

CONCESSION AGREEMENT
(Amelia Island State Park)

This Concession Agreement (“Agreement”) is between the State of Florida Department of Environmental Protection (“Department”), a state agency, through its Division of Recreation and Parks (“Division”), whose address is 3900 Commonwealth Boulevard, Tallahassee, Leon County, Florida 32399, and Kelly Ranch, Inc. (“Concessionaire”) organized as a Florida Profit Corporation, whose headquarters is located at 9500 1st Coast Highway, Amelia Island, Nassau County, Florida 32034.

RECITALS

WHEREAS, the Department agrees to grant Concessionaire the privilege of providing the described visitor services within the boundaries of Amelia Island State Park (“Park”);

WHEREAS, the Concessionaire agrees to accept the responsibility of providing these visitor services at the Park;

WHEREAS, these visitor services will require investment by the Concessionaire and will involve certain risks of financial loss;

WHEREAS, the Concessionaire agrees not to interfere with the daily operations of the Park and agrees to promote the Park by all means possible and practicable; and

WHEREAS, the Concessionaire will work concurrently with the Citizen Support Organization (“CSO”) and not interfere with the CSO’s operations.

NOW THEREFORE, in consideration of the promises and the mutual covenants and conditions contained in this Agreement, the Department and the Concessionaire agree as follows:

SPECIAL CONDITIONS

A. Dates and extension or renewal discretion. The term of this Agreement will commence on February 1, 2020 and will end at 11:59 p.m. on January 31, 2023, (“Term”), subject to all terms, conditions, and provisions contained herein. This Agreement may be extended by written amendment, upon agreement by both parties. The decision whether to consent to an extension or renewal and the length of the extension or renewal will depend upon an analysis of various factors, including: the needs and goals of the State Park system, as determined by the Department; the ability and willingness of the Concessionaire to perform under this Agreement and any other agreement, contract, or written document between the Department and the Concessionaire; the good standing of the Concessionaire (including any entity related to or affiliated with the Concessionaire) under any other agreement with the Department; the Concessionaire’s past record of performance, including annual, quarterly, and other evaluation reports, and any audits; the past revenues paid to the Department; the nature and extent of capital improvements made by the Concessionaire; and other factors relevant to Park operations and planning of the individual Park (collectively, the “Factors”). The Department reserves the right not to extend or renew this Agreement beyond the initial term specified above.

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. Seahorse Stables (Building No. BL192001), including tack room, office, gift shop, and holding stables;
2. Fenced corrals adjacent to Seahorse Stables;
3. Restroom (Building No. BL192004);
4. Barn Building (Building # not assigned) and adjacent parking lot;
5. Shared access to picnic area adjacent to Barn Building and parking lot;
6. Access to beach and Horse Corridor;
7. Shared access to the Timucuan Trail;
8. Entrance area and gate;
9. The Department may authorize additional space with written pre-approval; and
10. Space for a mobile home residence site to be used on an as-needed basis and designated, in writing, through execution of an Agreement of Occupancy:
 - a. If the home residence site is authorized, the fee for the resident site will be \$100 paid to the Department each month the site is occupied. Resident site fees will be paid by the Concessionaire to the Department on, or prior to, the 30th of each month as payment in advance for the ensuing month.
 - b. An Agreement of Occupancy will be signed by both the Department and the Concessionaire for the resident site prior to the Concessionaire's occupancy of the site. The Department and the Concessionaire agree that upon execution of an Agreement of Occupancy, the Agreement of Occupancy will be incorporated into this Agreement by reference as if fully set forth herein, and in the event of a conflict between the terms and conditions of this Agreement and the terms and conditions in such Agreement of Occupancy, the language of this Agreement will prevail over the language of Agreement of Occupancy, unless otherwise stated herein.

An area map (attached as Exhibit I) shows the location of the Facilities. The Department may clarify the exact location and size of the Facilities if necessary. The Concessionaire will maintain and repair the Facilities pursuant to the maintenance and repair schedule detailed in the Maintenance and Repair Plan. Prior to the Concessionaire's commencing operations under this Agreement, the Concessionaire must finalize the Maintenance and Repair Plan (per Exhibit A) and submit it to the Department for approval. The Concessionaire's Maintenance and Repair Plan will include guidelines for all aspects of the Concessionaire's maintenance and repair responsibilities including, but not limited to, 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. Daily cleaning of all restrooms in the Facilities, to Park standards;
4. Daily trash/waste removal from the Facilities. The Concessionaire will perform daily removal of litter within 50 feet of the Facilities;
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 Department must pre-approve all cleaning, maintenance, and repair supplies (chemicals and compounds) and all insecticides, rodenticides, and herbicides.

Intentional or negligent damage to Facilities caused by the Concessionaire or its customers will be repaired at the Concessionaire's cost.

On Department-owned facilities, 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 (as defined in Paragraph 8 below).

The Concessionaire will not alter 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. Services Provided. The Concessionaire is authorized to conduct the following business and to provide the following services, which are further specified in Exhibit A, (collectively, the "Services"), subject to all terms, conditions, and provisions of this Agreement:

1. Equestrian Services;
2. Merchandise Resale;
3. Recreational Equipment Rental; and
4. Vending Machine Services.

The Parties will periodically review this list of Services to eliminate outdated technology and add new technology as necessary. The Concessionaire may provide additional services if the Concessionaire obtains written pre-approval from the Department.

D. Utilities. The Concessionaire will be responsible for the costs of all utilities associated with its operations within the Park, including:

1. Electricity: The Concessionaire will contract with and make payment directly to the provider.
2. Water/Sewer: The Department will be responsible for fees associated with water.
3. Garbage: The Department will be responsible for fees associated with garbage.
4. Propane: The Concessionaire will contract with and make payment directly to the provider.
5. Telephone/Internet: The Concessionaire will contract with and make payment directly to the provider.
6. Vending Machines: The Concessionaire must receive prior written approval from Department before installing a vending machine. If written approval is given, the cost to the Concessionaire is a flat monthly fee of \$20.00 per vending machine for those which do not require a heating element or refrigeration, and \$30.00 per vending machine for those which require a heating element or refrigeration, unless the machine is located in an area where electricity is paid for by the Concessionaire.

E. Security Deposit for Concessionaire's Performance. Upon execution of this Agreement, the Concessionaire will post with the Department a security deposit in the amount of \$12,000.00 ("Security Deposit") to assure compliance with this Agreement and applied toward any award of liquidated damages in the event the Concessionaire defaults on the terms and conditions of this Agreement. The Security Deposit will be in the form of one of the following: (1) a verified payment bond, issued by a surety company with twice the minimum surplus and capital required by the Florida Insurance Code and that holds a certificate of authority issued by the United States Department of Treasury authorizing it to write surety bonds in the State of Florida; (2) a verified, original, current letter of credit from a bank authorized to do business in the State of Florida containing terms and conditions satisfactory to the Department; or (3) check or cash equivalent payment to the Department for establishment of a security deposit account that is administered by the Department.

The Department will not pay interest on deposited funds. Any letter of credit or payment bond will include provisions allowing for automatic renewal upon its expiration. The Concessionaire must provide written notice to the Department at least 120 days before a letter of credit or bond's expiration date if it wishes to terminate or cancel the letter of credit or payment bond.

The Department will return the Security Deposit to the Concessionaire if the Concessionaire has satisfied all terms and conditions of the Agreement upon the Department's termination for convenience pursuant to the Termination paragraph of this Agreement or upon expiration of this Agreement.

If (a) the Department terminates this Agreement for cause, or (b) the Concessionaire abandons this Agreement or terminates the Agreement for convenience, the Concessionaire forfeits the full amount of the Security Deposit and the Security Deposit will be applied toward any award of liquidated damages.

The Security Deposit must be continuously in effect throughout the term of this Agreement. If the Department receives notice the Security Deposit will expire, be terminated, be cancelled, or is scheduled for renewal, the Concessionaire must submit proof of its reinstatement or renewal or substitute an otherwise acceptable Security Deposit at least 90 days prior to the expiration.

The Department will annually assess the amount of the Security Deposit based on the Concessionaire's total gross sales submitted for the previous 12 months as documented on the Concessionaire's Annual Profit and Loss Statement (Exhibit F) and upon any renewal, extension, or amendment to this Agreement. The Concessionaire must obtain written pre-approval regarding any changes to the Security Deposit. The Department may not increase the Security Deposit above the Concessionaire's monthly average commission payment as calculated based on the 12-months preceding the requested increase.

F. Compensation. The Concessionaire will pay the Department a commission fee equal to 12% of Total Gross Sales each month, but not less than \$20,000.00 annually ("Minimum Guarantee"). The Department will determine if an amount is owed by comparing the amount of commission fees paid for each year of the Agreement to the Minimum Guarantee. If a shortfall exists, the Department will notice the Concessionaire of the amount owed. The Concessionaire will remit any shortfall within five (5) days of receiving a notice from the Department or within 30 days of the yearly anniversary of this Agreement, whichever occurs earlier. Concessionaire will

also pay the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate).

"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:
 - a. Park admission fees collected by the Concessionaire on behalf of the Department, and
 - b. Other 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.

G. Notices. All notices and written communication between the Department and Concessionaire will be sent by electronic mail, U.S. Mail, a courier delivery service or delivered in person. Notices will 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 will be in writing and will be delivered to the parties at the following addresses:

Concessionaire
Kelly Kelly, Vice President
Kelly Ranch, Inc.
7500 1st Coast Highway
Amelia Island, Florida 32034
kellyseahorseranch@gmail.com

Department
Michelle Waterman, Park Manager
Amelia Island State Park
12157 Heckscher Dr.
Jacksonville, Florida 32226
Michelle.Waterman@FloridaDEP.gov

With a copy to:
Park Business Development Section,
Section Leader
3900 Commonwealth Boulevard, MS 535
Tallahassee, Florida 32399-3000
FPS.Concessions@FloridaDEP.gov

The Concessionaire will inform the Department in writing within 30 days of any change to its name, business organization, ownership, address, Registered Agent, or other contact information. Either party may provide notice to the other party by email identifying a change of a designated contact person and must provide the new contact information for the newly designated Agreement Manager. Such notice is sufficient to effectuate this change without requiring a written amendment to this Agreement.

H. Agreement Managers. Michelle Waterman, Park Manager, who can be reached by telephone at (904) 251-2320 or by email at Michelle.Waterman@FloridaDEP.gov or her successor, is hereby designated as the Department's Agreement Manager. The Agreement Manager for the Concessionaire is Kelly Kelly, who can be reached by telephone at (904) 491-5166 or by email at kellyseahorseranch@gmail.com. Such contact persons and information may be updated by either party, from time to time during the Term hereof, upon written notice to the other party.

