

CONCESSION AGREEMENT – AMENDMENT #2

THIS AMENDMENT #2 TO CONCESSION AGREEMENT (“Amendment #2”), as previously amended, 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, organized as a Florida Limited Liability Company (“Concessionaire”).

RECITALS

WHEREAS, on or about December 18, 2018, the Department and Concessionaire entered into a Concession Agreement (DEP Contract No. CA-0818) (the “Concession Agreement”).

WHEREAS, pursuant to the Concession Agreement, the Concessionaire agreed to provide certain goods and services at Lovers Key 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 June 2, 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.

WHEREAS, the parties wish to amend the Agreement to address the impact that Hurricane Ian had on the Concessionaire's business by adjusting compensation, updating facilities, revising the capital improvement obligation, and making other changes.

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. Shared access to the Boat Ramp Area Public Restroom (BL #193016);
2. Shared access to the Main Parking Area and South Beach temporary restrooms;

3. Space at the South Beach Area for a Concessionaire-provided concession facility;
 4. Space at the Boat Ramp Area for a Concessionaire-provided concession facility;
 5. Space in the Park authorized for a temporary gift shop trailer;
 6. Space at the Main Canoe and Kayak Launch Area for a Concessionaire-provided concession facility;
 7. Shared access to four (4) canoe and kayak launch locations, located at the Main Parking Area, the Boat Ramp Area, the South Beach Area, and the Main Canoe and Kayak Launch Area;
 8. Department owned equipment authorized for use by the Concessionaire and the corresponding DEP Property Numbers will be identified in Exhibit J-1 of this Agreement; and,
 9. The Department may authorize additional space by written pre-approval."
- 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 December 18, 2018, through November 30, 2019 ("Compensation Period 1"), the Concessionaire will pay a commission equal to 17% of Total Gross Sales each month, but not less than \$190,000.00 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 December 1, 2019, through November 30, 2020 ("Compensation Period 2"), the Concessionaire will pay a commission equal to 17% of Total Gross Sales each month, but not less than \$152,000.00 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 December 1, 2020, through August 31, 2024 ("Compensation Period 3"), the Concessionaire will pay a commission equal to 17% 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, 2024, through the last day of the month in which the concessionaire receives Department authorization to occupy a new, Department built concession building ("Compensation Period 4"), 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

5. Compensation Period 5:

From the first day of the month following the month in which the concessionaire is authorized to occupy a new, Department built concession building through August 31, 2028 ("Compensation Period 5"), 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, 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; and
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 of the Agreement is hereby deleted in its entirety and replaced with Exhibit B-1, Revised Schedule and Scope of Capital Improvements, attached to this Amendment #2.
- 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, attached to this Amendment #2.
- e. Exhibit J. Exhibit J of the Agreement is hereby deleted in its entirety and replaced with Exhibit J-1, Revised Department-owned Inventory, attached to this Amendment #2.

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 OF LEE
COUNTY, LLC, A FLORIDA LIMITED
LIABILITY COMPANY

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 
President or Authorized Signatory

By: 
Secretary's signature or designee

Printed Name: Todd J. Richards

Printed Name: Justin Wolfe

Title: Managing Member

Title: General Counsel

Date: 9/20/24

Date: 11/22/2024

List of Exhibits incorporated as part of this Amendment:

Exhibit B-1 Revised Schedule and Scope of Capital Improvements
Exhibit D-1 Revised Monthly Report of Concessionaire's Total Gross Sales
Exhibit J-1 Revised Department-owned Inventory

EXHIBIT B-1
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. From December 18, 2018, 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 (20th) day of the following month. The Capital Improvement Account balance of \$198,022.84 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 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 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 + \$ _____

Pass through fee Pavilion rentals + \$ _____

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

9/20/24

Date

Signature of Preparer

Date

Preparer Name

Return this form to the Department's Agreement Manager.

Exhibit J-1
Department-owned Inventory

1. The Concessionaire will 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 will notify the Department or its designee and will replace such equipment at its sole cost and expense.
2. Upon termination or expiration of this Agreement for any reason, all Department-owned equipment will 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, will 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 will 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 will 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 will be at the sole discretion of the Department and will be reduced to writing.

Department-owned equipment authorized for use by the Concessionaire:

DEP Property Number:	Quantity:	Equipment Description:
DEP 22536	1	Featherlite Passenger Trailer
DEP 22537	1	Featherlite Passenger Trailer