

**UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

PROSPECTUS

**UNDER WHICH A CONCESSION CONTRACT
WILL BE AWARDED
FOR THE OPERATION OF
A FAMILY SPORTS CENTER WITHIN
GATEWAY NATIONAL RECREATION AREA**

DATE ISSUED: May 7, 2001

**PROPOSALS AND ANY MODIFICATIONS MUST BE RECEIVED BY THE
NATIONAL PARK SERVICE BY 4:00 P.M. (CLOSE OF BUSINESS) ON
September 4, 2001. MAIL PROPOSALS TO:**

**NATIONAL PARK SERVICE
GATEWAY NATIONAL RECREATION AREA
BUSINESS MANAGEMENT OFFICE
HEADQUARTERS BUILDING 69
FLOYD BENNETT FIELD
BROOKLYN, NY 11234**

(718) 338-4540 or (718) 338-4603

ADDRESS QUESTIONS BY MAIL TO:

**Ms. Kathleen Williams
Business Management Office
Gateway National Recreation Area
Headquarters Building 69, Floyd Bennett Field
Brooklyn, NY 11234**

TABLE OF CONTENTS

BUSINESS OPPORTUNITY

THE BUSINESS TO BE DEVELOPED AND OPERATED

Stabilize and adapt historic hangars
Suggested sport profit centers
Objectives for the business
Term of Contract



THE BUSINESS ENVIRONMENT

GATEWAY NATIONAL RECREATION AREA AND ITS MISSION

DESCRIPTION OF PARK AND LOCATION

Legislated Purpose and Significance of Park
Compliance with Federal, State and Local Laws and Park Jurisdiction
Park Management Structure
Park Resource Management Issues
Park Interpretive Themes and Goals



CONCESSION CONTRACT

EXHIBITS

Exhibit A: Leasehold Surrender Interest
Exhibit B: Operating Plan
Exhibit C: Nondiscrimination
Exhibit D: Assigned Land and Real Property Improvements
Exhibit E: Assigned Government Personal Property
Exhibit F: Concessioner Construction, Major Rehabilitation, and
Repair and Maintenance Project Procedures
Exhibit G: Leasehold Surrender Interest
Exhibit H: Maintenance Plan
Exhibit I: Insurance Requirements



*** GATEWAY NATIONAL RECREATION AREA ***
**** NORTHEAST REGION - NATIONAL PARK SERVICE ***

APPLICATION

PROPOSAL INSTRUCTIONS

PROPOSAL PACKAGE

APPENDIX

1. Public Law 105-391
2. Concession Management Regulations, 36 CFR 51
3. National Park Service Concession Management

BUSINESS OPPORTUNITY

INTRODUCTION

This opportunity is at Floyd Bennett Field, in the largest unit of Gateway National Recreation Area, the Jamaica Bay Unit, Brooklyn, NY. Floyd Bennett Field is historically significant as New York's first municipal airport. The Field was host to record-breaking pilots such as Wiley Post, Howard Hughes, Charles Lindburgh, Amelia Earhart, Laura Ingalls, Col. Roscoe Turner, John Corrigan and John Glenn.

Gateway National Recreation Area is composed of three Units, Sandy Hook Unit in New Jersey, a Staten Island Unit, and the Jamaica Bay Unit which includes the Breezy Point District. Visitor use for all units in 1999 was 6,813,607 visitors.

The Field has ready access to Flatbush Avenue between the Belt Parkway and the Gil Hodges Bridge.

The National Park Service determined in 1997 that it would be financially feasible for a concessioner to adaptively develop four of the Field's hangars into a major family-oriented sports center that would be anchored by an ice skating facility. The business opportunity was announced in 1998, and received significant response. In October 1998, the law that controls National Park Service concessions management was changed and caused the solicitation to be withdrawn until new regulations could be written, published and public comments considered.

THE BUSINESS TO BE DEVELOPED AND OPERATED

The successful applicant will be required to adaptively develop an historic hangar complex into a major family oriented sports center. Snack bar(s) will be required to provide users adequate time at the facility without having to leave for food service. Applicants may elect to additionally propose a full service restaurant, but snack bars are required.

Although feasibility was decided on the basis of ice sports being the primary attraction the National Park Service will consider other options. All applicants are required to submit pro formas that demonstrate effective stabilization investment and cost of adapting the hangars to a sports center. Assuming the successful offeror employs an adequate replacement reserve, Leasehold Surrender Interest (see the draft contract) provides significant protection for investment capital. The National Park Service obtained a 1997 estimate of potential income that would support feasibility at the \$11 million level of investment.

GATEWAY NATIONAL RECREATION AREA
****NORTHEAST REGION - NATIONAL PARK SERVICE****



Suggested secondary activities include: roller hockey, fitness modules, swimming or lap pool, basketball, volley ball, rock climbing wall, indoor tennis, track and field, sport simulators, aerobics classes, gymnastics, and associated services such as meeting rooms, locker room services, etc.

13

Active sports are preferred. Lessons, clinics and leagues and other associated services are acceptable.

14

Sports simulators are acceptable as a means of increasing profitability per sq. ft.

Examples of sports simulators include: golf simulations that interpret results of ball strikes into a net, rock climbing machines, virtual reality soccer and baseball that interpret interactive movements with sports equipment, air hockey, basketball shots, reduced size bowling, and other simulations that may be approved by the Superintendent on a case by case basis. Flight simulators may be approved; assuredly so, if they are visually based on Floyd Bennett Field

Provision of a soft play area for children and other child entertainment is encouraged.

15

Other acceptable activities include:

- Retail sale of sporting goods and accessories
- Group programs such as sports day camps
- A sports medicine center for physical therapy and rehabilitation

Bicycle rentals and a bicycle repair shop may also be authorized.

Rides, electronic games, videos and games of chance are not allowed.

It is desirable that the facility be capable of being temporarily converted to accommodate special events.

The concessioner shall be required to provide the services and facilities to be finalized in Section 3 of the attached contract. The detailed listing of required services and facilities will be determined by the offer accepted by the National Park Service. Offerors are provided much latitude to propose conceptual plans and design.

16

The National Park Service expects the successful offeror to operate the facilities without

GATEWAY NATIONAL RECREATION AREA

****NORTHEAST REGION - NATIONAL PARK SERVICE****

requesting authorization to use subconcessioners.

Objectives for the proposed business are:

Enhance the recreational mission of Gateway National Recreation Area by providing varied, year round, recreational opportunities for all populations.

Rehabilitate historic fabric where feasible; stabilize the remaining historic fabric.

Respectfully use the rich history of Floyd Bennett Field to good advantage through architectural design that aesthetically capitalizes upon the underlying historical specimen.

Provide exhibits and other informational media that educate users and remind of the national significance of the site.

THE BUSINESS ENVIRONMENT

The Floyd Bennett Field hangars front Flatbush Avenue, between the heavily traveled Belt Parkway and the Marine Parkway Bridge, also known as the Gil Hodges Bridge, Brooklyn, New York. On the opposite side of Flatbush Avenue from the hangars is Gateway Marina. This marina is in the process of being completely rehabilitated. Adjacent to the marina is an outdoor sports complex containing a golf driving range, outdoor tennis, miniature golf and batting cages. The outdoor sports complex will be advertised for bid under a separate prospectus.

The draft contract requires the concessioner to pay the National Park Service a fee based on annual gross receipts of the business. The minimum acceptable fee will be 2% of gross sales. The actual percentage may be higher, depending on that which is offered by the successful offeror.

The nearest facility that is similar to that which is envisioned for development is Chelsea Piers in Manhattan Island, N.Y.

The former administration building and control tower is adjacent to the area to be assigned to the concessioner and now serves as the Ryan Visitor Center.

Facilities

The business will adaptively use two large adjacent buildings that formerly accommodated four hangars. The concessioner will cover the expense of doing so. The buildings are currently in

GATEWAY NATIONAL RECREATION AREA
****NORTHEAST REGION – NATIONAL PARK SERVICE****

need of extensive rehabilitation. Specifically, roofs and masonry walls require extensive rehabilitation.

The following data was obtained by the National Park Service in 1996. The data is neither up to date nor represented to be accurate.

| | <u>Size, sq. ft.</u> | <u>estimated rehab.</u> <u>\$/sq. ft</u> | <u>Subtotal</u> |
|---|----------------------|---|-----------------|
| Hangar 5 | 16,820 | | |
| Hangar 5 lean-to | 8,400 | | |
| Hangar 6 | 16,820 | | |
| Hangar 6 lean-to | 8,400 | | |
| enclosed space between hangars 5 & 6 | <u>12,180</u> | | |
| | 62,620 | \$30.00 | \$1,878,600 |
| Hangar 7 | 16,820 | | |
| Hangar 7 lean-to | 8,400 | | |
| Hangar 8 | 16,820 | | |
| Hangar 8 lean-to | 8,400 | | |
| enclosed space between hangars 7 & 8 | <u>7,800</u> | | |
| | 58,240 | \$30.00 | \$1,747,200 |

The outside open area between the two pairs of hangars measures 150 feet by 350 feet.

The Park separately permits special events. These events have attracted 15 to 20 thousand participants for weekend special events with a maximum of 10 thousand participants per day. No special events are scheduled during July and August. The proposed operation must allow for and accommodate special events in the vicinity.

Cooperators and the National Park Service have developed a green-way pedestrian and bicycle path along the east side of Flatbush Avenue alongside the hangars. The path connects to existing segments of the citywide green-way system. The bicycle/walkway provides an additional source of users for the sports center and another profit center if bicycle rentals are offered.

PROPOSED CONTRACT TERM

GATEWAY NATIONAL RECREATION AREA
****NORTHEAST REGION – NATIONAL PARK SERVICE****

The term of the new contract is limited by Statute to a maximum of twenty (20) years. However, it is the desire of the National Park Service to keep contract terms as short as possible.

Concession developers are often able to accept shorter terms due to the leasehold surrender interest benefits of Sec. 9c of the Contract. A ten-year term is usually consistent with a reasonable opportunity for the concessioner to realize a profit on its operations under the contract.

Offerors must declare the shortest term of contract they need, but not to exceed 20 years. If the offer is for a term of contract greater than ten years, the offeror must demonstrate the proposed term as necessary by submitting a pro forma for a ten year term showing the term to be not feasible and submit another pro forma for the desired term.

Contracts negotiated for a term of more than 10 years, or when the expected annual gross receipts exceed \$5,000,000, are required by law to be submitted to the Congress for sixty days before they may be awarded.

IMPROVEMENT PROGRAM

The concessioner is to produce a safe, stable, full service family oriented sports complex using the historic hangar facilities as a base. The historic fabric of the hangars must be stabilized and preserved as part of the project to adaptively use them for profit.

Tastefully adapt the hangars to sports center use so as to maintain views of as much of the original fabric as possible. If historic fabric must be covered after stabilization, provide an interpretive view of a portion of that which is otherwise covered.

Offerors must submit conceptual design plans for development of the assigned area for profitable and needed services that are compatible with the mission of Gateway National Recreation Area.

Offerors may incorporate the open space between the hangars in their adaptive use plans. A competitive factor in the selection of the developer/concessioner will be how well the adaptive plan, if implemented, will maintain the character of the historic hangars. If the area between the buildings is to be enclosed, the enclosure must be creatively planned as to the overall appearance and the continued ability of viewers to identify the basic historic structures. Enclosure must be reversible and minimize damage to the historic fabric.

The interior décor should provide a theme supportive of the Park history, setting and purpose. This interpretive theme may be developed, in part, from access to the Gateway NRA museum collection. Murals and photos may be available for the developer/concessioner's use.