I. Special Events. During the Term of the Agreement, the Concessionaire may schedule events for dates up to 12 months after the Agreement's end date. For all events scheduled during the 12-month post-agreement period, the Concessionaire will provide a copy of the original event contract to the Department. All special event contracts for events after the Agreement's end date must provide notice that the contract may be assigned to another concessionaire at the Department's request. The Department may either issue a permit authorizing the Concessionaire to fulfill these event obligations or require the Concessionaire to assign the contracts and deposits to another concessionaire. In the event of a cancellation, the Concessionaire will not pursue or accept a replacement date or event, unless the Department's Agreement Manager gives written pre-approval. After the Agreement's end date, the Concessionaire will not schedule any additional events or reschedule existing events.

GENERAL CONDITIONS

1. Agreement to provide Services in compliance with all laws and regulations. The Concessionaire will provide Services that comply with Chapter 258, Florida Statutes; Rule 62D-2, Florida Administrative Code; the requirements stated within the Division's Operations Manual regarding concession operations ("Division's Operations Manual"); and the Park's Unit Management Plan. The Concessionaire will comply with: (a) all applicable federal, state, and local laws, rules, regulations, and ordinances, including those listed above; (b) the Division's Operations Manual in effect on the date of this Agreement and any subsequent amendment; and (c) all other terms and conditions contained in this Agreement. It is the Concessionaire's responsibility to be apprised of amendments to any applicable statutes and rules. The current version of the Division's Operations Manual may be obtained from the Park Manager.

2. Operations. The Concessionaire will provide the Services to the public throughout the Operating Hours identified in Exhibit A. Minimum Operational Requirements and Procedures, including Park Operating Hours, are outlined in Exhibit A. The Concessionaire must obtain written pre-approval from the Park Manager to close operations, including on holidays, and for any changes made to the Minimum Operational Requirements and Procedures.

3. Use of premises and governing law. The Concessionaire will not use, or permit any other person to use, the Facilities for any purpose that violates a law, ordinance, or applicable governmental rule or regulation. The Concessionaire will be responsible for supervising the Concessionaire's employees, agents, and customers.

The Concessionaire's employees, agents, or acquaintances are not allowed to store personal property in the Park. Concessionaire-owned vehicles or equipment that Concessionaire uses to conduct Services under this Agreement may be stored in the Park with written pre-approval from the Department.

4. Fire insurance standards. The Concessionaire will not permit the use or storage of any materials that are prohibited by the standard policies of Florida fire insurance companies in any Facilities or space used by the Concessionaire.

5. Concessionaire's failure to maintain facilities, space, and premises. The Concessionaire agrees that authorized Department representatives (or any other authorized state, county, or municipal officer) may inspect the Facilities at any time during Park Operating Hours without notice. The Concessionaire will immediately correct any deficiency cited by such inspectors at Concessionaire's expense unless the Department is responsible for the deficiency. If (1) the Concessionaire fails to correct a deficiency, or, (2) if after two inspections by the Department's Agreement Manager, the Concessionaire fails to meet the minimum maintenance or repair standards contained in the Maintenance and Repair Plan, the Department reserves the right to correct any deficiencies and issue an invoice to the Concessionaire for the cost. If the Concessionaire fails to pay the invoice within 30 days of receiving it, the Department may suspend the Concessionaire's Services, or may terminate this Agreement for cause and begin procedures to claim the Security Deposit.

6. Surveys and reports. The Concessionaire will cooperate with the Department in conducting surveys, providing reports of visitor contacts, and responding to Department inquiries regarding public usage of the Facilities and Services. The Concessionaire will provide the Department a nominal amount of space in the Facilities for Florida State Park marketing and promotional materials.

7. Leasing and lessee; Full compliance. The Concessionaire agrees the Department is not leasing any parcel, building, facility, structure, equipment, or space to the Concessionaire, the Concessionaire is an independent contractor and not a lessee, and the Concessionaire's right to occupy the Facilities and to conduct the Services will continue only if the Concessionaire and its operations comply with this Agreement.

8. Construction. The Concessionaire will obtain written pre-approval from the Department to construct new facilities and for all improvements, alterations, or additions to existing Facilities. The Concessionaire will pay the cost of approved construction, improvements, alterations, or additions. All construction, improvements, alterations, or additions will become state-owned assets once complete. Any incomplete construction, improvements, alterations, or additions will become state-owned assets if either the Concessionaire abandons construction or this Agreement is terminated prior to completion of construction. The Concessionaire is responsible for obtaining all required permits and paying all costs associated with required permits. The Concessionaire is responsible for all costs associated with design, site survey, geotechnical, environmental, and other site testing (including asbestos and lead-based paint surveys), and for preparing all construction documents. Before starting construction, the Concessionaire will give the Department all necessary construction documents, including permits, sealed plans, construction documents, test reports, product submittals, budget estimates, and sketches. The Department will review the documents and provide comments and alterations. Before beginning construction, the Concessionaire will 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. At or prior to the pre-construction meeting, the Concessionaire will provide the specifics of all projects that 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. Once the Department has

reviewed and approved the permits and final plans, the Department will provide the Concessionaire with a Notice to Proceed. Once the Concessionaire has received the Department's Notice to Proceed, the Concessionaire may begin construction. The Department is not obligated to pay or reimburse the Concessionaire for unamortized capital improvements (including pre-construction phase costs and fees) if the Department did not issue a Notice to Proceed.

9. Permits and licenses. The Concessionaire will obtain all permits, licenses, and professional education necessary for the operation of the Services. The Concessionaire must obtain all required permits and licenses and present them to the Department before providing any Services.

10. Expansion of operations and assignment. The Department may, by formal amendment to this agreement, authorize the Concessionaire to expand or change the Services provided if the Department determines that the expansion or change would be beneficial to the Park, Park visitors, or the Department. The Concessionaire may not occupy or use additional Facilities, discontinue use of Facilities, or expand, change, or terminate Services without the prior written consent of the Department. This Agreement may not be assigned, in whole or part, without the Department's prior written approval. The Department has the discretion to grant, condition, or deny the proposed assignment. If the Department approves the assignment, the Concessionaire will pay the Department a processing fee of \$100.00, unless the Department waives the processing fee for good cause.

11. Subcontracting. The term subcontract means any written agreement where another entity undertakes to perform any of the Services. The term subcontractor means any entity or person offering goods or services in the Park by written agreement with the Concessionaire.

The Concessionaire is responsible for providing all Services. The Concessionaire may subcontract with another entity to provide some or all the Services, provided the Concessionaire gives notice and delivers to the Department all pertinent information concerning the subcontractor, provides a copy of the proposed subcontract, and obtains the Department's written consent. The Concessionaire will provide the Department with a copy of the subcontract once the subcontract is executed by the parties. The Concessionaire must notify the Department if Concessionaire changes the subcontract, and must provide the Department with a revised copy. Unless otherwise specified by this Agreement, only the Florida Park Service District Bureau Chief or their superior may consent to a Concessionaire using a subcontractor. Consent to use a subcontractor must be in writing. The Department reserves the right to withhold its consent.

If the Concessionaire fails to obtain the Department's pre-approval of a subcontract or subcontractor the Department may terminate this Agreement. The Department is not liable to a subcontractor for expenses or liabilities incurred under the subcontract. The Department is not responsible for the subcontractor's performance under the subcontract. The Concessionaire will include a provision in its subcontract that requires the subcontractor to comply with the terms of this Agreement, and to submit reports in the form required by this Agreement. A subcontractor's failure to perform or to pay the Concessionaire does not excuse the Concessionaire's obligations to the Department.

The Concessionaire is solely responsible for verifying the subcontractors' reports, for reporting gross sales attributable to all subcontracts, and for computing and remitting the monthly fee based on Total Gross Sales. The Concessionaire agrees that any subcontract will require the

subcontractor 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. In the event a subcontractor refuses to comply with this Agreement, the Concessionaire is accountable to the Department to remedy the subcontractor's non-compliance, up to and including terminating the subcontractor. If Concessionaire fails to remedy the subcontractor's non-compliance, the Department may terminate this Agreement.

12. Competition. The Department agrees not to authorize any services in the Park that are in conflict or in direct competition with the Concessionaire's Services, under the following conditions

(a) The Department may propose competing services if it first gives the Concessionaire at least 30 days written notice of its intent to authorize such services. If, after notice the Concessionaire desires to provide the proposed services, the Concessionaire must submit a sufficiently-detailed written proposal to the Department within 14 days of receiving the notice. The Concessionaire's proposal may be accepted or rejected by the Department after the Department reviews the Factors and other relevant information.

(b) The parties agree that the following services are not subject to this paragraph and will not constitute competition:

(1) the Department and the Park's Citizen Support Organization selling Florida State Park promotional merchandise. The Department acknowledges the Concessionaire is the authorized provider of Services. The Department therefore agrees to limit activities provided by the Citizen Support Organization, so that the activities do not negatively impact the Services provided by Concessionaire;

(2) private persons hiring outside caterers or carrying in their own food and refreshments for individual events held in areas other than the Facilities;

(3) the delivery of goods or services in the Park if the sale or service transaction originated outside the Park;

(4) Park management of events; or

(5) sales by the Department's online retail and merchandise concessionaire.

This paragraph is not intended to make the Department responsible for taking any action to prevent or remedy any competition to Concessionaire's Services that occurs or originates outside of the Park.

13. Conflict of Interest. The Concessionaire agrees it presently has no interest and will not acquire any interest that would conflict with the Services to be provided under this Agreement. The Concessionaire agrees to use its best efforts to maximize the profitability of this Agreement and to refrain from any self-dealing or other activity that would usurp opportunities of the Park associated with the Services. The Concessionaire further agrees not to conduct any activity that would be injurious or cause disrepute to the Park.

14. Independent contractor. The Concessionaire acknowledges that it is performing as an independent contractor and not as an employee, representative, or agent of the State of Florida, the Department, or the Division, and neither the Concessionaire nor its employees are entitled to accrue any benefits of state employment.

