

CONCESSION AGREEMENT – AMENDMENT #1
(Florida Caverns State Park)

THIS AMENDMENT #1 TO CONCESSION AGREEMENT (“Amendment #1”) is entered into between the State of Florida Department of Environmental Protection (“Department”), a state agency, by and through its Division of Recreation and Parks (“Division”), 3900 Commonwealth Boulevard, Tallahassee, Florida 32399, and Florida Caverns Gift Shop, LLC (“Concessionaire”), 3345 Caverns Road, Marianna, Florida 32446.

RECITALS

WHEREAS, on or about April 1, 2017, the Department and Concessionaire entered into a Concession Agreement (DEP Agreement No. CA-1616) (the “Concession Agreement”); and

WHEREAS, pursuant to the Concession Agreement, the Concessionaire agreed to provide certain goods and services at Florida Caverns State Park (the “Park”), as such goods and services are more particularly described in the Concession Agreement; and

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

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. Recitals:

The Recitals are true and correct and are incorporated herein by reference.

2. Modifications to the Agreement:

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

“F. Compensation: The Concessionaire will pay the Department a commission fee based on the following schedule and pursuant to the terms set forth in this Agreement, including, but not limited to, Special Conditions, Section F, and General Conditions, Sections 17 and 18 herein:

1. Period 1:

From April 1, 2017 through March 31, 2018 (“Period 1”), the Concessionaire will pay to the Department a commission fee equal to 6% of Total Gross Sales each month, but not less than \$33,000.00 annually (“Period 1 Minimum Guarantee”), which will be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida’s Commercial Rental Tax rate); and

2. Period 2:

From April 1, 2018 through March 31, 2019 (“Period 2”), the Concessionaire will pay to the Department a commission fee equal to 12% of Total Gross Sales each month, but not less than \$67,000.00 annually (“Period 2 Minimum Guarantee”), which will be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida’s Commercial Rental Tax rate). The

Period 2 Minimum Guarantee will be reduced by a pro rata-based amount for the partial year of October 1, 2018 through March 31, 2019; and

3. Period 3:
From April 1, 2019 through March 31, 2020 ("Period 3"), the Concessionaire will pay to the Department a commission fee equal to 6% of Total Gross Sales each month, plus the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate); and
4. Period 4:
From April 1, 2020 through March 31, 2021 ("Period 4"), the Concessionaire will pay to the Department a commission fee equal to 12% of Total Gross Sales each month, but not less than \$67,000.00 annually ("Period 4 Minimum Guarantee"), which will be assessed and any shortfall remitted at the end of each year of this Agreement, plus, the applicable State Use Tax, (a percentage of the amount paid to the Department, equal to Florida's Commercial Rental Tax rate); and
5. Period 5:
From April 1, 2021 through December 31, 2022 ("Period 5"), the Concessionaire will pay to the Department a commission fee equal to 18% of Total Gross Sales each month, but not less than \$96,000.00 annually ("Period 5 Minimum Guarantee"), which will be assessed and any shortfall remitted at the end of each year of this Agreement, plus, 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 beverage, vending, and other permissible services generated from the Concessionaire's Services at or associated with the Park. This includes all sales made or advertised within the Park, advertised on the Concessionaire's website associated with the Park, transactions conducted through the point of sale and bank accounts utilized by the Concessionaire for its Park operations, and sales generated by subcontractors or related entities whose sales are associated with the Concessionaire's authorized operations at the Park. Total Gross Sales does not include:

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

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

- b. Concessionaire employee standards: Paragraph 16 of the General Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

"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."

- c. Public Records: Paragraph 19 of the Agreement is hereby deleted in its entirety and replaced with the following language:

"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 public records required by the Department to perform the services under this Agreement.

b. This Agreement may be unilaterally canceled by the Department if the Concessionaire fails to either provide to the Department all public records relating to this Agreement upon request or allow the records to be inspected or copied within a reasonable time.

c. If Concessionaire meets the definition of "Contractor" found in Section 119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

1. Pursuant to Section 119.0701, F.S., a request to inspect or copy public records relating to this Agreement must be made directly to the Department. If the Department does not possess the requested records, the Department 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 s. 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"**

- d. Sexual predator and offender check: Paragraph 35 of the General Conditions of the Agreement is hereby deleted in its entirety and replaced with the following language:

"35. Sexual predator and offender check. The Department will conduct a sexual predator and sexual offender check on the Concessionaire's Agreement Manager and officers. The Concessionaire will conduct a sexual predator and sexual offender check on all employees and subcontractors prior to executing this Agreement and will conduct a sexual predator and sexual offender check 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 that file available to the Department during the Concessionaire's regular office hours. The Concessionaire will not employ any person within the Park 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"). The Concessionaire will be responsible for including this provision in all subcontracts entered into under this Agreement. The Department has the right to conduct criminal background checks and additional sexual predator and sexual offender checks on the Concessionaire's Agreement Manager, officers, employees, and subcontractors during the term of this Agreement. If the Concessionaire or any subcontractor

knowingly employs a sexual predator or sexual offender, or fails to perform the required research of the FDLE list or the NSOPW, the violation will be cause for the Department's immediate unilateral termination of this Agreement."

- e. Minimum Accounting Requirements: The following language is added to Paragraph A of Exhibit C of the Agreement:

"10. 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."

- f. Food consumption: The following language is removed from Exhibit D:

"Total Funds from Concessionaire Employee Food Consumption: - \$_____"

- 3. Ratification:

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

- 4. Execution in Counterparts:


This Amendment #1 may be executed in two identical counterparts, each of which will be deemed an original. The two, executed, identical counterparts will constitute this Amendment #1. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. Any party transmitting an electronic signature will provide the inked original thereof to the receiving party, at the receiving party's request.

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WHEREFORE, the parties hereto have caused this Amendment #1 to be executed as of the day and year last set forth below.

FLORIDA CAVERNS GIFT SHOP, LLC

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
Managing Member or Authorized Signatory

By: 
Secretary's signature or designee

Printed Name: Robert DeGroot

Printed Name: Barbara Goodman

Title: owner

Title: Deputy Secretary

Date: 08/26/19

Date:
Approved as to form and legality:


DEP Attorney