

**CONCESSION AGREEMENT – AMENDMENT #2**

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 Nature Recreation Management of Lee County, LLC (“Concessionaire”), organized as a Florida Limited Liability Company, whose headquarters is located at 8720 Estero Boulevard, Fort Myers Beach, Collier County, Florida 33931.

**RECITALS**

WHEREAS, on or about October 29, 2015, the Department and Concessionaire entered into a Concession Agreement (DEP Contract No. CA-1315) (the “Concession Agreement”).

WHEREAS, pursuant to the Concession Agreement, the Concessionaire agreed to provide certain goods and services at Delnor-Wiggins Pass 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	Dated August 12, 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. Use of Facilities, Space and Equipment. Paragraph B of the Special Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

“ B. Use of Facilities, Space and Equipment. The Department will provide to the Concessionaire the following facilities, space, and equipment (“Facilities”) for use during the term of the Agreement”

1. Space in one of the Park’s Parking Lot for a mobile concession unit;
2. Space in the Park for a garbage dumpster;
3. Space at the Park’s boat ramp for storage of rental equipment; and,
4. Additional space as approved, in writing, by the Department or their designee.”

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

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

1. Compensation Period 1:

From November 1, 2015, through October 31, 2021 (“Compensation Period 1”), the Concessionaire will pay a commission equal to 13% of Total Gross Sales each month, but not less than \$17,000.00 annually (“Compensation Period 1 Minimum Guarantee”). The 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 November 1, 2021, through August 31, 2024 (“Compensation Period 2”), the Concessionaire will pay a commission equal to 17% of Total Gross Sales each month, but not less than 90% of the Commission paid to the Department during the previous 12-month period annually (“Compensation Period 2 Minimum Guarantee”). The 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 September 1, 2024, through August 31, 2027 (“Compensation Period 3”), the Concessionaire will pay a commission equal to 9% of Total Gross Sales each month. The 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

4. Compensation Period 4:

From September 1, 2027, through August 31, 2028 (“Compensation Period 4”), the Concessionaire will pay a commission equal to 20% of Total Gross Sales each month. The 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).

Following completion of construction of a new, Department-built concession building, this Agreement will be amended to define the new building and authorize the facility for the Concessionaire’s use.

“Total Gross Sales” means all sales of goods, merchandise, food and beverages, equipment rentals, event management, and other permissible services described in Section C above, generated from the Concessionaire’s Services at or associated with the Park. This includes all sales made or advertised within the Park or 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 does not include:



1. Sales tax collections;
2. Gratuities;
3. Pass through fees, which include fees collected by the Concessionaire on behalf of the Department; or
4. Funds that were collected but have been refunded to the customer.

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

- c. Exhibit B. Exhibit B-2 of the Agreement is hereby deleted in its entirety and replaced with Exhibit B-3, Revised Schedule and Scope of Capital Improvements, as attached to this Amendment #2 and hereby incorporated into the Agreement. All references in the Agreement to Exhibit B-2 shall hereinafter refer to Exhibit B-3, Revised Schedule and Scope of Capital Improvements.
- d. Exhibit D. Exhibit D of the Agreement is hereby deleted in its entirety and replaced with Exhibit D-1, Revised Monthly Report of Concessionaire's Total Gross Sales, as attached to this Amendment #2 and hereby incorporated into the Agreement. All references in the Agreement to Exhibit D shall hereinafter refer to Exhibit D-1, Revised Monthly Report of Concessionaire's Total Gross Sales.

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:

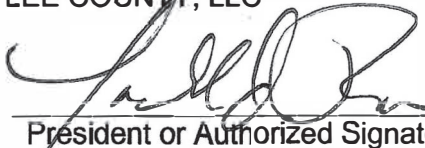
The Agreement constitutes the entire agreement between the parties with respect to the Concessionaire's services at or within the Park, and integrates all understandings and agreements between the parties, whether oral or written, with respect thereto. The Agreement supersedes any prior agreement regarding 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.