15. Fees and merchandise. The Concessionaire agrees the prices and fees charged for merchandise and Services offered by the Concessionaire will be consistent with those charged by similar businesses for similar merchandise and services in the general vicinity of the Park. "General Vicinity" means a business located or charging for merchandise or services within five miles of the Park. If there are no similar businesses that market similar merchandise or services

within five miles of the Park, General Vicinity means the nearest similar business. The Concessionaire will not sell or rent any type of merchandise or equipment prohibited by the Department and will sell or rent only the type of merchandise or equipment approved by the Department. The Concessionaire will maintain an adequate supply of all merchandise and equipment (including Florida State Park merchandise), that the Park Manager deems appropriate or necessary to accommodate Park visitors. The Concessionaire will ensure that all merchandise and equipment sold or rented is of good quality, safe, and clean. The Department must pre-approve, in writing, the Concessionaire's schedule of fees for the sale of goods and Services. The Concessionaire may request price and fee adjustments by submitting the request in writing to the Park Manager. The Park Manager will review the request and approve or deny it in writing. The Park Manager's approval will be based on the Concessionaire's written request for a fee schedule change, which must include a market analysis supporting the requested change.

16. Concessionaire employee standards. The Concessionaire will provide continual training and evaluation of all employees assigned to the Concessionaire's Service operations to ensure an appropriate level of proficiency, a public service attitude, and a good understanding of the principles of hospitality. All Concessionaire's employees and/or those acting on behalf of or providing services under the supervision of the Concessionaire will be required to wear a visitor service uniform and name tag while on duty in the Park. The Concessionaire will obtain written pre-approval from the Park Manager for all service uniforms and name tags. The Concessionaire has a duty to replace any employee and/or those persons acting on behalf of or providing services under the supervision of the Concessionaire if the Park Manager so requests. No Department employee or close relative of a Department employee is permitted to be employed by the Concessionaire or a subcontractor, or otherwise compensated by the Concessionaire or a subcontractor, without the prior written approval of the Department's Bureau of Human Resources Management and the Office of General Counsel.

17. Monthly fee payment. The Concessionaire will submit the monthly commission fee, plus the applicable State Use Tax and any other fees or payments due ("Monthly Payment"), along with the Monthly Report of Concessionaire's Total Gross Sales ("Monthly Report" detailed in Exhibit D) through the Park Manager. The Concessionaire will submit the funds and report(s) to the Park Manager no later than the 20th day of each month following the month the Gross Sales were collected by the Concessionaire. The Department will assess a late fee in the amount of 1% of the current amount due for each day the Monthly Payment is late. The Department may waive the late fee based on documented circumstances beyond the Concessionaire's reasonable control. If the Concessionaire fails to submit the Monthly Payment and accumulated late fees within 30 days of the normal monthly payment deadline, the Department may either suspend the Concessionaire's performance of Services under this Agreement until the Department receives full payment or terminate this Agreement for cause and begin procedures to collect the Security Deposit. When the Department completes a system for accepting electronic payments from concessionaires, the Concessionaire agrees to use the system for making or delivering its monthly payments to the Department. Concessionaire's agreement to use the system is contingent upon there being no fee or a nominal fee to use the system.

18. Accounting. Accounting requirements will be as follows:

a. Minimum Accounting Requirements and Audit Requirements. The Concessionaire and any subcontractors will document compliance with the Minimum Accounting Requirements detailed in Exhibit C. The Concessionaire and any subcontractors will establish and maintain books, records, and documents directly pertinent to performance under this Agreement according to the Minimum Accounting Requirements and with generally accepted

accounting principles. The Department and other appropriate government agencies will have access to all records for audit purposes during the Term of this Agreement and for five years following the Agreement's expiration or termination. The Department will conduct audits at locations and at a frequency determined by the Department or other state agency and communicated to the Concessionaire and any subcontractor. The Concessionaire and any subcontractor will provide materials for the audit at the designated place within 20 days after receiving the Department's or other government agency's notice. In addition, the Department may require the Concessionaire, and any subcontractor, to procure an annual financial audit of the Concessionaire's or subcontractor's operations if the appropriate government agency's audit shows that the Limited Engagement document (prepared pursuant to subsection f, below) shows a gross sales discrepancy of greater than five percent (5%) from such agency's audit. The audit will be conducted by a Certified Public Accountant at the Concessionaire's or subcontractor's expense. The Concessionaire agrees the audit will be conducted in accordance with generally accepted auditing and accounting principles and will be completed within a reasonable time frame, which will not be set at less than 90 days by the Department.

b. Monthly Report of Total Gross Sales. The Concessionaire will provide the Department with a Monthly Report of Concessionaire's Total Gross Sales. This report will include gross sales attributable to all subcontracts and be in the form attached hereto as Exhibit D, as it may be modified by the Department from time to time. Each monthly report will contain the required detail based upon Total Gross Sales for such month by point of sale. The Concessionaire will deliver the report and required payment(s) to the Park Manager no later than the 20th day of the succeeding month.

c. Monthly Profit and Loss Statement. If requested by the Department, the Concessionaire will provide a Monthly Profit and Loss Statement to the Department in the form attached as Exhibit E. Such statement will include the results of the Concessionaire's operations pursuant to this Agreement for each calendar month or portion thereof. The Concessionaire will deliver the statement to the Park Manager no later than the 20th day of the succeeding month.

d. Annual Profit and Loss Statement. The Concessionaire will provide an Annual Profit and Loss Statement to the Department in the form attached as Exhibit F. The statement will include the results of the Concessionaire's operations for each calendar year or portion thereof. The statement will be delivered to, or sent so it is received by, the Park Manager no later than April 30th of the succeeding calendar year, or within 90 days of the expiration or termination of this Agreement, whichever is sooner.

e. Books of original entry. Both the Monthly Reports of Total Gross Sales and the Annual Profit and Loss Statements will be based on source documents and books of original entry. The Concessionaire will retain books of original entry and source documents for five (5) years, or until final resolution of matters resulting from any litigation, claim, or audit that started prior to the expiration of the five-year retention period, whichever is later. The retention period commences from the date of submission of the last Annual Profit and Loss statement required in Paragraph 18 d. above.

f. Limited Engagement document. If, during any calendar year where this Agreement is effective, the annual Total Gross Sales from the Concessionaire's Services under this Agreement exceed \$400,000.00, the Concessionaire will obtain and submit, at its cost, a limited engagement document, prepared in accordance with the Agreed-Upon Procedures for a Certified Public Accountant specified in Exhibit G. Such limited engagement document will be conducted in accordance with generally accepted auditing and accounting principles. The limited

engagement document will be submitted to the Park Manager no later than June 30th of the following calendar year or within 120 days after the expiration or termination of this Agreement, whichever is sooner.

g. Revenue subject to State Use Tax. The Concessionaire's commission fees are subject to State Use Tax, unless the Concessionaire is exempt from paying tax on commission fees. If it is tax exempt, the Concessionaire will provide the Department with verification of its tax-exempt status by completing the State Use Tax Exempt Certification form attached hereto as Exhibit H. The Concessionaire will provide its completed certification form to the Department at the time it delivers the executed Agreement to the Department.

h. Purchasing card industry ("PCI"). The Concessionaire will be responsible, at Concessionaire's cost, for complying with the PCI Data Security Standards ("PCI DSS"), which include a set of comprehensive requirements for enhancing payment account data security. The PCI DSS standards can be found at the PCI Security Standards Council website <https://www.pcisecuritystandards.org/>. The Concessionaire may obtain additional information through the Florida Department of Financial Services ("DFS"), which coordinates the State of Florida's efforts directly with the PCI Security Standards Council. Prior to beginning operations, the Concessionaire will ensure that the required data security measures are in place by submitting a completed Self-Assessment Questionnaire ("SAQ") to the Department. The Concessionaire will submit an updated SAQ to the Park Manager annually on the anniversary of the Agreement commencement date. The SAQ can be found on the PCI DSS website listed above. During the term of this Agreement, it will be the Concessionaire's responsibility to be apprised of any amendment to or update of the PCI DSS. The Concessionaire, at its cost, is required to modify its annual SAQ to comply with the most current version of the PCI DSS.

19. Public records.

a. Concessionaire will 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 will keep and maintain the public records required 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 §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 will 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 §119.10, F.S.

2. Upon request from the Department's custodian of public records, Concessionaire will 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 will 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 will 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 will 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 will 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**

20. No vested real property right; Violation of agreement terms. This Agreement does not vest any real property right or interest in the Concessionaire, and is only a grant of the privilege to perform the Services in full compliance with this Agreement.

21. Termination. In addition to the termination rights contained elsewhere in this Agreement, the parties may terminate this Agreement prior to the expiration of the Term of the Agreement, as follows:

a. Termination for cause.

i. Upon the Concessionaire's default, breach, or deficiency in performing any obligation under this Agreement ("Default"), the Department may terminate this Agreement for cause.

ii. If a cure period is expressly provided under any provision of this Agreement for a particular Default specified in the Department's notice, or if otherwise the Department, in its sole discretion, elects to provide the Concessionaire a specific amount of time to cure a Default, then the Department's notice of termination will provide a specified amount of time for the Concessionaire to cure the Default ("Cure Period"). Unless otherwise specified, the Concessionaire will have fifteen days to cure a monetary Default, and thirty days to cure a non-monetary Default. The Concessionaire will promptly commence and diligently pursue the full and complete cure of the Default. Should the Concessionaire desire an extension of the Cure Period, then on or before the expiration of the initial Cure Period: (a) the Concessionaire will have commenced actions to cure the Default(s), and (b) the Concessionaire will submit a notice in writing to the Department stating the curative actions it has undertaken to date, with a request to extend the Cure Period to a later date (which cannot be greater than the 90th day following the Concessionaire's receipt of the Department's written notice of Default). The Concessionaire's request will include an explanation of the need for an extension of the Cure Period. The Department may grant, deny, or condition its approval of the Concessionaire's extension request. If the Concessionaire does not fully and timely cure the Default(s) prior to the expiration of the Cure Period (or the extended Cure Period) then this Agreement will automatically terminate at 12:01 AM Eastern on the first calendar day following the expiration of the Cure Period.