GATEWAY NATIONAL RECREATION AREA
****NORTHEAST REGION - NATIONAL PARK SERVICE****

Capital improvements and renovation shall be by prior approval of the National Park Service and in accord with "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (1990), GPO #024-005-01061-1. Cost is \$2.00 from the Superintendent of Public Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; (202) 512-1800; fax (202) 512-2250. The Guide will be incorporated by reference in the Concession Contract. A reference copy is available in the Park for review.

It is not the intention of the National Park Service to duplicate the services that are currently provided by the concessioners at Gateway National Recreation Area. Any conflict of services will be resolved between the concessioners and approved by the General Superintendent.

Time lines for completion of construction will be integrated into the concession contract.

CONSTRUCTION PERMITS

All designs and plans must be approved by the National Park Service and cleared through all affected permitting agencies. Sewerage lines to the treatment plant at Floyd Bennett Field must be installed in compliance with Public Health Service guidelines.

The concessioner must identify all federal and state permits necessary for construction and adaptive use of the facilities. Applications for construction permits on National Park Service lands will be filed by the National Park Service after they have been prepared by the selected operator.

All plans and specifications must conform to State Historic Preservation Office comments prior to approval by the National Park Service.

14

UTILITIES

Electricity is provided to the site by Consolidated Edison, telephone service by NYNEX, and water by the City of New York. All utility services will be billed directly to the concessioner. The concessioner will be required to connect to the Floyd Bennett Field sewerage system and will be billed by the Service on a cost reimbursable basis or charged rates that are comparable to other similar businesses, whichever is greater.

The concessioner will provide and install dual fuel, heating and air conditioning/refrigeration systems.

Natural gas will be provided by the Brooklyn Union Gas Company and must be separately

GATEWAY NATIONAL RECREATION AREA

NORTHEAST REGION – NATIONAL PARK SERVICE

metered and billed to the concessioner. Secondary fuel is to be #2 fuel oil. Conversion to #2 fuel oil for heating is required when outside air temperature drops below Brooklyn Union Gas guidelines.

All fuel storage tanks are to be EPA approved and in compliance with National Park Service standards. The concessioner shall use co-generation energy saving electrical systems wherever possible.

PUBLIC SERVICE REQUIREMENTS

The National Park Service expects concessioners to interpret natural and cultural resources to park visitors and concession employees and to instill in them an appreciation of the park area. Interpretive messages should include safety, local resource management issues and objectives, history of the area, and interpretive themes identified in the park's Statement for Interpretation.

SITE VISITS

Applicants are strongly advised to visit the area to become familiar with physical conditions and limitations involved and become acquainted with the details requisite to operating the services. Applicants planning to visit the area should contact the Business Office at (718) 338-4603 or 4540 in advance to make arrangements.

GATEWAY NATIONAL RECREATION AREA AND ITS MISSION

Gateway National Recreation Area was established in 1972. The two congressional committees that held hearings and wrote the legislation knew they were creating a very unusual national park when they authorized the park. In its report to the House, the Interior Committee referred to Gateway as a "major breakthrough in recreation planning" and stated it would be the "first federal recreation area in the heart of an urban complex and it will bring the National Park program closer to the people than ever before." The House members also called Gateway a "unique opportunity" and said it would offer to millions of Americans "the only real hope that they might ever have to visit a unit of the National Park System." In a similar vein, the Senate report expressed wonder that "a number of natural areas of outstanding quality are still available adjacent to the most heavily populated urban center in the entire country."

DESCRIPTION OF PARK AND LOCATION

Gateway National Recreation Area contains approximately 26,000 acres of parkland preserved in the midst of the New York-New Jersey metropolitan area. The park contains ocean beaches, dunes, wooded uplands, bays, a holly forest, a wildlife refuge, three forts, two historic airfields and the nation's oldest operating lighthouse. Besides its natural and historic features, Gateway provides numerous opportunities for recreation, including swimming, fishing, boating, bird watching, horseback riding, and recreational games such as football and softball. Some of these opportunities are provided by private businesses operating as concessioners of the National Park Service. One such business providing services to the public using the park is the subject of this prospectus.

This business opportunity is located in the Jamaica Bay District of Gateway National Recreation Area which encompasses 4,450 acres of land and marshland. The district is divided into three subdivisions: Floyd Bennett Field - North Shore, Frank Charles Park and Howard Beach Park.

Floyd Bennett Field was New York City's first municipal airport where many aviation records were set in the 1930's. It became a naval air station in 1941 and was decommissioned in 1972. Floyd Bennett Field's significance is derived from its service as an important municipal airport and/or military airfield from the 1930's into the 1970's, as well as the site of many record breaking flights. Its period of significance is listed in the National Register of Historic Places as 1931-1941, and a portion of the field is listed as an historic district.

The site contains historic Hangar Row, the North 40 Nature Trail and miles of open runways for cycling or in-line skating. Festivals, outdoor concerts and other special events are held here

*** GATEWAY NATIONAL RECREATION AREA ***
**** NORTHEAST REGION - NATIONAL PARK SERVICE ****

during summer and fall seasons. The Ryan Visitor Center is located on Hangar Row.

Legislated Purpose and Significance of Park

The purpose of the park is to "preserve and protect for the use and enjoyment of present and future generations an area possessing outstanding natural and recreational features." In addition, more specific objectives have been established to guide Gateway's management and development; some addressed by this project include:

To develop and manage Gateway National Recreation Area for recreational use, and to appropriately care for the park's natural and historic resources

To make Gateway a great park for all the people where innovation and experimentation in park and recreation management, design, and programming may tap the large reservoir of talent, including volunteers, in the region

To involve the public in planning for Gateway, and to work closely with adjacent neighborhood and governmental entities, the states of New Jersey and New York, and federal agencies in planning for the park and its surrounding region and in addressing mutual problems of land use, pollution, and transportation

To provide high-quality affordable facilities and services for visitor use

To develop and carry out, in cooperation with others, diverse and innovative recreational, interpretive, and educational programs on a year-round basis

To provide access, facilities, and programs for the entire visiting public, including the physically handicapped, older citizens, and people lacking average mobility and financial resources

To identify, preserve, and provide for visitor appreciation of the important fish, wildlife, and other natural resources of Gateway

Compliance with Federal, State, and Local Laws and Park Jurisdiction

Gateway National Recreation Area operates under the jurisdiction of the Federal Government. Law enforcement is conducted by United States Park Police and National Park Service Rangers holding Federal law enforcement commissions. Federal law and state law, through the Act of June 25, 1948, The Assimilative Crimes Act, are enforced by these officers. Although operations

*** GATEWAY NATIONAL RECREATION AREA ***
**** NORTHEAST REGION - NATIONAL PARK SERVICE ****

are conducted on Federal property, the concessioner is subject to state and local laws and ordinances in the same manner as if they operated outside of the Federal holding. Local and state law enforcement authorities can and do enforce state law and local ordinances and codes as appropriate to their area of authority. Business permits normally required must be secured and taxes normally payable must be paid.

Public health codes are as prescribed by the United States Public Health Service (USPHS), and inspections will be conducted in accordance with model codes they have issued. The USPHS will inspect and supervise the operation of the park's water supply and sewage disposal systems. The USPHS and/or the Park Sanitarian will also inspect food service operations. Plans for food service facilities will require approval of the National Park Service, in consultation with the U.S. Public Health Service. That approval will be coordinated by the National Park Service.

Safety is inspected in accordance with the Occupational Safety and Health Act (OSHA) of 1970 with inspections annually or more often by qualified National Park Service staff.

Building codes that apply include the codes used by the county or the applicable national codes that are National Park Service standards, as earlier described, whichever sets a higher standard. Plans must be reviewed and stamped by the county building office and fees must be paid. The county will only approve plans as complying with codes they require to be used. Higher standards required by the National Park Service will be part of the NPS review process. No construction may be undertaken unless the National Park Service has issued a letter or permit to proceed and has approved the plans involved.

Hazardous waste management, including underground storage tanks, is supervised by the National Park Service and the County Hazards and Contamination Division. There is a County Clean Air Commission that supervises emissions from vehicles and vehicle fleets, and smoke stacks.

Park Management Structure

Gateway National Recreation Area is managed by a General Superintendent whose office is in Floyd Bennett Field, Brooklyn, New York. A unit Superintendent whose office is at Breezy Point District, manages the day-to-day operations of this concession. A concessions management staff based at Floyd Bennett Field advises the General Superintendent and the unit Superintendent.

Park Resource Management Issues

*** GATEWAY NATIONAL RECREATION AREA ***
**** NORTHEAST REGION - NATIONAL PARK SERVICE ****

Solid waste disposal is a major environmental issue. As a federal conservation agency, as well as a concerned and responsible member of the community, the National Park Service supports efforts of concessioners to reduce the generation of nonbiodegradable solid waste and packaging materials.

Methods of control of vermin, pest and weeds must be approved in advance by the National Park Service before execution.

Park Interpretive Themes and Goals

The National Park Service supports and encourages concessioners to use Park interpretive themes and associated subjects to better serve their visitors. On any given day, the concessioner may make more actual visitor contacts than the National Park Service. Therefore, it only appears appropriate for the concessioner to provide interpretive material to the visitor. This could include information such as safety messages, local resource management concerns or the history of the area. "did you know" questions, and it could be provided as decorative materials in public rooms or areas, or on menus.

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

--ooOoo--

SPORTS CENTER COMPLEX
at
JAMAICA BAY DISTRICT
GATEWAY NATIONAL RECREATION AREA

--ooOoo--

CONTRACT NO. CC-GATE015- EXECUTED _____

[Name of Concessioner]

[Address, including email address and telephone number]

Doing Business As

COVERING THE PERIOD

Through

GATEWAY NATIONAL RECREATION AREA
****NORTHEAST REGION - NATIONAL PARK SERVICE****

TABLE OF CONTENTS

IDENTIFICATION OF THE PARTIES

TERM OF CONTRACT

SEC. 2 DEFINITIONS

SEC. 3 SERVICES AND OPERATIONS

- A. Required and Authorized Visitor Services
- B. Operation and Quality of Operation
- C. Operating Plan
- D. Merchandise and Services
- E. Rates
- F. Impartiality as to Rates and Services

CONCESSIONER PERSONNEL

- A. Employees

SEC. 5 LEGAL, REGULATORY, AND POLICY COMPLIANCE

- A. Legal, Regulatory, and Policy Compliance
- B. Notice
- C. How and Where to Send Notice

ENVIRONMENTAL AND CULTURAL PROTECTION

- A. Environmental Management Objectives
- B. Environmental Management Program
- C. Environmental Management Measurement
- D. Environmental Data, Reports, Notifications, and Approvals
- E. Corrective Action
- F. Indemnification and Cost Recovery for Concessioner Environmental Activities
- G. Weed and Pest Management
- H. Protection of Cultural and Archeological Resources

SEC. 7 INTERPRETATION OF AREA RESOURCES

- A. Concessioner Obligations
- B. Director Review of Content

CONCESSION FACILITIES USED IN OPERATION BY CONCESSIONER

- A. Assignment of Concession Facilities
- B. Concession Facilities Withdrawals
- C. Effect of Withdrawal
- D. Right of Entry
- E. Personal Property
- F. Condition of Concession Facilities
- G. Utilities Provided by the Director
- H. Utilities Not Provided by the Director

SEC. 9 CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS

- A. Construction of Real Property Improvements
- B. Removal of Real Property Improvements
- C. Leasehold Surrender Interest
- D. Concession Facilities Improvement Program

10 MAINTENANCE

- A. Maintenance Obligation
- B. Maintenance Plan

FEES

- A. Franchise Fee
- B. Payments Due
- C. Interest
- D. Adjustment of Franchise Fee

SEC. 12 INDEMNIFICATION AND INSURANCE

- A. Indemnification
- B. Insurance in General
- C. Commercial Public Liability
- D. Property Insurance

