

MULTI-YEAR CONCESSION AGREEMENT AMENDMENT #1

THIS AMENDMENT #1 TO MULTI-YEAR CONCESSION AGREEMENT ("Amendment #1") 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 Florida State Park Concessions, Inc. ("Concessionaire").

RECITALS

WHEREAS, on or about May 27, 2013, the Department and Concessionaire entered into DEP Agreement No. MY-1112 (the "Original Concession Agreement").

WHEREAS, pursuant to the Original Concession Agreement, the Concessionaire agreed to provide certain goods and services at Wekiwa Springs State Park (the "Park"), as such goods and services are more particularly described in the Original Concession Agreement.

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

WHEREAS, pursuant to Paragraph 3 of the Agreement, the term of the Agreement expires on May 31, 2018 and the parties wish to extend the expiration date as set forth in this Amendment #1.

WHEREAS, the parties wish to exercise the extension discretion afforded by Paragraph 3 of the Agreement.

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. Extension: Paragraph 3 of the Agreement is hereby amended to change the Agreement expiration date from May 31, 2018, to midnight Eastern on May 31, 2021.
- b. Construction: Paragraph 12 of the Agreement is hereby deleted in its entirety and replaced with the following language:

"12. 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."

c. Services provided: Paragraph 13, f. is added to the Agreement to read:

"f. Guided Eco-Tours"

d. Subcontractor: Paragraph 16 of the Agreement is hereby deleted in its entirety and replaced with the following language:

"16. 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."

- e. Compensation: Paragraph 23 of the Agreement is hereby deleted in its entirety and replaced with the following language:

"23. Compensation. The Concessionaire shall pay 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, Paragraph 24 and 25, and Exhibit G herein:

1. Period 1:

From June 1, 2013 through May 31, 2014, the Concessionaire shall pay to the Department a monthly commission fee equal to 13% of Total Gross Sales each month, plus, the applicable State Use Tax (a percentage of the amount paid to the Department, equal to the sum of the state sales tax and applicable county discretionary sales tax percentages); and

2. Period 2:

From June 1, 2014 through May 31, 2021, the Concessionaire shall pay to the Department a monthly commission fee equal to 15% of Total Gross Sales each month, 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.”

- f. Public Records: Paragraph 26 of the Agreement is hereby deleted in its entirety and replaced with the following language:

“26. 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"**

g. Notices: Paragraph 31 of the Agreement is hereby deleted in its entirety and replaced with the following language:

"31. 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
Florida State Park Concessions, Inc.
Raymond L. Bass, Jr., Registered
Agent
The Moorings Professional Building
2335 Tamiami Trail North, Suite 409
Naples, Florida 34103

Department
Robert Brooks, Park Manager
Wekiwa Springs State Park
1800 Wekiwa Circle
Apopka, Florida 32712

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: Paragraph 32 of the Agreement is hereby deleted in its entirety and replaced with the following language:

“32. Agreement Managers. Robert Brooks, Park Manager, who can be reached by telephone at (407) 553-4373 or by email at Robert.Brooks@dep.state.fl.us, or his successor, is hereby designated as the Department's Agreement Manager. The Agreement Manager for the Concessionaire is Jack Bobo, who can be reached by telephone at (561) 373-0727 or by email at jbobo@nspconcessions.com.”

- i. Insurance: Paragraphs 33 and 34 of the Agreement are hereby deleted in their entirety and replaced with the following language:

“33. 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, Wekiwa Springs State Park, and mailing address, 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, Wekiwa Springs State Park, and mailing address, 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."

j. Services: Paragraph 2. a. 7). is added to Exhibit A of the Agreement to read:

"7). The Concessionaire may serve alcoholic beverages with authorization, in writing, from the Department or its designee. If authorized to serve alcoholic beverages, the Concessionaire shall comply with the following Alcoholic Beverages Requirements:

- a). The Concessionaire shall obtain an alcoholic beverage license from the Department of Business and Professional Regulation, 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 Orange County Ordinances that regulate the alcoholic beverage licenses; and
- c). Prior to implementation of the serving of alcoholic beverages, Concessionaire shall submit a plan of action including hours of service and control methods, in writing, to the Park Manager for approval."

k. Services: Paragraph 2. e. is added to Exhibit A of the Agreement to read:

"e. Guided Eco-Tours

The Concessionaire may 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."

l. Schedule and Scope of Improvements: Exhibit B of the Concession Agreement is hereby deleted in its entirety and replaced with Exhibit B-2 attached hereto and incorporated herein.

3. Ratification:

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

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 #1 may be executed in two identical counterparts, each of which shall be deemed an original. The two, executed, identical counterparts shall constitute this Amendment #1. If 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 #1 to be executed as of the day and year last set forth below.

Florida State Park Concessions, Inc

By: [Signature]
Authorized Representative

Printed Name: Jack E. Bobo Jr.

Title President

Date: October 31, 2017

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: [Signature]
Secretary's signature or designee

Printed Name: David Clark

Title: Deputy Secretary

Date: 11/18/17

Approved as to form and legality:

[Signature] 10/09/2017
DEP Attorney

EXHIBIT B-2
Schedule and Scope of Capital Improvements

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 \$53,500.00 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:
 - A. \$3,500.00 in Capital Improvements to be completed no later than December 31, 2013.
 - 1) The Concessionaire shall construct stationary canoe and kayak racks to hold all of its canoes and/or kayaks used in its operations at the Park.
 - 2) The Department recognizes completion of the above Capital Improvements.
 - B. \$17,200.00 in Capital Improvements to be completed no later than December 31, 2017.
 - 1) The Concessionaire shall make improvements to the concession building to facilitate food and beverage service.
 - 2) The Department recognizes completion of the above Capital Improvements.
 - C. \$32,800.00 in Capital Improvements to be completed no later than January 31, 2018.
 - 1) Conceptually agreed to Capital Improvements include, but are not limited to, purchase and installation of a restaurant quality griddle/fry hood.

- 2) Specific projects shall be 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. Constructed capital improvements shall immediately become the property of the Department.