Upon the Department's termination for cause, the Concessionaire will immediately remove itself and all related parties who occupy any part of the Facilities. The Concessionaire's continued occupancy of the Facilities after the Department terminates this Agreement will constitute trespass and may be prosecuted. The Concessionaire will forfeit any unamortized costs for capital improvements and all Concessionaire equipment and other tangible property at the Facilities if the Department terminates the Agreement for cause.

b. Termination for convenience. The Department or the Concessionaire may terminate this Agreement for convenience at any time by giving 90 days' advance written notice to the other party.

i. If the Concessionaire terminates this Agreement for convenience before the end of the Term, the Concessionaire will pay the Department a \$100 processing fee. If the Concessionaire gives less than the 90 days' notice required above, the Department may require the Concessionaire to pay an additional expedited termination fee equaling 5% of its previous 12 months average monthly commission for each month remaining in the Term of this Agreement to be applied toward any award of liquidated damages to the Department. This provision does not preclude the Department from pursuing other available legal remedies. The Concessionaire forfeits the right to be reimbursed for unamortized costs of capital improvements if the Concessionaire terminates the Agreement for convenience.

ii. If the Department terminates this Agreement for convenience, it will not be liable to the Concessionaire for any direct, indirect, or consequential damages arising from the termination, except for the obligation to reimburse the Concessionaire for unamortized capital improvements (as applicable and part of this Agreement). If the Concessionaire has made capital improvements to the Park that have not been fully amortized (as defined by the Amortization Schedule in Exhibit B) the Department will pay the Concessionaire the cost of capital improvements remaining unamortized on the termination date. The Department's obligation to reimburse the Concessionaire for unamortized capital improvements is contingent upon an appropriation by the legislature. The Department's reimbursement obligation will not arise if the Department did not issue a Notice to Proceed as referenced in Paragraph 8 of the General Conditions. If capital improvements are required as a part of this Agreement, the Concessionaire may not amortize capital improvements for more than 10 years. The amortization rate and period for capital improvements will be as stated in Exhibit B, if applicable, and the Department will prorate any reimbursement based on the date of termination. The Department will calculate the prorated reimbursement using a 360-day calendar year. The Concessionaire agrees that reimbursement by the Department for unamortized capital improvements, (if applicable as a part of this Agreement) is the only liability for liquidated damages assessed against the Department's termination for convenience.

c. Termination rights cumulative. The Department's termination rights in Paragraph 21 are in addition to termination rights contained elsewhere in this Agreement and to remedies available at law or in equity. There are specific circumstances in this Agreement where termination occurs automatically with or without notice and Paragraph 21 does not alter those specific contractual termination rights. All of the Department's rights and remedies, whether under this Agreement, at law, or in equity, are cumulative, and the Department may use them singularly or concurrently.

22. Equipment and other tangible property. When this Agreement terminates, regardless of cause, the Department is not obligated to purchase any of the Concessionaire's equipment or remaining inventory. Within 30 days of receiving a Notice of Termination, or sooner if the Department directs, the Concessionaire must remove or dispose of all assets that are not fixtures of state property. The Department may elect to allow the Concessionaire to leave assets that are not fixtures of state property. The Department will give written notice of this election prior to the termination of this Agreement. All assets not removed by the Concessionaire prior to termination of this Agreement will become the property of the Department.

23. Review of terms. This Agreement will be reviewed by the parties periodically to determine whether the value of compensation, services provided, and required Capital Improvements are appropriate. The Department may consider the following reasons for altering the compensation: whether the Concessionaire has made Capital Improvements, a significant increase or decrease in use by the public, the Concessionaire's contributions to the Park other than Capital Improvements, a significant increase in the Concessionaire's profits without a comparable increase in value to the Park, a decrease in overhead costs, competitive rates in the marketplace, and other relevant reasons. If the parties mutually determine the value of compensation, Services provided, and Capital Improvements are no longer appropriate, the parties will negotiate until agreement is reached and the parties execute a written amendment to this Agreement. If the parties cannot agree upon the amount to be paid the Department, then the Department will terminate the Agreement after 90 days' written notice to the Concessionaire.

24. Insurance coverage. The Concessionaire's failure to comply with any part of the insurance requirements is considered a material breach and will be cause for termination by the

Department. All insurance policies will 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 may not begin Services under this Agreement prior to compliance with these insurance requirements. Compliance with these requirements does not relieve the Concessionaire of liability under any portion of this Agreement. All insurance obtained by the Concessionaire in accordance with this Agreement will include a Hold Harmless Agreement in favor of the Department and the Board of Trustees. All insurance policies will include the DEP Agreement No. on the certificate. The Concessionaire will submit insurance policy certificates to the Park Manager, and will list the Park Manager's name, Amelia Island State Park, and mailing address, as listed in Paragraph G of the Special Conditions of this Agreement, as the insurance policy certificate holder. All insurance policies will be with insurers licensed or eligible to do business in the State of Florida. The Concessionaire's current certificate of insurance will contain a provision that the insurance will not be canceled for any reason except after 30 days prior written notice to the Department, except for nonpayment of insurance premium, which will be handled in accordance with Florida law. The Concessionaire will provide evidence of its current insurance coverage to the Department prior to beginning any activity permitted by this Agreement. All required insurance policies will remain in full force and effect throughout the term of this Agreement. Evidence of all policy renewals will be provided to the Park Manager at the time of every renewal of the 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 will not be subject to dilution or reduction by any other insurable loss or interest of the Concessionaire under the policy. 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 will 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 will obtain liability waivers signed by members of the public. Waivers seeking parents' or guardians' signature on behalf of a minor will comply with the form requirements set forth in Section 744.301, Florida Statutes.

The Concessionaire will secure and maintain the following types of insurance covering its operations under this Agreement:

a. Liability. The Concessionaire will 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 provide coverage for contents of the Facilities and space, including additional products, services, and expansion of the Concessionaire's Services. Insurance coverage must include coverage for all claims that may arise from the Services and operations provided under this Agreement, whether such Services and operations are by the Concessionaire or someone directly or indirectly employed by the Concessionaire. The minimum limits of liability will be \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate.

b. Automotive. The Concessionaire will secure and maintain Commercial Automobile Liability insurance for company-owned vehicles and for hired and non-owned vehicles that are used to conduct business and provide Services. For these vehicles, the Concessionaire will have a minimum combined single limit of \$1,000,000.00. 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. The Department may require other insurance under this Agreement for the unique operations, recreations, or facilities provided and any unique hazards arising from them. Examples include 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 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 will maintain Workers' Compensation insurance for all of its employees for the duration of this Agreement. The Concessionaire will provide evidence of the coverage to the Department prior to starting Services under this Agreement. The self-insurance program or insurance coverage will 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. If any employees engaged in work under this Agreement are not protected under Workers' Compensation statutes, the Concessionaire will provide adequate insurance, satisfactory to the Department, for the protection of its non-covered employees.

25. Risk in operation. The Concessionaire assumes all risk in the operation of any activity permitted by this Agreement and will be solely responsible for accidents or injuries to persons or property arising from its operations. Concessionaire is liable for any damage arising from the carelessness, negligence, or improper conduct of the Concessionaire, its subcontractors, and their respective employees, representatives, or agents. The Concessionaire will save and hold harmless and indemnify the Department and the Board of Trustees against any liability, claims, judgments, attorney's fees, or costs for:

1. An injury to, or death of, any person;
 2. The loss of or damage to any property resulting from the use, service, operation, or performance of work under the terms of this Agreement; or
 3. Damages resulting from any act, or failure to act, by the Concessionaire or its subcontractors, and their respective employees, agents, or representatives;
- to the extent allowed by law. Within five days of receiving service of process, the Concessionaire will notify the Park Manager of any legal action filed against the Concessionaire related to the Park, to Concessionaire's Services, or that may adversely affect or reflect on the Department.

26. Force majeure event. A force majeure event is an act of God or nature, a strike, lockout or other industrial disturbance, an act of a public enemy, war, blockade, public riot, lightning, fire, flood, explosion, failure to receive timely necessary governmental or third-party approvals, governmental restraint, terrorism, threat to homeland security, tornado, hurricane or other severe storms, civil commotion, criminal activity, or any other cause that is not reasonably within the control of the Concessionaire. The following do not constitute force majeure events: (1) failures by the Concessionaire's subcontractor to perform; (2) business losses; or (3) equipment failures.

A force majeure event does not relieve the Concessionaire of any terms of this Agreement that can be performed. No payment from the Concessionaire will be due for the period during which its operations are totally suspended because of a force majeure event.

The Concessionaire hereby waives all claims for compensation arising from loss or damage sustained from a force majeure event that takes place in or affects the Park, except as outlined in

Paragraph E of the Special Conditions of this Agreement. If a force majeure event causes delay or a reasonable likelihood of delay in the Concessionaire's performance, the Concessionaire will promptly notify the Park Manager orally, and, within seven calendar days, notify the Park Manager in writing of the anticipated length and cause of the delay, the measures to minimize the delay, and the Concessionaire's timetable for implementing these measures. If the parties agree that a delay or anticipated delay has been or will be caused by a force majeure event, time for performance of this Agreement may be extended for a period equal to the delay resulting from the force majeure event. Except as outlined in Paragraph E of the Special Conditions of this Agreement, such extension is the Concessionaire's sole remedy under this Agreement for a delay caused by a force majeure event. The extension will be confirmed by an amendment to this Agreement, reduced to writing and executed by both parties.

27. Waiver in light of force majeure event. The Concessionaire also hereby waives all rights, claims, and demands and forever releases and discharges the Department and the Board of Trustees from all demands, attorney's fees, claims, actions, and causes of action arising from a force majeure event.

28. Natural and cultural resources. The Concessionaire will abide by all local, state, and federal regulations and statutes governing the protection of natural and cultural resources. The Concessionaire is liable for a violation of these regulations or statutes.

29. Recyclable or biodegradable materials. When the Concessionaire uses disposable serving supplies, they will be produced from recyclable or biodegradable materials. The Concessionaire should give preference to using non-disposable serving supplies. The Concessionaire will develop and implement a Solid Waste Reduction Plan, as part of the Environmental Protection Plan required by Exhibit A, for solid waste generated by the Services. In areas where recycling programs exist, this solid waste reduction plan will include provisions for recycling all appropriate materials, and will be approved, in writing, by the Park Manager during the first 60 days of operation under this Agreement.

30. Intellectual Property.

a. Department's Marks. Concessionaire understands that the Department's name, logos, trademarks, and service marks (collectively the "Department's Marks") are the sole and exclusive property of the Department and will not be used without the Department's prior written consent.

b. Marketing and Ownership of Intellectual Property. The Department will obtain and own any domain names using the Park name, and telephone numbers directly associated to the Services at the Park and agrees to allow the Concessionaire to post content relating to the Services at that web address. The Concessionaire agrees to assign ownership of any marketing materials, websites, or social media accounts using the Park name, whether or not they can be copyrighted, to the Department. The Concessionaire is responsible for monitoring all websites and social media accounts and reporting complaints or inappropriate posts to the Park Manager. Failure to comply with these responsibilities constitutes a Default under this Agreement and entitles the Department to terminate this Agreement for cause and/or pursue other available legal remedies. The Concessionaire agrees to provide the Park Manager with administrator log-ins and passwords to all websites and social media accounts using the Park name upon their creation. Any changes to the administrator log-ins and passwords must be immediately reported to the Park Manager, along with the revised log-in and password.