SEC. 13 BONDS AND LIENS

- A. Bonds
- B. Lien

4 ACCOUNTING RECORDS AND REPORTS

- A. Accounting System
- B. Annual Financial Report
- C. Other Financial Reports

SEC. 15. OTHER REPORTING REQUIREMENTS

- A. Insurance Certification
- B. Environmental Reporting
- C. Miscellaneous Reports and Data

SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION

- A. Suspension
- B. Termination
- C. Notice of Bankruptcy or Insolvency
- D. Requirements in the Event of Termination or Expiration

SEC. 17. COMPENSATION

- A. Just Compensation
- B. Compensation for Contract Expiration or Termination
- C. Procedures for Establishing the Value of a Leasehold Surrender Interest
- D. Compensation for Personal Property

SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

SEC. 19. GENERAL PROVISIONS

EXHIBITS

- Exhibit A: Leasehold Surrender Interest
- Exhibit B: Operating Plan
- Exhibit C: Nondiscrimination.
- Exhibit D: Assigned Land, Real Property Improvements
- Exhibit E: Assigned Government Personal Property
- Exhibit F: Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures
- Exhibit G: Leasehold Surrender Interest
- Exhibit H: Maintenance Plan
- Exhibit I: Insurance Requirements

[CORPORATION]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Northeast Region, (hereinafter referred to as the "Director"), and _____, a corporation organized and existing under the laws of the State of _____ (hereinafter referred to as the "Concessioner"):

[PARTNERSHIP]

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Northeast Region, hereinafter referred to as the "Director", and _____ a partnership organized under the laws of the State of _____ hereinafter referred to as the "Concessioner":

[SOLE PROPRIETORSHIP]

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Northeast Region, hereinafter referred to as the "Director," and _____, an individual, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, Gateway National Recreation Area is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

WHEREAS, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

WHEREAS, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

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

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (Pub. L. 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

SEC. 1. TERM OF CONTRACT

This Concession Contract No. CC-GATE015-01 ("CONTRACT") shall be effective as of _____, and shall be for the term of () years if the Concessioner satisfactorily completes the Concession Facilities Improvement Program described in Section 9(e) of this CONTRACT. If the Concessioner fails to complete this program to the satisfaction of the Director within the time specified, then this CONTRACT shall be for the term of _____ () years until its expiration on _____. The Director may extend this shortened term (but not beyond the original date of expiration of this CONTRACT) in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

SEC. 2. DEFINITIONS

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(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 (e.g., 36 CFR Part 51), 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) "Area" means the property within the boundaries of Gateway National Recreation Area.

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced, reasonable methods and technologies to undertake and maintain a superior level of environmental performance under this CONTRACT. BMPs are expected to change from time to time as technology evolves. The goal of BMPs is sustainable operations. Sustainable operations are operations that have a restorative or net positive impact on the environment.

(d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.

(e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.

(f) "Days" shall mean calendar days.

(g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

- (1) intracompany earnings on account of charges to other departments of the operation (such as laundry);
- (2) charges for employees' meals, lodgings, and transportation;
- (3) cash discounts on purchases;
- (4) cash discounts on sales;
- (5) returned sales and allowances;
- (6) interest on money loaned or in bank accounts.
- (7) income from investments;
- (8) income from subsidiary companies outside of the Area;
- (9) sale of property other than that purchased in the regular course of business for the purpose of resale;
- (10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies; and
- (11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin-operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

- (k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.
- (m) "Major Rehabilitation" shall have the meaning set forth in Exhibit A to this CONTRACT
- (n) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (o) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner, rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.
- (p) "Superintendent" means the manager of the Area.
- (q) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this CONTRACT.

SEC. 3. SERVICES AND OPERATIONS

(a) Required and Authorized Visitor Services

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) Required Visitor Services

The Concessioner is required to operate a family-oriented sports center, on a year-round basis. (Depending on the offer, the primary core sports activities, such as ice sports, will be entered here as well as support services such as food and beverage service and pro shop shall be incorporated in the final contract and operating plan after selection of the best offer.)

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services during the term of this CONTRACT:

**Interpretive material (books, postcards, posters, photographs);
Limited apparel;
Souvenirs tied to the interpretive theme(s) of the Park;
Teaching professional services;
Sports physical therapy**

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an

extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

(f) Impartial Rates and Services

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4. Concessioner Personnel

(a) Employees

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

- (7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.
- (8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.
- (9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

SEC. 5. LEGAL, REGULATORY, AND 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 governing protection of the environment are further described in this CONTRACT. 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 by the Concessioner, including its employees, agents or contractors, 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 be sufficient service. Notices sent to the Director shall be sent to the following address:

General Superintendent
Gateway National Recreation Area
Attention: Chief, Business Management Division

Headquarters Building 69
Floyd Bennett Field
Brooklyn, New York 11234

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

_____, Concessioner
Address _____
Attention _____

Sec. 6. Environmental and Cultural Protection

(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 employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
- (2) The Concessioner shall incorporate Best Management Practices (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 initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.
- (2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and 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 established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e., measurable results and schedules) to achieve these goals.

Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

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

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.

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.

Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

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.

Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the 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 self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least 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 extremely hazardous substance, as defined in the 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 Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(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 in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(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 the 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.

(e) 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, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with section 12 of this 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 employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remedy an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remedy, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

(g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

(h) Protection of Cultural and Archeological Resources.

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

SEC. 7. INTERPRETATION OF AREA RESOURCES

(a) Concessioner Obligations

- (1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.
- (2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.
- (3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER

(a) Assignment of Concession Facilities

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

- (i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and
- (ii) certain real property improvements described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to reflect the addition of real property improvements completed in accordance with the terms and conditions of this CONTRACT and to reflect the withdrawal of concession facilities as set forth below.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

11

- (1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;
- (2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or
- (3) land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this CONTRACT. This Exhibit E will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

(g) Utilities Provided by the Director

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(h) Utilities Not Provided by the Director

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this CONTRACT for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS

(a) Construction of Real Property Improvements

The Concessioner may construct or install upon lands assigned to the Concessioner under this CONTRACT only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All real property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

(b) Removal of Real Property Improvements

- (1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.
- (2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.
- (3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

(c) Leasehold Surrender Interest

- (1) This CONTRACT hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of this CONTRACT and Exhibit A, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT, including, but not limited to, those Capital Improvements constructed as part of the Concession Facilities Improvement Program and those Capital Improvements which result from the Major Rehabilitation of an existing real property improvement. Upon completion of a Major Rehabilitation by the Concessioner, an existing real property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation shall be considered as a Capital Improvement for all purposes of this CONTRACT.
- (2) The Concessioner shall not obtain Leasehold Surrender Interest under this CONTRACT except as may be provided in Exhibit A and Exhibit F. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance Reserve described in this CONTRACT, and this CONTRACT does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

(d) Concession Facilities Improvement Program

- (1) The Concessioner shall undertake and complete an improvement program (hereinafter "Concession Facilities Improvement Program") costing not less than \$__ million, as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Labor's CPI-U Index, as published by the Department of Labor.
- (2) The Concession Facilities Improvement Program shall include:

Adaptation of Historic Hangars to Provide a Family Sports Center

- (i) Stabilize hangars 5, 6, 7 and 8 for preservation and adaptive development.

Construction to occur in 2001-2002.

Estimated cost - \$4,000,000

- (ii) **Construct and adapt the stabilized hangars to a commercial family sports center.**

Construction to occur in 2002-2003.

Estimated cost - \$9,000,000 (depending upon extent of development)

Facility will be suitable for year-round operation and be accessible. Services to include snack bar food service.

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward.

(4) The Concessioner shall complete and have the real property improvements available for public use as set forth in Subsection d (2). The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

SEC. 10. MAINTENANCE

(a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

SEC. 11. FEES

(a) Franchise Fee

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to _____ percent (____ %) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published annually in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Adjustment of Franchise Fee

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

- (2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.
- (3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.
- (4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.
- (5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.
- (6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.
- (7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.
- (8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.
- (9) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.
- (10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

SEC. 12. INDEMNIFICATION AND INSURANCE

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

(b) Insurance in General

(1) 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 this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent business person would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverage.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in Exhibit I.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverage and amounts described in Exhibit I.

SEC. 13. BONDS AND LIENS

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner.

SEC. 14. ACCOUNTING RECORDS AND REPORTS

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$250,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.

(2) Statements of Reserve Activity. The Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

SEC. 15. OTHER REPORTING REQUIREMENTS

The following describes certain other reports required under this CONTRACT:

(a) Insurance Certification

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

(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.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION

(a) Suspension

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this CONTRACT. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

(3) To avoid interruption of services to the public upon termination of this CONTRACT for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this CONTRACT for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

SEC. 17. COMPENSATION

(a) Just Compensation

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

(b) Compensation for CONTRACT Expiration or Termination

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

(c) Procedures for Establishing the Value of a Leasehold Surrender Interest

At any time during the term of this CONTRACT, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this CONTRACT. In the event that such negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this CONTRACT, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

(d) Compensation for Personal Property

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

Sec. 19. General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be

extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C.2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this CONTRACT as of the _____ day of _____, 2001.

CONCESSIONER

UNITED STATES OF AMERICA

BY _____
(Title),
(Company Name)

BY _____
Director, Northeast Region
National Park Service

[CORPORATIONS]

ATTEST:

BY _____

TITLE: _____

[SOLE PROPRIETORSHIP]

WITNESSES:

NAME _____

ADDRESS _____

TITLE_____

NAME_____

ADDRESS_____

TITLE_____

[PARTNERSHIP]

WITNESSES AS TO EACH:

[Concessioner]

NAME_____

(NAME)

ADDRESS_____

NAME_____

ADDRESS_____

Exhibit A
Leasehold Surrender Interest

This Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of leasehold surrender interest. In event of any inconsistency between this Exhibit A and Exhibit F of this CONTRACT this Exhibit A shall prevail.

Section 1. Definitions

"Arbitration" means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this Exhibit A will utilize the following procedures unless otherwise agreed by the Concessioner and the Director. One member of the arbitration panel will be selected by the Concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Determinations must be made by a majority of the members of the panel and will be binding on the Concessioner and the Director.

A "capital improvement" is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this CONTRACT and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Exhibit A.

"Construction cost" of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the Concessioner in accordance with Generally Accepted Accounting Principles (GAAP).

"Consumer Price Index" means the national "Consumer Price Index—All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

"Depreciation" means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

"Eligible direct costs" means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits, materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contract's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability and unemployment insurance).

"Eligible indirect costs" means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those

. Leasehold Surrender Interest

prevailing in the locality of the project) architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expense and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

"Fixtures and non-removable equipment" are manufactured items of personal property of independent form and utility necessary for the basic function of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.) Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the Concessioner pursuant to the terms of this CONTRACT are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in Exhibit A, the term "fixture" includes the term "non-removable equipment."

"Leasehold surrender interest" solely means a right to payment in accordance with this CONTRACT for related capital improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this CONTRACT. The existence of a leasehold surrender interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

"Leasehold surrender interest value" means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this CONTRACT. The leasehold surrender interest value in existing capital improvements under the terms of this CONTRACT is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approved the substantial completion of the construction of the related capital improvements to the date of payment of the leasehold surrender interest value;
- (3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of this CONTRACT, or if applicable, the date on which the Concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of this CONTRACT.

"Major rehabilitation" means a planned, comprehensive rehabilitation of an existing structure that:

- (1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances) and;
- (2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the Structure.

"Pre-rehabilitation value" of an existing structure means the replacement cost of the structure less depreciation.

"Real property improvements" means real property other than land, including, but not limited to, capital improvements.

"Related capital improvement" or "related fixture" means a capital improvement in which the Concessioner has a leasehold surrender interest.

"Replacement cost" means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

"Structure" means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

"Substantial completion of a capital improvement" means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

Section 2. Obtaining a leasehold surrender interest.

The Concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with the terms and conditions of this CONTRACT, including, without limitation, the terms and conditions of this Exhibit A to the CONTRACT.

Section 3. Authorizing the construction of a capital improvement.

The Director may only authorize or require the Concessioner to construct capital improvements on area lands in accordance with the terms and conditions of this CONTRACT and for the conduct by the Concessioner of visitor services, including, without limitation, the construction of capital improvements necessary to conduct visitor services.

Section 4. Requirements for beginning to construct a capital improvement.

Before beginning to construct any capital improvement, the Concessioner must obtain written approval from the Director in accordance with the terms of this CONTRACT, including the terms and conditions of this Exhibit A and Exhibit F. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this Exhibit. (The approval requirements of this and other sections of this CONTRACT, also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this CONTRACT.)

Section 5. Requirements after substantial completion of a capital improvement.

Upon substantial completion of the construction of a capital improvement in which the Concessioner is to obtain a leasehold surrender interest, the Concessioner must provide the Director a detailed construction report in accordance with the terms and conditions of this CONTRACT, including without limitation Exhibit A and Exhibit F. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the Concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this Exhibit. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

Section 6. Determining construction cost for purposes of leasehold surrender interest value.

After receiving the detailed construction report (and certification, if requested), from the Concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this Exhibit A. The construction cost determined by the Director will be the construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under Section 7 of this Exhibit A. The Director may at any time amend a construction cost determination (subject to arbitration under Section 7 of this Exhibit A) if the Director determines that it was based on false, misleading or incomplete information.

Section 7. Arbitrating the construction cost of a capital improvement.

If the Concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Section 6 of this Exhibit A. If a timely request is not made, the Director's determination of construction cost under Section 6 shall be the final determination of the construction cost. The arbitration procedures are described in Section 1 of this Exhibit A. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the Concessioner and the Director.

Section 8. Actions the Concessioner may or must take regarding leasehold surrender interest.

The Concessioner:

- (a) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT.
- (b) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and
- (c) May waive or relinquish a leasehold surrender interest.

Section 9. Extinguishment of a leasehold surrender interest.

A leasehold surrender interest may not be extinguished by the expiration or termination of this CONTRACT and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to the terms of this CONTRACT will constitute the payment of just compensation for leasehold surrender interest within the meaning of this CONTRACT and for all other purposes.

Section 10. Leasehold surrender interest under a new concession contract.

If the Concessioner under this CONTRACT is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the Concessioner's leasehold surrender interest value (established as of the date of expiration or termination of this CONTRACT in the related capital improvements) will be continued as the initial value of the Concessioner's leasehold surrender interest under the terms of the new concession contract.

Section 11. Payment for leasehold surrender interest if the Concessioner is not awarded a new concession contract.

- (a) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, or the Concessioner, prior to such termination or expiration, ceases to utilize under the terms of this CONTRACT capital improvements in which the Concessioner has a leasehold surrender interest, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT, or the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT. Depreciation of the related capital improvements will be established as the date of expiration or termination of this CONTRACT, or if applicable, the date the Concessioner ceases to utilize the capital improvements under the terms of this CONTRACT.
- (b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of this CONTRACT, or as of the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The

payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this CONTRACT of the cessation of use of related capital improvements under the terms of this CONTRACT.

Section 12. Process for determining leasehold surrender interest value.

In the event that the Concessioner and the Director cannot reach agreement as to a leasehold surrender interest value where required by the terms of this CONTRACT, the leasehold surrender interest value will be determined by arbitration upon request of the Director or the Concessioner. The arbitration procedures are described in Section 1. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this Exhibit A are final and not subject to further arbitration.

Section 13. Payment of leasehold surrender interest by a new concessioner.

A new concession contract awarded to a new concessioner will require the new concessioner to pay the Concessioner its leasehold surrender interest value in existing capital improvements as determined under Section 12.

Section 14. Obtaining additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the Concessioner has leasehold surrender interest.

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitation and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this CONTRACT.

Section 15. Obtaining additional leasehold surrender interest by replacing a fixture in which the Concessioner has a leasehold surrender interest.

If the Concessioner replaces an existing fixture in which the Concessioner has a leasehold surrender interest with a new fixture, the Concessioner will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

Section 16. Obtaining a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists.

(a) If the main body of this CONTRACT requires the Concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the Concessioner) a leasehold surrender interest will be obtained by the Concessioner in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in the CONTRACT.

- (b) If the main body of this CONTRACT requires the Concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the Concessioner), upon substantial completion of the major rehabilitation, the Concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

Section 17. No leasehold surrender interest results from repair and maintenance of real property improvements.

The Concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

Exhibit B

OPERATING PLAN
FAMILY SPORTS CENTER
GATEWAY NATIONAL RECREATION AREA

SIGNED: _____ **DATED:** _____
General Superintendent, Gateway National Recreation Area

| |
|--------------------------|
| TABLE OF CONTENTS |
|--------------------------|

| | |
|---|--------|
| Introduction | Page 3 |
| Management, Organization and Responsibilities | Page 3 |
| Concessioner | Page 3 |
| National Park Service | Page 3 |
| Concession Operations | Page 3 |
| Operational Evaluations | Page 3 |
| Rates | Page 4 |
| Operating Dates and Hours of Operation | Page 4 |
| Staffing and Employment | Page 5 |
| Merchandising | Page 5 |
| Food Service | Page 6 |
| Risk Management/Safety | Page 6 |
| Lost and Found Policy | Page 7 |
| Marketing | Page 7 |

Introduction

This Operating Plan between _____ (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service") will serve as a supplement to the Concession Contract CCGATE015-01 referred to as the "Contract". It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities 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.

Any revisions shall not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

I. Management, Organization and Responsibilities

A. Concessioner

The concessioner will employ a general manager, who has the responsibility for carrying out the policies and directives of the NPS as well as those of the concessioner in operating the authorized concession facilities.

B. National Park Service

The General Superintendent is responsible for total park operations. The Chief, Business Management Office is the liaison between the concessioners and all other NPS divisions. All services, rates, menus, operating dates and hours, facility improvements and new construction will be reviewed by the Business Management Office staff, and approved by the Superintendent, Jamaica Bay/Breezy Point Unit.

II. Concessions Operations

A. Operational Evaluations

All NPS and United States Public Health Service inspections and evaluations of the concessioner's facilities and services will be conducted in a professional manner and will conform to current NPS guidelines.

All services and facilities will be inspected to:

- Ensure public health and safety
- Ensure that satisfactory services are provided
- Ensure that employee living and working conditions are satisfactory
- Ensure that buildings and equipment are well maintained.

2. The NPS and the concessioner will inspect and monitor concession facilities and services.
3. The concessioner will ensure that requirements are adhered to with respect to applicable standards, authorized rates, safety and public health.
4. The concessioner will ensure that impacts to cultural and natural resources are minimized.
5. Results of the evaluations will be forwarded to the concessioner by the NPS in a timely manner.
6. The concessioner will cooperate with the NPS in scheduling inspections and in accompanying NPS staff if requested.
7. The concessioner is required to comply with correction dates or to establish abatement plans to correct deficiencies. Abatement plans will be approved by the NPS.

B. Rates

The objective of the NPS rate approval program is to assure that concessioner rates are comparable to similar services and facilities provided by the private sector. Rates will be approved or disapproved based on current comparability studies or applicable guidelines:

Rates for all goods and services must have prior written approval by the NPS.

2. The concessioner may recommend the selection of comparable businesses.
3. The concessioner will submit requests for rate increases to the NPS for approval. Requests for major rate approval actions require at least four weeks for official NPS review and response. Requests for rate changes that are not significant will require less time.
4. The concessioner will provide detailed information necessary to enable the NPS to assess rates, i.e., portion sizes, type of service, menus, etc.

C. Operating Dates and Hours of Operation

The concessioner will submit dates and hours of operation to the NPS for approval by January 15 each year. Specific dates for operating seasons may fluctuate with weather and road conditions. The Sports Center will be open all year.

D. Staffing and Employment

The concessioner will hire and maintain staffing levels to provide satisfactory services.

2. The concessioner may not employ spouses and dependent children of Service employees, except as may be permitted by a written determination of the General Superintendent that the proposed hire is in accord with Service policy and procedures.
3. A general employee orientation and training will be provided by the concessioner. Employees will be informed of regulations and requirements affecting their employment and activities while working in the park. Additional orientation sessions will be conducted by the concessioner and the NPS once employees are on location.
4. Adequate job specific training, applicable to each employee, will be provided prior to working with the public.
5. All employees dealing with the general public will be neat and clean, and wear an accurate name tag, or uniform identifying the concessioner and the employee.

E. Merchandising

Merchandise sales in Gateway NRA shall: 1) provide logistical support to enable visitors to participate in park activities; 2) provide opportunities for visitors to purchase mementos of the park, and 3) serve as an extension of the park's interpretive responsibilities to the public. Merchandise will generally contribute to the understanding of park preservation and related environmental and cultural values.

The following objectives have been established:

1. The image of the park and its shops will be intertwined. Shops will exemplify quality and professionalism.
2. The concessioner will, to the greatest extent possible, offer gifts and souvenirs that have an identifiable relationship to Gateway.
3. The concessioner will cooperate with the NPS in promoting the sale of United States handicrafts relating to the cultural, historical, natural and geographic characteristics of Gateway.
4. NPS Merchandising Standards will be followed, including but not limited to:
 - Foreign-made merchandise is not prohibited but should not dominate gift shops.

- Merchandise that offends normal standards of taste or which violates conservation principles will not be sold.

The sale of original prehistoric or historic archeological specimens is prohibited. Replicas may be sold if they are clearly labeled as replicas.

Merchandise representative of items found in the park, but not originating from the park, must be labeled and identified so as to indicate the origin.

- Plant material or other natural materials originating in the park cannot be sold. Animal skins fabricated into such items as leather gloves, belts, jackets, purses, etc., are acceptable if the concessioner obtains a statement from the manufacturer stating the skins were obtained from legally authorized sources and not from threatened or endangered species.
- Merchandise conflicting with NPS policies and regulations will not be sold.
- The selling price of all items must be individually marked or designated on each display.

F. Food Service

The concessioner will offer a range of food service including fountain, fast food, snacks and deli. Food service will be varied and include options for children and the elderly. Menus, pricing and service delivery will be limited to those approved each operating season by the NPS.

All food service facilities will be designated as non-smoking.

The Service has contracted with the USPHS to accomplish health and sanitation inspections. However, the city, county and state also have jurisdiction, may conduct inspections and require corrective action pursuant to their findings.

G. Risk Management -Safety

The concessioner is responsible for providing a safe and healthful environment for its employees and visitors as outlined in the contract. The concessioner will develop a Risk Management Program that will be approved by the NPS in accordance with the Occupational Safety and Health Act (OSHA) and NPS guidelines. The Program will be reviewed annually by the NPS. The program will include the following components:

- Management's Policy Statement, Duties, Employees' Responsibilities, and Administration
- Inspection and Abatement
- Accident Investigation and Reporting
- Safety/Health Committee

- Training
- Emergency Procedures

H. Lost and Found Policy

Found Items

1. Found items are to be turned over the concession manager and tagged by designated personnel. The tag will identify the item, date, location and name of finder. The concessioner shall establish and maintain a central repository, familiar to all employees. A lost and found log book shall be maintained.
2. Found items shall be stored in a secure place (expensive items such as cameras, wallets and jewelry should be stored in a safe)

Examination of Concessioner Reports

I. Marketing

All promotional and printed material produced by the concessioner (including computer Web-sites) will be submitted to the NPS for approval prior to distribution to the public. Out of park advertising including the Internet, radio ads, billboards, magazines, etc., will also be approved by the NPS. All interpretive material and park information will be kept current and accurate.

