



100 JAMES ROAD  
JEKYLL ISLAND, GA 31527  
(912) 635-4000

## **Request for Proposal # 367**

for

Vendor Services for Provision of Historic Carriage Tours and  
Beach Trail Rides

Date Issued: September 22, 2021

### **Submission Deadline:**

Friday, November 5, 2021  
at 2:00p.m. Eastern Time

## SECTION 1

### GENERAL INFORMATION

This is an invitation to submit a proposal to establish a contract with an interested qualified professional to provide Jekyll Island Authority with the services as indicated herein. The Authority certifies that the use of competitive sealed bidding will not be practicable or advantageous to the Authority or the State of Georgia in completing the acquisition described in this Request for Proposal ("RFP"). This RFP process will be conducted to gather and evaluate responses from a company or person desiring to do business with the Jekyll Island Authority ("Proposer") for a potential award. After evaluating all the Proposals received prior to the Close Date of this RFP and following negotiations and resolution of contract terms (if any), the preliminary result will be submitted to the Board of Directors for consideration and approval. Subject to and following Board approval, a contract will be executed.

**Jekyll Island.** Jekyll Island is a unique, state-owned barrier island that balances conserving and preserving natural, historic, and cultural resources with providing accessible, affordable recreation, vacation, and educational opportunities for the people of Georgia and beyond. Surrounded by picturesque marshes and breathtaking oceanfront, Jekyll Island is a peaceful costal habitat. The barrier island contains one of the few remaining intact maritime forests on the Eastern seaboard. Originally inhabited by Native Americans, Jekyll was explored by the French and Spanish, and first settled by the English. From early settlers to America's social elite to today's young explorers, this special barrier island has captured imaginations for generations.

**Jekyll Island Authority.** Recognizing that our island's natural beauty and vibrant history set us apart from any other coastal destination, the Governor and the Georgia State Legislature established the island as a State Park in 1950 and entrusted its care to the Jekyll Island Authority. Since its inception, the Authority has set up parameters to protect the island ecosystem, while ensuring it remains an inviting place for residents and guests. Today, the Authority is a self-supporting state entity responsible for the management and stewardship of Jekyll Island.

#### *Our Mission*

As stewards of Jekyll Island's past, present, and future, we are dedicated to maintaining the delicate balance between nature and humankind.

#### *Our Vision*

Through progressive stewardship and excellent customer service, Jekyll Island will be recognized as a sustainable conservation community that is the choice destination among all who experience its unique environment, services, and amenities.

#### RESOURCES:

Jekyll Island Ordinances:

[https://library.municode.com/ga/jekyll\\_island\\_authority/codes/code\\_of\\_ordinances](https://library.municode.com/ga/jekyll_island_authority/codes/code_of_ordinances)

Code of Georgia: <http://www.lexisnexis.com/hottopics/gacode>

## SECTION 2

### DEFINITIONS

- 2.1 Contractor:** Contractor means any person or business having a contract with Jekyll Island Authority.
- 2.2 Jekyll Island-State Park Authority ("JIA" or "Authority" or Jekyll Island Authority):** a public authority created by the General Assembly of the State of Georgia and deemed an instrumentality of the State of Georgia and a public corporation.
- 2.3 Professional Services:** Those services as outlined in this Request for Proposal and the Proposal that Proposer will perform during this Project.
- 2.4 Project:** The Professional Services and work and collaboration between JIA and Contractor and their team, staff, consultants, and representatives to carry out the purpose of this Request for Proposal.
- 2.5 Project Manager:** That staff member and day-to-day representative of the Jekyll Island Authority for this Project. The Project Manager is the point of contact for this Project.
- 2.6 Proposal:** An offer or statement of a price and project description in response to a request for services to be rendered to the JIA.
- 2.7 Proposer:** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity that has submitted a proposal to the Jekyll Island Authority in such capacity before a contract has been entered into between such party and the JIA.
- 2.8 Request for Proposal ("RFP"):** Those documents, including documents attached or incorporated by reference, utilized for soliciting proposals in accordance with the RFP procedures and instructions set forth herein. The Request for Proposal, Legal Advertisement, General Conditions and Instructions to Proposers, Specifications, Special Conditions, Scope of Work, Addendum, and/or any other pertinent documents form a part of the Proposal and by reference are made a part hereof.

## SECTION 3

### SCHEDULE OF EVENTS

**3.1 Schedule of Events.** The schedule of events represents the JIA's best estimate of the schedule that will be followed. However, delays to the process may occur which may necessitate adjustments to the proposed schedule. If a component of this schedule is delayed, the rest of the schedule may be shifted as appropriate. Any changes to the dates up to the closing date of the RFP will be publicly posted prior to the closing date of this RFP. After the close of the RFP, the JIA reserves the right to adjust the remainder of the proposed dates on an as-needed basis.

Description	Date and Time
Deadline for written questions	10/8/2021 at 2:00 p.m. ET
Responses to Written Questions	10/15/2021 at 5:00 p.m. ET
Proposals Due / Close Date Proposal Opening Date	11/5/2021 at 2:00 p.m. ET
Proposal Evaluation Completed (on or about)	One to Three Weeks after Close Date
Interviews Begin	Four to Six Weeks after Close Date
Negotiations (discretionary)	Four to Six Weeks after Close Date
Notice of Intent to Award (emailed) (on or about)	Four to Six Weeks after Close Date
Resolution of Contract Terms	Prior to Consideration of Board Approval
Consideration of Board for Approval - estimated	12/14/2021
Estimated Lease Start Date	January 6, 2022

**3.2 Proposer Questions and Inquiries.** Questions and requests for clarification may be submitted up to the date and time set forth above via email to Yank Moore at [ymore@jekyllisland.com](mailto:ymore@jekyllisland.com) . No questions will be accepted after this. **Contact with other staff of the Authority or members of the Board regarding this RFP is strictly prohibited and will result in disqualification of the Proposer.** A final summary of the questions received and the Authority's responses will be posted on the Georgia Procurement Registry, the Authority website, and, if answers to submitted questions materially change the conditions and specifications of this RFP, sent periodically via email to those who have requested the RFP no later than the date and time set forth above. No questions other than written will be accepted. No response other than written will be binding upon the JIA. Proposers are cautioned that the JIA may or may not elect to entertain late questions or questions submitted by any other method than as directed by this section. In submitting your question, you must include your company name, your question, and cite the relevant section of the RFP.

- 3.3 Negotiations.** Following any submissions or presentations, the finalist(s) may be re-evaluated. Should it become necessary, JIA may negotiate, verbally or in writing, with the Proposer(s) whose proposal(s) is/are determined to be most advantageous to JIA. Such Proposer(s) may be asked to submit a revised written offer. However, JIA reserves the right to accept a proposal as submitted; accordingly, it is imperative that all Proposers present their best offers in their initial submission.
- 3.4 JIA's Right to Request Additional Information.** Prior to contract award, the JIA must be assured that the selected Proposer has all the resources to successfully perform under the contract. This includes, but is not limited to, adequate number of personnel with required skills, availability of appropriate equipment in sufficient quantity to meet the needs of the JIA, financial resources sufficient to complete performance under the contract, and experience in similar endeavors. If, during the evaluation process, the JIA is unable to assure itself of the Proposer's ability to perform, if awarded, the JIA has the option of requesting from the Proposer any information deemed necessary to determine the Proposer's ability. If such information is required, the Proposer will be so notified and will be permitted a certain period to submit the information requested.
- 3.5 Notice of Intent to Award.** The prospective successful Proposer, if any, will be notified by e-mail of the Authority's Notice of Intent to Award the contract to the Proposer. The Notice of Intent to Award is not notice of an actual contract award; instead, it is notice of the JIA's expected contract award(s) pending resolution of the protest process and Board approval.
- 3.6** Resolution of contract terms may commence with the prospective successful Proposer. The draft contract format (as may be amended in JIA's sole discretion) will be the **only** acceptable document for execution.
- 3.7** Upon mutual agreement of contract terms, the attached draft contract shall be constructed and forwarded to the prospective successful Proposer for execution.
- 3.8** Upon execution of the contract by the prospective successful Proposer, a recommendation will be made to the Authority's Board of Directors for consideration. A reminder: The Notice of Intent to Award and execution of the contract by the prospective successful Proposer does not guarantee an award of this contract, which is determined by a vote of the Board of Directors.
- 3.9** Upon the Board's approval and subsequent expiration of protest period, the contract will be executed.
- 3.10** The Proposer will be required to submit its certificate(s) of insurance and endorsement(s) prior to the issuance of a Notice to Proceed.
- 3.11 Notice to Proceed.** Upon a duly executed contract and submission of all required documentation, a Notice to Proceed will be issued as scheduled. The successful proposer shall not commence work under this Invitation to Bid until a written contract

is awarded and a Notice to Proceed is issued by the Project Manager. If the successful Proposer does commence any work or deliver items prior to receiving official notification, he does so at his own risk.

**3.12** Upon execution of the contract, the unsuccessful Proposers will be notified.

## SECTION 4

### RFP PROPOSAL FACTORS, SCORING, AND AWARD

All timely proposals will be evaluated in accordance with the following steps. The objective of the evaluation process is to identify the proposal which represents the best value to the Authority based on a combination of factors.

**Proposer consents to the Authority to contact any person or organization to make inquiries into legal, character, practical, financial, and other qualifications of Proposer. Proposer agrees that any person working on this Project may be subject to a criminal and financial background check.**

#### **4.1 Procedure.**

**4.1.1** The Authority will evaluate the submitted proposals.

**4.1.2** Based on this review, the proposals will first be evaluated as either "responsive" or "non-responsive." If a Proposal fails to meet a mandatory requirement, the Authority will determine if the deviation is material. An immaterial deviation will be processed as if no deviation had occurred. A material deviation will be cause for rejection of the Proposal.

**4.1.3** Responsive proposals will then be evaluated by an evaluation team for content and ranked in accordance of their merits.

**4.1.4** The evaluation team may recommend interviews with up to five (5) finalists. Those proposals not achieving finalist status will be eliminated from further consideration.

**4.1.5** The evaluation team may interview selected Proposers to clarify specific matters presented in their proposals, and as part of this process may request the submittal of additional information clarifying the issues discussed.

**4.1.6** The evaluation team will use the information gained during these discussions, along with information presented in the proposals, to rank the proposals.

