between the parties with respect to the Concessionaire's services at or within the Park, and integrates all understandings and agreements between the parties, whether oral or written, with respect thereto. The Agreement supersedes any prior agreement regarding the Concessionaire's services at or within the Park and may not be modified except by written instrument signed by both the Department and the Concessionaire.

5. Execution in Counterparts:

This Amendment #2 may be executed in two identical counterparts, each of which shall be deemed an original. The two, executed, identical counterparts shall constitute this Amendment #2. In the event that any signature is delivered by facsimile transmission or by e-mail 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 page were 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.

WHEREFORE, the parties hereto have caused this Amendment #2 to be executed as of the day and year last set forth below.

KAYAK AMELIA, INC.
FLORIDA PROFIT CORPORATION

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 
Authorized signature or designee

By: 
Secretary's signature or designee

Printed Name: Raymond Hetchka

Printed Name: Mara Gambineri

Title: President

Title: Deputy Secretary

Date: 2/26/23

Date: 4/5/2023