EXHIBIT C

NONDISCRIMINATION

Section I: Requirements Relating to Employment and Service to the Public

A. Employment

During the performance of this CONTRACT 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 CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further

Government concession contracts 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 CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" 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:

- (h) 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.

Section II Accessibility

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.

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.

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.

EXHIBIT D
ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS
(CONCESSION FACILITIES)

LAND ASSIGNED:

Land is assigned in accordance with the boundaries shown on the enclosed land assignment map.

REAL PROPERTY IMPROVEMENTS ASSIGNED:

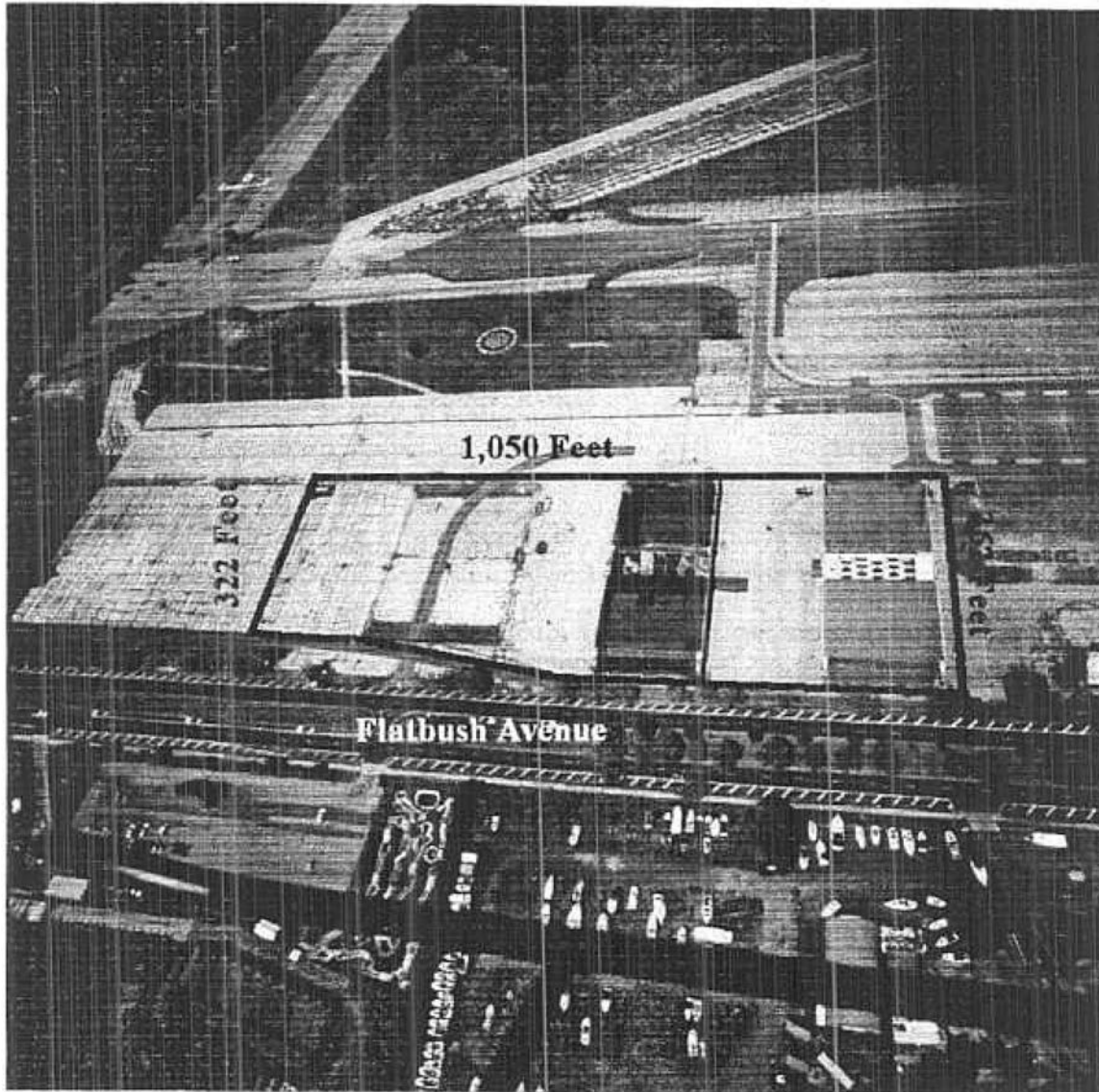
The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

| Building # | Building Name | Square Footage |
|-------------------|---|-----------------------|
| | hangar 5 | 16,820 |
| | hangar 5 lean-to | 8,400 |
| | hangar 6 | 16,820 |
| | hangar 6 leant-to | 8,400 |
| | enclosed space between hangars 5 & 6 | 12,180 |
| | hangar 7 | 16,820 |
| | hangar 7 lean-to | 8,400 |
| | hangar 8 | 16,820 |
| | hangar 8 leant-to | 8,400 |
| | enclosed space between hangars 7 & 8 | 7,800 |
| | | |
| | The outside open area between the two pairs of hangars measures 150 feet by 350 feet | |
| | | |
| | | |

Approved, effective , 20.

By: _____
Director, Northeast Region

Land Assignment



Hangers 5-8 and other land assigned are located on Floyd Bennett Field, adjacent to Flatbush Avenue, directly across from the Gateway Marina and Gateway Golf Driving Range. Additional land may be assigned if necessary and approved by the General Superintendent. The dimensions are: southern boundary 362'; eastern boundary 1,050'; northern boundary 322'; the western boundary follows the fence line adjacent to the bike path.

EXHIBIT E
ASSIGNED GOVERNMENT PERSONAL PROPERTY

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

NONE

EXHIBIT F

CONCESSIONER CONSTRUCTION, MAJOR REHABILITATION, AND REPAIR AND MAINTENANCE PROJECT PROCEDURES

A. Introduction

This exhibit presents step-by-step procedures for the administration of Concessioner building projects (construction, major rehabilitation, and repair and maintenance projects) within the park Area. Important terms are defined first. Project planning and design are presented second, followed by guidelines for project supervision. All projects undertaken by the Concessioner require a coordinated effort between the Concessioner and the Superintendent. This exhibit applies to the building of new structures or facilities, major rehabilitations, and the repair and maintenance ("R&M projects") of existing facilities that change the nature, appearance or value. Rehabilitation projects that are not major rehabilitations as defined in the Contract are considered as R&M projects. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this CONTRACT and Exhibit A, the main body of the CONTRACT and Exhibit A will prevail.

In accordance with the Contract, only certain new construction and major rehabilitation projects may qualify for leasehold surrender interest (LSI). Following these administrative procedures for both LSI and non-LSI projects will enable NPS to approve LSI, as well as to ensure that all requirements of law and NPS policy are undertaken with respect to any project.

In addition, these procedures will enable the appraisal of LSI to occur in an orderly way. The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and concessioner in future planning and facility appraisal.

All project activities shall be directed and managed as presented in the "Annual Construction and Repair and Maintenance Management Plan" (CMP). In addition to these activities, the CMP is also to present scheduled project development and implementation, as presented below under Item C, Project Planning and Design, paragraph 1. Individual projects included in the CMP will be authorized by NPS through an approved Project Statement (PS).

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by NPS, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and NPS management policies.

The Concessioner is responsible for all aspects of project development and implementation. The role of the NPS is to provide direction, authorization and oversight. The Concessioner and the Park staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of the park Area and the NPS.

B. Definition of Terms

"Annual Construction and Repair and Maintenance Management Plan" (CMP): A written document presenting all construction, major rehabilitation and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

"Approved Project Documents": Project drawings and specifications approved by the Park Superintendent and used by the Concessioner to direct a contractor in the type, size and quality of projects.

"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": The removal or assembly of a building, road, utility or any other facility part or material that changes the nature, appearance, or value of that facility.

"Construction Supervisor": A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and NPS and assuring quality work is performed that meets the design and specifications of the project. 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.

"Major Rehabilitation": (Defined in the CONTRACT).

"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 individual projects identified in a CMP.

“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”: (Defined in the CONTRACT).

“Total Project Cost”: The total of all actual project expenditures (invoiced and paid) for completion of a project.

“Total Project Price”: The total of all estimated project expenditures for completion of a project.

C. Project Planning and Design

(1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any 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 projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP should include any intended projects. Projects shown in 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 Concessioner shall formally notify the Park Superintendent in writing of intent to proceed with any facility planning, design and/or projects. The project must be identified in the CMP the calendar year before to assist the NPS in sequencing and scheduling necessary support staff. 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 before the project is funded.

(3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person should have the authority to obligate project expenditures and hire and direct consultants and contractors, and concessioner support staff.

(4) Prepare a proposed Project Statement (PS). Arrange and facilitate a project planning conference with NPS staff and prepare a proposed 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 an approved 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 Price; 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, if requested, with written and competitively acquired price proposals or construction contracts. Not all projects qualify for LSI. LSI is only granted under the terms of this CONTRACT, including, without limitation, its Exhibit A.

(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 specified. 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. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the Park Superintendent.

(f) NPS Operations. Any aspect of the proposed project 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 proposed 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 Containing Claims for Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for LSI purposes. The eligibility of any expenditures for LSI 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 specified in the PS. The Park Superintendent shall only approve final LSI costs after project completion and written project close-out.

(b) Design Required for Leasehold Surrender Interest Eligibility and Value. The Park Superintendent may require an appropriate level of design to determine whether a project is eligible for LSI, and if so, its estimated cost. The level of project planning and design required may include completion of concept design, schematic design, or preliminary engineering design, to clearly identify the elements eligible for LSI. Some projects may require the completion of construction drawings and specifications before the proposed LSI is documented to the satisfaction of the Park Superintendent. All improvements for which LSI is claimed must be defined in record "as-built" construction drawings and specifications when the Concessioner submits its request for LSI at Project Close-out.

(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. The Project File will become an LSI project file when the Concessioner requests approval of LSI. It shall be established and maintained by the Concessioner and shall include all of the documents identified in section 6(C) of this Exhibit. This file shall be submitted at the time of Project Close-out to the Park Superintendent as the basis for the leasehold surrender interest request. 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 eligible for LSI 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 approved 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 the project 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 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 close-out.

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. This section must contain all correspondence supporting LSI with appropriate cross reference to other sections for clarity of the LSI "paper trail." (For example, cross

reference tabs). Also contained in this section shall be a copy of the project acceptance and close-out letter from the Park Superintendent that specifies the amount of leasehold surrender interest, if any, applicable to the project.

Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., should be kept to support requests for LSI and to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos should be filed with the documents they support.

(7) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of NPS staff early in project planning to assure uninterrupted project implementation. Development 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 affecting 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. 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" determination--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 Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs 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 R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs 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. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

D. 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 its communication concerning the nature and progress of day-to-day project activity to this person. This person should have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The NPS should not take any responsibility for projects until Project Close-out and Acceptance when the NPS receives certification of completed work performed in compliance with Project Documents and all specified codes.

(2) Submit a Total Project Price for Review.

(a) All projects completed under the terms of this Contract where LSI is requested shall include submittal of a Total Project Price in writing to the Superintendent for review.

(b) Where no LSI is requested, the Total Project Price is provided as an informational item. Formal approval by the Superintendent is not required.

(3) Notice-to-Proceed with a Project. A "Notice-to-Proceed" with a 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 Area 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 PDs for Park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed 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 purposes. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs. The NPS shall be notified immediately, if a change is likely to occur in the Total Project Price where the project involves LSI. (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 PDs 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 completion of projects, as identified in the approved PDs. 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 PDs 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 PDs 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 facility 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 five 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 LSI. All change orders or any other means of directing the Contractor that may have the effect of increasing the Total Project Price will require the Park Superintendent's review and approval, if the project has LSI implications.