**4.2 Factors.** The following factors will, at a minimum, be considered during the evaluation process:

- a)** The qualifications of the project team including a demonstrated solid track record working with a similar project or the Jekyll Island Authority;
- b)** The quality and completeness of the proposal package;
- c)** Demonstrated understanding of the uniqueness of Jekyll Island and the relationship of these tour offerings to the overall quality of Jekyll Island's visitor experience;

- d)** The quality of interview presentation and response to questions from interviewer;
- e)** Financial value of the project, in consideration of all payments-to or costs-incurred by the Authority;
- f)** The responsibility of the Proposer. A Proposer must be considered responsible to be eligible for a contract award. "Responsible" means the Proposer, whether a company or an individual, has appropriate legal authority to do business in the state of Georgia, a satisfactory record of integrity, appropriate financial, organizational and operational capacity and controls, and acceptable performance on previous governmental and/or private contracts, if any. Examples of non-responsibility include, but are not limited to: a Proposer's history of nonperformance or performance problems on other contracts (public or private); a record of financial difficulty, business instability, criminal sanctions, civil sanctions, or tax delinquency; or being debarred, suspended, proposed for disbarment, or declared ineligible or voluntarily excluded by any governmental entity (federal, state or local). A Proposer's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility. Non-responsibility will be determined on a case-by-case basis taking into consideration the unique circumstances of the individual RFP.
- g)** The best fit for Jekyll Island, which may include factors not listed here, such as advantages or disadvantages introduced or discovered during the proposal process. The Authority has determined that it is best to define its own needs, desired operating objectives, and desired operating environment. The Authority will not tailor these needs to fit particular solutions Proposers may have available; rather, the Proposers shall propose to meet the Authority's needs as defined in this RFP. All claims shall be subject to demonstration; and
- h)** Proposer's commitment and capability to work expeditiously and collaboratively with the JIA to implement the project.

#### **4.3 Award of Contract:**

**4.3.1** The contract, if awarded, will be awarded to that Proposer whose Proposal will be most advantageous to Jekyll Island Authority, price and other factors considered. The JIA reserves the right to select any Proposer it believes to be in its best interest and to negotiate proposed scope elements and fees, or to reject any and all proposals at its sole discretion. The primary intent of this RFP is to identify a single source to provide all of the needed goods and/or services, but the Authority reserves the right to make split awards.

**4.3.2 Multiple Awards:** Any contract resulting from this RFP is non-exclusive, except if specifically stated, and shall be awarded with the understanding and



agreement that it is for the sole convenience of JIA. JIA is free to have multiple contracts for the awarded services and may initiate other solicitations with other professional service providers at any time at JIA's sole discretion. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with JIA.

## SECTION 5

### INSTRUCTION TO PROPOSERS

**5.1** By submitting a response to this RFP, the Proposer is acknowledging that the proposer:

- a) Has read the information and instructions and attachments; and
- b) Agrees to comply with the information and instructions contained herein.
- c) The JIA will not be liable for any costs incidental to the preparation of the RFP, presentations, or interviews relating to the selection process.

**5.2** Each Proposal shall contain at least the following information. **JIA reserves the right to reject any or all Proposals that are non-responsive.**

**5.2.1 Cover Letter.** Please include in your cover letter a summary of your firm, key members of your team, who will be the principal contact/project manager from your firm, the name of the person authorized to enter into the contract on behalf of your team, and contact information for those individuals, including email addresses.

**5.2.2 Background and Experience.**

- a) **General Background and Experience.** Describe the background, history, and core competencies of your company as they relate to this Project.
- b) **Relevant Projects.** Describe in detail relevant projects which highlight similar experience as this Project. Include government owners if possible. If the Proposer has performed any work for the JIA within the last five years, at least one of the projects must be from the appropriate party within the JIA. Please include in your description information on:
  - 1) Project name and location
  - 2) Start date and completion date
  - 3) If applicable, how many days were exceeded from estimated project completion deadline
  - 4) Project scope
  - 5) Annual gross income
  - 6) Contact information for references who can speak knowledgably about your involvement in the project
  - 7) Description of relationships with any existing vendors or independent contractors.
- c) Resumes of key team members, including the firm principal, project manager, other key project personnel, and any subcontractors.
- d) Previous contracts your company has performed for the JIA by Project Title, date, and awarded/final cost.

- e) If applicable, explanation of any failure to complete a project, or explanation of any project that has been the subject of a claim or lawsuit by or against the Proposer. If so, please describe the nature of the claim/lawsuit, the court in which the case was filed, and the details of the resolution.

### 5.2.3 Detailed Proposal, which shall include:

- a) **Statement of Project Understanding.** Briefly describe the concept and scope of your Proposal and explain why your Proposal is the best approach.
- b) **Schedule of Events:** A detailed schedule that outlines the proposed project timeline from contract execution through project completion. Also include a statement of the ability of the firm to meet the proposed schedule.
- c) Proposal should include
  - 1) Statement of Proposer's standard operating procedures, including, but not limited to:
    - i. the care of its animals
    - ii. the safety of its clients, employees, and bystanders
    - iii. waste removal (carriage and trail)
    - iv. employee training and policies
    - v. description of proposed relationships with any ancillary or supporting businesses (marketing, photography, etc.)
  - 2) Proposed Site Plan for Clam Creek Leased Area including
    - i. layout of any fences, gates, or other structural elements that establish boundaries around and within the space
    - ii. location of any other structures or buildings
    - iii. any proposed landscaping elements or signage
    - iv. guest staging and loading/unloading zones
  - 3) Proposed Operational Plan for Beach Trail Rides
    - i. map of proposed trail route
    - ii. leased site preparation and maintenance plan, including any grading, materials added to the site, plantings or anticipated vegetation pruning or removal
    - iii. approach for minimizing impacts on non-leased areas along tour route, including manure cleanup, trail wear, and the experience of other island visitors
    - iv. Manure disposal plan
    - v. Operational contingencies for those high tide conditions that leave no accessible beach seaward of the dunes

- vi. Details of proposed tour offerings including number of tours offered per day (not to exceed 2 tours on the beach at any given time), times of day, tour lengths (hours), maximum number of riders per tour (not to exceed 12 including staff), description of private tour experiences, etc.
  - vii. Total number of horses proposed to be on site, which includes corralled and horses on tour (not to exceed 15) and details of on-site care and management of animals when not on tour
- 4)** Proposed Site Plan for Amphitheater Leased Area
  - i. Layout of any fences, gates, or other structural elements that establish boundaries around and within the space
  - ii. Number and types of carriages including style and capacity
  - iii. Map of proposed tour route(s)
  - iv. Leased site preparation and maintenance plan including any grading, materials added to the site, plantings, or anticipated vegetation pruning or removal
  - v. Approach for minimizing impacts from on non-leased areas along tour route(s), including manure cleanup, trail wear, and the experience of other island visitors
  - vi. Number of horses proposed to be corralled and on tour (not to exceed 2) and the details of on-site care and management of animals when not on tour
- 5)** Comprehensive description of standards of care and well-being for horses including, but not limited to:
  - i. Standard schedules of veterinary and farrier care
  - ii. Veterinarian(s) (if established) providing or to-provide services
  - iii. Processes for evaluating and responding to physical limitations of horses that may occur during business operations due to fatigue or injury

**5.2.4** Contract Exceptions pursuant to Section 7.8.2.

**5.2.5** Attachment A.

**5.2.6** Any other pertinent information the firm wishes to present.

**5.3 Preparing the Response.** Proposers are encouraged to review carefully all provisions and attachments of this document prior to submission, including the attached draft contract. Each Proposal constitutes an offer and may not be withdrawn

except as provided herein. All Proposals shall be:

**5.3.1** Prepared on the forms enclosed herewith, unless otherwise noted, and **all documents must be submitted to be considered a complete and responsive Proposal**. Please note that specific forms for submission are required.

**5.3.2** Typewritten on standard 8-1/2"x 11" paper, except for schematics, exhibits, photographs, or other necessary information, or signatures, which shall be signed by the business owner or authorized representative. **ALL SIGNATURE SPACES MUST BE SIGNED**

**5.3.3** All erasures or corrections shall be initialed and dated by the official signing the Proposal. Any changes to the conditions and specifications must be in the form of a written addendum to be valid.

**5.4** Packaging your Proposal.

**5.4.1** Submit six hard copy(ies) and one (1) electronic copy in **PDF format** on a USB drive of your complete proposal.

**5.4.2** Your Proposal must be submitted in sealed opaque envelopes, plainly marked as follows:

RFP # 367  
Name of Company  
Point of Contact for Company and Phone Number

**5.5** Submitting your Proposal.

**5.5.1** Your proposal must be mailed or hand delivered as follows in sufficient time to ensure receipt by the JIA on or before the time and date specified.

Jekyll Island Authority  
ATTN: Maria Humphrey  
100 James Road  
Jekyll Island, Georgia 31527.

**5.5.2** The complete Proposal must be received on or before the due date and time.

**PROPOSALS NOT RECEIVED BY THE TIME AND DATE SPECIFIED**  
**WILL NOT BE OPENED OR CONSIDERED.**

## **SECTION 6**

### **RIGHT TO PROTEST**

**6.1** By submitting a Proposal, or by submitting a Protest prior to submitting a Proposal, the Protestor agrees to be bound by the terms and conditions of this Section.

#### **6.2 Subject of protest.**

**6.2.1** Any Proposer may file a Protest on the grounds of irregularities in the proposal procedures, but not based upon the evaluation of each proposal.

**6.2.2** The presence of multiple nonmaterial issues in a solicitation or award does not constitute a material issue unless the Protestor can establish that those nonmaterial issues together would prejudice the outcome.

**6.2.3** Governmental officials and state entities are presumed to act in good faith, and a Protester's contention that procurement officials, including but not limited to procurement personnel and evaluation team members, are motivated by bias or bad faith must be supported by convincing proof.

**6.2.4** The manner and depth of the Authority's analysis is a matter within the sound exercise of the Authority's discretion. Protesters may not challenge the realism of a potential awardee's price, such as arguing that a proposer's price is so low that it reflects a lack of understanding of the Authority's requirements or creates a risk of unsuccessful performance.

**6.2.5** Patent ambiguities must be challenged prior to the Close Date. A proposer who chooses to compete under a patently ambiguous solicitation does so at its own peril and cannot later complain when the Authority proceeds in a manner with one of the possible interpretations.