31. Federal, state, and local laws. The Concessionaire will comply with all applicable federal, state and local laws, rules, regulations, and ordinances in providing Services. The Concessionaire acknowledges that this requirement includes compliance with all applicable federal, state, employment laws, and local health and safety rules and regulations. The Concessionaire agrees to include this provision in all subcontracts. The Concessionaire's failure to comply with any part of this provision is material and will be grounds for the Department to terminate the Agreement for cause.

The Concessionaire understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Concessionaire will comply with this duty and ensure that Subcontracts issued under this Agreement impose this requirement on its sub-contractors.

a. Compliance with the Americans with Disabilities Act. The Concessionaire must comply with the Americans with Disabilities Act ("ADA") and the Florida Civil Rights Act, Chapter 760, Part I, Florida Statutes. The Concessionaire must provide accommodations and program access to persons with disabilities for each program and activity the Concessionaire offers to the public. It is the intent of the Department that the Concessionaire offer maximum access to all its facilities and programs, not merely the minimum mandated by law.

b. Violation of ADA. If the Concessionaire is sued for violation of the ADA and either a court of competent jurisdiction determines the Concessionaire is in violation of the ADA or the Concessionaire settles the case with the understanding that ADA changes must be made, the Concessionaire will pay its own attorney's fees and costs as well as the plaintiff's attorney's fees and costs. The Concessionaire may seek insurance for such risk and any policy covering this risk must name the Department and the Board of Trustees as Additional Named Insureds. If the Department is a co-defendant in such suit, the Department will only pay for those attorney's fees and costs attributable to its own violation of the ADA, as determined by judgment, court order, or settlement agreement. In the event the attorney's time records do not reflect whether counsel's work was attributable to the Department's or the Concessionaire's violations, or the parties cannot agree on a split, the attorney's fees and costs will be split equally between the Concessionaire and the Department.

c. A & I Coordinator. The Division of Recreation and Parks employs an Accessibility and Inclusion Coordinator ("A & I Coordinator"), and the Concessionaire will consult the coordinator each time an ADA issue arises. The A & I Coordinator will be the Division's contact for all public complaints and questions related to the ADA. Within five days of receiving service of process concerning an alleged ADA violation, the Concessionaire will inform the A & I Coordinator and the Park Manager. The Concessionaire will inform the A & I Coordinator and the Park Manager in writing of all ADA disputes or claims within five days of the event. If there is an ADA-related dispute between the Concessionaire and a visitor, the A & I Coordinator will attempt to negotiate an accommodation between the parties. The A & I Coordinator can be contacted through the Department's Agreement Manager.

i. A & I Liaison. Before starting to provide Services under this Agreement, the Concessionaire will identify one or more officers or employees to act as their Accessibility and Inclusion Liaison ("A & I Liaison") and will provide their names and contact information to the Park Manager. The Concessionaire's A & I Liaison will: act as liaison with the A & I Coordinator, educate and direct other Concessionaire staff in ADA matters and issues, and cooperate with the A & I Coordinator.

ii. ADA Training.

(a) The Department will send notice to the Concessionaire's A & I Liaison when the Department's online ADA training is available or updated. The Concessionaire's A & I Liaison and the Concessionaire's Agreement Manager will take the Department's online ADA training within 60 calendar days of receiving notice of that the course is available or has been updated.

(b) If the Department offers training on ADA practices during a Concessionaire meeting, the Concessionaire will attend the training.

iii. Visitor Complaints. The Concessionaire's A & I Liaison and the Concessionaire's Agreement Manager will make themselves familiar with the ADA requirements related to the Concessionaire's operations. The Concessionaire will follow the accessibility guidelines provided by the Park Manager and will use the complaint procedure found on the Division's website at www.FloridaStateParks.org for any visits, calls, or complaints from visitors to initiate the resolution of the complaint to the visitor's and the Department's satisfaction.

iv. Accessibility and inclusion policy. On the first day of Services under this Agreement, the Concessionaire will make the Concessionaire's Accessibility and Inclusion Policy available to everyone, including the Concessionaire's employees, the Park Manager and Park visitors. The policy will include (1) the Concessionaire's responsibility towards individuals with disabilities; (2) the degree of access available to the Concessionaire's operational facilities, programs, and activities; (3) the Concessionaire's policy for visitor requests or inquiries for access to the Concessionaire's operational facilities, programs, and activities; and (4) the Concessionaire's policy for handling a complaint on access and inclusion. The Concessionaire must post on its premises and its website, if it provides one, the Concessionaire's Accessibility and Inclusion policy in a location that the public and the Concessionaire's employees will always be able to see.

v. Written publications. If the Concessionaire provides written publications, such as a website and brochures for its operations, the Concessionaire will include accessibility information in the publications.

vi. Compliance with ADA terms and conditions. The Concessionaire will comply with ADA provisions of this Agreement beginning on its first day of operations within the Park. The Concessionaire's A & I Liaison and the Park Manager will monitor the Concessionaire's ADA compliance. The Department will include ADA compliance as a component of the Concessionaire's Quarterly Evaluation Report.

32. Civil Rights Act. The Department receives Land and Water Conservation Funds. Under Title VI of the 1964 Civil Rights Act, the U.S. Department of Interior prohibits discrimination on the basis of race, creed, color, national origin, age, sex, or disability. The Concessionaire's employment practices and Services will not discriminate on the basis of race, creed, color, national origin, age, sex, or disability. Requests for information regarding Title VI or registering of complaints under Title VI may be made to: The Office of Equal Opportunity, U.S. Department of the Interior, Office of the Secretary, 1849 C Street N.W., Washington, DC 20240.

33. Unauthorized aliens. Section 274A(e) of the Immigration and Nationality Act prohibits the Concessionaire from employing unauthorized aliens. If the Concessionaire knowingly employs unauthorized aliens, the Department may unilaterally terminate this

Agreement. The Concessionaire is responsible for including this prohibition in all subcontracts entered into under this Agreement.

34. E-Verify Employment Eligibility Verification. The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. The Concessionaire will only employ individuals who may legally work in the United States (either U.S. citizens or foreign citizens who are authorized to work in the U.S). The Concessionaire will use the U.S. Department of Homeland Security's E-Verify Employment Eligibility Verification system to verify the employment eligibility of all employees. The Concessionaire will include this provision in all subcontracts it enters into under this Agreement.

35. Sexual predator and offender investigation. The Concessionaire will not employ within the Park any person who is listed on either the sexual predator or sexual offender list maintained by the Florida Department of Law Enforcement ("FDLE") or maintained by the U.S. Department of Justice's Dru Sjodin National Sex Offender Public Website ("NSOPW").

- A. The Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors prior to executing this Agreement. The Concessionaire will conduct a sexual predator and sexual offender investigation on all employees and subcontractors hired subsequent to execution of this Agreement. The Concessionaire will keep a copy of its investigation records in the Concessionaire's personnel files and have those files available to the Department during the Concessionaire's regular office hours.
- B. The Concessionaire will at its sole cost and expense, conduct criminal and civil, and sexual predator and sexual offender background investigations on all officers prior to executing this Agreement. The Concessionaire will at its sole cost and expense, conduct criminal and civil and sexual predator and sexual offender background investigations on all officers elected, hired or otherwise taking office subsequent to execution of this Agreement. All background investigations of the Concessionaire's officers required under the provisions of this paragraph will be conducted by an independent third-party entity and the Concessionaire will authorize the investigating entity to release the investigation results directly to the Department's Agreement Manager.
- C. If the Concessionaire or any subcontractor employs a sexual predator or sexual offender or fails to perform the required research of the FDLE list or the NSOPW, the Department may immediately terminate this Agreement for cause.
- D. The Concessionaire will be responsible for including all of the provisions of this paragraph in all subcontracts entered into under this Agreement.

36. Public Entity Crime; Convicted Vendor. "Public Entity" means the State of Florida, any of its departments or agencies, or any political subdivision. "Public Entity Crime" means a violation of any state or federal law by a person directly related to the transaction of business with any Public Entity or with an agency or political subdivision of any other state or with the United States, including any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

The Concessionaire confirms that, as of the execution date of this Agreement, neither the Concessionaire nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents (as applicable) who are active in managing the Concessionaire, have been placed on the convicted vendor list maintained by the State of Florida following a conviction for a Public Entity Crime or on any similar list maintained by any other state or the federal government. The Concessionaire will re-affirm this statement annually no later than July 1 of each year. A person or affiliate who has been placed on the convicted vendor list following a conviction for a Public Entity Crime, among other things, may neither be awarded work nor perform work as a contractor, supplier, subcontractor, or consultant under a contract with any Public Entity; and may not transact business with any Public Entity in excess of a specified threshold amount for a period of 36 months following the date of being placed on the convicted vendor list.

The Concessionaire must notify the Department within 30 days after any conviction of a Public Entity Crime applicable to the Concessionaire, its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the Concessionaire, or any affiliates of the Concessionaire. If the Concessionaire is convicted of a Public Entity Crime, this Agreement is voidable.

37. Indemnification. The Concessionaire will hold harmless and indemnify the State of Florida, the Department, the Board of Trustees, and their respective officers, employees, and agents from any lawsuit, claim or action arising out of its operations and Services under this Agreement, unless such lawsuit, claim, or action arises from the Department's breach of its obligations hereunder.

38. State of Florida Department of Environmental Protection employees act in representative capacity. The Concessionaire agrees that the Department and the Board of Trustees, and their respective employees, officers, and agents, are acting in a representative capacity and not for their own benefit. Neither the Concessionaire's nor any of its subcontractor's employees, officers, or agents will have any claim against Department employees, officers, or agents who comply with applicable laws, rules, ordinances, or Department directives and procedures.

39. Appropriation by Legislature. The Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If funds are not appropriated for the Department to operate the Park or maintain the Facilities allotted for the Concessionaire, the Department may terminate this Agreement after giving the Concessionaire 30 days' written notice.