(8) NPS Project Inspection. The 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 drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required by professional Architects and/or Engineers must also be kept on the project site with the PDs 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) Requesting Approval of Leasehold Surrender Interest. Upon substantial completion of a project, as determined by the Park Superintendent, the Concessioner must provide the Superintendent a written schedule of requested LSI eligible costs incurred, which becomes the Concessioner's request for LSI approval. 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 request. If requested by the Park Superintendent, the Concessioner shall also provide written certification from a certified public accountant regarding the LSI costs. The certification must comply with the requirements of Exhibit A of this Contract.

(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 section C(13) below). Projects where LSI is requested may require the submittal of any other similar documents deemed by the NPS necessary to establish complete project 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 PDs and the approved Total Construction Price.

(13) "As-Constructed Drawings". The "as constructed" drawings included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with NPS management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided. The drawings establishing LSI shall provide a full and complete record of all "as-constructed" facilities including reproduction of approved submittals and

manufacturer'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 Close-out 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. Until receiving formal written project acceptance and close-out from the Park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work. For LSI projects, the project close-out letter issued by the Superintendent will specify the granted amount of LSI value resulting from the project.

EXHIBIT G

**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, if any, is as follows:

NONE

MAINTENANCE PLAN

**FAMILY SPORTS CENTER
GATEWAY NATIONAL RECREATION AREA**

SIGNED: _____ **DATED:** _____
General Superintendent

TABLE OF CONTENTS

| | |
|---------------------------------------|---------|
| Introduction | Page 3 |
| Concession Facilities | Page 3 |
| Access to Concession Facilities | Page 3 |
| General Maintenance Standards | Page 3 |
| General Concessioner Responsibilities | Page 4 |
| Buildings | Page 4 |
| Grounds and Landscaping | Page 5 |
| Accessways | Page 6 |
| Utilities | Page 7 |
| Solid Waste | Page 7 |
| Water | Page 7 |
| Sewer | Page 8 |
| Electrical | Page 8 |
| Telephones | Page 9 |
| Fuel Tanks | |
| Hazardous Materials | |
| Environmental | Page 10 |
| Snow Removal | Page 10 |
| Public Signs | Page 11 |
| Pest Control | Page 11 |

INTRODUCTION

This Maintenance Plan between _____ (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service") will serve as a supplement to the Concession Contract CC-GATE015-01 (herein referred to as the "Contract"). The plan describes specific maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area 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 Gateway National Recreation Area. Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT. Revisions must be reasonable and in furtherance of the purposes of this CONTRACT.

Assigned Areas

Lands assigned under the Contract are identified on the land assignment maps (See Exhibit D), which are not well defined by a sidewalk or road, are to be a maximum of 50-feet from buildings and 10-feet on either side of paths, walkways, and trails unless otherwise specified on the maps. If a sidewalk is the defining boundary, the assignment will include up to the roadside edge of the gutter. Any modification of concession-assigned areas or buildings will be reflected by corresponding changes on the land assignment maps.

Access to Concession Facilities

The Superintendent or his designated representatives will have access to all concessioner facilities to conduct evaluations and other required inspections.

General Maintenance Standards for Concession Facilities

The NPS Concession Review Program provides general direction, expectations, and standards on all aspects of concession operations. The standards for interior and exterior maintenance as amended, supplemented, or revised, are hereby incorporated by reference.

The concessioner is required by the terms of the contract to maintain the facilities used in a manner that is acceptable to the NPS. It is the purpose of this Maintenance Plan to help define the necessary standards and to define the maintenance relationship between the concessioner and the NPS. Both the concessioner and the NPS have specific responsibilities as outlined in the concession contract and this plan.

General Concessioner Responsibilities

Any work that modifies concession facilities requires written approval by the NPS prior to commencing work. (See Contract - Exhibit F).

The concessioner will ensure that all operations, repair, maintenance and new construction adhere to the contract requirements and the Secretary of Interior's Standards for Treatment of Historic Properties.

Except as noted, the concessioner is responsible for housekeeping, general maintenance, replacement and repair as follows:

A. Buildings

Buildings: Any changes in the architecture, building interior or exterior, including color and material must be approved in advance by the NPS. Preservation maintenance, routine maintenance and repair on all structures must be consistent with NPS standards and guidelines.

2. Radon: When requested to do so, the concessioner will monitor radon levels in work places and provide mitigation where federally accepted levels are exceeded in accordance with Director's Order (DO)-76.
3. Asbestos: The concessioner will develop a schedule for identifying and abating asbestos in accordance with OSHA 29 CFR 1926.58, Environmental Protection Agency (EPA), 40 CFR 61.M, 763.E and G, and NPS-76.
4. Lead-Based Paint: The concessioner will develop a program to identify and mitigate hazardous lead-based paint in accordance with the Lead Poisoning Prevention Act of 1971, Public Law 91-695, as amended in 1987 and 1988; and NPS Housing Design and Rehabilitation Guidelines (DO-76). Lead levels must be detected before renovating any building constructed prior to 1977.

Building Codes: The concessioner will comply with all applicable federal, state, and local codes, including, but not limited to, the National Fire Protection Association's (NFPA) and applicable OSHA standards.

6. Interior Systems: The concessioner will develop and implement preventive maintenance guidelines for building systems to ensure efficient operations. The concessioner will clean and inspect all interior systems prior to each operating season, including but not limited to, chimneys, fireplaces, stoves, etc.
7. Utility Systems: The concessioner will operate, repair and replace all interior and exterior utility systems within their land assignments as described in this plan or shown and described on land assignment maps.
8. Food Service Equipment: All equipment used in food service operations, including but not limited to, dishwashers refrigerators, freezers, coolers, serving tables, etc., will comply with safety, public health, and sanitation codes.

9. Safety Equipment: The concessioner will provide and maintain safety devices, in accordance with applicable codes, including but not limited to, fall protection, confined space, fire detection, suppression equipment, etc. and all equipment necessary for the protection of the employees and the public, as well as concessioner-owned and government-assigned improvements by complying with all applicable codes.
10. Historic Structures: The hangars are listed on, or are eligible to for nomination to the National Register of Historic Places. The concessioner will submit plans for all proposed work or actions affecting these resources to the NPS to ensure compliance with laws, policies, and guidelines, including the National Historic Preservation Act of 1966, as amended. The NPS will work with the concessioner to ensure that compliance requirements are followed.
11. Damage to Concession Facilities or Utilities: The concessioner will be responsible for repairing any damage caused to any assigned structure or utility due to negligence on the part of a concessioner employee or supplier.

B. Grounds and Landscaping

All landscaping changes will be approved in advance by the NPS. All chemicals, including but not limited to, fertilizers, pesticides, and herbicides require NPS approval prior to use.

2. The concessioner will work with the NPS to identify resource-related problems in their assigned areas. The NPS will recommend and approve correction methods. The concessioner is responsible for ensuring that necessary work is accomplished.
3. The concessioner is responsible for litter-control in assigned areas
4. The concessioner is responsible for exotic weed management in their assigned areas:

The NPS will survey the concessioner's land assignments to identify exotic weeds and provide the concessioner with the survey results. The concessioner will work with the NPS to ensure early detection.

The concessioner will be responsible for manual removal of high-priority species. Weeds that cannot be controlled manually will be chemically sprayed by the NPS. The concessioner will be billed for associated costs.

C. Accessways

Parking Areas

1. The concessioner is responsible for resurfacing, surface repair, patching and striping, debris and hazard removal in visitor, employee and administrative parking lots designated in land assignments.

Sidewalks, Walkways, Trails, Steps, Foot Bridges

The concessioner is responsible for maintaining and replacing sidewalks, established

trails, and steps in their assigned areas including sweeping, surface repair, erosion control, and lighting.

2. The concessioner will provide safety railings on steps and hazardous walkways.
3. The concessioner is responsible for complying with the Uniform Federal Accessibility Standards (UFAS) in their assigned areas. All designs must meet NPS and UFAS standards. Ramps must not interfere with plowing and street-sweeping by extending into the roadways or parking lots.

D. Utilities

Water and sewer are provided by the NPS and, if requested, the NPS will collect garbage. These services will be provided to the concessioner based on established rates.

Solid Waste

If requested, the NPS will collect solid waste and bill the concessioner based on established rates.

2. The concessioner can make other arrangements for garbage collection. However, storage equipment, and schedules must be approved in advance by the NPS to assure that resource management guidelines are met.
3. The concessioner will paint garbage cans within its assigned areas as needed.
4. Any debris generated from the concessioner's construction or demolition is the responsibility of the concessioner. Debris will be contained and removed from the park, to appropriate disposal sites, as soon as possible.

Water

1. The concessioner is responsible for all interior plumbing in concession facilities.
2. The concessioner's responsibility starts at, and includes, the isolation valves on the building side of the water main in assigned areas.
3. The NPS will maintain water meters on new and existing concession facilities. The concessioner is responsible for purchasing and installing meters and back-flow prevention devices for new construction or new building assignments.
4. If a water main is tapped, broken or needs to be accessed, the local NPS maintenance supervisor will be notified. The concessioner is responsible for exposing the main and restoring the area unless it is previously determined to be an NPS responsibility.
5. The concessioner is responsible for road repairs if excavation through a road or paved area is needed to repair a line. The concessioner will replace topsoil and revegetate any ground disturbance caused by repairs. The concessioner will disinfect repaired lines in accordance with NPS procedures.

6. The concessioner will provide the NPS with facility occupancy dates for activation or deactivation of systems when opening and closing dates are submitted for approval.
7. The concessioner is responsible for the following procedures prior to opening any facility that has been closed:

Water lines will be superchlorinated before initial use.

- In cases where superchlorination is not possible, lines will be thoroughly flushed with potable water. After lines are flushed, a steady stream of water must flow from spigots until demand creates a constant flow.
8. The NPS and the USPHS will conduct annual water/sewer surveys in the concessioner's facilities.
 9. The NPS is responsible for replacing and maintaining and painting fire hydrants.

Sewer

1. The concessioner is responsible for all interior plumbing and fixtures in concession facilities.
2. The concessioner is responsible for collection systems serving only the concessioner's facilities as follows:
 - Cleaning, repair and replacement of systems up to and including the last manhole before a lift station or up to and including the last manhole before another user comes on line.
 - Exterior lines and laterals from assigned buildings to the mains.
3. The NPS is responsible for day-to-day maintenance on lift stations
4. The concessioner is responsible for installing, repairing, maintaining and replacing grease traps associated with their operations.

The concessioner is responsible for reporting sewer spills and plugged sewer lines to NPS District Maintenance Managers and the Concessions Management Office immediately.

Electrical

The concessioner will obtain electrical service from the local provider.

1. Maintaining, repairing and replacing all interior wiring and electrical supply lines from exterior transformers into concession facilities are concessioner responsibilities.
2. The concessioner will provide all utility line drawings to the NPS to reflect any changes including new installations, repair or relocation.

3. The concessioner is responsible for obtaining new or additional power lines within assigned areas.
4. The concessioner is responsible for electricity and fixtures in assigned parking lots that serve only their facilities.

Telephones

The concessioner is responsible for all on-premise equipment and inside wiring. The concessioner will contract directly for commercial telephone service. Agreements will be in accordance with guidelines provided by the NPS.

