



# Federal Register

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**Wednesday,  
February 23, 2000**

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**Part II**

## **Department of the Interior**

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**National Park Service**

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**Proposed National Park Service Standard  
Language Concession Contracts and  
Amended Proposed Environmental  
Protection Provisions; Notice**

**DEPARTMENT OF THE INTERIOR****National Park Service****Proposed National Park Service Standard Language Concession Contracts and Amended Proposed Environmental Protection Provisions**

**AGENCY:** National Park Service, Interior.

**ACTION:** Solicitation of public comments on exhibits to proposed NPS standard language concession contracts and amended proposed environmental protection provisions.

**SUMMARY:** On September 3, 1999, the National Park Service (NPS) published in the **Federal Register** for public comment a proposed new standard language concession contract. Concession contracts are the means by which NPS generally authorizes private businesses to provide services to visitors to areas of the national park system. A new standard language concession contract is needed as a result of the passage of Public Law 105-391 which established new policies and procedures for NPS concession contracts. On December 22, 1999, NPS published for public comment in the **Federal Register** proposed new short form concession contracts. This notice publishes for public comment proposed Exhibits to the proposed standard concession contracts (as applicable). In addition, this notice publishes for public comment amended portions of the proposed standard concession contract originally published for public comment on September 3, 1999. Final standard concession contracts (and final exhibits) will be published in the **Federal Register** after consideration of public comments. NPS requests public comments on these matters as a matter of policy. It is not legally required to do so.

**DATES:** NPS will accept written comments on the following subjects on or before March 24, 2000.

**ADDRESSES:** Comments should be addressed to Concession Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Wendelin Mann, Concession Program, National Park Service, 1849 "C" Street, NW, Washington, DC 20240 (202/565-1219).

**SUPPLEMENTARY INFORMATION:**

A. The proposed exhibits to the standard concession contract are as follows:

Exhibit "A": Nondiscrimination requirements

Exhibit "B": Assigned Land, Real Property Improvements

Exhibit "C": Assigned Government Personal Property

Exhibit "D": Description of Existing Leasehold Surrender Interest

Exhibit "E": Insurance Requirements

Exhibit "F": Maintenance Plan

Exhibit "G": Operating Plan

Exhibit "H": Construction Project Approval Procedures

Exhibit "X": Pertinent Leasehold Surrender Interest provisions of 36 CFR PART 51

**1. EXHIBIT "A"—Nondiscrimination Section I**

Requirements Relating to Employment and Service to the Public

**A. Employment:** During the performance of this concession permit the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession permit or with any of such rules, regulations, or orders, this concession permit may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession permits in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may

direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

#### **B. Construction, Repair, and Similar**

**Contracts:** The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this permit, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this permit, and for that purpose the term "permit" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

**C. Facilities:** (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition; (ii) discriminating by segregation or other means against any person.

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent *reasonably possible* to individuals who are mobility impaired, hearing impaired, and visually impaired. It *does not* require architectural access to every building or facility, but only that the service or program can be provided *somewhere* in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

#### *Part A*

##### Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
3. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

#### *Part B*

##### Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

## **2. EXHIBIT "B"—Land Assigned**

Land is assigned for housekeeping purposes in accordance with the boundaries shown on the following map[s]:

#### *Real Property Improvements Assigned*

The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building Number

Description

Approved, effective \_\_\_\_\_, 20\_\_

By \_\_\_\_\_  
Regional Director, \_\_\_\_\_ Region

## **3. EXHIBIT "C"—Assigned Government Personal Property**

Government personal property is assigned to the concessioner for the purposes of this CONTRACT as follows:

Property Number

Description of Item

Effective, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_  
Regional Director, \_\_\_\_\_ Region

## **4. EXHIBIT "D"—Leasehold Surrender Interest as of the Effective Date of this Contract**

Pursuant to Section 9(c)(2), the Concessioner's leasehold surrender interest in real property improvements as of the effective date of this CONTRACT is as follows:

Building Number

Description

Value

[If there are none, this exhibit should say "NONE".]

Exhibit D Approved Effective \_\_\_\_\_  
Concessioner  
United States of America

By: \_\_\_\_\_  
By: \_\_\_\_\_  
Director, National Park Service

## **5. EXHIBIT "E"**

### **I. Insurance Requirements**

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT:

#### *I. Liability Insurance*

The following Liability Coverages are to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

**A. Commercial General Liability**

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit \$

Products/Completed Operations Limit \$

Personal Injury & Advertising Injury Limit \$

General Aggregate \$

Fire Damage Legal Liability "per fire" \$

2. The liability coverages may not contain the following exclusions/limitations:

- a. Athletic or Sports Participants
- b. Products/Completed Operations
- c. Personal Injury or Advertising Injury exclusion or limitation
- d. Contractual Liability limitation
- e. Explosion, Collapse and Underground Property Damage exclusion
- f. Total Pollution exclusion
- g. Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)

3. For all lodging facilities and other indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

**B. Automobile Liability**

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1. (Where there are no owned autos, coverage applicable to "hired" and "non-owned" autos, "Symbols 8 & 9," shall be maintained.)

Each Accident Limit \$

**C. Liquor Liability**

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit \$

Aggregate Limit \$

**D. Watercraft Liability (or Protection & Indemnity)**

Coverage will be provided for bodily injury or property damage arising out of the use of any watercraft.

Each Occurrence Limit \$

**E. Aircraft Liability**

Coverage will be provided for bodily injury or property damage arising out of the use of any aircraft.

Each Person Limit \$

Property Damage Limit \$

Each Accident Limit \$

**F. Professional Liability/Errors & Omissions Liability (Describe Specific Coverage)**

Coverage will apply to damages resulting from the rendering or failure to render professional services.

Each Occurrence or Each Claim Limit \$

Aggregate Limit \$

**G. Garage Liability**

This coverage is not required, but may be used in place of Commercial General Liability and Auto Liability coverages for some operations. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

**Each Accident Limits—Garage Operations**

Auto Only \$

Other Than Auto Only \$

Personal Injury & Advertising

Injury Limit \$

Fire Damage Legal Liability "per fire" \$

**Aggregate Limit—Garage Operations**

Other Than Auto Only \$

If owned vehicles are involved, Liability coverage should be applicable to "any auto" ("Symbol 21") otherwise, coverage applicable to "hired" and "non-owned" autos ("Symbols 28 & 29") should be maintained.

**H. Excess Liability or Excess "Umbrella" Liability**

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

**I. Care, Custody and Control—Legal Liability (Describe Specific Coverage)**

Coverage will be provided for damage to property in the care, custody or control of the concessioner.

Any One Loss \$

**J. Environmental Impairment Liability**

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

Each Occurrence or Each Claim Limit \$

Aggregate Limit \$

**K. Special Provisions for Use of Aggregate Policies**

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

**L. Self-Insured Retentions**

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000.

**M. Workers Compensation & Employers' Liability**

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

**II. Property Insurance****A. Building(s) and/or Contents Coverage**

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit B of this CONTRACT.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Coverage is to be provided on a blanket basis.

7. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

8. Flood Coverage shall be maintained with a limit of not less than: \$

9. Earthquake Coverage shall be maintained with a limit of not less than: \$

10. Ordinance or Law Coverage shall be maintained with a limit of not less than \$

#### B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities, as more specifically described in Exhibit B of this CONTRACT.

2. The policy shall provide for loss recovery on a Replacement Cost basis.

3. The amount of insurance should represent no less than 75% of the Replacement Cost value of the insured property.

4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

5. Coverage is to be provided on a blanket basis.

6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.

7. Ordinance or Law Coverage shall be maintained with a limit of not less than \$

#### C. Builders Risk Coverage

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.

3. The policy shall provide for loss recovery on a Replacement Cost basis.

4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.

5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.

6. Any occupancy restriction must be eliminated.

7. Any collapse exclusion must be eliminated.

8. Any exclusion for loss caused by faulty workmanship must be eliminated.

9. Flood Coverage shall be maintained with a limit of not less than: \$

10. Earthquake Coverage shall be maintained with a limit of not less than: \$

#### D. Business Interruption and/or Expense

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

#### E. Deductibles

Property Insurance coverages described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding \$50,000).

2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

#### F. Required Clauses

##### a. Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with the Concession Contract/Permit No. \_\_\_\_\_ dated \_\_\_\_\_, between the United States of America and the \_\_\_\_\_ (the Concessioner) payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America."

#### III. Construction Project Insurance

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be

determined in consultation with the Director taking into consideration the scope and size of the project.

#### IV. Insurance Company Minimum Standards

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverages must be rated no lower than A – by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

2. All insurers for all coverages must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).

3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

#### V. Certificates of Insurance

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverages, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to receiving certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

#### VI. Statutory Limits

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit shall be considered the minimum to be maintained.

#### 6. EXHIBIT "F"

Exhibit "F" is a sample Maintenance Plan. A maintenance plan attached to an NPS concession contract delineates, consistent with the terms of the main body of the concession contract, the maintenance responsibilities of the Concessioner and NPS. There is no prescribed "standard" NPS maintenance plan. An appropriate maintenance plan is to be developed by NPS for each

particular concession contract. The following proposed sample maintenance plan, subject to any changes that may be made after consideration of public comments, will be included for informational purposes only as Exhibit "F" of standard language concession contracts (where applicable). There is no requirement that any actual Exhibit "F" to a concession contract adhere to the sample set forth below except for the introductory paragraph. Each actual maintenance plan will be developed to meet the needs and mandates of the individual park area and concession operations. Some sections included in this sample plan will not apply to all concessioners, e.g., where the concessioner provides no employee housing or is not affected by snow removal issues. Additional sections, e.g., hurricane preparedness, may be included in actual maintenance plans.

## (SAMPLE) MAINTENANCE PLAN

### Park Unit Name

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#### I. Introduction

This Maintenance Plan between \_\_\_\_\_ (hereinafter referred to as the "Concessioner") and (Park Unit Name), National Park Service (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It sets forth the maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within (Park Unit Name) which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any apparent conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed

annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of (Park Unit Name). Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT.