**6.2.6** The Authority may waive compliance with a material solicitation requirement in awarding a contract if the award will meet the Authority's actual needs without prejudice to other proposers. Competitive prejudice from such a waiver exists only where the requirement was not similarly waived for the Protester or where the Protester would be able to alter its submission to its competitive advantage if given the opportunity to respond to the relaxed term. In cases where the Protester argues that the Authority improperly waived a certain requirement, prejudice does not mean that, had the Authority failed to waive the requirement, the awardee would have been unsuccessful. Rather, the pertinent question is whether the Protester would have submitted a different offer that would have had a reasonable possibility of being selected for award or that it could have done something else to improve its chances for award had it known that the Authority would waive the requirement.

**6.2.7** The Authority must rely upon its business judgment in exercising its

determination that a Proposer is not responsible. Although the determination must be factually supported and made in good faith, the ultimate decision rests with the Authority, as the Authority must bear the effects of any difficulties experienced in obtaining the required performance. For these reasons, a determination of non-responsibility will generally not be questioned unless the Protestor can demonstrate bad faith on the part of the Authority or lack of any reasonable basis for that determination.

### **6.3 Types of Challenges.**

**6.3.1 Challenge to the Solicitation.** Any interested individual or entity capable of responding to a competitive solicitation may file a protest with respect to the competitive solicitation process, including but not limited to a challenge to specifications or any events or facts arising during the solicitation process.

**6.3.2 Challenge to the Authority's Intended or Actual Contract Award.** Any Proposer who has submitted a timely Proposal may file a protest with respect to the Authority's intended or actual contract award, including, but not limited to, events or facts arising during the evaluation process.

### **6.4 Filing Deadlines.**

**6.4.1** A protest has been deemed filed when it is received by the Authority.

**6.4.2** Untimely protests will not be considered absent evidence of malfeasance or administrative error by the Authority absent evidence of malfeasance or administrative error by the Authority that substantially impaired a Protestor's ability to file a timely protest.

**6.4.3** If timely access to records has not been provided as required pursuant to state law, the Protestor is required to file a protest within the filing period, indicating the failure of the Authority to provide timely access to records and reserving the right to file an amended protest upon production of such records.

**6.4.4** If a potential protestor fails to file a protest by the applicable deadline, the potential protestor is deemed to have voluntarily relinquished any ground the potential protestor may have for protesting through the protest process in subsequent litigation. To ensure the protest process is conducted efficiently and in a manner fair to all parties, the Protestor is required to identify all grounds for protest during the protest filing period. Any issues not raised in the protest filing period are deemed as voluntarily relinquished by the Protestor. After the protest filing period expires, any grounds for protest voluntarily relinquished may not be introduced at any time during the protest process or any subsequent litigation.

Protest Filing Deadlines	
Type of Protest	Protest Filing Deadline
<b>Challenge to Competitive Solicitation Process</b>	<p><b>Earlier of:</b></p> <p>10 calendar days after the Protestor knows or should have known of the occurrence of the action which is protested</p> <p>OR</p> <p>2 business days prior to the Close Date</p>
<b>Challenge to the Authority's Intended or Actual Contract Award</b>	<p><b>Earlier of:</b></p> <p>10 calendar days after the Protestor knows or should have known of the occurrence of the action which is protested</p> <p>OR</p> <p>5 calendar days after award of solicitation by Board of Directors</p>

## 6.5 Protest Remedies.

Protest Remedies	
Type of Protest	Available Relief includes, but is not limited to, the following:
<b>Challenge to Competitive Solicitation Process</b>	<ul style="list-style-type: none"> <li>• Modification of RFP</li> <li>• Extension of the Close Date and time (as appropriate)</li> <li>• Cancellation of the RFP</li> </ul>
<b>Challenge to the Authority's Intended or Actual Contract Award</b>	<ul style="list-style-type: none"> <li>• Revision or cancellation of the Notice of Intent to Award or Notice of Award</li> <li>• Re-evaluation and re-award</li> <li>• Cancellation of the RFP.</li> <li>• Re-solicitation with appropriate changes to the new RFP.</li> </ul>



## **6.6 Form of Protest.**

**6.6.1** All protests shall be in writing and filed in duplicate.

**6.6.2** All envelopes containing protests shall be labeled "PROTEST."

**6.6.3** A written protest shall include as a minimum the following:

- a)** The name and address of the Protestor;
- b)** The signature of the Protestor or its representative. The Protestor must be authorized to act on behalf of the Proposer;
- c)** Appropriate identification of the solicitation document;
- d)** A statement of reasons for the protest;
- e)** Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time; in which case the expected availability date shall be indicated. If a future expected availability date is given, the Protestor should supplement the Protest when the additional materials become available and should indicate on the materials submitted that they are "supplemental" and indicate whether the submission of the materials constitutes the final submission of materials for the Protest (unless requested to submit additional materials by the Executive Director or Authority). Provided, however, that the Executive Director or his or her designee shall not be prohibited from making a decision on a Protest prior to receipt of final Protest materials from the Protestor; and
- f)** The form of relief requested.

**6.7 Delivery of Protest.** All protests should be mailed or delivered by hand to the following address and marked as follows:

PROTEST - RFP # 367  
Executive Director  
Jekyll Island Authority  
100 James Road  
Jekyll Island, GA 31527

**6.8 Stay of Award During Protest.** When a protest challenging the competitive solicitation process has been timely filed, the Close Date will be extended until a final decision resolving the protest has been issued, unless the Executive Director makes a written determination that the award of the contract without delay is necessary under the circumstances to protect the interests of the Authority. When a protest challenging an intended contract award has been timely filed, the Authority will not proceed to actual contract award, unless the Executive Director makes a written determination that the award of the contract without delay is necessary under the circumstances to protect the interests of the Authority.

**6.9 Information on Protests.** The Authority shall, upon written request, make available to any interested party information submitted that bears on the substance of the Protest except where such information is permitted or required to be

withheld by law or regulation.

**6.10 Decision on Protest.** The Executive Director shall review all information submitted with the Protest, including any additional information requested from the Protestor, and shall issue a written decision on the protest as expeditiously as possible after receiving all relevant requested information. The decision of the Executive Director is final except if a Protest is denied.

### **6.11 Appeal of Protest Denial**

**6.11.1** If a Protest is denied by the Executive Director, the Protestor may make an appeal to the Board of Directors within 5 calendar days after the denial by the Executive Director.

**6.11.2** No appeal will be considered if the Protestor has not first filed a Protest with the Executive Director and received a decision.

**6.11.3** An appeal shall contain all information included in the original protest together with the decision of the Executive Director and all other information relevant to the basis for the appeal.

**6.11.4** All protests should be mailed or delivered by hand to the following address and marked as follows:

PROTEST APPEAL - RFP # 367  
Board of Directors  
Jekyll Island Authority  
100 James Road  
Jekyll Island, GA 31527

**6.11.5** The appeal will be placed on the agenda for the next available board meeting. The next available board meeting will be the next board meeting for which the agenda has not yet been made public, unless the Executive Director determines otherwise. The Authority may submit a written response to the protest and appeal to the Board of Directors. No other response or reply will be allowed. The Board of Directors will be provided the documents prior to the meeting. The Protestor and the Authority will be given no more than 5 minutes each to make an oral argument before the Board of Directors.

**6.11.6** The Board of Directors shall have 30 days after hearing an appeal to issue its decision. This period may be extended for good cause for a reasonable time not to exceed 30 days, barring extraordinary circumstances justifying a longer extension, including, but not limited to, events such as hurricanes.

**6.11.7** The Board of Director's decision shall be in writing and shall be sent to the Protestor.

**6.11.8** The decision of the Board of Directors shall be final, and no further appeal will be allowed.

**6.12 Costs.** In no event shall a Protestor be entitled to recover any costs incurred in connection with the protest of a solicitation, including Proposal or quote preparation costs, protest preparation costs, or attorney fees.

**6.13 Exclusive Remedy.** This Procedure shall be the exclusive method for asserting a claim against the Authority arising out of or relating to this RFP.

## SECTION 7

### GENERAL TERMS AND CONDITIONS

- 7.1** Proposers to this RFP are required to respond at their own risk and expense. By responding to this RFP, Proposers acknowledge, understand, and accept the Authority's rights under this RFP.
- 7.2 Jekyll Island Authority's Rights Concerning Responses and Award.** JIA reserves the right to reject any or all responses and to waive any irregularities or technicalities in responses received whenever such rejection or waiver is in the best interest of JIA. JIA reserves the right to reject all responses or any response that is not responsive, is over budget, of a proposer who has previously failed to perform properly or complete on time contracts of a similar nature, or a Proposal from a proposer whom investigation shows is not able to perform the contract. The JIA reserves the right to waive any irregularity or informality in a Proposer's response, and to accept or reject any item or combination of items, when to do so would be to the advantage of the JIA. It is also within the right of the JIA to reject responses that do not contain all elements and information requested in this RFP. A Proposer's response will be rejected if the response contains any defect or irregularity and such defect or irregularity constitutes a material deviation from the RFP requirements, which such determination will be made by the JIA on a case-by-case basis.
- 7.3 Jekyll Island Authority's Right to Amend and/or Cancel the RFP.** The JIA reserves the right to amend this RFP prior to the end date and time. Amendments will be made in writing and publicly posted as one or more addenda. EACH PROPOSER IS INDIVIDUALLY RESPONSIBLE FOR REVIEWING ADDENDA AND ANY OTHER POSTED DOCUMENTS AND MAKING ANY NECESSARY OR APPROPRIATE CHANGES AND/OR ADDITIONS TO THE PROPOSER'S RESPONSE. ALL PROPOSERS ARE ENCOURAGED TO FREQUENTLY CHECK THE WEBSITE FOR ADDITIONAL INFORMATION. The JIA reserves the right to cancel this RFP at any time.
- 7.4 Errors or Omissions in RFP.** Any obvious error or omission in specifications shall not inure to the benefit of the Proposer but shall put the Proposer on notice to inquire of or identify the same to the JIA.
- 7.5** It is the responsibility of the Proposer to carefully examine and fully understand the contract, plans, technical specifications and other documents hereto attached and make a personal examination of the site of the proposed work and satisfy him or herself as to the actual conditions and requirements of the work. Failure to do so will be at the Proposer's own risk.
- 7.6 Project Manager.** The Project Manager shall act as the JIA's representative during the execution of this Contract. He or she shall decide questions which may arise

as to quality and acceptability of services and products furnished and work performed. He or she shall interpret the practical intent of the Contract in a fair and unbiased manner. The decisions of the Project Manager shall be final and conclusive and binding upon all parties to the Contract.

