

CONCESSION AGREEMENT

This Concession Agreement made this _____ day of _____, 20__, by and between The City of Key West, a municipal corporation, (hereinafter referred to as "City") and Key West Wild Bird Center, Inc., a non-profit corporation of the State of Florida, (hereinafter referred to as "Concessionaire").

Whereas, the City is the owner of the property described in Exhibit "A", attached hereto, located at 1801 White Street, Key West, in Monroe County, Florida (hereinafter referred to as the "Property"); and

Whereas, the City desires to make a portion of the Property available to the Concessionaire for the operation of a wildlife center, providing rehabilitation and release or rehabilitation and permanent educational habitat for injured wildlife; and

Whereas, the City requires relocation of chickens out of the City; and

Whereas, the Key West Wild Bird Center, Inc. in exchange for use of the subject property described above agrees to administer a chicken relocation program as agreed upon by both parties.

Now, therefore, the parties mutually agree as follows:

1. Concession Use: Operation of a wildlife center, providing rehabilitation and release or rehabilitation and permanent educational habitat for injured wildlife and relocation of chickens out of the City. The City grants Concessionaire the right to use the Property to operate Concessionaire's headquarters. Such use shall be limited to retrieving, rehabilitating, and releasing injured migratory birds, land mammals and reptiles and conducting educational classes dealing with migratory birds, land mammals and reptiles as well as administer the chicken relocation program.

The Concessionaire expressly agrees to accept all healthy and unhealthy chickens which are delivered to the Property by the general public or the City. The Concessionaire expressly agrees herein to relocate no less than every two months all healthy chickens housed on the Demised Premises to a location outside the City of Key West pursuant to the direction of the City Manager or his designee. In the event of an impending hurricane or other natural disaster, Concessionaire shall transport all chickens out of the City pursuant to the direction of the City Manager or his designee.

No later than 90 days from the effective date of this agreement, Concessionaire shall relocate all wildlife (to include chickens) to the aviary located on the Property. Thereafter, all wildlife (to include chickens) shall be housed in the aviary.

At the City's option and expense a free standing "holding" aviary for the chickens may be constructed as an alternative to relocating all wildlife (to include chickens) to the main aviary.

Concessionaire agrees to operate the facilities in accordance with all required US Fish and Wildlife and FWC permits and all wildlife shall be kept in accordance with the general requirements governing captive wildlife, pens, and caging as set forth in Rules 68A-6.004, 68A-6.0041 and 68A-6.0023, F.A.C.

Concessionaire further agrees to take all steps necessary to assure that all fecal material is contained and disposed of in accordance with all applicable permits and regulations.

2. Demised Premises: The buildings and grounds as outlined on "Exhibit A" attached hereto and incorporated herein. City reserves the right from time to time with good cause, upon at least sixty (60) days advance written notice to relocate Concessionaire to other Demised Premises within the Property, during the term of this Concession Agreement, so long as usable area so substituted equals or exceeds the usable area of the Demised Premises; provided however that Concessionaire shall have the right at its sole option and as its sole remedy, to terminate the Concession Agreement upon ninety (90) days advance written notice which right must be exercised, if at all, within fifteen (15) days after receipt of City's relocation notice, which relocation notice may be withdrawn by City within ten (10) days after City's receipt of Concessionaire's termination notice, in which event Concessionaire's attempted termination shall be null and void and the Agreement shall continue in full force and effect in accordance with its terms. In the event that the City shall relocate Concessionaire to other space within the Property, City shall pay the reasonable relocation costs of Concessionaire in connection therewith, but City shall not have any other liability with respect to any such relocation.

3. Concession Term: The City grants to Concessionaire the Property for a term of five years. This Agreement shall commence upon its execution.

4. Concession Fees: Concessionaire shall pay an annual fee of \$10.00 to the City. Concessionaire further agrees that any income derived from the rental of the pavilions must be utilized for the chicken re-location program.

The City expressly agrees herein to compensate Concessionaire for the care, habitat maintenance, medical supplies, and relocation of the chickens in the amount of \$4,166.66 per month for the entire term of the Agreement. Concessionaire shall maintain accounting records sufficient to segregate the aforementioned operating costs of the wildlife center from the Concessionaire's obligations pursuant to this paragraph. Concessionaire will provide the City a full annual report of such costs and effectiveness of the chicken location program. Monthly compensation will be reviewed annually by the City and the Concessionaire to ensure the costs of administering the chicken relocation program is fair and reasonable to both parties. Any change in the monthly compensation will require the agreement of both parties. Additionally, the monthly compensation amount is subject to continued appropriation in the City of Key West annual budget.