[From this point on, this document shall be tailored to the requirements of each individual park.]

#### II. Maintenance of Concessioner Facilities

The Concessioner is required by the terms of the CONTRACT to maintain the facilities used in a manner that is considered satisfactory by the National Park Service. It is the purpose of this Maintenance Plan to help define the necessary maintenance requirements and to define the maintenance relationship between the Concessioner and the National Park Service. Both the Concessioner and the Service have specific responsibilities as outlined in the CONTRACT and this document.

#### III. Terms Used in this Agreement

"*Concession Facilities*": As defined in the Concession CONTRACT.

"*Assigned Areas*": Assigned areas are lands within (Park Unit Name), as defined by Land Assignment Maps in Exhibit "B" to the CONTRACT. These lands contain improvements and support facilities used by the Concessioner. The Concessioner has specific responsibilities, defined below, regarding the condition of these lands, together with the facilities, improvements and landscapes on them.

Land Assignment Maps may also contain comments addressing maintenance responsibilities specific to an area.

"*Exterior*": Exterior refers to structures, foundations, exterior walls and surfaces, roofs, porches, stairways, and other structural attachments. This includes all equipment, walkways, trails, parking lots, and other improvements, as well as the lands, landscapes, and utilities within the assigned area of responsibility.

"*Interior*": Interior refers to the area of structures inside the external walls and under the roof, including doors and window frames. This also includes all equipment, appurtenances, improvements, and utility systems that penetrate the walls, roof, or foundation.

"*Maintenance*": The preservation and upkeep of real or personal property in as nearly as is practicable to the originally constructed condition or its subsequently improved condition. Maintenance includes operational cyclic repair and rehabilitation of designated areas, facilities, infrastructure,

equipment, and their component parts—up to and including replacement if necessary—to provide a safe, sanitary and aesthetically pleasing environment for park visitors and employees.

"*Operations*": Operations refers to all aspects of activity by the Concessioner authorized under the concession CONTRACT. Operations include all services provided to the public and all non-public actions necessary to support those authorized services.

"*Repair*": Repair is defined as the act of correcting an unsatisfactory physical condition. Replacement is an aspect of repair and may be a necessary and/or an economically sound approach to repairs. Repair is an aspect of maintenance, and the objective of repair is the same as the objective of the general act of maintenance as defined above.

#### IV. Annual Maintenance Inspections

The Service and Concessioner shall conduct an annual joint inspection/ review of Concessioner Facilities assigned to the Concessioner to determine what maintenance work is necessary, and if the facilities comply with applicable state and federal laws, regulations, guidelines, rules, codes, and policies. This review shall take place on a schedule to be established by the Service in consultation with the Concessioner.

Based upon the annual review, deficiencies noted on periodic evaluations (see Operating Plan), and needs identified by concessioner staff, the Concessioner shall prepare a list of maintenance needs and an annual maintenance program proposal to submit for Service approval by December 1 of each year. This program will list specific projects and the manner by which the Concessioner intends to execute its maintenance responsibilities during the following year.

#### V. Concessioner's Responsibilities

The following sections identify the responsibilities of the Concessioner.

##### A. Facilities Assigned to the Concessioner

The Concessioner shall maintain and repair all Concession Facilities assigned to the Concessioner except as noted under "Service Responsibilities."

The Concessioner's maintenance responsibilities include, but are not limited to:

- Lands, landscaping, and drainage structures;
- All improvements resting on the lands (buildings, walkways, trails,

parking areas, pavement markings, fences, curbing, culverts, etc.);

- Underground storage tanks and associated mitigation if needed;
- Intrusion and fire alarm systems;
- interior and exterior lighting systems;
- Fire suppression systems;
- Utility and utility distribution systems;

• Structural elements and surfaces (roofing, flooring, windows, doors, porches, etc. including hazard abatement);

- Heating and cooling systems;
- All installed fixtures and miscellaneous equipment.

The Concessioner will carry out general preventative and cyclic maintenance and emergency repair in a timely manner to ensure that all Improvements assigned to the Concessioner achieve the basic goals described by the Concessioner Review Program and applicable codes and guidelines. Maintenance will be carried out as follows:

1. *Codes:* The Concessioner shall comply with all applicable federal, state, and local codes, including but not limited to, the Uniform Building Code, Uniform Federal Accessibility Standards, the Uniform Plumbing Code, the National Electric Code, and the National Fire Protection Association's (NFPA) Life Safety Codes; unless a written exception has been provided by the Superintendent.

2. *Painting:* To maintain the appearance of the structures, exterior painting shall be performed on a seven year cyclic basis or more often if needed to provide adequate protection to the structure. Interior painting shall be performed on a five year cyclic schedule or more often if needed to maintain a good appearance. The Service must provide advance written approval for lengthening intervals or change of paint color.

3. *Interior Systems:* The Concessioner shall operate, repair, and replace lighting, heating, and cooling systems. The Concessioner shall clean and inspect all chimneys, fireplaces, stoves, and exhaust ducts prior to each operating season. The concessioner shall also provide and install any needed winterization covers for chimneys.

4. *Utility Systems:* The Concessioner shall operate, repair, and replace all interior and exterior utility systems within Concessioner land assignments as described on Land Assignment Maps.

5. *Food Service Equipment:* All equipment used in food service operations, including but not limited to dishwashers, refrigerators, freezers, and

servicing tables, will comply with safety, public health, and sanitation codes.

6. *Safety Equipment:* The Concessioner will provide and maintain safety devices, fire detection and suppression equipment, and such additional appurtenances as are necessary for the protection of the employees and the public, as well as assigned Concessioner Facilities, by complying with all applicable county, state, and federal codes.

7. *Fire Equipment:* The Concessioner is responsible for all hose boxes, fire hose, standpipes, and extinguishers within its assigned area of responsibility, and shall inspect the equipment on a regular basis to ensure proper working order and compliance with the NFPA Life Safety Code.

8. *Roof Replacement:* As roof materials are replaced, type A materials will be used to maximize the fire protection provided to structures assigned to the Concessioner.

9. *Historic Structures:* (Historic Items) Certain Concessioner Facilities are listed on, or may be nominated to, the National Register of Historic Places and the NPS List of Classified Structures (LCS).

The Concessioner shall submit plans for all proposed work or actions affecting these resources to the Service to ensure compliance with laws, policies, and guidelines, including the National Historic Preservation Act of 1966, as amended. This applies to any undertaking that may affect an historic structure, historic district, cultural landscape, archeological site, or historic object or furnishing. The Concessioner must document proposed actions using the "XXX Form" which is available from the park. Service representatives will provide guidance to the Concessioner on the preparation of the form if requested. The proposed project may be reviewed by the Service cultural resources staff at the park and regional level, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation. Service approval is required prior to undertaking the proposed action.

10. *Winter Closures:* The Concessioner shall provide winter bracing in unoccupied buildings as needed to avoid damage to structures. The Concessioner shall install shutters on all windows that are susceptible to snow damage. Shutters shall be neatly made and fitted and shall match the color of the structure to which they are affixed. Shutters for the windows and doors of historic structures shall be installed in a manner approved by the Service.

The Concessioner shall remove snow from roofs when snow accumulations

threaten to injure persons or damage buildings. The Concessioner assumes sole responsibility for actions needed to correct damage that results from inadequate preventative measures.

11. *Concessioner Housing:* The Concessioner will carry out general maintenance and repair of employee housing structures on a timely basis to ensure that employee housing are well maintained. The Concessioner will inspect and clean heating on a cyclic basis and prior to initial occupancy. The Concessioner shall monitor employee housing for compliance with fire, health and safety codes and Service policies and guidelines.

#### B. Signs

The Concessioner will install, maintain, and replace all interior and exterior signs relating to its operations and services within the assigned areas and directional signs outside assigned areas that relate specifically to concession operations. Examples include identifying location of facilities, operating services and hours, and the Concessioner's rules or policies.

The Concessioner shall ensure its signs are compatible with Service sign standards. Sign size, style, color, and location shall be submitted for Service approval prior to installation. No handwritten signs shall be permitted within the Concessioner's area of responsibility except on a short-term, interim basis.

The Service may install signs within the areas assigned to the Concessioner.

#### C. Snow Removal

The Concessioner shall clear ice and snow, and sand all walkways, roadways, and parking areas within its assignment zones, as necessary to make access reasonably safe for the visiting public, Concessioner employees, Service emergency operations, and Concessioner maintenance and support operations. The use of chemical or foreign material de-icers must be pre-approved by the Service.

#### D. Litter and Garbage

The Concessioner shall provide an effective system for the collection and disposal of garbage and trash within its areas of responsibility. The concessioner may engage an independent contractor for this activity. The Concessioner shall keep its assigned areas free of litter, debris, garbage, and abandoned equipment, vehicles, furniture, or fixtures. Refuse shall be stored in receptacles that are covered, waterproof, and bear-and vermin-proof.

These containers will be kept clean, well maintained, and serviceable; sites

will be free of spills, waste, and odors. To prevent pest attraction and breeding, all wet garbage from concession operations will be adequately bagged and tied or stored in sealed containers. Waste must not accumulate in trash containers to the point of overflowing. Trash containers shall be conveniently located and in sufficient quantity to handle the needs of the area. The Concessioner will place cigarette receptacles at heavy use locations within assigned areas.

In areas where trash/garbage pickup noise may disturb guests, the contractor is restricted to pick-ups between 8:00 a.m. and 5:00 p.m.

Trash and garbage containers should be painted light brown or tan to distinguish between Service receptacles which are dark brown. Paint color should be approved by the Service prior to application.

All materials generated as solid waste must be removed from parks at the Concessioner's expense and disposed of in an appropriate manner in an approved site. Applicable state and/or county codes shall also be followed.