**7.7 Signed Proposal Considered Offer:** The signed Proposal shall be considered an offer on the part of the Proposer, which offer shall be deemed accepted upon approval by the Jekyll Island Authority's Board of Directors. In case of a default on the part of the Proposer after such acceptance, Jekyll Island Authority may take such action as it deems appropriate, including legal action for damages or lack of required performance. The Proposer further agrees that the cost of any work performed, materials furnished, services provided, or expenses incurred, which are not specifically delineated in the contract documents, but which are incidental to the scope, intent, and completion of the contract, shall be deemed to have been included in the Fees as proposed.

## **7.8 Contract Terms and Conditions.**

**7.8.1 Please review the JIA's contract terms and conditions prior to submitting a response to this RFP in Attachment B.** Proposers should plan on the contract terms and conditions contained in this RFP being included in any award as a result of this RFP. Therefore, all costs associated with complying with these requirements should be included in any pricing quoted by the Proposer. The contract terms and conditions may be supplemented or revised before contract execution and are provided to enable Proposers to better evaluate the costs associated with the RFP and the potential resulting contract.

**7.8.2** By submitting a proposal, each Proposer acknowledges its acceptance of the RFP specifications and the contract terms and conditions without change except as otherwise expressly stated in the submitted Proposal. **If a Proposer takes exception to a contract provision, the Proposer must state the reason for the exception and state the specific contract language it proposes to include in place of the provision. All exceptions to the contract must be submitted as an attachment to the Proposer's response.** Proposed exceptions must not conflict with or attempt to preempt mandatory requirements specified in the RFP.

**7.8.3** In the event the Proposer is selected for a potential award, the Proposer will be required to enter into discussions with the JIA to resolve any contractual differences before an award is made. These discussions are to be finalized and all exceptions resolved within the period of time identified in the Schedule of Events. Failure to resolve any contractual issues may lead to rejection of the Proposer. The JIA reserves the right to proceed to

discussions with the next best ranked Proposer.

**7.8.4** The JIA reserves the right to modify the contract to be consistent with the apparent successful Proposal and to negotiate other modifications with the apparent successful Proposer. Exceptions that materially change the terms or the requirements of the RFP may be deemed non-responsive by the JIA, in its sole discretion, and rejected. Contract exceptions which grant the Proposer an impermissible competitive advantage, as determined by the JIA, in its sole discretion, will be rejected. If there is any question whether a particular contract exception would be permissible, the Proposer is strongly encouraged to inquire via written question submitted to the Authority prior to the deadline for submitting written questions as defined by the Schedule of Events.

**7.9 Reserved.**

**7.10 Reserved.**

**7.11 Payment of Taxes.** Every contractor, vendor, business, or person under contract with Jekyll Island Authority is required by Georgia law to pay State sales or use taxes for products purchased in Georgia or transported into Georgia and sold to Jekyll Island Authority by contract. Please consult the State of Georgia, Department of Revenue, Sales and Use Tax Unit in Atlanta (404) 656-4065 for additional information.

**7.12 Equal Employment Opportunity.** The Proposer certifies that it/he/she will follow equal employment opportunity practices in connection with the awarded contract or as more fully specified in the contract documents.

**7.13 ADA Guidelines.** The JIA adheres to the guidelines set forth in the Americans with Disabilities Act. Proposers should contact the Jekyll Island Authority at least one day in advance if they require special arrangements. The Georgia Relay Center at 1-800-255-0056 (TDD Only) or 1-800-255-0135 (Voice) will relay messages, in strict confidence, for the speech and hearing impaired.

**7.14 Reserved.**

**7.15 Liability Provisions:** Where Proposers enter or go onto Jekyll Island Authority property to take measurements or gather other information in order to prepare the proposal, the Proposer shall be liable for any injury, damage or loss occasioned by negligence of the Proposer, his agent, or any person the Proposer has designated to prepare the Proposal and shall indemnify and hold harmless Jekyll Island Authority from any liability arising therefrom. The contract document specifies the liability provisions required of the successful Proposer in order to be

awarded a contract with Jekyll Island Authority.

**7.16 Cone of Silence.** Lobbying of RFP Evaluation Committee members, Government employees, and elected officials regarding this product or service solicitation, Invitation to Bid (ITB), Request for Proposal (RFP), or contract by any member of a Proposer's staff, or those people employed by any legal entity affiliated with an organization that is responding to the solicitation, is strictly prohibited. Such actions may cause your proposal to be rejected.

## **7.17 CONFIDENTIALITY AND GEORGIA OPEN RECORDS ACT.**

**7.17.1** The responses will become part of JIA's official files without any obligation on JIA's part. Ownership of all data, materials and documentation prepared for and submitted to Jekyll Island Authority in response to a solicitation, regardless of type, shall belong exclusively to Jekyll Island Authority and will be considered a record prepared and maintained or received in the course of operations of a public office or agency and subject to public inspection in accordance with the Georgia Open Records Act, Official Code of Georgia Annotated, Section 50-18- 70, et. Seq., unless otherwise provided by law.

**7.17.2** Jekyll Island Authority shall not be held accountable if material from responses is obtained without the written consent of the Proposer by parties other than JIA at any time during the solicitation evaluation process.

**7.17.3** In the event a Proposer submits information which constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, the Proposer must follow the procedure set forth in O.C.G.A. § 50-18-72(a)(34). If the proper documentation is not submitted, any documents labeled trade secret information or confidential will not be kept confidential under the Georgia Open Records Act.

**7.18 Insurance Provisions:** See Attachment B- Contract.

## SECTION 8

### SCOPE OF WORK

#### RFP # 367

### **Vendor Services for Provision of Historic Carriage Tours and Beach Trail Rides**

#### **A. Project Overview**

The Jekyll Island Authority is seeking companies and/or interested parties to submit proposals for the lease and operation of a beach trail ride and carriage tour service on Jekyll Island. This project offers a unique opportunity to provide an interactive guest experience along portions of the famous Driftwood Beach and within Jekyll Island's Landmark Historic District. The goal of the RFP is to select a company that shares the vision of the JIA and will operate in a professional and positive manner.

#### **B. Project Scope**

1. Carriage Tours centered around the Jekyll Island Historic District offering guests an accurate narrative and interactive experience into the rich history of Jekyll Island.
  - a. Facilities to manage the Carriage Tours include:
    - i. A 44 square foot portion of an office building, located on Riverview Drive for ticket sales. This does not include the restroom portion of the office building, but tenants will be allowed a non-exclusive easement for the restroom needs of its customers.
    - ii. A building located at the Amphitheater at 250 Stable Road ("Actor's Building"). The Actor's Building is approximately 30x80 (2,500 square feet). This includes non-exclusive rights to the 10-foot-wide un-named drive to access the location.
    - iii. An area of land totaling approximately 1000 square feet outside of the repurposed building at 250 Stable Road to place a corral to contain horses when not on tour.
    - iv. There is currently a Request for Proposal (RFP #364) outstanding to rehabilitate and repurpose the Amphitheater. **The facilities near the Amphitheater are on an as-available basis and may not be available in the future depending upon the revitalization of the Amphitheater.** The JIA will work with the Contractor to find alternate facilities if available, but at this time, the JIA has not identified any alternate facilities.
2. Beach trail riding tours offering guests a leisure experience exposing them to the natural beauty of Jekyll Island.
  - a. The beach trail horseback riding will be led from the Clam Creek Leased Area facilities include:
    - i. A currently unimproved area of land totaling approximately 21,780 square feet, or half an acre, located near the north end of Clam Creek Road for the placement of a corral or fence panels to contain and care for horses when not on tour. This site, referred to, until



such time as a street address is designated, as the Clam Creek Leased Area, is also intended to serve as a starting and ending point for beach trail rides and any associated guest services/activities. The site is shaded by large live oak trees some of which fall within the lease bounds. To protect the health and longevity of these trees, only approximately 50% of the site can be fenced for occupation by corralled or stalled horses. Any structures proposed will also be restricted to this area. The remaining area, which is not suitable for structures or routine horse traffic, may be proposed for utilization for other support functions, such as guest waiting areas or material storage sites.

- ii. The design and buildout of the currently unimproved site for the trail ride operations and guest services is an essential component of this scope.
- iii. Truck and trailer access to the un-named paved drive leading from the round-about at the fishing pier to Clam Creek Road and running immediately adjacent to the east of the Clam Creek Leased Area. This drive is intended to be accessible only to authorized motor vehicles but will remain accessible to pedestrians and cyclists. If this road is proposed to be restricted to vehicular traffic, gate installation will be the responsibility of the vendor. Accordingly, proposals should include gate design details.
- iv. Non-exclusive access to the restrooms for the needs of customers.
- v. Non-exclusive access to parking areas along Clam Creek Road.

## ATTACHMENT - A

### CERTIFICATION

I, the undersigned proposer, and on behalf of the proposing company I represent (collectively "I"), certify that

- I have carefully read this RFP and all other documents and data applicable hereto and made a part of this invitation and further certify that the Fee(s) shown in my Proposal are in accordance with all documents contained in this Invitation for Bids/Proposals package, and that any exception taken thereto may disqualify my Proposal;
- I have read this document in its entirety and agree to be bound by the provisions of the same.
- If this Proposal is accepted, I agree to enter into an agreement with the JIA in the form of the attached Contract, as may be amended in JIA's sole discretion, and to perform and furnish all goods and Professional Services as specified or indicated;
- I have had the opportunity to visit the site, if requested, and become familiar with and am satisfied as to the general, local, and site conditions that may affect cost, progress, performance, and furnishing of the goods and Professional Services;
- I am familiar with and am satisfied as to all federal, state, county, JIA, and local laws, regulations, statutes, ordinances, and rules that may affect cost, progress, performance, and furnishing of the goods and Professional Services;
- I am aware of the general nature of the work to be performed by the JIA and others at the site that relates to Work for which this Proposal is submitted as indicated in the RFP.
- I have given the Authority written notice of all conflicts, errors, ambiguities, or discrepancies that I have discovered in the RFP and the written resolution thereof by the Authority is acceptable to me. The RFP is generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Proposal is submitted.
- This Proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation. I have not directly or indirectly induced or solicited any other Proposer to submit a false or sham Proposal. I have not solicited or induced any person, firm, or corporation to refrain from submitting a Proposal. I have not sought by collusion to obtain for myself any advantage over any other Proposer or over the Authority.
- Any lobbyist whom I or my company employs or retains has registered with the Commission and complied with the requirements of the Lobbyist Registration.
- I am authorized to conduct business in the State of Georgia.
- I accept the provisions of the Contract as to liquidated damages in the event of failure to complete the Work within the times specified in the Contract.