E. Fuel Tanks

1. The concessioner is responsible for all underground storage tanks (USTs) and above ground storage tanks (ASTs) within their assigned areas. ASTs will be tested and maintained in accordance with 40 CFR, Part 280 (Wyoming) and ARM 16.45.102A (Montana) and all other applicable laws. The concessioner must notify the NPS and the appropriate State Department of Environmental Quality (DEQ) in the event of any leaks, spills, tank modifications, temporary closures or any status changes.
2. The NPS policy for USTs and ASTs will be followed for all existing tanks, upgrades and new installations.
3. The concessioner is responsible for all propane (L.P.) tanks in assigned areas:
 - Tanks will be tested and maintained in accordance with NFPA 54 and 58, and with 29 CFR 1910.110.
 - Wherever possible, propane tanks will be underground. All above ground propane tanks will be fenced and kept free of vegetation.
 - Plastic, untraceable LP gas lines will have trace-wire installed to facilitate advanced location and use. Warning tape will also be installed to warn future excavators of gas lines below.
 - All new propane tank installation will be approved by the NPS prior to installation.
4. All designated suppliers will be issued a non-fee permit for transporting hazardous materials.

F. Hazardous Materials

All hazardous material (Haz-Mats) will be handled as follows:

- The concessioner will follow all RCRA, OSHA and 29 CFR, 1910 and 1926 regulations.
- Haz-Mat requirements will be part of the Concessioner's Risk Management Program.

- Spill kits, specified by the NPS, will be available at all of the concessioner's fueling stations, Haz-Mat storage areas and in maintenance vehicles.
- Spills will be reported immediately to the NPS Concessions Management Office.

G. Environmental

To the extent possible, the concessioner will use naturally-derived cleaning products.

The concessioner will cooperate with the NPS in assuring that disposable products such as glass, aluminum, cardboard and paper are recycled. Following are individual responsibilities:

1. The concessioner may independently recycle (any independent recycling program must be approved in advance by the NPS) or participate in the park's recycling program as follows:
 - The NPS will provide a sufficient number of marked recycling receptacles throughout the park for employees and visitors

The concessioner will provide a sufficient number of marked recycling receptacles in its areas of operation

 - The NPS will collect recyclables from NPS offices and residential areas and haul them to Amfac's recycling center.
 - The concessioner will collect recyclables from their assigned areas and haul to designated recycling centers.
 - The concessioner will store recyclables in appropriate secure storage containers to protect against odors that could attract animals.
 - Revenues generated from the sale of recycled materials will be documented and used to offset the cost of the program.

H. Snow Removal

The concessioner is responsible for snow removal from concession facilities' roofs, entrances, porches and walkways. Ice buildup on walkways will be sanded or removed for safety. Spring snow removal will be coordinated with NPS District Maintenance Managers.

2. Any chemical used for removing ice must be approved in advance by the NPS.
3. All winterkeeping of concession facilities is the concessioner's responsibility.
4. The concessioner is responsible for marking fire hydrants with snow stakes and for removing snow from around hydrants in assigned areas.

F. Public Signs

All signs, flags and banners will be approved by the NPS prior to installation or replacement. Signs will meet the NPS sign standards and the following requirements:

- The concessioner is responsible for maintaining and replacing all interior and exterior signs within their land assignments that relate to their operations and services

The NPS will provide roadside directional, traffic and regulatory signs

The NPS will provide signs for accessibility to be installed by the concessioner

G. Pest Control

The concessioner will notify the Concessions Management Office of serious pest problems including rodents, swallows, bats, bedbugs and other wildlife or insects that may invade buildings. Concessions Management will coordinate with other NPS staff to provide an approved Integrated Pest Management (IPM) strategy for the concessioner's implementation. The concessioner will provide the NPS the IPM results.

EXHIBIT I

INSURANCE REQUIREMENTS

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

II. LIABILITY INSURANCE

The following Liability Coverage is 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 - | \$4,000,000 |
| Products/Completed Operations Limit - | 4,000,000 |
| Personal Injury & Advertising Injury Limit - | 4,000,000 |
| General Aggregate - | 5,000,000 |
| Fire Damage Legal Liability "per fire" - | 4,000,000 |

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

- a. Products/Completed Operations
- b. Personal Injury or Advertising Injury exclusion or limitation
- c. Contractual Liability limitation
- d. Explosion, Collapse and Underground Property Damage exclusion
- e. Total Pollution exclusion

3. For all 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."

Each Accident Limit - \$1,000,000 or greater amount if required by the state

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 - \$6,000,000
Aggregate Limit

D. 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.

E. 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 – as required by the state
Aggregate Limit

F. 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.

G. 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.

G. Workers Compensation & Employers' Liability

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

III. 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 D 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. Coverage is to be provided on a blanket basis
6. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities.
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.

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

F. Required Clauses

1. 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 Concession Contract No. ___ dated ____, between the United States of America and [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."

2. The United States Department of the Interior, National Park Service will be named as additional insured on certificates.

IV. 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 coverage shall be determined in consultation with the Director taking into consideration the scope and size of the project.

V. 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 coverage 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 coverage 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.

VI. CERTIFICATES OF INSURANCE

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverage, 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 providing 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.

VII. STATUTORY LIMITS

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

PROPOSAL INSTRUCTIONS

PROPOSAL INSTRUCTIONS

Before completing a proposal, carefully read and consider these instructions, the concession contract document, the exhibits to the concession contract document, and the proposal package, as well as the other information in this prospectus, its appendix and any other documents to which it refers.

Response Period for Submission of Proposals

This prospectus is issued under the authority of 36 CFR Part 51. In the event of any inconsistency between the terms of this prospectus and 36 CFR Part 51, 36 CFR Part 51 will control.

All persons that submit a proposal in response to this prospectus are presumed to be informed of the provisions of 36 CFR Part 51, including, without limitation, requirements regarding purchase and disposition of the personal property and possessory interest of the existing concessioner set forth in subparts G and H of 36 CFR Part 51.

Proposals must be received within **120 calendar days** from the date this prospectus was announced. Specific dates are shown on the front page of this prospectus. Proper public notice has been given, as required by Part 51 of Title 36 of the Code of Federal Regulations. The National Park Service considers that **120 days** is a sufficient response time taking into account the limited scope of services to be provided under this contract.

Only an offeror submitting a responsive proposal is eligible to be awarded the new concession contract. A responsive proposal means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the new concession contract and prospectus and as having provided the information required by the prospectus. The minimum requirements for the new concession contract are identified in Part A of the Proposal Package. Offerors must agree in their transmittal letter to the minimum requirements of the Prospectus as identified in Part A, and provide the information required by Part B on all subfactors in order for the proposal to be considered responsive.

Form in Which Proposal Must Be Submitted

You must follow the format provided in the proposal package, including in its entirety without alteration the "Offeror's Transmittal Letter," in applying for the concession opportunity. Failure to submit the Offeror's Transmittal Letter without alteration (except for filling in the indicated blanks) will make your proposal non-responsive.

Please number each page and section in your completed proposal according to its corresponding location in the proposal package. Feel free to add any relevant information to your proposal, while staying within the organizational framework in the proposal package.

Where and How to Submit a Proposal

Completed proposals and any modifications of them must be submitted to the National Park Service at the address and by the close of business on the due date shown on the front page of this prospectus. Proposals may be delivered in any manner convenient to the Offeror during normal business hours of the receiving office.

Submit three copies of your proposal, following the format of the proposal package presented within this Prospectus.

Proposals and modifications of them must be enclosed in sealed envelopes with the following marked on the envelope:

"CONCESSION PROPOSAL, MAIL ROOM DO NOT OPEN."

The due date specified in this prospectus for receipt of the proposal by the National Park Service

The name and address of the Offeror.

As Proposals May Be Considered Public Documents

All proposals submitted in response to this Prospectus may be disclosed by the Department of the Interior to any person, upon request, to the extent required by the Freedom of Information Act. If you believe that your proposal contains trade secrets or confidential commercial and financial information exempt from disclosure under the Freedom of Information Act (5 USC 552), mark the cover page of each copy of the proposal with the following legend:

"The information specifically identified on pages of this proposal constitutes trade secrets or confidential commercial and financial information that the Offeror believes to be exempt from disclosure under the Freedom of Information Act. The Offeror requests that this information not be disclosed to the public, except as may be required by law."

You must specifically identify what you consider to be trade secret information or confidential commercial and financial information on the page of the proposal on which it appears, and you must mark each such page with the following legend:

"This page contains trade secrets or confidential commercial and financial information that the Offeror believes to be exempt from disclosure under the Freedom of Information Act, and which is subject to the legend contained on the cover page of this proposal."

Information so identified shall not be made public by the National Park Service except in accordance with law.

Questions

If you do not understand something in this prospectus, you must submit your question in writing to the contact person noted on the cover of the prospectus, no later than 30 days in advance of the submittal date. The National Park Service will respond to your question in writing, and will provide the question and response to all potential Offerors who have requested a Prospectus. Questions submitted after this date will not be answered. Because the National Park Service must provide equal information to all Offerors, there must be sufficient time allowed to inform all interested parties of such questions and answers.

Evaluation of Proposals and Selection

SELECTION FACTORS

HOW THE NATIONAL PARK SERVICE WILL EVALUATE PROPOSALS AND SELECT A CONCESSIONER:

Evaluation. The Director will apply the principal selection factors and secondary factors as set forth in CFR 36 Part 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation discussing any subfactors when applicable.

Scoring. For each selection factor the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received if any.

The first four principal factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor will be scored from zero to three. The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

Principal Selection Factors. The five principal selection factors are:

Principal selection factor 1. The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

Principal selection factor 2. The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

Principal selection factor 3. The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

Principal selection factor 4. The financial capability of the offeror to carry out its proposal:

Principal selection factor 5. The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

Secondary Selection Factors.

The secondary selection factor is:

1. The quality of the Offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of the park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction and recycling.

Selecting the best proposal. The National Park Service will select the proposal with the highest cumulative point score as the best proposal. If two or more proposals receive the same highest point score, then the Director will select as the best proposal (from among the proposals with the same highest point score) the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of 36 CFR Part 51. Consideration of revenue to the United States in this determination and in scoring proposals under Principal Factor 5 will be subordinate to the objectives of protecting, conserving and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates (36 CFR §51.16(c)).

Right of Preference

PREFERRED OFFEROR DETERMINATIONS.

A preferred Offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with 36 CFR §51.27. A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match the requirements of the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal. The Director has determined that this is not a qualified new concession contract, and therefore, no preferred Offeror for this contract exists. There is no incumbent concessioner.

Congressional Review

Contracts issued for a term of more than 10 years or when the annual gross receipts are anticipated to exceed \$5,000,000, are required by law to be submitted to the Congress for sixty days before they may be awarded. The new concession contract will be submitted to the Congress because anticipated gross receipts exceed \$5,000,000 and the anticipated term may be more than 10 years.

Cautions to Offerors about Submission and Evaluation of Proposals

1. All information regarding this prospectus will be issued in writing. No National Park Service or other government official is authorized to make substantive oral representations relating to this matter, and no offeror should rely on any oral representations made by government officials with respect to this transaction.
2. The proposal includes the selection factors to be used by the National Park Service to evaluate proposals. Under each factor, the National Park Service identifies subfactors to ensure that all elements of the factor are considered. You, the Offeror, should ensure that you fully address all of the selection factors and related subfactors.
3. This prospectus and related documents reflect the views and objectives of the National Park Service with regard to the proposed concession operation. Should you believe any statement in the prospectus to be inaccurate, you must submit comments to the National Park Service in writing, no later than thirty days prior to the due date for proposals. Send your comments to the office named in the cover of this prospectus for the receipt of proposals.