#### E. Grounds and Landscaping

The Concessioner shall prepare a written landscaping plan for each land assignment area and submit it to the Service for approval. The plan will include general statements regarding the desired regime (manicured, natural, etc.) and condition of the area and sub areas, as appropriate. It should include specific information including locations and scope of work proposed, safety and resource considerations, debris disposal, and proposed use of irrigation systems. The appropriate use of native vegetation, need for revegetation/restoration efforts, and the potential existence of cultural landscapes should be considered during this planning phase.

The Concessioner shall ensure proper drainage control to protect landscapes, native vegetation, structures, facilities, improvements, and equipment while maintaining natural drainage patterns to the greatest extent possible.

The Concessioner will remove trees within the Concessioner's assigned areas that have been identified by the Service as hazardous. Such trees and other trees requiring removal will be approved for removal in advance by the Superintendent by means of a written authorization that shall serve as a removal permit.

In cases where grounds and landscaping activities require temporary modification or relocation of structures assigned to the Concessioner, the Concessioner shall carry out the

temporary modification or relocations at its expense.

The Concessioner will remove accumulated debris. The Concessioner should use creative methods of recycling natural debris, such as chipping woody materials for use as compost, dust control, and/or resource mitigation material. The Concessioner will remove slash buildup around buildings in its assigned area to reduce fire hazard.

As facilities are removed or sites become heavily impacted by construction activities or overuse, the Concessioner shall prepare and implement a site restoration component for its landscaping plan. The park's Resources Management Division will provide advice and assistance during the preparation of these plans. Written approval from the Service is required prior to plan implementation.

#### F. Roads, Trails, Parking Areas, and Walkways

The Concessioner shall maintain roads, parking areas, curbing, sidewalks, walkways, and trails within its assigned lands in a state of good repair and in a manner, which provides reasonable access to the general public, persons with physical disabilities, and emergency/service vehicles. In all assigned areas, the Concessioner shall sweep, sign, and paint curbs and striping surfaces on a recurring schedule to ensure that public areas are consistently clean and free of litter and earthen debris and are well marked. Striping plans must have written approval from the Service prior to implementation.

The Concessioner will control dust within the Concessioner's land assignment and dust which results from Concessioner use outside the Concessioner's land assignment.

The Concessioner shall develop an exterior lighting system plan, which addresses installation and maintenance of directed lighting systems that provide the minimum necessary lighting for night-time walking in assigned walkway areas. This lighting system plan shall be submitted to the Service for approval.

The Concessioner shall maintain trails assigned for its use.

#### G. Firewood

The Concessioner shall acquire fully-cured firewood from outside the park for use in assigned facilities. The Service encourages the use of lower emission composite fuels when and wherever possible.

To minimize hazards associated with fuel wood storage, the Concessioner will store wood away from existing

structures and will comply with instructions provided by the Service's fire management staff.

#### H. Utilities

Utility systems will not be extended or altered without prior written approval of the Superintendent. This does not include routine or minor maintenance such as replacement of system components with like kind.

1. *Electrical*: The Concessioner shall maintain all electrical lines and equipment (conduit, fuses, panels, switches, transformers, lines, etc.) down line from the meter within all Concessioner land assignments and all fixtures (lamps, cords, and equipment) affixed to the secondary electrical lines.

The Concessioner shall repair or replace any electrical system damage occurring beyond the Concessioner assigned areas which results from negligence of the Concessioner and/or its employees while working or operating concessioner equipment.

The Concessioner will ensure that all electrical circuits under its control meet or exceed the standards of the National Electric Code.

2. *L.P. Gas Systems*: The Concessioner shall repair and maintain, according to NFPA codes, all L.P. gas systems in its assigned areas. This includes, but is not limited to, tanks, bottles, regulators, and piping.

The Concessioner will conduct and document, semi-annual inspections of its gas storage and distribution systems.

Placement of new or additional tanks must receive prior written Service approval. All gas installations must be inspected by an independent inspector at the Concessioner's expense.

3. *Water*: The Concessioner shall repair and maintain water service and building plumbing systems down flow from the meter within the Concessioner land assignments or as shown and/or described on Land Assignment Maps. The Concessioner shall repair or replace any damaged portions of the water system within assigned areas and damage occurring beyond the Concessioner assigned areas which results from negligence of the Concessioner and/or its employees while working or operating concessioner equipment. The Concessioner shall also maintain all fixtures attached to the water system within all buildings and structures.

The Concessioner shall implement water conservation measures as needs arise. As replacement of fixtures is needed, the Concessioner shall obtain and install low-flow and water conserving fixtures.



The Concessioner shall implement a cross-connection control program in accordance with the most current version of the (Park Unit Name) Water System Cross-Connection Control Regulations.

The Concessioner will provide for the daily monitoring and periodic sampling of water systems at its camps.

4. *Sewage:* The Concessioner shall repair and maintain all sewage lines, connections, disposal systems, and appurtenances within the Concessioner land assignment to the sewer collection main or as shown and/or described on Land Assignment Maps. The Concessioner shall repair or replace any damage to the sewage disposal system within assigned areas and damage occurring beyond the Concessioner assigned areas which results from negligence of the Concessioner and/or its employees while working or operating concessioner equipment.

The Concessioner shall maintain, repair, and replace fixtures attached to the sewage disposal system (including sinks, toilets, urinals, and dish washing equipment).

The Concessioner shall install and maintain grease traps as necessary to assure that grease does not flow into wastewater systems. The Service will bill the Concessioner to recoup costs for clearing or replacing clogged sewer lines and cleaning lift station wet wells due to heavy grease accumulation when directly related to the Concessioner's operations.

The Concessioner shall provide chemical toilets at designated areas associated with their operations, e.g., golf courses, stables, and raft takeout. The Concessioner will also provide for the proper operation and maintenance of composting toilets associated with its operations.

5. *Telephone Service:* The Concessioner shall contract directly with commercial telephone operators for phone service to its assigned facilities. Agreements with commercial providers shall be in accordance with guidelines provided by the National Park Service. The Concessioner shall be responsible for all on premise equipment and wiring.

6. *Seasonal Operations:* The Concessioner will drain all water and sewer lines that are defined above as the responsibility of the Concessioner and take all necessary steps to prevent damage from freezing.

The Concessioner will charge and test all water and sewer lines for leaks prior to opening.

The Concessioner shall comply with the Service's annual guidelines when

reopening and repairing drinking water distribution systems.

7. *Fuel Storage Tanks and Pumps:* The Concessioner shall maintain in a serviceable condition all fuel dispensing equipment (including nozzles, regulators, shut-offs, pumps, pump housing and related appurtenances). The Concessioner shall also be responsible for installation, maintenance or replacement of fuel storage tanks and underground pumps, pipes, etc. to the dispensing apparatus, and shall be responsible from the installation and maintenance of protection barriers to protect the dispensing equipment. All maintenance, repairs, remodeling, upgrading and fuel spill mitigation shall be consistent with applicable Federal, state and local regulations and codes. The Concessioner shall notify the park's Communication Center immediately upon the event of a hazardous material or fuel spill.

#### VI. *Service Responsibilities*

During the execution of any Service responsibilities indicated below, should the Service disrupt areas or lands within the Concessioner's assigned lands, the Service shall provide mitigative signing, barriers, and revegetative efforts as are needed.

The Service will interface with the Concessioner's maintenance program by executing the following responsibilities. All obligations of the Service are subject to the availability of appropriated funds.

##### A. *Facilities Assigned to the Concessioner*

The Service will not maintain Concession Facilities assigned to the Concessioner. The Service will provide staff review of Concessioner plans and proposals, inspection and evaluation of Concessioner processes and programs, and technical advice and assistance when requested and as resources allow.

##### B. *Signs*

The Service will install, maintain, and replace all regulatory signs. The Service will provide direction and assistance to the Concessioner during the design and installation of all approved signing.

If requested, and subject to the availability of resources, the Service may on a reimbursable basis construct, maintain, and/or install signs for which the Concessioner is responsible. All requests for such service must be approved by the Chief, Facility Management, or his/her designated representative.

##### C. *Snow Removal*

(This paragraph should mesh with the Concessioner snow paragraph. Also, if snow removal is being provided to the Concessioner by NPS, provisions must be made as to price and availability.)

The Service will hold (usually in the fall) an annual meeting to develop a snow removal plan and priority schedule for Service plowing operations; a representative of the Concessioner may attend.

##### D. *Litter and Garbage*

(This paragraph should be aligned with the related concessioner paragraph.)

If requested and subject to the availability of funds, the Service may on a reimbursable basis provide garbage pick-up and disposal, bear-proof dumpsters, and maintenance and repair of those dumpsters within the Concessioner's assigned areas. All requests for such service must be approved by the Chief, Facility Management or his/her designated representative.

The Service will provide direction and guidance to the Concessioner regarding procedures and methods for keeping Concessioner refuse away from Park wildlife.

##### E. *Grounds and Landscaping*

The Service will identify and periodically monitor hazardous trees in the Park. The Service will review the Concessioner's Landscaping Plans, provide standards as needed, review and approve (if appropriate) proposed work, and monitor Concessioner projects.

The Service may make available to the Concessioner, when no cost to the Service is incurred, designated sites where limbs and other legally burnable forest debris may be transported for disposal.

##### F. *Roads, Trails, Parking Areas, and Walkways*

The Service will be responsible for appropriate maintenance of all roads, parking areas, curbing, sidewalks, walkways, and trails in the Park, except those within the Concessioner's area of responsibility as shown on the Land Assignment Maps. The Service will review the Concessioner's maintenance plans, provide standards as needed, review and approve proposed work where appropriate, and monitor Concessioner projects. Use of assigned trails by the Concessioner is subject to specific terms and conditions as may be developed by the Superintendent for mitigation of impacts by the Concessioner resulting from the Concessioner use.

### G. Integrated Pest Management

The control of pests by chemical and other means is subject to park approval. Procedures are outlined in the Park's Integrated Pest Management Plan. Specific problems can be referred to the park's Integrated Pest Management Coordinator.

### H. Utilities

1. *Electrical*: Where currently provided or where duplicate efforts exist, the Service will offer electrical service to the Concessioner at rates established by the Service. The Service will allow commercial electrical service to be available at all locations assigned to the Concessioner where the provision of electrical service is indicated in General Management Planning documents.