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

BY: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
EMAIL

**ATTACHMENT - B**

**CONTRACT**

**[ON FOLLOWING PAGES]**

## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Agreement"), effective \_\_\_\_\_, 2022 ("Effective Date") is between the Jekyll Island-State Park Authority, a public authority created by the General Assembly of the State of Georgia and deemed an instrumentality of the State of Georgia and a public corporation ("Lessor"), and \_\_\_\_\_ d/b/a \_\_\_\_\_ ("Lessee"), a \_\_\_\_\_ authorized to do business in the State of Georgia. In consideration of the promises stated in this Agreement, the parties agree as follows:

**I. PREMISES RENTED / LICENSES GRANTED.** The following Premises shall be rented by Lessee from Lessor, except for those premises identified as granting to Lessee a non-exclusive license. Collectively, the Historic District Premises, Amphitheater Premises, and Clam Creek Premises are collectively deemed the "Premises."

**A. Historic District Carriage Tours**

1. Historic District Premises, as identified in *Exhibit A*
  - a) A portion of an office space consisting of 44 square feet, located in the Jekyll Historic District on Riverview Drive;
  - b) The restrooms located in the office building are not included in the premises. Lessee shall have a non-exclusive license to use the restroom portion of the office building for the restroom needs of its employees and customers; and
  - c) A non-exclusive license to use a portion of Riverview Drive for loading and unloading passengers for Historic District tours.
  - d) A non-exclusive license to use the Historic District multi-use paths for tours. [Path shall be indicated on *Exhibit A*.]
2. Amphitheater Premises, as identified in *Exhibit B*
  - a) A building identified as the "Actors' Building" located near the Amphitheater, 250 Stable Road, Jekyll Island, Georgia. The Actor's Building is approximately 30x80 (approximately 2,500 square feet).
  - b) A non-exclusive license to use an unnamed drive approximately ten (10) feet wide located directly north of the main entrance to the fire station for ingress and egress between Riverview Drive and the

- Amphitheater Premises;
  - c) A portion of land upon which to locate a horse corral approximately 1000 square feet in size, located near the "Actors' Building". This specifically excludes the existing horse corral materials at this location, which belongs to a current Lessee and may be reused if that lessee is awarded this contract.
- B. Driftwood Beach Tours
  - 1. Clam Creek Premises, as identified in *Exhibit C*
    - a) Approximately a half-acre of land known, until such time as a street address is designated, as the Clam Creek Leased Area, located on Clam Creek Road, Jekyll Island, Georgia.
    - b) A non-exclusive license to use public roads and multi-use paths and portions of Clam Creek and Driftwood Beaches. Lessee must keep horses on paved or otherwise improved surfaces when traveling to and from the beach.

## **II. USE OF PREMISES**

- A. The premises shall be used by Lessee solely for Lessee's business, which shall consist of offering horse-drawn carriage tours through the Jekyll Island Historic District and guided trail rides utilizing a limited area of the beach at the north end of Jekyll Island.
- B. Lessee shall only utilize the routes for the carriage tours and horseback rides as set forth in this Agreement.
- C. Lessee shall abide by the Guidelines in *Exhibit D*, which are incorporated into this Agreement.
- D. The retail sale of any food or beverage item is prohibited from any part of the premises.

## **III. TERM**

- A. This Agreement shall be for a term of five (5) years beginning on the Effective Date and ending at 11:59 p.m., prevailing legal time at Jekyll Island, Georgia, on the fifth (5<sup>th</sup>) anniversary of the Effective Date, unless sooner terminated as hereinafter provided.
- B. This Agreement may be renewed upon Lessor's sole discretion.
- C. A Term Year means a twelve-month period beginning on the Effective Date and each successive twelve-month period thereafter.

## **IV. RENTAL.** Beginning upon the Effective Date, Lessee shall pay to Lessor as rent Base Monthly Rent and Percentage Rent, as follows:

- A. Base Monthly Rent:
1. Subject to the CPI Adjustment to Base Rent, below, the Base Monthly Rent shall be \$2,387.17, payable in advance on the first calendar day of each month of the period.
    - a) Historic District Premises: \$33 (calculated at \$9/square foot/year at 44 square feet)
    - b) Amphitheater Premises: \$1,020.83 (calculated at \$3.50/square foot/year at 3,500 square feet)
    - c) Clam Creek Premises: \$1,333.50 (calculated at \$2,667.67/acre at .5 acre)
  2. CPI Adjustment to Base Rent. On every first (1st) anniversary of the Effective Date thereafter during the Term (each an "Adjustment Date"), the Base Rent shall be increased by a "Cost of Living Adjustment." Such Cost of Living Adjustment shall be calculated by multiplying the then current amount of Base Rent by a fraction, the numerator of which shall be the CPI (defined below) for the month which is three (3) months prior to the applicable Adjustment Date (a "CPI Month"), and the denominator of which shall be the CPI for the same month that is one (1) year prior to the CPI Month. As used in this Agreement, the term "CPI" shall mean the Consumer Price Index for All Urban Consumers, All Items (1982-1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics. Notwithstanding anything herein to the contrary, each such CPI adjustment to Base Rent shall be at least minimally increased (on each Adjustment Date) by one- and one-half percent (1.5%) but limited to a maximum increase of (on each Adjustment Date) of ten percent (10%). The Base Rent, as so adjusted on each Adjustment Date, shall be the Base Rent payable under this Agreement until the next succeeding Adjustment Date. If the CPI is no longer published on an Adjustment Date, Lessor shall substitute, in its reasonable business judgment, an index which is published by the Bureau of Labor Statistics or similar agency and which is most nearly equivalent to the index described above.
- B. Percentage Rent. Percentage Rent for each month or any other applicable time period during the Term shall equal three percent (3.0%) of total Gross Revenue for such month or other time period, as the case may be.
1. Calculation of Percentage Rent. Lessee shall calculate and report Percentage Rent, on a cumulative and calendar year

basis for the months constituting each calendar year (or portion thereof, as the case may be) of the Term to Lessor in a form agreed to by Lessor. Each such report shall be provided to Lessor prior to the fifteenth (15th) day following the last day of each such month during such calendar year (each such date being a "Percentage Rent Calculation Date") and shall be for all the months in the time period ending with the last day of such preceding month.

2. Payment of Percentage Rent. Percentage Rent payments shall be due and payable by Lessee to Lessor on each applicable Percentage Rent Calculation Date.
3. The term "Gross Income" shall mean and include all revenues and monies derived from fees and sales of merchandise, as above provided, and from any and all income producing operations and activities of whatever nature, conducted in, on, from or through the premises, whether or not the same shall have been specifically referenced or described in this Section IV as being included within the meaning of Gross Income, and include, but not be limited to, the following:
  - a) the dollar aggregate of the total amount, valued in money, whether paid in money or otherwise, derived from all fees, subscriptions, admission charges and concession fees (collectively, "fees");
  - b) all sales (conditional or otherwise), exchanges, Agreements or rentals, hereinafter collectively referred to as "sales," in any manner or by any means whatsoever, whether for cash or on credit, of any goods, wares, merchandise and services of whatever type, kind or nature (collectively, "merchandise") made in, on, from or through the premises;
  - c) all mail, internet, or telephone orders received and filled;
  - d) all sales of merchandise made through vending machines and other machines;
  - e) cancellation fees;
  - f) all transactions originating from whatever source, and which Lessee in the normal and customary course of its operations would credit or otherwise attribute to its business;
  - g) the total consideration valued in money, whether paid in money or otherwise, paid to Lessee by a third party for the right or privilege of conducting upon or from

- the premises any business authorized by this Agreement;
- h) the total amount, valued in money, of all fees and sales of merchandise charged or made by any such third party in, on, upon, from or through the premises;
  - i) the total value received by any subsidiary, division, parent company, or any other organization.
4. There shall not be deducted from Gross Income any income, excess profit, franchise, or other taxes based upon or measured by Lessee's income.
5. Gross income shall not include:
- a) any uncollected or uncollectable credit amount provided that Lessee makes all reasonable efforts to collect such credit amount;
  - b) proceeds derived from the sale of any capital assets used by Lessee in the operation of its business on the premises;
  - c) any sales tax collected on sales of services or merchandise to customers and paid by Lessee for any sales, cabaret, excise, use or gross receipts tax imposed by any legally organized and constituted governmental authority;
  - d) the dollar amount of any returns of services or merchandise to shippers or manufacturers;
  - e) the amount of any cash refunds or allowances made on account of services or merchandise claimed to be defective or unsatisfactory, provided, however, the sale of such merchandise shall have been included in Lessee's gross income;
  - f) the amount of any credit refunded upon any sale where the merchandise sold, or some part thereof, is returned by the purchaser and accepted by Lessee, provided, however, the merchandise sold, or such part thereof, shall have been included in Lessee's gross income, or
  - g) the sales price of any merchandise returned by customers for exchange, provided, however, the sales price of merchandise delivered to such customer in exchange therefor shall have been included in Lessee's gross income.
- C. Lessee shall pay to Lessor promptly all rents, and all other charges as provided by this Agreement as the same become due and



- payable, without offset, deduction or demand.
- D. Lessee shall also pay to Lessor all expenses which Lessor may suffer as a result of any default of Lessee or failure on the part of Lessee to comply with any terms, provisions or conditions of this Agreement.
- E. Late Rent, Dishonored Checks
1. Lessor shall not be obligated to accept any late payment of rent, but if Lessor does accept any late payment of rent, Lessee shall pay to Lessor, as additional rent, due and payable upon Lessor's acceptance of such late payment, a late charge of 5% of the overdue amount. Notwithstanding the foregoing, if Lessee fails to pay any Rent or portion of Rent at the time set forth in this Lease and Lessor has given notice of same either (A) two or more times within the preceding twelve months, or (B) ten or more times during the entire Term of the Lease, then Lessee shall pay a late charge equal to fifteen percent (15%) of the overdue amount for each occurrence.
  2. If any check delivered by Lessee to Lessor is dishonored, the check shall be turned over to third party vendor and Lessee shall be charged the vendors prevailing rate. Dishonored checks will be deemed to be late rent. Returned checks may not be redeemed by a personal check, but must be redeemed by cash, cashier's check, certified check or money order.
  3. The payment to and acceptance by Lessor of such late charge shall in no event constitute a waiver by Lessor of Lessee's Default with respect to such overdue amounts, nor prevent Lessor from exercising any of the other rights and remedies granted at law or equity or pursuant to this Lease.
  4. All charges under this Paragraph IV(E) shall be deemed to constitute additional rent due and payable upon notice from Lessor to Lessee, and Lessor shall have all the rights and remedies with respect thereto as Lessor has for the nonpayment of rent.

