

MULTI-YEAR 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 Florida State Park Concessions, Inc. (“Concessionaire”).

RECITALS

WHEREAS, on or about May 27, 2013, the Department and Concessionaire entered into a Concession Agreement (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 was modified by the following amendment entered into by and between the Department and Concessionaire (the “Amendment”):

Document Title	Document Date	Short Reference
Multi-Year Concession Agreement - Amendment #1	dated 11/18/2017	(“Amendment #1”)

WHEREAS, the Original 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, pursuant to Paragraph 3 of the Agreement, the term of the Agreement expires on May 31, 2021 and the parties wish to extend the expiration date as set forth in this Amendment #2.

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 midnight Eastern on May 31, 2021, to midnight Eastern on May 31, 2024.
- b. Use of facilities, space and equipment: Paragraph 5 of the Agreement is hereby deleted in its entirety and replaced with the following language:

“5. Use of facilities, space and equipment. The Department will provide to the Concessionaire the following facilities, space, and equipment for use during the Term of the Agreement:

- a. The concession building including restrooms (Building Number: BL080030).
- b. Shared use of canoe/kayak launch area.
- c. The storage building (Building Number: BL080034).
- d. Space adjacent to concession building for mobile food unit. Exact location to be determined by the Park Manager.
- e. Vending machine space. Exact location to be determined by the Park Manager.

The Concessionaire accepts the previously identified physical facilities, space and equipment ("facilities") "as is" and with no warranties of suitability for Concessionaire's intended use. The Concessionaire will maintain and repair the Facilities pursuant to a Maintenance and Repair Plan, which must be approved, in writing, by the Department. The Concessionaire's Maintenance and Repair Plan will include 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 walls and ceilings;
2. Routine maintenance and repair of interior and exterior components of the HVAC systems, fire detection systems, water heater, 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 will be repaired at the Concessionaire's cost;
5. Maintenance and repair of Concessionaire's signage;
6. Nonstructural or cosmetic interior improvements to the Facilities, if written pre-approval is obtained by the Department; and
7. Routine landscaping and grounds maintenance surrounding the Facilities.

The Concessionaire will perform daily removal of litter within fifty (50) feet of all Facilities occupied by the Concessionaire pursuant to this Agreement. The Department must pre-approve all cleaning, maintenance, and repair supplies (chemicals and compounds) and all insecticides, rodenticides, and herbicides.

The Department will 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
2. The roofs, exterior walls, interior systems, and other structural elements of the Facilities, unless the parties mutually agree to make these items part of Concessionaire's capital improvements.

The Concessionaire will not alter or damage the Facilities through the operation of its business without written pre-approval from the Department. The Concessionaire will give the Department a written description of any proposed construction or alteration of the Facilities. If the Department approves the proposal, the construction or alteration must comply with this Agreement and any applicable federal, state, and local laws."

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

"23. Compensation. The Concessionaire will pay the Department payment amounts and commission fees 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 will 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 Florida's Commercial Rental Tax rate); and
2. Period 2:
From June 1, 2014 through May 31, 2024, the Concessionaire will 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 Florida's Commercial Rental Tax rate).

In addition to the foregoing commission fees, the Concessionaire will pay to the Department \$25,000 no later than October 15, 2019. Payment will be made to the Park Manager, and the funds will be processed as a deposit into the Park's Help Our State Parks fund.

"Total Gross Sales" means 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 does 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.

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.

- d. Schedule and Scope of Improvements: Exhibit B-2 of the Concession Agreement is hereby deleted in its entirety and replaced with Exhibit B-3 attached hereto and incorporated herein.
- e. Department-owned inventory: Exhibit I is hereby added and attached hereto and incorporated herein.

3. Ratification:

Except as modified by this Amendment #2, the Agreement remains in full force and effect. This Amendment #2 will be attached to and incorporated into the Agreement. In the event of a conflict

between the Agreement and this Amendment #2, this Amendment #2 will control. Henceforth, the term "Agreement" will mean the Agreement as further amended by this Amendment #2.

4. Execution in Counterparts:

This Amendment #2 may be executed in two identical counterparts, each of which will be deemed an original. The two, executed, identical counterparts will constitute this Amendment #2. If any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature will 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 will 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.

FLORIDA STATE PARK
CONCESSIONS, INC., A FLORIDA
CORPORATION

By: 
Authorized Representative

Date: 9/10/19

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: 
Secretary's signature or designee

Printed Name: BARBARIA GOODMAN

Title: Deputy Sec

Date: 9/25/2019

Approved as to form and legality:


DEP Attorney

EXHIBIT B-3
Schedule and Scope of Capital Improvements

1. The Concessionaire will adhere to the Americans with Disabilities Act (“ADA”) for remodeling and construction. The costs incurred because of such requirement will be the sole responsibility of the Concessionaire.
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 and paying for all costs of any required permits. The Concessionaire will obtain permits according to the below schedule for Improvements.
4. Prior to commencement of 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, final sealed last documents by the Bureau of Parks District 3 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 all required permits have been obtained.
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. Unless and 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 receipt of the Notice to Proceed, the Concessionaire will begin with the construction as agreed to below.
7. The Department recognizes completion of \$117,843.42 in capital improvements by the Concessionaire, as follows:
 - A. \$3,500.00 in capital improvements to construct stationary canoe and kayak racks to hold all of its canoes and/or kayaks used in concession operations at the Park.
 - B. \$17,200.00 in capital improvements to renovate the concession building and facilitate food and beverage service.
 - C. \$97,143.42 in capital improvements to modify the concession building's food and beverage service, installation of a new range hood, and kitchen/service equipment (as identified in Exhibit I).
 - D. The capital improvements are the sole property of the Department.

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Exhibit I
 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 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 requests, in writing, 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.

6. Department-owned equipment authorized for use by the Concessionaire:

DEP Property Number:	Quantity:	Equipment Description:
	1	7' grease hood with fire suppression
	4	Regency 60" x 20" x 8" Aluminum dunnage rack
	1	Regency 1.42 GPM wall-mounted pre-rinse assembly
	1	Regency 60" 12-gauge three compartment commercial sink
	1	Comstock 2-burner 36" griddle range with two ovens
	1	Inertek 40 lb. 24" 2-basket fryer
	8	2-top table with two chair sets
	8	4-top table with four chair sets
	6	Aluminum high-top folding tables
	2	Modern Better Homes and Gardens 8-cube organizer
	3	4-cube Better Homes and Gardens room organizer storage bookcases
	6	Better Homes and Gardens 6-cube organizers
	4	Spring Side Grille Signs (1 - 30"x40" and 3 - 24"x24")
	6	Canoe & kayak Rental Signs (4 - 16"x20" and 2 - 18"x24")
	8	Nature Adventure Snack Bar Signs (1 - 12"x64", 1 - 30" x 40", 4 - 36"x24" and 2 - 1'x1')