2. *Water*: The Service shall supply potable water to all Concession assigned areas to the extent possible using existing water systems at rates to be established by the Service. The Service will charge a fee to be determined annually.

The Service will provide bacteriological monitoring and chemical analysis of potable water as required by applicable law or policy. In the case of the required water monitoring by the Concessioner, the Service will provide training and review the Concessioner's daily monitoring procedures. The Service will also process water samples taken by the Concessioner at its monitored areas.

The Service will furnish water service, connections, meters, and shut-off valves. All piping and appurtenances down flow from the meter or as shown and/or described on Land Assignment Maps shall be the responsibility of the Concessioner to operate, repair, and maintain.

3. *Sewage*: The Service shall provide waste water treatment and collection services to all Concession assigned areas or as described and/or marked on Land Assignment Maps. The Service will charge a fee to be determined annually.

The Service shall assume responsibility for waste water collection at the sewer main where major points of collection occur and operate and maintain lift stations and wastewater treatment facilities including the pumping of sealed vaults within lands assigned to the Concessioner.

The Service will provide advice and technical expertise, as available, to the Concessioner regarding the operation and the maintenance of composting toilets.

### National Park Service

Superintendent

Date: \_\_\_\_\_

#### 6. EXHIBIT "G"

Exhibit "G" is a sample Operating Plan. An operating plan attached to an NPS concession contract describes specific operational responsibilities of the Concessioner and NPS. There is no prescribed "standard" NPS operating plan (except for the introductory paragraph of this sample plan). An appropriate operating plan is to be developed by NPS for each particular concession contract. The following proposed sample operating plan, subject to any changes that may be made after consideration of public comments, will be included for informational purposes only as Exhibit "G" of standard language concession contracts (where applicable). There is no requirement that any actual operating plan follow this sample except for its introductory paragraph. Each actual operating plan will be developed to meet the needs and mandates of the individual park area and concession operations. Some sections included in this sample plan will not apply to all concession contracts, e.g., where the concessioner provides no lodging or food service. Appropriate additional sections may be included in actual operating plans.

#### (Sample) Operating Plan

Park Unit Name

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#### I. Introduction

This Operating Plan between \_\_\_\_\_ (hereinafter referred to as the "Concessioner") and (Park Unit Name) (hereinafter referred to as the "Service") shall serve as a supplement to Concession Contract CC-xxxxnnnn-yy (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within (Park Unit Name) which are assigned to the Concessioner for the purposes authorized by the CONTRACT.

In the event of any conflict between the terms of the CONTRACT and this Operating Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of (Park Unit Name).

Any revisions shall be consistent with the main body of this CONTRACT.

[From this point on, this document needs to be tailored to the requirements of each individual park.]

## II. Management, Organization and Responsibilities

### A. Concessioner

1. The Concessioner will direct this concession operation. The Concessioner shall employ an on-site manager, who carries out the policies and directives of the Service as well as those of the Concessioner in the operation of the authorized concessions facilities and services in (Park Unit Name). To achieve an effective working relationship between the Concessioner and the Service, the Concessioner shall designate one representative who has full authority to act as a liaison in all concession matters within (Park Unit Name).

2. The on-site manager will employ a staff with the expertise to operate all services authorized under the concession CONTRACT.

3. The on-site manager will furnish the Service with an initial list identifying key concession management and supervisory personnel and their job titles, with updates as changes occur.

### B. Area

1. The Superintendent manages the total park operation, including concession operations. The Superintendent carries out the policies and directives of the Service, including oversight of concession contracts. Through staff representatives, the Superintendent reviews, supervises, and coordinates concession activities within (Park Unit Name).

Monitoring concession contract compliance includes evaluating all concession operations and services, and reviewing and authorizing all rates, improvements to facilities, and construction.

2. The Assistant Superintendent supervises and manages the functions of all divisions, as they relate to the overall park operation. This position has delegated authority and assists the Superintendent by making recommendations on all aspects of park management and serves as Acting Superintendent during the absence of the Superintendent.

3. The Management Assistant is responsible for coordinating planning and development activities, overseeing environmental compliance, and supervising the concession management activities within the park.

4. The Concessions Management Division coordinates the functions of other Service divisions relating to concession operations. The Chief makes recommendations on all aspects of the concessioner's operation to the Superintendent. He/she ensures that

necessary evaluations and inspections are performed, including those required by the United States Public Health Service (USPHS), Park Safety Officer (including fire inspections), along with periodic evaluations required under the NPS Concessioner Review Program. The Chief ensures all concessioner rates are approved based upon current comparability studies or applicable guidelines. He/she has authority from the Superintendent to make field decisions pertaining to the concessions operation, and acts as liaison between the Concessioner and Superintendent.

Concessions Management Specialist(s) review and coordinate the Concessioner's day-to-day activities; operational and maintenance activities; rate, service, and schedule changes; equal employment opportunity and affirmative action plans; advertisements; construction proposals; annual financial reports; insurance coverage; and any other contract requirements.

5. The Park Safety Officer monitors the Concessioner's Loss Control program to ensure it meets all applicable standards.

6. The Park Sanitarian monitors food and beverage services, grocery stores, solid waste disposal, water, and waste water systems to ensure adherence to all applicable public health standards.

7. The Chief Ranger initiates, reviews, supervises, and coordinates the activities of personnel who provide visitor services and protection functions. District and Subdistrict Rangers, the Fire Management Officer, and the Chief Law Enforcement Specialist serve as the direct line of communication to the Concessioner on matters related to fire management, law enforcement, safety, prescribed fire, search and rescue, emergency medical services and resource protection. District and subdistrict rangers may assist with concession operational evaluations, PHS evaluations and critical item follow-up inspections.

8. The Chief of Interpretation acts on behalf of the Superintendent in matters pertaining to interpretation, environmental education, museum services, and public information. The Interpretive Division will work with the Concessions Management Division to evaluate/monitor concession interpretive activities.

a. District Interpreters provide interpretive programs for the visiting public and serve as the direct line of communication to the Concessioner about interpretive matters, including concession staff training.

b. The Public Information Officer coordinates media relations and activities directly with the

Concessioner. This office also prepares the Parks' newspaper, the Sequoia Bark.

c. The Parks Cultural Resources Specialist serves as the direct line of communication to the Concessioner about the care, treatment, and preservation of the historic structures assigned to the Concessioner.

9. The Chief of Maintenance acts on behalf of the Superintendent in matters pertaining to maintenance and supervises the activities of Facility Managers, the Park Sanitarian, and Park Communications Center.

a. The Facility Managers, District Maintenance Supervisors and their staff provide day-to-day supervision of all maintenance activities and operations, including utilities, in their districts. They serve as the direct line of communications to the Concessioner on routine maintenance matters.

b. The Exhibits Specialist provides technical advice and assistance to the Concessioner on all matters concerning maintenance to historic structures.

10. The Chief of Resources Management acts on behalf of the Superintendent in all matters pertaining to natural resources management such as air quality monitoring, vegetation management, fish and wildlife management, and hazard tree mitigation.

11. The Administrative Officer acts on behalf of the Superintendent in matters related to fiscal management associated with the concession activities, including billing for payment of franchise fees, utilities, lease fees, quarters rental, and personal services provided by the Service to the Concessioner.

## III. Concession Operations

### A. Operational Evaluations

1. The Service and the Concessioner shall inspect and monitor concession facilities and services. The Service will evaluate all services and facilities operated by the Concessioner to ensure public safety and health, identify maintenance and operating deficiencies, and ensure satisfactory services and accommodations for the general public within assigned areas of responsibility.

2. The Superintendent's representative(s), normally the Concessions Management Specialists, will conduct periodic inspections of concessioner facilities and services to ensure conformance to operational standards established by the Concessioner Review Program. Location managers will be contacted at the time of evaluations so that a representative of the Concessioner can accompany the Service evaluator.

3. The Park's Safety Officer will conduct at least one annual

comprehensive safety and occupational health evaluation.

4. The Park Sanitarian shall conduct periodic food service evaluations; inspections may be conducted without prior notice. The Concessioner will maintain and follow a formal, written food service sanitation self-inspection program. The Service will help develop and update the program as necessary.

5. The Concessioner is responsible for developing and following a comprehensive safety program. The service will make unannounced inspections and evaluations of the safety program on a random basis.

6. The Concessioner will perform annual interior and exterior fire and safety inspections of all concession buildings. Written records, verifying the completion of such inspections, will be maintained by the Concessioner and available to the Service upon request.

7. The Service reserves the right, in accordance with the Concession CONTRACT, to enter the Concessioner's facilities at any reasonable time for inspections or when otherwise deemed necessary.

8. The Concessioner must be responsive to dates assigned for correction of deficiencies and abatement plans for correction of identified deficiencies. The Concessioner will meet with Service officials to schedule and prioritize correction of deficiencies and improvement programs resulting from these inspections.

#### B. Rates

The Concessioner shall provide its visitor services at rates approved by NPS.

#### C. Schedule of Operation

The Concessioner will provide authorized services for (Park Unit Name) visitors on a year-round basis; some facilities close seasonally or provide limited services. The Concessioner will annually submit a written schedule of proposed opening and closing dates and operating hours for all concession facilities for the Superintendent's approval prior to implementation. The Service will give reasonable notice of any schedule changes that it may initiate. Weather and visitation may cause specific dates of operating seasons to fluctuate; these dates, however, will be agreed upon and approved by the Service.

#### D. Staffing and Employment

##### 1. Concessioner Hiring:

a. The Concessioner will hire a sufficient number of employees to ensure satisfactory services during shoulder as well as peak visitor seasons.

b. The Concessioner will attempt to offer its employees a full workweek whenever possible. Prior to employment, the Concessioner will inform employees of the possibility that less-than-full-time employment may occur during slow periods.

c. The Concessioner will establish hiring policies that include appropriate background reviews of applicants for employment. The Concessioner will establish employment standards to ensure that guest safety and security is maintained and that sensitive positions, such as those with access to guest room keys, are identified.

d. Drivers of delivery trucks or passenger carrying vehicles shall have a valid operator's license for the size and class of vehicle being driven. They shall also meet any additional State requirements established for the vehicle driven or passengers carried.