## **V. OPERATIONS**

- A. Lessee shall operate in accordance with a schedule and routing as set forth in *Exhibits A, C, and D*.
- B. No operations will be conducted by Lessee that have not been previously approved in writing and signed by the Executive Director or Deputy Executive Director of the Authority.
- C. Lessee shall be open to the public at a minimum three hundred

fifty-Two (352) days during each Term Year. Lessee may close the Premises on Thanksgiving Day, Christmas Day, New Year's Day, and Easter Sunday and any other two (2) days during the year that Lessee deems appropriate. Lessee may close for seven (7) additional days during each Term Year to conduct inventory, make improvements to the premises, or other business-related reasons. Lessor must be notified prior to closings. Days when beach trail rides cannot be conducted due to extreme tides will not be counted as days closed.

**VI. NON-DISCRIMINATION.** In its occupancy and use of the Premises, Lessee shall not discriminate against any person based on race, gender, color, national origin, religion, age, or disability. This covenant by Lessee may be enforced by termination of this Agreement, by injunction, and by any other remedy available at law to the Lessor.

**VII. BOOKS AND RECORDS**

- A. Lessee shall keep, in accordance with generally accepted accounting principles, full and accurate accounts, books and records of Gross Revenue and other information necessary or pertinent to determine the amount of Percentage Rent payable hereunder, including, but not limited to, executed originals or counterparts of all subleases, concession or license agreements, certifications for payment, ledgers, cash receipts and disbursement journals, bank deposit slips, bank books, and records prepared for electronic data procession and all records prepared as a result of such processing (the "Records"), all of which shall be kept by Lessee at its primary office for not less than six (6) years after the end of each Term Year.
- B. All records are subject to inspection at reasonable times upon reasonable written advance notice by Lessor but not more frequently than once each Term Year, provided, however, that if Percentage Rent is confirmed to have been underpaid in the previous two Term Years, such inspections may be performed up to three (3) times each Term Year.

**VIII. SECURITY DEPOSIT**

- A. Contemporaneously with the beginning of the Term of this Agreement as security for the full and faithful performance by Lessee of its obligations under this Agreement, Lessee shall deposit and always maintain with Lessor during the Term of this Agreement an unconditional, irrevocable Letter of Credit in an amount equal to two times the Base Monthly Rent.

- B. If at any time, Lessor, in its sole discretion, shall determine that the security so deposited and maintained no longer has a value equal to two months Base Rent, Lessee shall, within 30 days following notice by Lessor of such loss in value, make good said loss in value by the deposit of additional security so that Lessee's security on deposit with Lessor shall always equal two times the Base Monthly Rent.
- C. Upon default by Lessee of any of its obligations hereunder, not cured within the grace period specified herein, Lessor may use, apply or retain the whole or any part of the deposited security for the payment of any rental amount in default or for the payment of any other sum which Lessor may expend, or be required to expend, by reason of Lessee's default, including any damages or deficiency in the reletting of the Premises, whether such damages or deficiency accrues before or after summary proceeding or re-entry by Lessor.
- D. Not being in default hereunder, or if in default hereunder, if proper settlement with Lessor has been made, Lessee, upon an assignment of this Agreement, shall be entitled to receive, and Lessor agrees to return, the security deposited, provided the assignee shall have deposited with Lessor the security required of assignee.
- E. If upon the termination of this Agreement, Lessee shall have well and truly performed all of its obligations hereunder, all of the security on deposit with Lessor shall be returned to Lessee by Lessor.
- F. In the event of a default by Lessee, any excess over those amounts toward the payment of which Lessor may apply Lessee's security deposit pursuant to Paragraph 8 shall be returned to Lessee by Lessor.

#### **IX. RENOVATION AND IMPROVEMENT TO PREMISES**

- A. Lessee shall not renovate, modify, change, or improve the premises in any way without the prior express written consent of Lessor.
- B. All renovations, modifications, changes, or improvements to the premises so performed by Lessee shall be in strict accordance with plans, specifications and directions submitted to and approved by Lessor.
- C. Upon the expiration or termination of this Agreement, all improvements or additions placed or erected upon the premises by Lessee, whether or not affixed or attached to the premises, shall vest in and become the property of Lessor, without further

- notice or instrument executed.
- D. Lessee shall repair all damage to the premises resulting from the removal of Lessee's personal property.

**X. TIME IS OF THE ESSENCE.** All time limits stated in this Agreement are of the essence of this Agreement.

**XI. INSURANCE**

- A. Lessor is under no obligation to insure Lessee's possessions or property. Lessee will insure and keep insured Lessee's property on Authority property.
- B. Lessee is required to procure and maintain for the duration of this Agreement insurance as provided below against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by Lessee, his agents, representatives, or employees.
- C. To achieve the appropriate coverage levels, a combination of a specific policy written with an umbrella policy covering liabilities stated below is acceptable. For example: If appropriate limits are \$2 million per occurrence and \$2 million aggregate, acceptable coverage would include a specific policy covering \$1 million per occurrence and \$1 million aggregate written with an umbrella policy for an additional \$1 million.
- D. All policies shall contain a provision or endorsement that coverage afforded under the policies shall not be canceled, changed, allowed to lapse, or allowed to expire until thirty (30) calendar days after written notice has been given to the state certificate holder on the certificate of insurance. All such coverage shall remain in full force and effect during the initial term of the Contract and any renewal or extension thereof.
- E. All policies must be issued by an insurance company licensed to do business in the State of Georgia, with a minimum AM Best rating of A-, and signed by an authorized agent.
- F. The policies shall be written without an insured versus insured exclusion or any exclusion that prevents coverage of a claim by one insured against another.
- G. To the full extent permitted by the Constitution and the laws of the State of Georgia, Lessee and its insurers must waive any right of subrogation against the Indemnities, the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insurance funds of the State of Georgia, and insurers participating thereunder, to the full

- extent of the indemnification.
- H. The insurer must agree that the Attorney General of Georgia represents and defends Lessor, and his or her prerogative is not waived by any policy of insurance. Any settlement of litigation on behalf of Lessor must be expressly approved by the Attorney General.
- I. Certificate of Insurance. It is every Lessee's responsibility to provide the Lessor current and up-to-date Certificates of Insurance for multiple year contracts before the beginning of the contract and before the end of each term. Failure to do so may be cause for termination of contract. The name of the Insured on the COI must exactly match the name of the Lessee under this Contract.
- J. Additional Insured.
1. Lessee shall ensure that the Jekyll Island-State Park Authority, its officers, employees, and agents are covered as additional insureds under the commercial general, automobile, and umbrella liability policies. The Lessor may accept a blanket additional insured endorsement.
  2. Lessor calls attention to Lessee that the policy shall not limit the additional insured to those in privity of contract with Lessor, but shall also provide coverage for Lessor's officers, employees, and agents.
  3. Certificate of Insurance alone is insufficient evidence of compliance with this section. You must attach the endorsement that states your policy number on the endorsement
- K. Commercial General Liability Policy. Lessee's CGL policy must be made on Per Occurrence and Per Project. The CGL Policy must contain a contractual liability stipulation.
- L. Insurance Provisions, Minimum Limits.

Workers Compensation (WC)	Statutory Limits
Bodily Injury by Accident – each employee	\$100,000
Bodily Injury by Disease – each employee	\$100,000
Bodily Injury by Disease – policy limit	\$500,000
Commercial General Liability (CGL)	
Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Automobile Liability – Any Auto, Combined Single Limit	\$1,000,000

## **XII. RELEASE AND INDEMNITY**

- A. The Premises are to be used and enjoyed at the sole risk of Lessee. In consideration of the benefits to be derived therefrom, Lessee hereby releases and discharges and shall indemnify and hold harmless Lessor, and any of Lessor's officers, employees, agents, representatives, invitees, licensees, and Lessees (including the State of Georgia and the State Tort Claims Trust Fund, the State Employees Broad Form Liability Fund, the State Authority Operational Liability Fund, the State of Georgia Insurance and Hazard Reserve Fund, and any other insurance fund maintained by the State of Georgia), from and against all liabilities, damages, costs, and expenses (including all attorney's fees and expenses incurred by Lessor), causes of action, suits, demands, judgments, and claims, of any nature whatsoever (except to the extent caused by the sole negligence or willful act or omission of Lessor), arising from, by reason of or in connection with Lessee's occupancy of the Premises or the action or failure to act of Lessee or Lessee's employees, invitees, licensees, or agents, including the noncompliance or violation by Lessee, or Lessee's employees, invitees, licensees, or agents, or any local, state, or federal law or regulation. Lessor's legal counsel shall defend Lessor without waiver of any provision of this Paragraph.
- B. This indemnification applies whether: (i) the activities involve third parties or employees or agents of the Lessee or Lessor; (ii) the Lessor is responsible for the situation giving rise to the claim; or (iii) a claim results in a monetary obligation that exceeds any contractual commitment.
- C. This indemnification does not apply to the extent of the willful or wanton misconduct of the Lessor, its officers, or employees. This indemnification does not apply to the extent of the sole negligence of the Lessor, its officers, or employees, concerning activities within the scope of O.C.G.A. § 13-8-2(b) relative to the construction, alteration, repair, or maintenance of a building structure, appurtenances, and appliances, including moving, demolition, and excavating connected therewith.

## **XIII. LIMITATION OF LIABILITY**

- A. No limitation of Lessee's liability shall apply to Lessee's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Lessee's personnel. Lessee hereby expressly agrees to assume all risk of loss or damage to any such State equipment or

other property in the care, custody, and control of Lessee's personnel. Lessee further agrees that equipment transported by Lessee personnel in a vehicle belonging to Lessee (including any vehicle rented or leased by Lessee or Lessee's personnel) shall be deemed to be in the sole care, custody, and control of Lessee's personnel while being transported. Nothing in this section shall limit or affect Lessee's liability arising from claims brought by any third party.