40. Limitation of damages. This Agreement may be revenue generating or revenue neutral. The Legislature has not appropriated funds for the Department to pay damages. If a court of competent jurisdiction determines the Department is legally liable to the Concessionaire for breaching this Agreement and the Concessionaire has made no capital improvements to the Park, the Concessionaire agrees that a just reward for damages for any such breach are limited to the amount and return of the Concessionaire's Security Deposit. However, if the Concessionaire has made capital improvements to the Park that are not fully amortized as of the date of a court order, judgment or settlement agreement the parties agree relief is limited to the amount of the Concessionaire's Security Deposit and as more fully described in Paragraph 21.b.ii. regarding obligation to reimburse the Concessionaire for unamortized capital improvements (as applicable)

41. Delivered under laws of Florida and action brought in Leon County. This Agreement has been delivered in the State of Florida and will be construed under the laws of Florida. Wherever possible, each provision of this Agreement will be interpreted to be effective and valid under applicable law. If any provision of this Agreement is prohibited or invalid under applicable law, that provision will be ineffective without invalidating the remaining provisions of this Agreement. Any legal action in connection with this Agreement must be brought in Leon County, Florida.

42. Delay and failure to exercise right will not impair right. A party's delay in or failure to exercise a right accruing upon a default under this Agreement will not impair or waive those rights.

43. No interest given to any third party. This Agreement is not intended to grant any rights, privileges, or interest to any third party without the mutual written agreement of the parties.

44. Bona fide employee. The Concessionaire warrants it has not employed any company or person, other than a bona fide employee working solely for the Concessionaire, to solicit or secure this Agreement. The Concessionaire warrants it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Concessionaire, a fee or other consideration contingent upon the award of this Agreement.

45. Time is of the essence. Time is of the essence in the performance of this Agreement.

46. Severability. If a court deems any provision of this Agreement void or unenforceable, that provision will be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions will remain in full force and effect.

47. Conflict. Unless otherwise stated herein and in the event of any internal conflict among the terms of this Agreement and the exhibits, the Special Conditions and Exhibit A will control over any conflicting terms in the General Conditions.

48. Entire agreement. This Agreement, and all exhibits collectively represent the entire agreement of the parties and supersedes all previous agreements. Any amendments to or waivers of provisions of this Agreement will be valid only if reduced to writing, duly signed by all the parties, and attached to the original of this Agreement.

49. Acceptance of terms per signature. The Concessionaire agrees with and accepts the terms and conditions of this Agreement by its signature below.

50. Counterparts; electronic signature. This Agreement may be executed in identical counterparts, each of which will be deemed to be an original, but all of which when taken together will constitute the Agreement. If any signature is delivered by facsimile transmission or by email 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 the facsimile or ".pdf" signature was an original signature. Any party transmitting an electronic signature will provide the inked original to the receiving party, at the receiving party's request.

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The parties hereto have caused this Agreement to be executed December 1, 2019, as stated in Paragraph A of the Special Conditions.

CONCESSIONAIRE:

KELLY RANCH, INC.

DEPARTMENT:

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Kelly L Kelly
Authorized Signatory

Print Name: Kelly L Kelly

Print Title: Vice President

Date: 1-15-20

By: [Signature]
Secretary's Signature or Designee

Print Name: Cliff Maxwell

Print Title: Bureau Chief

Date: 1/28/20

Revised 4/25/19

List of Exhibits incorporated as part of this Agreement:

- Exhibit A Minimum Operational Requirements and Procedures
- Exhibit B Schedule and Scope of Capital Improvements
- Exhibit C Minimum Accounting Requirements
- Exhibit D Monthly Report of Concessionaire's Total Gross Sales
- Exhibit E Monthly Profit and Loss Statement
- Exhibit F Annual Profit and Loss Statement
- Exhibit G Agreed-Upon Procedures for a Certified Public Accountant
- Exhibit H State Use Tax Exempt Certification
- Exhibit I Area Map

EXHIBIT A

Minimum Operational Requirements and Procedures

1. Operations:
 - A. Concessionaire's operating hours:
 - 1) Minimum operating hours will be 8:00 a.m. to 5:00 p.m. Eastern, Tuesday through Sunday, including holidays.
 - 2) Operating Hours will be posted near the main entrance of the Facilities.
 - 3) Any deviation in Operating Hours will be pre-approved, in writing, by the Department.
 - B. The Concessionaire will maintain a telephone as a public and vendor contact point, that will be staffed during operating hours. If an answering device is used, calls must be returned within 24 hours.
 - C. The Concessionaire's advertising, including online, brochures, signs, and other forms of advertisement will be consistent with the Florida Park Service mission and will be pre-approved, in writing, by the Department. The Department will have the right to require removal of all or part of any advertising the Department deems inappropriate or that reflects poorly on the Department.
 - D. The Concessionaire will provide adequate staffing and oversight to operate the Services authorized in this Agreement. Staffing levels will be by mutual agreement of the Parties and to the standards acceptable to the Department.
 - E. All paper products and serving containers will contain post-consumer recycled content.

2. Services:
 - A. Equestrian Services

The Concessionaire will provide guided equestrian tours according to the following:

 - 1) Concessionaire will obtain written approval from the Department prior to establishing or modifying authorized tour routes.
 - 2) Number of horses per tour and number of tours per day will be pre-approved, in writing, by the Department and may be modified at the Department's discretion.
 - 3) Any interpretive narratives provided by Concessionaire will be consistent with the Florida Park Service mission and pre-approved, in writing, by the Department.
 - 4) The Concessionaire will provide appropriate safety equipment to each tour participant.
 - 5) The Concessionaire will require all tour participants to participate in a safety and environmental orientation program administered by the Concessionaire. The program and materials must be pre-approved, in writing, by the Department.
 - 6) The Concessionaire will ensure each tour participant, or their parent or guardian, signs a liability waiver.
 - 7) The Concessionaire will provide adequate staff, food, equipment, etc. to properly care for their horses.
 - 8) The minimum and maximum number of horses kept and maintained at the Facilities, and any deviations in these quantities, will be pre-approved, in writing, by the Department.
 - 9) Concessionaire will comply with Sections 773.04 and 773.06, Florida Statutes.
 - 10) If at any time during the term of this Agreement the Department determines Guided Equestrian Tours are unsafe or detrimental to the Park's resources, the Concessionaire will discontinue guided equestrian tours immediately upon written notification by the Department.
 - 11) The Concessionaire will provide security and will ensure the wellbeing of livestock.

B. Merchandise Resale

The Concessionaire will provide items for resale such as: non-alcoholic beverages, snacks, T-shirts, hats, sunglasses, sunscreen, bug repellants, souvenirs, gifts, sundries, personal convenience items, assorted pain relievers, Park-themed products and other appropriate items pre-approved, in writing, by the Department. The Concessionaire is responsible to keep inventory at a level deemed acceptable to the Department. All merchandise will be of high quality, environmentally friendly (to the extent practicable) and reflective of the Florida Park Service mission.

C. Recreation Equipment Rental

- 1) Concessionaire will provide recreational equipment rentals, including all required safety equipment. Types, models, and minimum and maximum inventory levels will be pre-approved, in writing, by the Department or its designee. The types of equipment will include, but not be limited to, unisex bicycles, varying in style to accommodate different ages and sizes of riders, with helmets.
- 2) The Concessionaire will provide appropriate safety equipment with each rental activity.
- 3) The Concessionaire will ensure each rental customer, or their parent or guardian, signs a liability waiver.
- 4) Concessionaire will provide an employee to work at the recreational equipment rental operations facility until all visitors have returned or have been accounted for. The employee will work at the recreational equipment rental operation facility until all visitors are located, and until either all cars have left the parking lot, or until all cars remaining in the parking lot have been positively identified, owner confirmed, and the Park Management notified.
- 5) The Concessionaire will obtain written approval by the Park Manager prior to placing passenger or tour vehicles, vessels, and rental equipment in use. The Division's approval of equipment will be based on public safety, resource protection, design and capacity of the vehicle or equipment, compatibility with other activities, compliance with the Americans with Disabilities Act ("ADA"), and aesthetic factors, such as compatible colors.

D. Vending Machine Services

The Concessionaire may provide self-service Vending to the guests at locations preapproved, in writing by the Department, according to the following:

- 1) The Concessionaire will ensure that the machines are operational, and that all repairs are made within 48 hours. The Concessionaire will be responsible at its sole cost and expense for the machines' maintenance and repair.
- 2) It is understood that the machines remain the property of the Concessionaire and the Concessionaire will maintain and repair the machines at no charge to the Department. Machines located outside enclosed buildings may be required by the Park Manager to be unlighted and painted or screened to blend with natural surroundings or facilities. The Concessionaire will be responsible for all losses of money or merchandise from the machines.
- 3) The Concessionaire will provide, at a minimum, cash receipts removed from vending machines, which will be reconciled once a month with the receipts expected from the sold or depleted inventory. As an alternative, counters may be installed on machines. Counters will identify quantities sold that can be reconciled to cash receipts. The Concessionaire will maintain receipts from vending purchases, which include a date stamp and time.

E. Wi-Fi Service

The Concessionaire may provide Wi-Fi services, free of charge, to guests at the Seahorse Stables (Building No. BL192001). The Concessionaire may provide Wi-Fi services to visitors in other areas of the Park, or may charge for premium Wi-Fi, if these activities are pre-approved, in writing, by the Department.

3. **Additional Services:** Additional Services, if provided, will comply with the Park's Unit Management Plan and the Division's Operations Manual and be pre-approved, in writing, by the Department. The foregoing notwithstanding, the Concessionaire may participate in test projects on behalf of the Department, with written pre-approval by the Department.
4. **Website:** The Concessionaire, at its expense, will maintain a website to promote the Park, Park activities, and Special Events according to the following:
 - A. The Concessionaire will use only Department-approved domain names and social media accounts.
 - 1) Pursuant to General Conditions, Paragraph 30 of this Agreement, Concessionaire agrees any websites (including web addresses and domain names) telephone numbers, or social media accounts created, used, or maintained in conjunction with this Agreement (except the business name of the Concessionaire, namely Kelly Seahorse Ranch or www.kellyranchinc.net), will immediately become and remain the property of the Department.
 - 2) The Concessionaire will create, or transfer, web addresses and domain names to an account as designated by the Department.
 - 3) For social medial accounts, the Concessionaire will establish administrative access for the Department.
 - B. The website design and content will be pre-approved, in writing, by the Department.
 - C. The website will include a link to the Park page on the Department's online Park Guide (www.floridastateparks.org).
 - D. Concessionaire may offer a mobile-optimized version of the website and/or mobile application.
 - E. At the Department's request, Concessionaire agrees to edit or adapt the website to allow reservations for Services through the Department's Central Reservation System website or other Department website.
 - F. With Department approval, the Concessionaire may use additional websites to obtain reservations for Services or otherwise promote Services.
5. **Maintenance and Repair Plan:**

Prior to beginning Services under this Agreement, the Concessionaire will provide a draft Maintenance and Repair Plan that will be evaluated by the Department. The Concessionaire will implement a final Maintenance and Repair Plan incorporating the District and Park Manager's comments and approved by the Department prior to beginning Services under this Agreement. The Maintenance and Repair Plan will be revised periodically to ensure Facilities are maintained for a quality visitor experience. This Maintenance and Repair Plan will include guidelines for all aspects of the Concessionaire's maintenance and repair responsibilities. At a minimum, the Maintenance and Repair Plan will comply with Special Conditions, Paragraph B of this Agreement and will include:

 - A. Maintenance and cleaning of facilities, grounds and systems.
 - 1) Schedule

- 2) Standards
 - B. Concessionaire staff and positions with assigned maintenance and cleaning responsibilities.
 - C. The Concessionaire will post contact information and instructions at identified Facilities for visitors to report concerns with maintenance and cleaning.
 - D. The Concessionaire may not plant or remove landscape material from the premises without written pre-approval from the Park Manager. Any planted material must be native to the park and be pre-approved, in writing, by the Park Manager.