5. Employees: At its own expense, the Concessionaire shall furnish employees as may be necessary in the operation of the Concessionaire's activities pursuant to this Agreement. Employees of Concessionaire shall not accrue any of the rights or benefits of a City employee.

6. Utilities: With the exception of phone service and television, the City shall be responsible to pay for all public utility services utilized by Concessionaire on the Property in furtherance of this Agreement, including but not limited to electricity, water, solid waste and sewer service. Concessionaire expressly agrees herein to be responsible for payment of telephone and television service.

7. Compliance with laws: The Concessionaire agrees that it will, at its sole cost and expense, comply with all federal, state and local laws and ordinances and further agrees that it will abide by all applicable rules and regulations that are now in or hereafter may be enforced by all applicable rules and regulations that are now in or hereafter may be enforced by the City.
8. Insurance: At Concessionaire's sole cost and expense, Concessionaire will secure, pay for, and file with the City, during the entire Term hereof, an occurrence form commercial general liability policy, covering the Demised Premises and the operations of Concessionaire and any person conducting business in, on or about the Demised Premises in a at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Lease, Concessionaire shall provide the minimum limits of liability coverage as follows:

Commercial General Liability	\$2,000,000	Aggregate
	\$2,000,000	Products Aggregate
	\$1,000,000	Any One Occurrence
	\$1,000,000	Personal Injury
	\$300,000	Fire Damage/Legal

Concessionaire shall also procure the following insurance coverage:

- (i) "All risk" property insurance, including theft coverage, written at replacement cost value and a replacement cost endorsement insuring Concessionaire's improvements and betterments, fixtures, furnishings, equipment and any other property belonging to Concessionaire.
- (ii) Workers compensation coverage as required by the provisions of Florida statute.

Any consignment agreement used by Concessionaire must provide that consignor acknowledge that the City does not have any liability whatsoever for any damage which may be done to items left in the Demised Premises on consignment. The Concessionaire must provide the City with a copy of any consignment agreement used by Concessionaire regarding Demised Premises. City shall not be responsible for damage to any property belonging to Concessionaire or consignor. Concessionaire completely indemnifies the City with regard to any claims made by any consignor for any reason. From time to time during this Lease, at City's request, Concessionaire shall (i) procure, pay for and keep in full force and effect such other insurance as City shall require and (ii) increase the limits of such insurance as City may reasonably require.

Any general liability or other policy insuring the City does not provide any contributing or excess coverage for Concessionaire. The policies Concessionaire procures for Concessionaire's exposure are the only coverage available to Concessionaire.

Concessionaire shall furnish an original Certificate of Insurance indicating, and such policy providing coverage, to City named as "Additional Insured" on a PRIMARY and NON CONTRIBUTORY basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its equivalent, INCLUDING A "Waiver of Subrogation" clause in favor of City on all policies. Concessionaire will maintain the General Liability coverage summarized above with coverage continuing in full force including the "additional insured" endorsement until at least 3 years beyond the termination of this Lease.

Concessionaire's insurance policies shall be endorsed to give 30 days written notice to City in the event of cancellation or material change, using form CG 02 24, or its equivalent.

All policies of insurance required to be carried by Concessionaire pursuant to this Lease shall be written by responsible insurance companies authorized to do business in Florida with an AM Best rating of A-VI or better. Any such insurance required to be carried by Concessionaire hereunder may be furnished by Concessionaire under any blanket policy carried by it or under a separate policy therefore. Certificates shall be delivered to City prior to the commencement of the Term of this Lease and, upon renewals, but not less than sixty (60) days prior to the expiration of such coverage. In the event Concessionaire shall fail to procure such insurance, City may, at its option, procure the same for the account of Concessionaire, and the cost thereof shall be paid to City as an additional charge upon receipt by Concessionaire of bills therefore, together with an administrative fee equal to fifteen (15%) percent to cover the cost of the City's efforts to procure such policy.