- B. Lessor shall not be liable to Lessee for excluding any person from the Premises who does not have a key or other identifying documentation as being an authorized employee or contractor of Lessee, or for damages or loss or theft resulting therefrom which affect any person, including Lessee. However, Lessee shall have the right to 24-hour access to the Property subject to complying with appropriate access procedures.

**XIV. UTILITIES.** At its sole cost and expense, Lessee shall cause to be furnished and shall pay for all water, gas, light, power, sanitation (sewerage or otherwise), garbage pick-up and disposal, telephone and all other utilities or services required for Lessee's use of the Premises.

**XV. DEFAULT**

- A. If Lessee
1. defaults in the payment of rental and remains in default for ten (10) days after notice of such default by Lessor; or
  2. defaults in the performance or observance of any other covenant, Lease, duty, obligation, term, consideration or provision of this Agreement which is to be performed, observed, kept and complied with by Lessee, and remains in default for thirty (30) days after notice of such default by Lessor; or
  3. if an order for relief in bankruptcy is entered or a bankruptcy proceeding is initiated, by or against Lessee; or if a permanent receiver is appointed for Lessee's rights and interest in this Agreement and such receiver is not removed within thirty (30) days after notice from Lessor to Lessee to obtain such removal; or if Lessee voluntarily or involuntarily takes advantage of any debtor relief or reorganization proceedings under any present or future law, whereby the rental or any part thereof is, or is proposed to be, reduced or payment thereof deferred; or if Lessee makes a general assignment for benefit of creditors; or if the Premises or Lessee's effects or interests therein should be levied upon

or attached under process against Lessee, not satisfied or dissolved within thirty (30) days after notice from Lessor to Lessee to obtain satisfaction thereof; or

4. shall attempt to make an assignment, transfer, or sublease in violation of Lessee's acknowledgements and Leases set forth in this Agreement,
  5. then, Lessor may at once after such event of default or at once after expiration of this particular grace period provided herein, as the case may be, terminate this Agreement, whereupon Lessee shall be deemed to have abandoned the Premises, and without legal process, Lessor may enter upon and take immediate possession and control of the premises to the complete exclusion of Lessee and remove some or all persons and their effects and the effects of Lessee therefrom, using such force as may be necessary, without being guilty of trespass, forcible entry or detainer or other tort. The failure of Lessor to exercise such rights after one or more defaults of Lessee shall not be a waiver, or be construed as a waiver, of the rights of Lessor upon any subsequent default.
- B. In connection with any action by Lessor to enforce its rights hereunder or to collect Rent or Additional Rent, Lessor shall be entitled to reimbursement of its reasonable costs of collection, including attorney's fees. Such amounts shall constitute Additional Rent payable by Lessee hereunder.

**XVI. INSPECTION.** Lessee shall permit Lessor, its agents and employees, to enter into and upon the premises at all reasonable times for the purpose of inspecting the same.

**XVII. MAINTENANCE, REPAIR, AND REPLACEMENT**

- A. **BY LESSEE CONDUCTING ITS BUSINESS IN OR FROM THE PREMISES, IT SHALL BE DEEMED TO HAVE ACCEPTED THE PREMISES WITHOUT ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING ITS CONDITION, SUITABILITY, HABITABILITY, FITNESS FOR PURPOSE OR ITS COMPLIANCE WITH ANY LAWS, REGULATIONS OR ORDINANCES, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT OF 1991, AS AMENDED.**
- B. Lessee shall not commit or suffer to be committed any waste upon the Premises.
- C. Lessee shall always keep the Premises in a clean and sanitary condition at its own expense, including the obligation to provide



such janitorial services and trash removal services, as may be required to maintain cleanliness and prevent unsightly or malodorous conditions, and upon the expiration of this Agreement, shall return the Premises to Lessor in as good a condition as when Lessee originally commenced its use, subject to reasonable wear and tear and damage caused by a catastrophic event.

- D. Except as provided in this Agreement, Lessee at its own expense shall put into and keep the Premises in good order and repair, including all improvements, and every part thereof. Lessee's obligation to repair shall include the obligation to maintain, service, and replace all aspects of the Premises except those specifically set forth in Paragraph XVII(F). All maintenance, repair, and replacement performed by Lessee shall be "in kind" and consistent with the character of the Premises.
- E. Except as provided in this Agreement, Lessor gives to Lessee exclusive control of the Premises and shall not be required to supply maintenance or repair for the Premises or to inspect the Premises.
- F. Lessor shall keep in good order and repair the following parts of the Actor's Building:
  - 1. The roof, defined as the trusses, underlayment, and shingles, but not including exterior paint;
  - 2. The foundation, exclusive of any flooring;
  - 3. The Wall System, defined as the framing and exterior weatherproofing, but not including the sheetrock, interior and exterior wall paint/covering, window or door frames, and glass; and
  - 4. The Electrical System to the busbars of the main electrical panel, but not including the electrical panel.
- G. Lessee shall keep in good order and upkeep the following aspects of the Clam Creek Leased Area and the corral space by the Actors' Building:
  - 1. Loss of ground elevation, evidenced by the increased exposure of tree root systems, or excessive soil compaction, evidenced by the occurrence of standing water or failing health of trees within the leased area, shall be corrected at the Lessee's expense to the Lessor's satisfaction.
  - 2. Tree care, pruning, and/or removal within leased areas as required to support tree health and guest safety and as permitted by the Authority.
- H. PROVIDED, HOWEVER, Lessor shall not be obligated for repairs to any part of the Premises made necessary by the acts or negligence

of Lessee, its agents, servants, employees, guests, customers, licensees or invitees.

- I. In the event that Lessee shall fail to remedy any health or fire hazard or nuisance within five (5) days after written notice by Lessor, Lessor may remedy and/or correct such health or fire hazard or nuisance at the expense of Lessee.
- J. Amounts required to remedy any condition caused by Lessee, its agents, servants, employees, guests, customers, licensees or invitees, shall be Additional Rent, payable upon demand by Lessor.
- K. Lessee hereby acknowledges that it has fully inspected the premises and that the premises are in satisfactory condition for the use intended.

**XVIII. NO COVENANT OF QUIET ENJOYMENT.** Lessee further acknowledges that no representation or warranty as to the title to condition of, terrain of, or any covenant of quiet enjoyment of the premises has been made by Lessor, its agents, or employees, or by any other person. Lessor makes no warranty whatsoever as to the title to, present condition of, terrain of or any covenant of quiet enjoyment of the premises.

**XIX. HOLDING OVER.** Lessee shall not use or remain in possession of the premises after the expiration of or any termination of this Agreement. Any holding over, or continued use or occupancy, or both, of the premises by Lessee after the expiration of or any termination of this Agreement without written consent from Lessor, shall not constitute a Lessee-At-Will interest in Lessee, but Lessee shall become a Lessee-At-Sufferance and shall be required to vacate the premises immediately without notice. There shall be no renewal or extension whatsoever of this Agreement by operation of law.

**XX. DESTRUCTION OR DAMAGE**

- A. If any structure located on the premises is totally destroyed or rendered untenable by storm, fire, earthquake, hurricane or other catastrophe, this Agreement shall terminate as of the date of such total destruction or untenability, with no obligation of Lessor to repair, restore or rebuild or provide another structure for Lessee, and the rental and other obligations accrued by or to the parties to this Agreement shall be accounted for between Lessor and Lessee as of the date when the structure was destroyed or became untenable.
- B. If any structure located on the premises is partially destroyed or

rendered partially untenable by storm, fire, earthquake, hurricane or other catastrophe, Lessee shall have the option to elect to either terminate this Agreement by written notice to Lessor, or to continue its Agreement in force with an appropriate abatement of rental and without obligation of Lessor to repair, restore, or rebuild the structure. The structure shall be considered partially destroyed or rendered partially untenable when at least ten percent (10%) but less than one hundred percent (100%) of the structure is destroyed or rendered untenable.

**XXI. OCCUPANCY OF PREMISES.** Lessee shall occupy the premises continuously throughout the term of this Agreement and shall not desert, surrender, abandon or cease operation of the premises during the term of this Agreement, without prior written approval from Lessor.

**XXII. RATES.** Lessor and Lessee hereby recognize that by law it is Lessor's function to make facilities at Jekyll Island State Park available to people with average income and to use all income and revenue arising from the operation of Jekyll Island State Park for the sole purpose of beautifying, improving, developing, enlarging, maintaining, administering, managing and promoting Jekyll Island State Park at the lowest rates reasonable and possible for the benefit of the people of the State of Georgia. Accordingly, it is a material condition of this Agreement that all rates, fees and other charges to Lessee's customers for services and the facilities made available to Lessee's customers at the premises shall be comparable to, or less than, those prevailing in similar operations in the State of Georgia, and shall be subject to the prior approval of Lessor before being instituted; it being expressly understood and agreed, however, that Lessor will not unreasonably withhold such approval if said proposed rates, fee or charges comply with the criteria set forth in this paragraph.

**XXIII. APPURTENANCES.**

- A. Lessee shall not erect or install, or cause to be erected or installed, any signs, placards, displays, advertising media, or decorations, or any radio or television antenna, sound amplifiers or similar devices, lighting or plumbing fixtures, shades or awnings, or any other appurtenances upon the premises, except with the prior approval of the same by Lessor.
- B. Any exterior appurtenances placed upon the premises by Lessee, with the prior approval of Lessor, shall be erected, maintained, and operated by Lessee in compliance with such rules, regulations or policies governing the same as may exist or from time to time

be prescribed by Lessor.

**XXIV. ADVERTISING.** Except as provided herein, Lessee shall not be limited as to the amount, quality, and type of advertising in commercial media (radio, television, newspapers, magazines, circulars, etc.), except that Lessor, at its option, shall have the right to approve or disapprove all advertising prior to publication, distribution, broadcasting or exhibition by Lessee; provided, however, that such right shall not be invoked unreasonably.