- 6. Environmental Protection Plan:

Prior to beginning Services under this Agreement, the Concessionaire will provide a draft Environmental Protection Plan to be evaluated by a Department biologist. The Concessionaire will implement a final Environmental Protection Plan incorporating the Department biologist's, the District's, and the Park Manager's comments prior to beginning Services under this Agreement. The Environmental Protection Plan will cover all operations in the Park, including, but not limited to:

 - A. Use of recyclable or biodegradable materials where possible, with preference given to use of non-disposable materials;
 - B. Natural resource impact minimization;
 - C. Solid waste reduction and recycling, including the provision of recycle bins for plastics, paper, aluminum, and glass for use by park visitors;
 - D. Waste management, including the provision of garbage bins for use by park visitors and preventing wildlife from accessing waste;
 - E. Use of cleaning and maintenance supplies/compounds, insecticides, rodenticides, and herbicides; and,
 - F. Any other information that would allow a reviewer to evaluate and understand the total Environmental Protection Plan.

- 7. Safety Plan:

Prior to beginning Services under this Agreement, the Concessionaire will provide a draft Safety Plan to be evaluated by the Department's Safety Officer and Park Manager. The Concessionaire will implement a final Safety Plan incorporating the District's and Park Manager's comments prior to beginning Services under this Agreement. The Safety Plan will be revised once a year before the anniversary date, and prior to the commencement of any new services, and the Concessionaire will submit the proposed revision to the Department's Safety Officer and Park Manager for evaluation and approval. The Safety Plan will include guidelines for all aspects of the Concessionaire's operation, with special attention to traffic control, first aid, security, fire prevention, and water related activities and equipment. A section of the Safety Plan will be devoted to Emergency Action, which will cover proper preparations and responses to all natural and human-caused emergencies.

- 8. Time is of the essence:

As with all aspects of this Agreement, time is of the essence. As it pertains to this Agreement, and the required plans above notwithstanding, Concessionaire will have in place a basic operations plan which accounts for health, safety, and security of visitors and employees, prior to beginning to provide Services.

EXHIBIT B
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 2 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 in the Notice to Proceed.
7. Constructed Capital Improvements will immediately become the property of the Department with no amortization due to the Concessionaire.
8. The State of Florida's performance and obligation to pay under the Agreement is contingent upon an appropriation by the Legislature.

EXHIBIT C
Minimum Accounting Requirements

The Concessionaire will comply with the general Minimum Accounting Requirements detailed in this attachment. Every sale will be accounted for by use of computerized or electronic cash registers, pre-numbered receipts, or pre-numbered tickets unless the Concessionaire has received prior written authorization from the Department to use some other method.

A. Minimum Accounting Requirements Regardless of Method Used to Document Sales

1. The Concessionaire will establish and maintain bank accounts (checking, savings, etc.) that are used solely for operations for this Agreement and are separate from any other concession agreement and non-concession agreement operations.

2. The Concessionaire will retain all checks written on the Concessionaire's checking account, whether voided or not.

3. The Concessionaire will always offer sales receipts to customers regardless of the amount involved. Sales receipts may be in the form of cash register slips, electronic receipts, pre-numbered receipts, or pre-numbered tickets, depending on the method employed to document sales. The Concessionaire will conspicuously place signs reminding customers to ask for a receipt at or near all collection stations.

4. The Concessionaire will support all customer refunds by customer signed documents or an alternative method for electronic and online transactions. The Concessionaire's Agreement Manager or designated employee will document and approve transaction voids.

5. If receipts exceed \$2,000.00, they will be deposited intact daily. If receipts do not exceed \$2,000.00 a day, they will be deposited intact periodically, which will be no more than a five-day working period. Un-deposited receipts will be stored in a secure manner – a safe is preferable. Validated deposit slips and bank statements supporting amounts deposited will be retained by the Concessionaire.

6. The Concessionaire will post daily ledger entries to account for gross sales and sales tax collections by point of sale and/or collection station. Ledger entries may be to an automated ledger, a journal, or by an automated entry. Entries will equal amounts deposited by period. All adjustments to gross sales, such as customer refunds, will be recorded in the ledger or journal using a separate entry. The Concessionaire will retain source documents, such as daily cash register tapes, copies of pre-numbered receipts, and use schedules for pre-numbered tickets, to support recorded gross sales and sales tax collections. Adjustments to gross sales will be supported by source documents such as customer signed receipts and cancelled checks.

7. The Concessionaire will assign duties associated with handling, recording, and reconciling receipts and disbursements to different employees, whenever possible. Employees who handle cash or cash-like items will be adequately supervised. Daily cash register totals should be verified, at the end of the day, by a person not having access to cash. If a person, other than the employee handling the cash or cash-like items, is not available to verify and reconcile the cash register at the end of a day, the Concessionaire will designate the General Manager as the alternative internal control. Prior to any changes in the internal controls, the Concessionaire will provide to the Park Manager written notification of the change.

8. Purchases will always be made by check or through use of an imprest fund. The imprest fund, if used, will always be replenished by check. Only under extremely unusual circumstances may daily receipts be used to make purchases. If daily receipts are used to make refunds or purchases, the Concessionaire will document both the occurrence and the reason. The Department is amenable to discuss and may approve an alternate method of purchase, such as a credit card dedicated for the sole purchase of supporting business operations.

9. Purchases will always be supported by vendor invoices and cancelled checks payable to either the vendor or the imprest fund. The Concessionaire will maintain receipts for purchases.

10. The Concessionaire will assign a custodian to have physical possession of the imprest fund, whenever possible. If it is not possible to assign a custodian, the Concessionaire will provide in writing to the Park Manager an alternative internal control. Prior to any changes in the internal controls, the Concessionaire will provide to the Park Manager written notification of the change.

B. Acceptable Methods of Documenting Sales and Minimum Accounting Requirements

1. Electronic Cash Registers and computerized software systems

At a minimum, the register and software will:

- a) Have a visual display that faces customers.
- b) Produce customer's copy of sales receipt.
- c) Contain a locked-in tape and sequential numbering system for such tapes.
- d) If the Concessionaire uses a computerized software system, the system will contain an electronic record of each daily transaction by point of sale and/or by collection station and provide sequential numbered printed receipts for each transaction. Additionally, each record of transaction will be date stamped and timed and identify the cashier making the transaction.
- e) Record and accumulate sales and sales tax amounts.

The Concessionaire will:

- a) Provide daily supervision over employees using the registers.
- b) Clear or close all cash registers at the end of the day and retain all tapes.
- c) If the Concessionaire uses a computerized software system, the system will clear and close all transactions at the end of the day, maintain transactions electronically in the computer by date and time, and identify the person closing the system daily.
- d) Approve all refunds and voids or delegate this duty to an employee who normally does not handle cash.

At a minimum, customer refunds will be documented by customer signed sales slips indicating receipt of the refund or alternative method for electronic and online transactions. The document will state the reason for the refund; identify the cashier making the refund; date stamp and time the refund; and be maintained electronically within the point of sale system. If the customer does not have his copy of the sales receipt, a pre-numbered refund receipt signed by the customer will be issued (see minimum requirements for pre-numbered receipts).

2. Cash Register Receipts (electronic or computerized software system)

At a minimum, cash register receipts will:

- a) Clearly state the attraction, rental, or service purchased.
- b) Be designed to capture all pertinent sales data, such as: receipts for date and time; items or service purchased; amount of sale; amount of sales tax collected; total collected; and cashier's identification.
- c) Have a numbering sequence by point of sale and/or by collection station that is continuous and does not repeat itself any more often than every three years.
- d) Be issued to customers sequentially. Any breaks in the numbering sequence will be explained.

The Concessionaire will:

- a) Retain the record copy of all issued receipts and all copies of voided receipts.
- b) All receipts and copies of voided receipts will identify the cashier making the void and provide the reason for the void.
- c) Maintain a work sheet or schedule that reports the numbering sequences of receipts used and money collected by day.
- d) Provide adequate security over unused receipts and periodically inventory these receipts at least every six months.
- e) Provide adequate supervision over employees to assure previously issued receipts are not resold.

At a minimum, customer refunds should be documented by the customer's signature on the original receipt. If the customer does not have the original receipt (his copy), then a refund receipt will be issued.

3. Pre-numbered Receipts and Tickets

At a minimum, pre-numbered receipts and tickets will:

- a) Clearly state the attraction or service purchased.
- b) Be designed to capture all pertinent sales data, such as: receipts for date; customer's name; items or service purchased; amount of sale; amount of sales tax collected; total collected; and salesperson's name or initials.
- c) Be at least two-copied (customer and record copy), each clearly identified.
- d) Have a numbering sequence that is continuous and does not repeat itself any more often than every three years. Numbering sequence will be supported by vendor's invoice at a minimum.
- e) Be issued to customers sequentially. Any breaks in the numbering sequence will be explained.

The Concessionaire will:

- a) Retain the record copy of all issued receipts and all copies of voided receipts.
- b) All receipts and copies of voided receipts will identify the cashier making the void and provide the reason for the void.
- c) Maintain a work sheet or schedule that reports the numbering sequences of receipts/tickets used and money collected by day.
- d) Provide adequate security over unused receipts and periodically inventory these receipts at least every six months.
- e) Provide adequate supervision over employees to assure that previously issued tickets are not resold.