##### 2. Employee/Staffing Practices:

a. All employees dealing with the public shall wear uniforms or standardized clothing with personal nametag. Employees will project a hospitable, friendly, helpful, positive attitude, be capable of and willing to answer visitors' questions, and provide visitor assistance. The Concessioner shall take appropriate steps to enforce these rules.

b. The Concessioner shall have an affirmative action plan, as required by law, and shall post the plan in the office and work area.

##### 3. Service Employees and Families:

The Concessioner shall not employ in any status a Service employee, his/her spouse, or minor children of Service employees without the Superintendent's approval. Service employees must submit a written request for approval to the Superintendent. The Concessioner shall not employ in any status the spouse or children of the Superintendent, Assistant Superintendent, Chief of Concessions Management, Concessions Management Specialists, Safety Officer, or Public Health Sanitarian.

##### 4. Training Program:

a. The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements that affect their employment and activities while residing and working in (Park Unit Name). A Service representative may participate in scheduled orientation sessions.

b. The Concessioner will provide appropriate job training to each employee prior to duty assignments and working with the public.

c. The Service will provide orientation(s) to the Concessioner

Review Program and other NPS Concession Programs, emphasizing the operational review program, to managers on an annual basis.

d. The Concessioner will provide hospitality training for employees who have direct visitor contact and/or who provide visitor information.

e. The Concessioner will design and provide interpretive training for all employees who provide interpretive and/or informational services. The Service will work closely with the Concessioner to refine the methods of preparing and conducting effective interpretive programs. The Service will evaluate interpretive visitor services to ensure appropriateness, accuracy, and the relationship of interpretive presentations to primary parkwide interpretive themes.

#### IV. Scope and Quality of Service

**Note to preparer:** This section of the sample operating plan includes only a portion of the potential services that a concessioner might provide. Some of these sample sections may not apply to one concessioner. Other services for which sections might be developed include, for example:

- Horse operations
- Guided ski touring, hiking or technical climbing
- Sleigh rides
- Wagon rides
- Bus tours
- Cookouts
- Snowmobile operations
- Pack trips
- Hunting guide services
- Canoe or kayak livery
- Etc.

All vehicular equipment used by the Concessioner will be properly licensed and maintained in a safe operating condition. Federal and state requirements must be adhered to. The Concessioner will park such equipment, when not in use, in an orderly fashion in an area approved by the Service.

#### A. Overnight Accommodations

1. *General:* Total pillow count will not exceed the pillow limitation set forth in the General Management Plan and applicable development concept plans for this park area.

The Concessioner will provide clean, well maintained overnight accommodations. Furnishings, bedspreads, pictures, draperies, etc. will retain a national park theme, with sensitivity to the history and resources of the park area. The Concessioner and Service will coordinate improvements to rooms and furnishings. The Concessioner must have prior written approval from the Superintendent

before implementation of any new improvements.

2. *Television*: Television will not be included as a part of furnishings in designated park lodging rooms.

3. *Telephone Services*: Telephone services shall provide public access to long distance services in accordance with "The Telephone Operator Consumer Service Act." Charges to guests will not exceed the FCC approved AT&T tariff time-of-day and day-of-week, public switched-message rates.

4. *Lodging Reservations/Deposits/Refunds*:

a. The Concessioner will adequately staff the Reservations Office to meet the need during peak periods.

b. The Concessioner will accept reservations up to one year and one day in advance. A deposit may be required to hold a reservation. The deposit requirement and refund policy is part of the rate approval process. Any deposit may be paid by cash, check, money order, or major credit cards, including the type of credit cards issued to government employees.

c. If cancellation is made 72 or more hours in advance of reservation, the deposit will be refunded in full. If the cancellation is made less than 72 hours in advance, the deposit is forfeited unless the rooms are filled. Rates confirmed by the Concessioner shall be honored at the time of stay. Refunds will be processed within one month of cancellation.

5. *Conventions, Group Meetings, and Special Events*:

a. The Concessioner shall limit convention and group meeting use of its facilities to the off-season period(s) and then only to fill accommodations which would otherwise be vacant. Facilities may not be set aside for exclusive use by special groups if they will interfere with the general public's use and enjoyment of the area or facility.

b. Where occupancies are low, the Concessioner is encouraged to schedule special events that relate closely to park themes.

#### B. Food and Beverage Service

1. All menus will maintain a price range that accommodates the general range of park visitors.

2. The Concessioner will offer a range of food service providing for a wide variety of visitors, i.e., deli, fast food operation, cafeteria, and full service restaurants in the lodging facilities. Food service operations will offer variety at each location, including vegetarian entrees, light eater's portions, and children's menus. Taken all

together, price ranges will accommodate the general range of Park visitors.

#### C. Alcoholic Beverage Sales

1. The Concessioner will comply with applicable State laws and regulations, which will be enforced by the Service.

2. Alcoholic beverage service will be available to the public with meal service (bona fide eating place) and at designated lounges. Alcoholic beverage sales will be available to the public at specific merchandising outlets. No promotional activities will center on alcoholic beverages (i.e., happy hours, two-for-one sales, etc.)

#### D. Merchandising

1. *General*: Guidelines regarding merchandise sales operations are included in the Concession CONTRACT.

2. *Gifts and Souvenirs*: A "Gift Mission Statement" for (Park Unit Name) is provided as Attachment 1 to this Operating Plan. The Gift Mission Statement connects primary parkwide interpretive themes with gifts and souvenirs chosen for sale in park gift shops.

In (Park Unit Name), gift and souvenir sales will conform to Gift Mission Statement including the following guidelines:

a. A broad range of gifts and souvenirs will provide visitors with opportunities to buy inexpensive as well as fine art items.

b. Handicraft items representing park and regional themes, including crafts by local and Indian artists, will be actively sought and prominently displayed.

c. Gift shops will offer items having a direct relationship to (Park Unit Name), its environs, its history, or other related environmental or cultural topics. This will provide visitors with opportunities to buy memorabilia of their park visit while at the same time obtaining information or educational messages related to the park's resources. Where possible and appropriate, informative tags will be attached to the sales item to show their relationship to park themes. Items of park interpretive value and general value in environmental and cultural education will be prominently displayed.

d. Gifts and souvenir items which are commonly found outside the park and which do not relate to identified primary parkwide interpretive themes will not be restocked. Existing stocks may be sold until depleted.

3. *Sporting Goods and Clothing*: The Concessioner shall carry a selection of clothing and sporting goods to meet the needs of visitors who may have forgotten items or need emergency

replacements. The intent of this visitor service is to provide a narrow selection of items which nonetheless represents a range of price and quality levels.

4. *Firewood*: The Concessioner shall acquire fully-cured firewood from outside the park for sale in its facilities. The Service encourages the use of lower emission composite fuels when and wherever possible.

#### E. Interpretive Services

1. *General*: The Concessioner shall submit to the Service a written plan for its interpretive program which outlines, for both non-personal and personal services, a basic description of topics to be covered, bibliography of resource materials being used, and the scope of employee training.

2. *Guided Bus Tours*:

a. The Concessioner will provide guided bus tours using vehicles provided by the Concessioner.

b. The Concessioner will provide a sufficient number of trained, courteous drivers and support staff to meet the operating schedule. Personnel will wear appropriate uniforms.

c. The Concessioner will adequately train staff members in safe operating procedures and interpretive techniques. The Concessioner will provide and be evaluated upon thematic interpretation. Employees will demonstrate their knowledge of (Park Unit Name), Service goals, and appropriate interpretive techniques in their programs.

3. *Non-Personal Interpretive Services*:

a. In addition to personal interpretation, the Concessioner will actively pursue a non-personal interpretive program. At food service facilities, interpretive messages will be included on menus, placentas, paper cups, tent-cards, etc. The Concessioner will explore a wide array of avenues for conveying interpretive messages to visitors on park-related themes and topics such as resource protection, appreciation of park values, and Service goals.

b. Primary parkwide interpretive themes will carry over to merchandise sold in retail outlets.

4. *Interpretive Assistance*: The Division of Interpretation is available to advise/assist the Concessioner in the development of an interpretive program which encompasses all of these efforts.

#### F. Ski Touring Operations

1. Equipment will comply with standards expressed by the American Standard Testing and Materials (ASTM); employees will receive proper training to work with equipment according to the manufacturer's specifications and ASTM.

2. Snowshoe and Nordic ski equipment rentals will be available when snow conditions permit. The Concessioner shall maintain an adequate supply of quality rental equipment in a wide variety of sizes to meet visitor needs. Staff shall possess the expertise needed to properly fit the equipment to the visitor's needs and abilities.

3. Ski Trail Grooming: The Concessioner is authorized to groom loop trails using mechanical grooming equipment. Machine grooming will not occur until average snow depth exceeds 24 inches. Machines will not cross open streams unless snow bridges can be constructed from available snowpack. With specific permission from the District Ranger, a snowmobile may be used for grooming trails in less than 24 inches of snow if this does not result in any disturbance of vegetation or soils.

#### G. Automobile Service Stations

1. Service stations will be full service facilities. Full service includes fuel pumped by an attendant, windows washed, oil and other fluid levels checked. Tire pressure will be checked on request.

2. Stations will be equipped and supplied with sufficient parts to enable them to make emergency vehicle repairs. Stations will be equipped and supplied or have access to supplies (such as replacement fan belts) to enable visitors to make minor repairs. There will be a mechanic on call during regular business hours. Diesel fuel, in addition to unleaded gasoline, will be available.

3. Emergency after-hours gasoline purchases will be available at the Service-approved call-out rate. When towing services are required, the Concessioner will recommend Service-approved towing services.

4. The Concessioner will comply with all federal, state and local regulations regarding hazardous materials and environmental concerns. The Concessioner shall place a salvage drum at each service station and be equipped to immediately address any spill.