NATURE RECREATION MANAGEMENT  
OF LEE COUNTY, LLC

By:   
President or Authorized Signatory

Printed Name: Todd J. Richards

Title: Managing Member

Date: 9/20/24

STATE OF FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

By: **Bryan Bradner** Digitally signed by Bryan Bradner  
Date: 2024.10.17 10:23:16  
-04'00'  
Secretary's signature or designee

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

List of Exhibits incorporated as part of this Amendment:

Exhibit B-3, Revised Schedule and Scope of Capital Improvements

Exhibit D-1, Revised Monthly Report of Concessionaire's Total Gross Sales



**EXHIBIT B-3**  
**Schedule and Scope of Capital Improvements**

If the Concessionaire is authorized to perform capital improvements, they will be completed per the following guidelines.

1. The Concessionaire will adhere to the Americans with Disabilities Act ("ADA") for remodeling and construction. The Concessionaire will bear all costs incurred from this requirement.
2. Any demolition or construction performed under this Agreement will comply with all applicable federal, state, county, and local laws.
3. The Concessionaire is responsible for applying for and paying for any required permits. The Concessionaire will obtain permits according to the below schedule for Improvements.
4. Prior to starting construction of capital improvements pursuant to this Agreement, the Concessionaire will 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 and final sealed documents by the Bureau of Parks District 4 Administrative Office and the Bureau of Design and Construction ("BDC"). The Department will have 30 days to review and approve the scope of work identified in the final construction documents and ensure the Concessionaire has obtained all required permits.
5. Once the permits and the final plans have been approved by the BDC, the Department will provide the Concessionaire a written Notice to Proceed. Until the Department issues its Notice to Proceed, the Department is not obligated to reimburse the Concessionaire for pre-construction phase costs or fees. Upon receiving the Notice to Proceed, the Concessionaire will begin construction and pursue completion of the project.
6. Upon receiving the Notice to Proceed, the Concessionaire will begin the construction as agreed to below.
7. The Concessionaire will establish a Capital Improvement Account ("CIA") to create a fund for future Capital Improvements. The CIA will be established at a federally insured financial institution.
  - a. From November 1, 2015, through October 31, 2021, the Concessionaire will deposit at least two (2%) percent of monthly total gross sales for all operations in the Park into this fund no later than the twentieth (20<sup>th</sup>) day of the following month.
  - a. From November 1, 2021, through July 31, 2024, the Concessionaire will deposit at least three (3%) percent of monthly total gross sales for all operations in the Park into this fund no later than the twentieth (20<sup>th</sup>) day of the following month. The Capital Improvement Account balance of \$25,269.06 as of the last deposit date of July 31, 2024, will remain available to be applied towards Capital Improvements under the contract. Disbursements from the CIA require written pre-approval from the Department's Agreement Manager. Disbursement decisions will be made jointly by the Concessionaire and the Department's Agreement Manager. CIA funds will not be used for routine maintenance, but will be used for major capital repairs, replacements, or improvements. CIA Capital Improvements completed prior to sufficient CIA funding will be credited in an equitable amount to future CIA deposits. All funds in the CIA will be expended on or before May 31, 2029. Upon

termination or expiration of this Agreement for any reason, any remaining funds in the CIA will be forfeited by the Concessionaire and remitted to the Department, and the CIA will be closed with a zero balance. CIA Capital Improvements will immediately become the property of the Department with no amortization due to the Concessionaire.

8. The Department is only liable to reimburse Concessionaire for Capital Improvements if the Agreement is terminated for convenience by the Department in accordance with Section 22 (B)(ii) of the Agreement.
9. The State of Florida's performance and obligation to pay under the Agreement is contingent upon an appropriation by the legislature.

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**EXHIBIT D-1****Monthly Report of Concessionaire's Total Gross Sales**  
(Due by the 20<sup>th</sup> 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 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) \_\_\_\_\_ - \$ \_\_\_\_\_

Park Admission Fees Collected \_\_\_\_\_ + \$ \_\_\_\_\_

# of Paid Visitors: \_\_\_\_\_ # of Free Entry Visitors \_\_\_\_\_

Credit card processing fees borne by the Concessionaire  
(limited to Park Admission Fees and other Department-approved fees) \_\_\_\_\_ - \$ \_\_\_\_\_

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

Other Payments (identify) \_\_\_\_\_ + \$ \_\_\_\_\_

**Total Monthly Compensation Due:** = \$ \_\_\_\_\_

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 \_\_\_\_\_

9/20/24

\_\_\_\_\_  
Signature of Preparer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Preparer Name

Return this form to the Department's Agreement Manager.