At a minimum, customer refunds should be documented by the customer's signature on the original pre-numbered receipt. If the customer does not have the original pre-numbered receipt (his copy), then a pre-numbered refund receipt will be issued.

C. Wedding, Memorial Services, and Events ("Special Events")

1. The Concessionaire will provide the customer a written contract for each Special Event it books at the Park. The contract will be pre-numbered, dated, and time stamped. The contract will include details of booking fees requested and collected; amount of balance due and date balance is due; client name; address; phone number; date of Special Event; number of people expected to attend; any and all subcontractors; client requirements; and any other pertinent information needed to organize the Special Event.
2. The Concessionaire will adequately report, and pay the Park any Park entrance fees or Park use fees collected for each contract. Park entrance fees and use fees will not be waived for the Special Event, unless pre-approved by the Park Manager.
3. The Concessionaire will record all contracts by date and maintain records by the Special Event date. The records will document any deposits, booking fees, fees charged for organizing the Special Event, fees in arrears, and late fees.
4. If a contract is canceled or voided, it will be logged as canceled and any refunded amounts will be documented.
5. The Concessionaire will provide the Park Manager copies of all contracts which document, monthly, each Special Event contract booked in the Park by the Concessionaire. The copies will be submitted with the Monthly Report of Gross Sales and will support the subcontract and contract revenue reported on the Monthly Report of Gross Sales.
6. When contracted Special Events are held in the Park, payments will go through the Concessionaire's bank account that is used solely for concession Agreement operations and is separate from any non-concession agreement operations.

D. Transfer to Electronic Format

1. The Department supports the Concessionaire's transfer of original paper documents to an electronic record-keeping system. This will be supported if the Concessionaire uses a record keeping system that: (1) accurately reproduces the paper original records; (2) manages electronic records as a duplicate or substitute copy of the original paper records; and (3) converts the electronic records back into legible, readable, and capable-of-being-copied, paper documents; and can be provided upon the Department's request.
2. The Department will have access to the electronic records and the electronic recordkeeping system for inspection and copying during Park Manager quarterly evaluations, Division compliance evaluations, Department audits, or compliant investigations.
3. In general, the original paper record may be disposed of any time after it has been transferred to an electronic recordkeeping system. However, the original paper record will not be disposed of if the electronic copy would not accurately reproduce the original record.

4. If records are maintained electronically, the Concessionaire will ensure the electronic records comply with this Agreement's record retention and access regulations pursuant to Chapter 119, Florida Statutes, which requires at a minimum the Concessionaire make available and retain the records for the life of this Agreement.
5. The Concessionaire will ensure that their electronic recordkeeping system:
 - a) Has reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of the records kept in electronic format;
 - b) Is capable of retaining, preserving, retrieving, and reproducing the electronic records;
 - c) Is able to readily convert paper originals stored in electronic format back into legible and readable paper copies; and
 - d) Has adequate records management practices in place.
6. The Concessionaire will manage, at a minimum, their electronic recordkeeping system according to these best management practices:
 - a) Labeling electronically maintained records;
 - b) Providing secure storage of electronic data;
 - c) Providing internal controls of the system to prevent manipulation of data and information;
 - d) Creating back-up electronic file copies;
 - e) Observing quality assurance for electronic recordkeeping through regular evaluations of the system; and
 - f) Retaining paper copies of records which cannot be accurately or completely transferred to the electronic recordkeeping system.

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EXHIBIT D
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

Date

Signature of Preparer

Date

Preparer Name

Return this form to the Department's Agreement Manager.

EXHIBIT E

Monthly Profit and Loss Statement for _____ (month) _____ (year)
(due with each Monthly Report of Concessionaire's Total Gross Sales)

Concessionaire: _____ Park: _____

	Services	Gross Sales	Less Commissions Paid	Less Cost of Goods Sold	Less Operating Expenses	Less Taxes	Net Profit/Loss
1		_____	_____	_____	_____	_____	_____
	Comments:						
2		_____	_____	_____	_____	_____	_____
	Comments:						
3		_____	_____	_____	_____	_____	_____
	Comments:						
4		_____	_____	_____	_____	_____	_____
	Comments:						
5	Totals:	_____	_____	_____	_____	_____	_____

Add a second page, as needed, to provide an inclusive list of services, including revenue from subcontractors.

Prepared by: _____

Capacity: _____

Date Submitted: _____

CERTIFICATION: I certify this monthly profit and loss 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: _____

EXHIBIT F
Profit and Loss Statement for _____ (year)
(due April 30 of the following year)

Concessionaire: _____ Park: _____

	Services	Gross Sales	Less Commissions Paid	Less Cost of Goods Sold	Less Operating Expenses	Less Taxes	Net Profit/Loss
1		_____	_____	_____	_____	_____	_____
	Comments:						
2		_____	_____	_____	_____	_____	_____
	Comments:						
3		_____	_____	_____	_____	_____	_____
	Comments:						
4		_____	_____	_____	_____	_____	_____
	Comments:						
5	Totals:	_____	_____	_____	_____	_____	_____

Add a second page, as needed, to provide an inclusive list of services, including revenue from subcontractors.

Prepared by: _____

Capacity: _____

Date Submitted: _____

CERTIFICATION: I certify this annual profit and loss 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: _____

EXHIBIT G

Agreed-Upon Procedures For a Certified Public Accountant			
Review of Florida State Park Concession Operations			
Item No.	Procedures	Done By	Date
I.	<p>OVERALL OBJECTIVES AND TIME PERIOD</p> <p><u>Objective:</u> To determine the accuracy of the gross sales reported to the Department of Environmental Protection (DEP) for the audit period and compliance with the Minimum Accounting Requirements included in the Agreement. The audit time period is the calendar year.</p> <p><u>Reports are due to the Park Manager no later than the date indicated in the Minimum Accounting Requirements paragraph found in the Agreement.</u></p> <p>Required records for review:</p> <ol style="list-style-type: none"> 1. Concession Agreement 2. Monthly Reports of Gross Sales 3. Cash register tapes (select a sample of several days to form an opinion) 4. Cash receipts or sales journals 5. Bank statements, including validated deposit slips 6. General ledger 7. Sales tax forms (DR-15) 8. Quarterly evaluation reports. 9. Other financial records, including expenditure documentation, if records listed above are not available or are not adequate to form an opinion on the accuracy of reported gross sales. 		
II.	<p><u>OBJECTIVE:</u> To determine if gross sales have been properly reported and commission fees properly remitted to DEP. In addition, determine compliance with the Minimum Accounting Requirements.</p> <p>A. Review source documents to determine if the Concessionaire provided a Monthly Statement of Gross Sales to DEP in the format established in Exhibit D of the Agreement by the 20th of the following month.</p> <ol style="list-style-type: none"> 1. If payments were late, the late payments will result in the assessed amount of 1% of the current amount due for each day the payment is late. <p>B. Has the Concessionaire based the Monthly Statement of Gross Sales on source documents and books of original entry?</p>		

Item No. (cont.)	Procedures	Done By	Date
	<ol style="list-style-type: none"> 1. Obtain and examine daily cash journals, general ledger, and bank statements which reflect gross sales reported by the Concessionaire. 2. Schedule this information on a spreadsheet. Note any differences. 3. Create a spreadsheet of point-of-sales documentation (daily cash register tapes or receipts) for sales. Search for revenues which may not have been reported to the DEP. 4. Compare point-of-sales (typically cash register tapes) with sales amounts reported in the cash journal. Depending on the volume of transactions, pick a judgmental sample of days for detailed testing. Test until an opinion is formed regarding the accuracy of the cash journal based on daily sales receipts. 5. Evaluate rental transactions to ensure there is adequate documentation to support use of equipment. <p>C. Determine whether a subcontractor operated during the review period. If so:</p> <ol style="list-style-type: none"> 1. Determine if the Concessionaire included gross sales from the subcontract operation in the gross sales reported on the Monthly Statement of Gross Sales. 2. Create a spreadsheet of point-of-sale documentation (daily cash register tapes or receipts) for subcontractor sales. 3. Compare subcontractor point-of-sales source documentation with monthly sales reports to DEP to determine the accuracy of sub-contractor sales. <p>D. Determine whether the Concessionaire paid the monthly visitor service fees equal to the established percentage of gross sales for all operations of the Concessionaire.</p> <ol style="list-style-type: none"> 1. Compare amounts reported on the Monthly Reports of Gross Sales to amounts obtained from source documents and scheduled in step II-B above. Note differences. <p>E. Does the gross sales reported to the Department on monthly reports agree with gross sales listed in other reports?</p> <ol style="list-style-type: none"> 1. Use spreadsheet of gross sales figures obtained from the Monthly Gross Sales reports. Compared to amounts reported on quarterly evaluation reports, Profit and Loss Statements, and DR-15 forms. Analyze the DR-15 gross sales forms and evaluate whether the reported amount is equal to gross sales reported to the Department. 		

Item No. (cont.)	Procedures	Done By	Date
<p>F.</p> <p>G.</p>	<p>Evaluate internal control for cash handling and accounting. Prepare a conclusion on the adequacy of internal controls and any deficiencies noted.</p> <ol style="list-style-type: none"> 1. Are sales receipts offered to customers regardless of the amount? 2. Are signs posted reminding customers to ask for a receipt? 3. Is a bank account maintained for the sole purpose of the concession operations? 4. Are bank deposits made in compliance with the Operations Manual? <ol style="list-style-type: none"> a. If receipts exceed \$2000, are they deposited intact daily? 5. Are customer refunds supported by customer signed documents? 6. Are duties associated with handling, recording, and reconciling receipts and disbursements assigned to different employees whenever possible? 7. Are cash boxes secured? 8. Determine whether the cash register and other methods of revenue collection account for all items available for sale. Is there a register category for all items? <p>Summarize findings and prepare calculations of fees owed to DEP if gross sales were under reported. Prepare a report that includes a conclusion on the accuracy of gross sales reported to DEP, compliance with the Minimum Accounting Requirements, and a summary of monthly gross sales based on this review.</p>		

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EXHIBIT I
Area Map



Facilities & Space

1. Seahorse Stables (BL192001), including tack room, office, gift shop, holding stables, and adjacent corrals.
2. Restroom (BL192004).
3. Picnic area and parking lot.
4. Barn Building (Building # not assigned).
5. Access to beach and Horse Corridor.
6. Horse turnout pasture.
7. Entrance gate.