#### H. Showers and Laundry Facilities

1. Shower enclosures and stalls will be well maintained and clean. Water pressure and temperature will remain constant and be comfortable. The concessioner shall provide at least two clothing hooks in each stall.

2. An adequate number of washers and dryers, in good working condition, will be provided. Washers and dryers will be well maintained and clean. Change or tokens and laundry soap will be available either in vending machines

onsite or at a convenient location nearby.

#### I. Vending

1. Vending and ice machines and their location will be easily identified, adequately illuminated, conveniently located, and of a design and color which complements the aesthetics of nearby buildings and surroundings. All proposed locations must be approved by the Service. All machines will be clean, properly stocked, and in good working condition. Signing on the machine will be generic in nature. Brand information should only be visible when at the machine.

2. Due to the inability to effectively regulate the use of cigarette vending machines by minors, cigarette vending machines will not be placed in the park.

3. When out of order for the season, signs will be posted on the vending machines with appropriate information that will direct patrons to the closest available unit.

#### V. Reports

##### A. Concessioner

1. *Management Information System:* To document visitor use impact, the Concessioner shall maintain a management information system on lodging and food service operations and shall provide the Superintendent a monthly report which will reflect the following information for each type of unit by location:

- a. Units available
- b. Units occupied
- c. Percentage of occupancy
- d. Total guest count
- e. Number of guests per unit
- f. Average length of stay
- g. Number of meals served (breakfast, lunch and dinner).
- h. For each type of guided activity:
  - i. Number of trips conducted, by type
  - ii. Number of participants on each.

2. *Utility Pass-Through Revenues:* The Concessioner shall provide the Superintendent with monthly reports on any utility rates recouped as pass-through revenue during the reporting month.

3. *Incident Reports:* The Concessioner will immediately report to the Service Communication Center: any fatalities or visitor-related incidents which could result in a tort claim to the United States; property damage over \$500; any employee, visitor, or stock injuries requiring more than minor first aid treatment; any fire; all motor vehicle accidents; any incident that affects the park's natural and/or cultural resources; and any known or suspected violations of law involving persons not employed by the Concessioner.

#### 4. Human Illness Reporting:

Information on all human illnesses, whether employees or guests, is to be promptly reported to the Service's Safety Office. This information, along with other information received, will be evaluated by the Park Sanitarian to help identify outbreaks of illness associated with contaminated water or food sources, or caused by other adverse environmental conditions. Reports shall be made by telephone.

#### 5. Other Reports Required by the CONTRACT:

- a. Annual Financial Report—April 1 each year.
- b. Certificate of Insurance—March 1 each year.
- c. Statement of Insurance—March 1 each year.

(from Concessioner's insurance company)

#### B. Service

1. *Annual Review of Utility Rates:* Operating costs for utility systems and services will be reviewed annually in July, and the Concessioner will be notified in writing by August 1 of the rates for the upcoming year (which will run from October 1—September 30).

2. *Annual Utility Pass-Through Reconciliation:* The Concessioner's monthly pass-through reports will be reviewed annually in November to compare the projected and actual utility costs and rate pass-throughs. Differences (plus or minus) of 5% or less of utility costs will be ignored. Differences of more than 5% will result in adjustments for the following year.

#### VI. Sanitation

A. The Service will inspect each food service facility, market, and public shower for sanitation on a periodic basis.

B. At a minimum, the Concessioner will provide sanitation training to food service managers at the start of their employment in a food service facility and at least once every five years.

#### VII. Loss Control (Risk Management) Program

A. Per the Occupational Safety and Health Act of 1970, the Concessioner will provide a safe and healthful environment for all of its employees and visitors.

B. The Concessioner will develop, maintain, and implement a documented safety program ("Loss Control Plan"). An initial submittal and request of approval of this plan will be made to the Superintendent within 120 days of contract execution.

### VIII. Lost and Found Policy

Each found item shall be tagged, listing the item found, location found, date and time found, and by whom it was found. If an item is not claimed within seven (7) days, it shall be turned over to the Service or mailed or transmitted to the Park in accordance with the Parks' Lost and Found Policy.

When possible, the Concessioner shall attempt to identify the ownership of the found item and provide this information to the Service.

### IX. Integrated Pest Management

The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

### X. Complaints

A. The Service will send complaints or comments regarding Concessioner facilities to the Concessioner for investigation and response in a timely manner. The Concessioner will provide a copy of the response to the Superintendent. A copy of the Service's response will be forwarded to the Concessioner.

In order to initiate valid and responsive visitor comments, the following notice will be prominently posted at all Concessioner cash registers and payment areas:

This service is operated by (Name of Concessioner), a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. The reasonableness of prices is based on comparability. Prices are approved by the National Park Service based upon prices charged by similar private enterprises outside the Park for similar services with due consideration for appropriate differences in operating conditions.

Please address comments to:  
Superintendent, Park Unit Name, City, State  
Zip Code.

### XI. Advertisements/Public Information

A. All promotional material must be approved by the Superintendent prior to publication, distribution, broadcast, etc. Advertisements must include a statement that the Concessioner is authorized by the NPS, Department of the Interior, to serve the public in (Park Unit Name). Brochure changes and layout should be submitted to the Superintendent for review at least 30 days prior to projected need/printing dates. The Superintendent will make every effort to respond to minor changes

to brochure and menu texts within 15 days. Longer periods may be required for major projects or where NPS assistance is required to help develop the product. The Concessioner should contact park staff well in advance to establish specific time frames for each project.

B. When used, advertisements for employment must contain a statement that the company is an equal opportunity employer.

### XII. Protection and Security

A. *Visitor Protection:* Visitor protection shall be provided by the Service. Concessioner-employed security personnel, in regards to visitors, may act as private citizens but have no authority to take law enforcement action or carry firearms.

Concessioner-employed security personnel are empowered to enforce the Concessioner's employee policies and housing regulations.

B. *Fire Protection:* Fire protection shall be provided jointly by the Service and the Concessioner, with primary responsibility lying with the Service. The Concessioner has the responsibility to ensure that all buildings within its assigned area meet Fire and Life Safety Codes and that fire detection and suppression equipment is in good operating condition at all times. It is also the Concessioner's responsibility to report all structural fires immediately. The Concessioner will allow employees to be on the various developed area volunteer fire brigades and will allow time away from their primary duties for necessary training.

The Service and Concessioner will enter into a separate agreement or memorandum of understanding prior to any active participation and/or training.

C. *Emergency Medical Care:* The Service is responsible for emergency medical care. Any injury sustained by a visitor or employee in a concession facility and/or all medical emergencies should be reported promptly to the NPS Dispatcher. All employee and/or visitor illness complaints will be promptly reported to the Service through the appropriate District Ranger so that thorough investigating procedures can be completed as necessary.

During the summer, the Concessioner shall provide a full-time employee qualified to provide health information and emergency medical treatment to Concessioner's employees. Minimum certification standard is EMT-1 qualification.

D. *Concessioner Security Personnel:* During peak visitor periods (from May 1 through October 31), the Concessioner shall provide security personnel to

handle in-house employee issues and to check concession facilities for security purposes.

E. *Alarm Systems:* The Concessioner will maintain existing and new alarm systems in all concession buildings to the National Fire Protection Association (NFPA) Life Safety Code unless otherwise approved in writing by the Superintendent. Systems must be tested annually, prior to operations. Trained personnel must be utilized to repair all such systems. Repairs must be completed within 12 hours of initial report of deficiencies.

### XIII. Recycling and Conservation

A. *Source Reduction:* The Concessioner will implement a source reduction program designed to minimize its use of disposable products in its operations. Reusable and recyclable products are preferred over "throwaways." Polystyrene and plastics will be used as little as possible, and then only polystyrene not containing chlorofluorocarbons. Where disposable products are needed, products will be used which have the least impact on the environment. The use of post-consumer recycled products whenever possible is encouraged.

B. *Recycling and Beverage Container Programs:* The Concessioner shall implement a recycling program that fully supports the efforts of the Service. Products to be recycled include but are not limited to paper, newsprint, cardboard, bimetal, plastics, aluminum, glass, waste oil, antifreeze, and batteries.

Any beverage container deposits collected in excess of related operating expenses will be used for environmental projects as approved in writing by the Superintendent. An accounting of the beverage container deposits collected and distributed will be provided to the Service on an annual basis.

C. *Water and Energy Conservation:* The Concessioner will implement water and energy conservation measures for each of its operations. As new technologies are developed, the Concessioner will explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.

### XIV. Volunteers in the Park (VIP)

The Concessioner will allow its employees to participate in the Park's VIP Volunteers in the Park program.

### XV. Smoking in Public Buildings

Concession facilities must comply with Service policy and Department of

the Interior guidelines relative to Service areas. The Concessioner will post notices in all public buildings as necessary.

#### XVI. Quiet Hours

Quiet hours will be enforced between the hours of 10:00 pm and 6:00 am in all concession overnight facilities and the Concessioner's employee housing areas.

Superintendent

Date: \_\_\_\_\_

### 6. EXHIBIT "H"

Introduction to Exhibit H.

NPS authorizes private businesses (concessioners) to provide visitor facilities and services within areas of the national park system and, in certain circumstances, permits concessioners to undertake the construction of new structures and the repair and maintenance of existing structures on park area lands under the terms of a concession contract. The following proposed procedures, to be included as an exhibit to concession contracts (where applicable), govern the undertaking by a concessioner of construction projects and repair and maintenance projects that substantially effect or alter existing Concession Facilities. However, the following proposed Exhibit is a guideline only. It may be changed from time to time by NPS officials as deemed appropriate in the circumstances of a particular proposed concession contract so long as any changes are consistent with the main body of the proposed contract and applicable NPS regulations.