**XXV. SPECIAL STIPULATIONS.** To the extent that the following Special Stipulations conflict with any of the terms of this Agreement, the following Special Stipulations shall control:

- A. Lessor shall have the right to develop the Jekyll Island Historic District, Amphitheater, and/or Clam Creek area for a use which may require a change in the use of the premises, and thereby notwithstanding any other term, provision, or condition of this Agreement, upon ninety (90) days written notice from Lessor, Lessee shall surrender the Premises to Lessor and, at the election of the Lessee, relocate to other premises designated by Lessor for the duration of the term of this Agreement and in accordance with the terms, provisions and conditions of this Agreement or terminate this Agreement as of the date Lessee would be required to surrender the premises. Such termination shall not relieve the Lessee of any obligations or liabilities arising or accruing by virtue of this Agreement prior to the termination thereof.
- B. Lessee shall remove all personal property of Lessee and all items and equipment of Lessee not attached or affixed to the premises on or before the expiration or termination of this Agreement.
- C. All personal property of Lessor if any leased to Lessee as a part of the Premises shall be kept in and not removed from the Premises by Lessee and shall be kept and maintained by Lessee in good order and repair and returned to Lessor at the expiration or termination of this Agreement in as good as or better condition than when received by Lessee. All such personal property of Lessor shall be kept and maintained in the premises at the sole risk of Lessee, and Lessee shall be liable to Lessor for the damage, destruction, or theft of such personal property of Lessor.

**XXVI. NO ESTATE.** This Agreement shall create the relationship of Lessor and Lessee, or a usufruct, and no estate shall pass from Lessor.

**XXVII. ASSIGNMENT.** Lessee shall not assign this Agreement or any right

herein and shall not sublease the Premises or any part thereof, or any right of privilege appurtenant thereto, or allow any other person to occupy or use the Premises, or any portion thereof, without the prior written consent and approval of Lessor. Any such assignment or subletting without such consent shall be void and may, at the option of Lessor, terminate this Agreement. Consent to one assignment and sublease, or either of them, shall not invalidate this provision, and all subsequent assignments and subleasing, or either of them, shall likewise be made only on prior written consent of Lessor.

**XXVIII. SURRENDER OF PREMISES.** Upon the termination or expiration of this Agreement, Lessee shall surrender the premises to Lessor in the same condition as at the commencement of this Agreement, or if improvements are made, the same condition as at the time the improvements were completed, normal wear and tear only excepted.

**XXIX. FORCE MAJEURE.** Neither Party shall be required to perform any term, provision, agreement, condition or covenant in this Lease so long as such performance is delayed or prevented by 'force majeure', which shall mean acts of God, strikes, injunctions, war, lockouts or labor restrictions, or other actions imposed by any third party beyond the control of the parties, sub-contractors, independent contractors, or employees hereto.

**XXX. BINDING EFFECT.** Each of the terms, provisions, and conditions of this Agreement shall apply, extend to, be binding upon and inure to the benefit or detriment of the parties of this Agreement, to the successors and assigns of Lessor, and to the extent that Lessor has consented to an assignment of this Agreement, or any interest herein, to the successors and assigns of Lessee. Subject to the foregoing, whenever a reference to the parties is made in this Agreement or future amendments, such reference shall be deemed to include the successors and assigns of said party, the same as if in each case expressed.

**XXXI. GOVERNING LAW.** This Lease shall be construed according to and governed by the laws of the State of Georgia.

**XXXII. RULES AND REGULATIONS.** The premises shall be subject to all applicable Federal, State, County, and other governmental rules, regulations, ordinances, restrictions, and conditions, however described or designated, including without limitation, the Code of the Jekyll Island-State Park Authority and all amendments thereto.

**XXXIII. NOTICES.**

- A. All notices, demands, requests, or other writings in this Lease provided to be given or made or sent, or which may be given or made or sent, by either party to the other, or by any Leasehold Mortgagee to either party shall be in writing and shall be deemed to have been duly given if (a) sent by a nationally recognized overnight delivery service, or (b) sent by registered or certified mail, return receipt requested, postage prepaid and sent to the following addresses:

Lessor: Jekyll Island-State Park Authority  
Attn: General Counsel  
100 James Road  
Jekyll Island, Georgia 31527

Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. Either party may change its notice address by giving notice thereof in accordance with this Paragraph.
- C. All notices hereunder shall be deemed given: (a) if sent by certified mail, return receipt requested, postage prepaid, on the third (3rd) day after deposit in the U.S. mail; or (b) if sent by overnight courier, on the first (1st) business day after delivery to the courier.

**XXXIV. NO JOINT VENTURE.** Nothing contained in this Agreement shall make, or be construed to make, the parties to this Agreement partners or joint venturers with each other, nor shall render, or be construed to render either party to this Agreement liable for the debts or obligations of the other.

**XXXV. SEVERABILITY.** If any provision, clause or phrase of this Agreement, or any portion thereof, shall be ruled void or unenforceable or contrary to public policy by any court of competent jurisdiction, then any remaining portions of such provision, clause or phrase and all other provisions of this Agreement shall survive and be applied, and any invalid portion shall be construed or reformed to preserve as much of the original words, terms purpose and intent, as shall be permitted by law.

**XXXVI. COUNTERPARTS.** This Agreement may be executed in any

number of counterparts and by each of the undersigned on separate counterparts and by facsimile or other electronic delivery (including "PDF" or other imaged versions of such executed counterparts such as DocuSign®), and each such counterpart will be deemed to be an original, but all such counterparts will together constitute but one and the same Agreement.

**XXXVII. ENTIRE AGREEMENT.** This Agreement constitutes the full, complete and entire agreement between Lessor and Lessee; no agent, employee, officer or representative of Lessor or Lessee has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith modifying, adding to, or changing the covenants, terms and provisions of this Agreement. No modification or amendment of this Agreement shall be binding unless such modification or amendment shall be in writing, signed by Lessor and Lessee and by reference incorporated in this Agreement.

**IN WITNESS WHEREOF,** the Parties have caused these presents to be signed, sealed and delivered by the authorized officers of each, all as of the day, month and year first above written.

**LESSOR:**

JEKYLL ISLAND STATE PARK AUTHORITY,  
a Georgia public authority, corporation and instrumentality

By: \_\_\_\_\_

Name: Joseph B. Wilkinson, Jr.

Title: Chairperson

Attest: \_\_\_\_\_

Name: William H. Gross, Secretary

**LESSEE:**

\_\_\_\_\_

By: \_\_\_\_\_ [signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signed, sealed, and delivered  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
in the presence of:

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]



**EXHIBIT A**  
**HISTORIC DISTRICT PREMISES**  
**[Carriage Tour Route(s) TBD following consideration of RFP proposals]**



**EXHIBIT B**  
**AMPHITHEATER PREMISES**



**EXHIBIT C**  
**CLAM CREEK PREMISES and ROUTE**









## **EXHIBIT D GUIDELINES**

In addition to policies, practices, and procedures specified in Lessee's proposal in response to RFP 367, Lessee will abide by the following Tour Guidelines for the safety, care, and cleanliness of (i) the premises, (ii) the public area of the Historic District, Clam Creek area, and Driftwood Beach, and (iii) Jekyll Island in general, and for the preservation of good order:

### **A. FOR THE PREMISES:**

1. All floor areas of the demised premises, doors, fixtures, windows, and plate glass shall be maintained in a clean, safe and good condition.
2. All trash, refuse, and waste materials shall be stored in adequate animal proof containers with a locking lid and regularly removed from the premises. These containers shall not constitute a health or fire hazard or nuisance to any patrons or businesses located at or near the Premises.
3. No portion of the premises shall be used for lodging purposes.
4. Neither roads, trails, sidewalks, or walkways shall be used to display, store or place any merchandise, equipment, advertisement, or devices, except in connection with special events held with Lessor's prior written approval.
5. No portion of the demised premises shall be used for the storage of any merchandise, materials, or other properties, other than those reasonably necessary for the operation of Lessee's business.
6. Except as specifically provided in the Agreement to which these Tour Guidelines are attached, no sign, placard, picture, advertisement, name, or notice shall be installed or displayed on any part of the outside or inside of the building or storefront without prior written consent of Lessor. Lessor shall have the right to remove, at Lessee's expense and without notice, any sign installed or displayed in violation of the Jekyll Island ordinances or this Agreement.
7. No portion of the premises shall be used to store or board any animals except for horses.
8. No portion of the premises shall be used to store or board any horses or other animals overnight.
9. Lessee shall only feed horses hay while on Jekyll Island.
10. Lessee shall provide Lessor with a statement of its standard operating procedures for care of its horses and safety of its riders, along with any veterinarian or farrier records demonstrating regular treatment and management within the standard of care for horses upon request of Lessor.

11. Lessee shall implement, subject to the prior written approval of Lessor, a certification process for all tour guides to ensure accuracy and correctness of all tour content.
12. Lessee, or its employees or independent agents, shall not negatively portray Lessor.
13. Lessee shall provide for adequate guides to oversee and manage each tour.
14. Lessee shall implement a dress code for tour guides that requires a casual uniform or period appropriate attire as approved by the Authority.
15. In the event Lessee fails to remove horse waste in a reasonable amount of time, Lessor shall have the right to remove such waste at Lessee's expense.

**B. FOR HISTORIC DISTRICT TOURS:**

1. All historic district tours shall be subject to random evaluations by Lessor.
2. Lessee shall obtain Lessor's prior written approval of all carriages, carriage decorations, and decoration of horses for all tours or special events in the Historic District.
3. Lessee shall not have more than two horses corralled at the Amphitheater at any given time.
4. Lessee shall not operate more than two tours in the Historic District at any one time.

**C. FOR BEACH HORSEBACK RIDES:**

1. Lessee shall implement a trail-riding operations plan, subject to the prior written approval of Lessor, which addresses and includes mitigation of trail erosion, best management practices for pruning vegetation from the trail, relocation of horse corral when necessary and establishment of routes along the beach that account for tidal fluctuations.
2. Lessee shall not allow any guided horseback rides that travel through the sand dunes. Sand dunes are defined as mounds of sand, whether small or large, deposited along a coastline by wind action, which mounds are often covered with sparse, pioneer vegetation and are located landward of the ordinary high-water mark, identifiable by recently deposited wrack lines, and which may extend to the tree line. Sand dune zones are dynamic, changing as frequently as daily, and must therefore be identified and avoided by trained ride leaders on a day-to-day basis.
3. Lessee shall require all customers and guides to wear riding helmets while mounted on horses.

4. Lessee shall not allow any tour or individual rider to approach within twenty (20) feet of any marked sea turtle nest.
5. Lessee may not allow more than twelve horses per tour, which number shall include horses of guides or other employees or agents of Lessee.
6. Lessee shall not have more than 15 horses corralled at the Clam Creek Leased Area at any given time.
7. Lessee shall not operate more than two tours on the beach at any one time.