Certificates of Insurance submitted to City will not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation/material change notice endorsements, and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements will also be required if necessary. **PLEASE ADVISE YOUR INSURANCE AGENT ACCORDINGLY.**

9. Indemnification:

Concessionaire does hereby agree to indemnify, defend, and save City, its respective officers, directors, agents and employees harmless from and against any and all liability for any injury to or death of any person or persons or damage to property (including adjoining property for environmental damage) in any way arising out of or connected with the conditions, use or occupancy of the Demised Premises, or in any way arising out of the activities of Concessionaire, its agents, employees, licensees or invitees on the Demised Premises and/or the building, including reasonable attorney's fees and court costs incurred by City in connection therewith, such legal expenses to include costs incurred in establishing the indemnification and other rights agreed to in this Paragraph, excepting, however, only liability caused by City's gross negligence in its failure to perform any of City's covenants, obligations or agreements of this Lease. Nothing herein is intended to waive the sovereign immunity afforded to City pursuant to Florida law, including section 768.28, Florida Statutes.

The indemnification obligations under this Section shall not be restricted in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Concessionaire under Workers' Compensation acts, disability benefits acts, or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of Concessionaire or of any third party to whom Concessionaire may

subcontract work. This indemnification shall continue beyond the date of termination of the Agreement.

10. Repair and maintenance: The City shall be responsible for maintaining the structural and mechanical aspects of the improvements located on the Property, including plumbing and electrical. The Concessionaire shall be responsible for daily cleaning of the Property, to include the restrooms, and shall be responsible for the purchase of necessary supplies and/or materials to do so.

11. Termination by City: The City shall have the right to terminate this Agreement after the expiration of 90 days from the date written notice has been given by the City to the Concessionaire or upon the happening of any of the following:

- (a) The abandonment or discontinuance of operation by Concessionaire.
- (b) The failure of the Concessionaire to perform any of the terms and conditions of this Agreement after the expiration of 30 days from the date written notice has been given by the City to the Concessionaire to correct such default or breach.
- (c) In the event of emergency, the City requires use of the Property.

12. Termination by Concessionaire: The Concessionaire shall have the right to terminate this Agreement after the expiration of 90 days from the date written notice has been given by the Concessionaire to the City.

13. Access to Pavilions: Concessionaire expressly agrees herein that access by the general public to the McCoy Indigenous Park will be between the hours of 9:00 AM and 5:00 PM every day of the week including all holidays. Concessionaire shall have exclusive right to use and rent the two pavilions located on the property for the purpose of making them available to the public for scheduled events.

14. Section 1.31: Unless waived by the City commission, the Concessionaire must submit to the appropriate background check pursuant to Section 1.31 of the Key West Code of Ordinances. Compliance with Section 1.31 is a condition of the effective commencement of this Agreement.

15. Assignment, Sub-lease, Transfer of Control: This concession shall be a privilege to be held by the Concessionaire for the benefit of the public. The concession cannot under any circumstances be assigned, or control thereof be transferred, by any means whatsoever without the prior written consent of the City, and then only under such conditions as the City may establish. Any purported transfer of control of or sublease or assignment of this concession without prior written authorization by the City Commission shall be null and void. The authorization shall be at the absolute discretion of the City.

16. City's Right of Entry: The City or its agents shall have the right to enter upon the

Demised Premises at all reasonable times to examine the condition and use thereof, provided only that such right shall be exercised in such manner as not to interfere with the Concessionaire in the conduct of the Concessionaire's operations on said Demised Premises. If the said Demised Premises are damaged by fire, windstorm, or by any other casualty which caused the Demised Premises to be exposed to the elements, then the City may enter upon the Demised Premises to make emergency repairs. City may enter upon the Demised Premises to make renovations and repairs of a non-emergency nature by giving reasonable notice to the Concessionaire, and in such a manner as to minimize any inconvenience to both parties.

17. **Captions:** Headings labeling any provision herein are for convenience only, and shall not in any way be construed as affecting, limiting expanding, or stating the contents or intent of this Agreement.

18. **Entire Agreement:** This Agreement sets forth all the promises and agreements between City and Concessionaire. No subsequent alteration, amendment or change to this Agreement shall be binding upon City or Concessionaire unless reduced to writing and duly executed by both parties.

19. **Partial Invalidity:** If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

20. **Governing Law:** This Agreement shall be construed and governed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.


ATTEST:

Cheryl Smith, City Clerk

CITY OF KEY WEST

By: _____
Bogdan Vitas, City Manager


ATTEST:



ELLEN R. WESTBROOK

CONCESSIONAIRE:

Key West Wild Bird Center, Inc.

By: 

THOMAS F. SWEETS
DIRECTOR
KEY WEST WILDLIFE CENTER

Exhibit "A"