#### EXHIBIT H—Concessioner Construction and Repair and Maintenance Project Procedures

##### A. Introduction

This exhibit presents step-by-step procedures for Concessioner construction and repair and maintenance projects within the Park Area. Important terms are defined first. Project planning and design are presented second, followed by project supervision. All projects undertaken by the Concessioner requires a coordinated effort between the Concessioner and the Superintendent. This Exhibit applies to the construction of new structures or facilities, and the repair and maintenance of existing Concession Facilities that substantially effect or alter existing Concession Facilities ("R&M projects"). All construction and R&M projects must be proposed, approved, and accomplished under these procedures.

Preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures and shall be directed and managed as presented in the Maintenance Plan.

Construction and R&M projects not included in approved park planning documents prepared in response to the National Environmental Policy Act (NEPA) of 1969, as amended, may be required to comply with NEPA requirements. Projects within historic and culturally significant areas may require certain building management methods established by Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Concessioner is responsible for all aspects of project development and implementation. The role of NPS is to provide direction, authorization and over-site to accomplish the goals and objectives of NPS. The Concessioner and the Park staff are to work closely together.

##### B. Definition of Terms

###### "Annual Construction and Repair and Maintenance Management Plan"

(CMP)—A written document presenting all construction and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

"Approved Construction Documents"—Construction project drawings and specifications approved by the Park Superintendent used by the Concessioner to direct a contractor in the type, size and quality of construction or R&M.

"Change Order"—A written agreement between the "Construction Supervisor" and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

"Construction Supervisor"—A Concessioner employee designated to administer and coordinate day-to-day construction and R&M projects representing the Concessioner and NPS and assuring quality work is performed. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

"Conventional Design-Bid-Build Methods"—Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

"Contact Person"—A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

"Facilitator"—A Concessioner employee designated to have the role of providing structure and agendas for meetings with NPS and who records meeting discussions and outcomes.

"Guaranteed Maximum Price Design-Build Construction Methods"—An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

"Licensed Contractor"—An entity performing construction certified or licensed by the State to perform construction services within that State.

"Project Coordinator"—A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

"Project Statement" (PS)—An agreement between NPS and the Concessioner approved by the Park Superintendent that authorizes the development and implementation of construction and R&M projects by a Concessioner on park property.

"Registered Technical Professionals"—Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

"Substantially Complete"—Project completion to the level where a list ("punch-list") of items can be formulated (with the assistance of appropriate design consultants and inspectors) to direct the contractor in the completion of the construction or R&M project.

"Total Project Cost"—The total of all actual project expenditures (invoiced and paid) for completion of a construction or R&M project.

"Total Project Price"—The total of all anticipated project expenditures for completion of a construction or R&M project.

##### C. Project Planning and Design

(1) *Submit an Annual Construction and R&M Management Plan.* Before approval to proceed with any construction or R&M project is granted by NPS, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of construction and R&M a complete



year in advance of actual work to allow adequate time to prepare for project commencement. The plan should include any projects under discussion or identified in the Concessioner annual maintenance plan, any Concessioner capital improvement plans, and any NPS plans that involve Concessioner assigned facilities. The plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with NPS staff.

(2) *Notify NPS of Intent-to-Proceed.* The Park Superintendent shall receive formal written correspondence from the Concessioner providing notification of intent to proceed with any facility planning, design and/or construction and R&M. The project must be identified in the CMP the calendar year before. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the Park Superintendent are included in the project scope.

(3) *Identify a Project Coordinator.* The Concessioner project coordinator must be identified for each construction project.

(4) *Prepare a Project Statement (PS).* Arrange and facilitate a project planning conference with NPS staff and prepare a PS to be submitted to the Park Superintendent for review. The conference should be performed on the proposed project site, if needed.

(a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference should be a PS prepared by the Concessioner resulting from collaboration between the Concessioner and the Park Superintendent.

(b) Project Statement Content. The PS shall include the following as a minimum: project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated "Total Project Cost"; proposed schedule; milestones of NPS design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.

(c) Leasehold Surrender Interest. If the Concessioner seeks leasehold surrender interest as a result of a construction project, the Concessioner must request

and receive the written approval of the proposed construction project by the Park Superintendent in accordance with the terms of this leasehold surrender interest concession CONTRACT. An estimate of the amount of leasehold surrender interest shall be identified in advance if the Concessioner requests leasehold surrender interest. The estimated leasehold surrender interest costs shall be separately identified as part of the Total Project Price and substantiated with written and competitively acquired price proposals or construction contracts.

(d) Methods of Establishing the Expected Value of Leasehold Surrender Interest. A number of methods are available to estimate the Concessioner's leasehold surrender interest as long as eligible direct and indirect costs are segregated from ineligible costs. The methods of identifying the expected value of leasehold surrender interest include guaranteed maximum price design-build construction methods, conventional design-bid-build methods, and construction price estimates professionally prepared by subject area experts.

(e) Professional Services and Construction. For any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work. The Concessioner shall provide for registered technical professionals to perform project inspection and/or facility certification, at the request of the Park Superintendent.

(f) NPS Operations. Any aspect of the proposed work where the scope of work interfaces with NPS operations such as utility service connections or road maintenance operations must be clearly identified in the PS.

(5) *Submit Project Statement for NPS Review.* The PS shall be submitted in written correspondence from the Concessioner to the Park Superintendent requesting review. A PS signed by the Park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.

(a) Project Statements Claiming Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for leasehold surrender interest purposes. The eligibility of any expenditures for leasehold surrender interest will not be identified until all project planning is complete to the satisfaction of the Park Superintendent including NEPA and Section 106 compliance, if required. An approved PS serves only as a guide for further project development to the level where the Park Superintendent may approve certain project costs as eligible for leasehold surrender interest. The Park Superintendent shall only approve final leasehold surrender interest expenditures after project completion and written project closeout.

(b) Design Required for Leasehold Surrender Eligibility. The Park Superintendent may require an appropriate level of design before construction projects eligible for leasehold surrender interest are identified. The level of project planning may extend to concept design, schematic design, or preliminary engineering design, to clearly identify the construction elements eligible for leasehold surrender interest. Some projects may require the completion of construction drawings and specifications before the leasehold surrender interest is documented to the satisfaction of the Park Superintendent. All capital improvements for which leasehold surrender interest is claimed must be defined in record "as-built" construction drawings and specifications.

(6) *Establish a Project File.* A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and NPS acceptance. Each project shall be identified with a unique project number assigned by the Park. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

(a) Leasehold Surrender Interest Project File. A leasehold surrender interest project file shall be established and maintained by the Concessioner and shall include all of the above. This file shall be submitted to the Park Superintendent as the basis for the leasehold surrender interest claim. As part of this file, the Concessioner must maintain auditable records of all expenditures attributable to each project and have them available for review if requested by NPS personnel. Invoices shall contain sufficient information to

identify the tasks completed or products delivered as agreed upon in contracts presenting a full scope of work. The file shall clearly provide a "paper trail" between expenditures deemed eligible for leasehold surrender interest purposes and the payment of those expenses.

(b) Typical Project File. The organization of a typical project file is presented in the following sections:

Section A. *Project Statement*. The PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the Park Superintendent should be filed in this section.

Section B. *Planning*. This section should contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section should be any concept design, preliminary design, or schematic design correspondence and documents. When the Park Superintendent grants approval for any of the above stages of project development, correspondence from the Park Superintendent should be filed in this section.

Section C. *Assessment*. This section should contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, should be filed in this section. Any other existing site or facility investigative reports, and all quality assurance documents such as third party project inspection, testing and certification should also be filed in this section.

Section D. *Design*. This section should contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the Park Superintendent providing design approval should be in this section.

Section E. *Project Work*. This section should contain a record of decisions made during project work. The letter from the Park Superintendent granting notice-to-proceed with construction or R&M should be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. should be in this section. Documentation for larger construction and R&M projects should be organized according to subcontractor activity or standard specification enumeration. The final document filed

in this section should be the NPS correspondence sent to the Concessioner providing project acceptance and closeout.

Section F. *Financial*. This is a very important section where a copy of all contracts and contract modifications should be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. Correspondence claiming and recognizing leasehold surrender interest must be organized in this section. Also contained in this section shall be a copy of the project acceptance and closeout letter from the Park Superintendent that specifies the amount of leasehold surrender interest, if any, applicable to the project.

(7) *Submit Resource Compliance Documents for Review and Approval*. Historic/cultural (Section 106), and NEPA compliance documents required for each project shall be submitted to the Park Superintendent for review and approval. The Concessioner must request the participation of NPS staff early in project planning to assure uninterrupted project implementation. Submittal of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.

(a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking effecting property listed shall be performed in accordance with "The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings". The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape.

Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

(b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them:

"Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic, and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Should Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Should the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the CONTRACT."

(c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the NPS in accordance with the above project specification. The NPS shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the NPS is unable to provide the expertise.

(d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the NPS early during project planning. The actual review period length may vary widely depending on the nature, scope,

and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on park resources usually require a "categorical exclusion"—a process that may require sufficient extended lead-time from submittal of review documents. Projects having a significant effect on park resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.

(8) *Submit Construction and R&M Documents for Review and Approval.* The Concessioner shall submit construction or R&M documents for review and approval to establish Approved Construction or R&M Documents for purposes of project work. Approved Construction or R&M Documents establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project.

"Manufacturer's cut-sheets" may be all that is required for some projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of construction and R&M documents and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

(9) *Submit a Project Estimate and Schedule.* An estimate of the "total project price" and completion schedule shall be submitted to the Superintendent before work begins.

#### *D. Construction and R&M Project Management Procedures*

(1) *Identify a Project Supervisor.* A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The NPS will direct their communication concerning the nature and progress of day-to-day project activity to this person.

(2) *Submit a Total Project Price for Review.* All construction and R&M projects completed under the terms of this concession CONTRACT shall include submittal of a Total Project Price in writing to the Superintendent for review.

(a) Conditions of Total Project Price Approval Where Leasehold Surrender Interest is Requested. In cases where leasehold surrender interest is being

requested, expected leasehold surrender interest expenditures shall be separately identified as part of the Total Project Price and substantiated by detailed pricing contained in a written, competitively acquired construction contract supported by record construction drawings and specifications. In addition, the Superintendent may require other correspondence or documentation to substantiate a claim.

(b) Conditions of Total Project Price Approval Where Leasehold Surrender Interest is Not Requested. Where no leasehold surrender interest is being requested, the Total Project Price is provided as an informational item. Formal approval by the Superintendent is not required.

(3) *Notice-to-Proceed with Project.* A "Notice-to-Proceed" with a construction or R&M project will be issued when all submittals requested by the Park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.

(4) *Hold a Pre-Project Conference with the Contractor.* The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the NPS with the Contractor. The purpose of the conference is to provide the NPS the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the NPS. Any questions the Contractor may have regarding any matter of the project or anything about Park access, rules and regulations may also be discussed.

(5) *Submit Project Activity Reports (as required).* A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of project documents for Park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed construction and R&M projects.

(a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. It shall also identify project expenditures to date if required for leasehold surrender interest. The reports shall identify any changes to the approved project documents either by change order or any other variance from approved project documents. The NPS shall be notified immediately, if a

change is likely to occur in the Total Project Price if the project involves leasehold surrender interest. (See discussion below for review and approval of change orders and contract modifications.)

(b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to project documents will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

(6) *Submit Requests for Changes in Approved Project Documents.* The Superintendent's approval will be required before any significant changes are made to the project scope during the construction or R&M, as identified in the Approved Project Documents. The Concessioner shall provide the NPS with written notification immediately upon identifying the need for a change in project scope that effects any of the items listed below. The written notification shall include a request for change in the Approved Project Documents complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the Approved Project Documents shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:

(a) Changes affecting natural, cultural and/or historic resources;

(b) Changes in designated visual appearance;

(c) Changes in the interface with NPS utility and/or road facility maintenance operations;

(d) Changes in project scope and/or the estimated leasehold surrender interest, as required for capital improvement projects.

(e) Proposed changes where natural or cultural/historic resources are involved

may require a significant period of review depending on the complexity of the concern.

(7) *Submittal of Change Orders for Review and Approval (for Leasehold Surrender Interest only)*. When one of the four factors listed above exists, the Concessioner shall submit, for the review and approval of the Park Superintendent, documentation justifying the proposed changes. The Concessioner shall also submit a revised Total Project Price for each proposed change, as needed, indicating the proposed change in estimated leasehold surrender interest. All change orders or any other means of directing the Contractor having the effect of increasing the Total Project Price will require the Park Superintendent's review and approval, if the project has leasehold surrender interest implications.

(8) *NPS Project Inspection*. The construction or R&M project will be inspected periodically by a representative of the Park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.

(9) *Project Supervision Documents*. Project construction drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Project Supervisor shall keep a current "red-line" copy of Approved Project Documents updated daily showing any changes. In addition, a well-organized file of submittals required in the Approved Project Documents and approved by professional Architects and/or Engineers must also be kept on the project site with the project documents for periodic inspection by NPS staff.

(10) *Substantial Completion Inspection and Occupancy*. Joint inspection by the NPS and the concessioner will occur upon notification that the project is substantially complete. A "punch list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the Park Superintendent.

(11) *Claiming Leasehold Surrender Interest*. Upon substantial completion of the construction or installation of

capital improvements, as determined by the Park Superintendent, the Concessioner must provide the Superintendent a written schedule of leasehold surrender interest eligible expenditures incurred, which becomes the Concessioner's claim for leasehold surrender interest. The project file, containing actual invoices and the administrative record of project implementation must support these expenditures and shall be submitted to the Park Superintendent for review with the claim, as indicated above. If requested by the Park Superintendent, the Concessioner shall also provide written certification from a certified public accountant. The certification must state: (1) That all the elements of the construction cost were incurred by the Concessioner; (2) that all such elements are proper under the definition of construction cost as defined in NPS Regulations and the terms of this concession CONTRACT; and (3) that all such elements were capitalized by the Concessioner on its federal income tax returns.

(12) *Project Completion Report*. Upon completion of any project, the Concessioner shall submit a Project Completion Report to the NPS. The completion report shall include the Total Project Cost; before and after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item below) for any construction. Construction projects where leasehold surrender interest is claimed may require the submittal of any other similar documents deemed by the NPS necessary to establish complete construction documentation. The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved construction documents and the approved Total Construction Price.

(13) *"As-Constructed Drawings"*. The "as constructed" drawings included with the project completion report for all construction and R&M projects shall be full-size archival quality prepared in accordance with the latest AutoCAD Guidelines prepared by the National Park Service Denver Service Center before final project acceptance. At least two half-size sets of drawings shall also be provided. The drawings establishing leasehold surrender interest shall provide a full and complete record of all "as-constructed" facilities including reproduction of approved submittals and manufacture's literature

documenting quality of materials, equipment and fixtures in addition to a record set of project specifications approved for construction.

(14) *Request Project Acceptance and Closeout by the Superintendent*. The Concessioner shall request project acceptance by the Park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the NPS. For leasehold surrender interest projects, the project closeout letter issued by the Superintendent will specify the granted amount of leasehold surrender interest associated with the construction.

#### **7. EXHIBIT "X"—Excerpts From 36 CFR, Part 51 Concerning Leasehold Surrender Interest**

(The text of this Exhibit will be added after regulations at 36 CFR, Part 51 have been finalized.)

##### *B. Amended sections of the Proposed Standard Language Concession Contract*

The following are proposed amended sections of the proposed NPS standard concession contract published for public comment on September 3, 1999. The proposed amendments implement principles of environmental leadership and sustainability for National Park Service facilities. The amendments requiring the development and implementation of an environmental management program (EMP) for each concessioner. The EMP describes the structure by which the concessioner will ensure compliance with applicable Federal, state, and local environmental requirements and best management practices, but does not prescribe how the concessioner will carry out specific operations, actions, strategies, goals and targets. The proposed amendments provide guidance on issues the EMP must address. The EMP of each concessioner additionally will address issues specific to the required and authorized services of the concessioner under its contract. In the case of a small operation, the EMP may be brief and simple. For a larger organization, the EMP may require more detail. The proposed amendments require that the concessioner designates an Environmental Program Manager and provides certain notifications, reports and other environmental information to the National Park Service.

A final NPS standard concession contract will be published in the

**Federal Register** after consideration of the public comments received as a result of the September 3, 1999 notice and this notice. In addition, final short form standard concession contracts will be published in the **Federal Register** after consideration of public comments received in response to the December 22, 1999, public notice that solicited public comment on the proposed short form standard concession contracts. To the extent that the final long-form standard contract is amended as a result of consideration of public comments, including public comments on the following proposed amendments and the short form standard contracts, those amendments will be applicable to all forms of standard concession (long form and short form) contracts to the extent otherwise applicable.

### **Proposed Amendments to Proposed Standard Concession Contract**

#### *1. A new "whereas" clause is proposed as follows:*

Whereas, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship and leadership;

#### *2. The definition of "applicable laws" as contained in the proposed standard concession contract is proposed to be amended and a new definition is added to read as follows:*

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Best Management Practices" (BMPs) are operational policies and activities that, in addition to ensuring full compliance with all Applicable Laws regarding public health and the environment, apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the operations of the Concessioner under this CONTRACT. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

#### *3. Section 5 of the proposed standard concession contract is proposed to be amended to read as follows:*

### **SEC. 5. Legal, Regulatory, Policy Compliance**

#### *(a) Legal, Regulatory and Policy Compliance*

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

#### *(b) Notice*

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws and, at its sole cost and expense, must promptly rectify any such violation.

#### *(c) How and Where to Send Notice*

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall constitute sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent  
Park name  
Address  
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner:  
Address:  
Attention:

#### *4. Section 6 of the proposed standard concession contract is proposed to be amended to read as follows:*

### **SEC. 6. Environmental Management**

#### *(a) Environmental Management Objectives*

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its agents, contractors and subcontractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate BMPs in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

#### *(b) Environmental Management Program*

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The Concessioner shall update the EMP at least annually and shall make the EMP available to the Director upon request.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

(i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals for the Concessioner that are consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner staff and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for Concessioner evaluation of staff and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) Communication. The EMP shall describe how the environmental policy,

goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) *Training.* The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) *Monitoring, Measurement, and Corrective Action.* The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will audit its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The audit should ensure Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the audit.

*(c) Environmental Performance Measurement*

The Concessioner shall be evaluated by the Director on its environmental performance under the terms of this CONTRACT on an annual basis.

*(d) Environmental Data, Reports, Notifications, and Approvals*

(1) *Inventory of Hazardous Substances and Inventory of Waste Streams.* The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any EPCRA extremely hazardous substance, as defined pursuant to Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) *Reports.* The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The

Concessioner shall also submit to the Director any environmental plans for which coordination with Park operations are necessary and appropriate, as determined by the Director.

(3) *Notification of Releases.* The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) *Notice of Violation.* The Concessioner shall give the Director immediate written notice of any threatened or actual notice of violation of any Applicable Law.

(5) *Communication with Regulatory Agencies.* The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

*(f) Corrective Action*

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

*(g) Indemnification and Cost Recovery for Concession Environmental Activities*

(1) The Concessioner shall indemnify the United States in accordance with section 12 of the CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts fees) arising out of the activities of the Concessioner, its agents, contractors and subcontractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release or correct any environmental audit finding of non-compliance in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to Concessioner, take any such action as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action for the environmental audit finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand.

5. *Section 7 of the proposed standard concession contract is proposed to be amended by adding a section (a)(3) to read as follows:*

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

6. *Section 15(b) of the proposed standard concession contract is proposed to be amended to read as follows:*

*(b) Environmental Reporting*

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

7. Section 16 of the proposed standard concession contract is proposed to be amended by deleting the word "enhance" and inserting after the word "protection," in subsection (a) the

phrase "conservation and preservation" and deleting the word "enhancing" and inserting after the word "protecting" in

subsection (b) the phrase "conserving or preserving."

Dated: February 9, 2000.

**Maureen Finnerty,**

*Associate Director, Park Operations and Education.*

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