4. The information provided in this prospectus, including the Appendix, is provided to allow offerors to understand the operations and terms of the new concession contract. However, the information is provided throughout all of the documents contained in this prospectus. Offerors are encouraged to thoroughly review all information and required submittal documents before beginning to prepare a proposal. In the event of any inconsistencies between this prospectus and 36 CFR, Part 51, 36 CFR, Part 51 will prevail.
5. A proposal to expand the scope of facilities and/or services beyond that identified in this prospectus will not be considered in the evaluation of proposals.
6. A proposal to provide direct or indirect monetary or other benefits to the park or government not within the scope or requirements of the contract will not be considered in the evaluation of proposals.
7. If you propose to make any financial commitments in response to any selection factor, your proposal will be closely reviewed and analyzed against your financial statements and supporting documents. Such documents reviewed and analyzed will include but not be limited to the pro forma income statements, balance sheets, and cash flow statements required in the proposal.
8. The proposal and related materials submitted should reflect the entire proposal you are making. The National Park Service will consider your written submission as your full and final proposal in response to the prospectus, and will make its selection based on the written information you have submitted. Do not assume that the National Park Service knows anything about you or your proposal. Do not assume that any information about you or your proposal, previous correspondence or previous submissions are in the possession of or will be considered by the National Park Service. This is true even if you are the current concessioner or have operated another concession within the park area.
9. The draft concession contract and its exhibits, which set forth the terms and conditions under which the concession operation is to be conducted, are attached. The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may also cancel a solicitation at any time before the award of the concession contract if the Director determines in its discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or reissued solicitation for this concession contract (36 CFR §51.11).
10. Except as provided under 36 CFR Section 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the award of a contract), the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded.
11. The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal, but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so, and unless the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals.

12. The selected offeror, including any preferred offeror, must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract within the time period specified by the Director, the Director will select another responsive proposal for award of the concession contract, or will cancel the selection and may resolicit the new concession contract.
13. Document delivery services, including overnight delivery, to some areas may not provide true overnight delivery. Offerors are encouraged to insure the timely submittal of proposals by contacting the delivery service of their choice regarding delivery availability for the specific location specified on the front page of this prospectus.
14. The NATIONAL PARK SERVICE, in accordance with 36 CFR Part 51, may include, as terms of the new concession contract, appropriate elements of the proposal selected for award of the concession contract.
15. Offerors are responsible for undertaking appropriate due diligence with respect to this business opportunity. All of the statements made in this prospectus regarding the nature of the business and its likely future are only opinions of the National Park Service. Offerors should not rely on any representations of the National Park Service in this regard.

Proposal Package

OMB Control No. 1024-0125

**Department Of Interior
National Park Service
Gateway National Recreation Area**

**Proposal to Develop and Operate a Family Sports Center
Within Floyd Bennett Field**

Date:

DUE DATE: All applications and any modifications of them must be received at
the following address:

**National Park Service
Gateway National Recreation Area
Chief, Business Management Division
Headquarters Building 69
Floyd Bennett Field
Brooklyn, NY 11234**

(718) 338-4603 or 4540

**No Later Than: SEP 04 2001
By Close Of Business: 4:00 P.M.**

**GATEWAY NATIONAL RECREATION AREA
NORTHEAST REGION – NATIONAL PARK SERVICE**

The Proposal Letter set forth below indicates your acceptance of the terms and conditions of the concession opportunity as set forth in this Prospectus. It indicates your intention to comply with the required elements of the Contract.

The letter must bear original signatures. The NPS will review the entire Proposal Package to determine whether your proposal in fact accepts, without condition, the terms and conditions of this Prospectus. If not, your proposal may be considered non-responsive, even though you submitted an unconditioned Proposal Letter.

If a court of competent jurisdiction determines that any term of the prospectus is unlawful, then any Offeror may withdraw its proposal at any time prior to award of the Contract without penalty and may submit a new proposal in accordance with any amendment to or resolicitation of the Prospectus.

PROPOSAL FOR CONCESSION OPERATION

To: General Superintendent, Gateway National Recreation Area
Headquarters Building 69
Floyd Bennett Field
Brooklyn, NY 11234



Dear Mr. Superintendent:

(I) (We) hereby offer to provide visitor services and facilities at Gateway National Recreation Area in accordance with the terms and conditions specified in the draft new Concession Contract No. CC-GATE015, provided in the prospectus issued by the public notice in the Commerce Business Daily dated _____, and to execute the draft new Concession Contract without substantive modification (except as may be required by the National Park Service pursuant to the terms of the prospectus).

(I) (We) are enclosing the required "PROPOSAL" which, by this reference, is made a part hereof.

(I) (We) certify that the information furnished herewith is true to the best of (my) (our) knowledge and belief. (I) (We) agree to meet all the minimum requirements of the draft new concession contract, and the prospectus, and that (I) (We) have provided all of the mandatory information specified in the prospectus.

(I) (We) certify in accordance with 43 CFR Part 12 regarding debarment, suspension, ineligibility and voluntary exclusion the following:

Any of the individuals or entities seeking participation in this Concession Contract are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from a public transaction by a federal department or agency.

Within the three years preceding submission of the Proposal, none of the individuals or entities seeking participation in this Concession Contract have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, or for violation of federal or state antitrust statutes or for commission of embezzlement, theft, forgery, bribery, falsification of records, making false statements, or receiving stolen property.

None of the individuals or entities seeking participation in this Concession Contract are presently indicted for or otherwise criminally or civilly charged by a federal, state or local unit of the government with commission of any of the offenses.

The individuals or entities seeking participation in this Concession Contract have not had one or more public transactions (federal, state or local) terminated for cause or default within the three-year period preceding the submission of the Proposal.

(I) (We), by submitting this Proposal hereby agree, if selected for award of the new concession contract:

1. To the minimum requirements of the prospectus as identified in Part A of this proposal package.
2. To complete the execution of the final Concession Contract within thirty working days after it is presented by the National Park Service.
3. To commence operations under the new concession contract on the effective date of the new concession contract. The effective date of the new concession contract will be after July 31, 2001, and no later than January 1, 2002, as determined by NATIONAL PARK SERVICE.

BY _____ DATE _____
(Type or Print Name)

ORIGINAL
SIGNATURE _____

TITLE _____

ADDRESS _____

CERTIFICATE OF CORPORATE OFFEROR)
(Offerors who are not corporations should skip this certificate)

I, _____, certify that I am the _____ of the corporation named as Offeror herein; that _____, who signed this proposal on behalf of the Offeror, was then _____ of said corporation; that said proposal was duly signed for and in behalf of the corporation by authority of its governing body within the scope of its corporate powers.

BY: _____ DATE _____
(Type or print name and date)

Original Signature

TITLE _____

ADDRESS _____

Objectives to be fulfilled by the business are listed in the Business Opportunity where they may be reviewed in their full context. For your ready reference, the objectives are reproduced here. NPS will select the offer that best achieves the objectives as measured by the Selection Factors

Objectives for the Proposed Business:

1. Enhance the recreational mission of Gateway National Recreation Area by providing varied, year round, recreational opportunities for all populations.
2. Rehabilitate historic fabric where feasible; stabilize the remaining historic fabric.
3. Respectfully use the rich history of Floyd Bennett Field to good advantage through architectural design that aesthetically capitalizes upon the underlying historical specimen.
4. Provide exhibits and other informational media that educate users and remind of the national significance of the site.

PART A

The minimum requirements for the new concession contract are identified in this Part A of the proposal package. If the offeror, in its proposal letter, does not agree to these minimum requirements, the proposal will be considered non-responsive.

PRINCIPAL SELECTION FACTOR 1. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROTECTING, CONSERVING, AND PRESERVING RESOURCES OF THE PARK AREA.

(I) (We) agree to comply with all terms and conditions in the contract, including compliance with all applicable laws, including, without limitation, environmental protection and conservation laws, under the terms and conditions specified in the Concession Contract.

PRINCIPAL SELECTION FACTOR 2. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROVIDING NECESSARY AND APPROPRIATE VISITOR SERVICES AT REASONABLE RATES.

(I) (We) agree to comply with all the terms and conditions specified in the Concession Contract, including its exhibits.

(I) (We) agree to operate at the currently approved rates during the term of the Concession Contract unless a new rate schedule is approved by the Secretary.

(I) (We) agree to accept the Concession Facilities, and any assigned government personal property "as is" as required by the draft Concession Contract, Section 8(f).

(I)(We) agree to carry out the required Concession Facilities Improvement Program according to the terms of the draft Concession Contract, including the time frames established by the Secretary.

(I) (We) accept without condition the proposed Maintenance Plan included as Exhibit H of the draft Concession Contract.

(I) (We) accept without condition the Operating Plan included as Exhibit B of the draft Concession Contract.

(I) (We) agree to implement an equal opportunity program and comply with the terms of the Equal Opportunity and handicapped access requirements of the draft Concession Contract.

(I) (We) agree to develop and implement an effective health and safety program (Risk Management Program), according to the requirements of the draft Concession Contract for such programs.

(I) (We) agree to meet the public liability and property insurance requirements of the draft Concession Contract and agree to provide property and liability insurance of at least the types and levels of coverage described in the draft Concession Contract.

PRINCIPAL SELECTION FACTOR 5. THE AMOUNT OF THE PROPOSED MINIMUM FRANCHISE FEE, IF ANY, AND/OR OTHER FORMS OF FINANCIAL CONSIDERATION TO THE DIRECTOR.

(I) (We) agree to the minimum Franchise Fee of 2.0% of annual gross receipts, and agree to pay any higher franchise fee offered in our proposal that may be accepted by the National Park Service.

PART B

Offerors must agree, in their proposal letter, to the minimum requirements identified in Part A of this proposal package, and must provide the information required by the following Part B subfactors to be considered responsive.

PRINCIPAL SELECTION FACTORS

PRINCIPAL SELECTION FACTOR 1. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROTECTING, CONSERVING, AND PRESERVING RESOURCES OF THE PARK AREA.

Subfactor B1(a) To be responsive to this prospectus you must submit a plan for a family sports facility that includes specific activities with a proposed floor plan so we will know the relative importance of each activity to your proposal and the resulting impact upon the character of the facility.

Subfactor B1(b) The National Park Service is committed to the conservation, protection and preservation of the natural and cultural resources of Gateway National Recreation Area. In complying with all applicable laws relating to the protection, conservation and preservation of these resources, please address how you are going to comply with park specific policies and planning documents.

1. The concession facilities are historic structures that are listed or eligible for listing on the National Register of Historic Places. All repair, rehabilitation and construction having an effect on cultural resources requires Section 106 consultation with the State Historic Preservation Officer.

- a. How will you ensure that the integrity of these facilities is maintained?
- b. What types of specialized training will be provided to staff responsible for maintaining these facilities?
- c. How will you ensure that no repair, rehabilitation or construction is initiated prior to appropriate consultation with the State Historic Preservation Officer?

2. Concession operations have potential to adversely impact the natural resources of the park.

- a. How will you ensure that ground-disturbing activities have been previously approved by the National Park Service?

- b. How will you ensure that your operations or employees' activities do not adversely impact park resources, i.e., parking cars outside parking areas; excessive grease getting into sewer system; hazardous materials spills, etc.?

Subfactor B1(c) Please identify your environmental program manager, and provide a brief description of his/her qualifications and past experience with regard to managing an environmental program. If the environmental program manager has not yet been selected, please identify the training and experience factors you will take into consideration in selecting the individual to fill this position.

Subfactor B1(d) The reduction of pollution and the use of toxic products in the park, within the constraints of U.S. Public Health Service codes, is an objective of the National Park Service. One method for doing so, that has been adopted by the National Park Service, is the use of environmentally preferable cleaning products for custodial, housekeeping and fleet operations. Primary products utilized for these purposes are naturally derived from renewable resources. Products that are toxic, skin irritants, flammable, corrosive, non-biodegradable, or that contain high VOC levels, petroleum and hydrocarbons, ozone-depleting, chlorinated compounds or artificial dyes and fragrances should be avoided.

Please describe, in narrative form, your commitment to this important objective and your specific plans for reducing or eliminating the use of toxic products.

1. Identify which of the departments you will convert to use of environmentally-preferable cleaning products and a timetable for each conversion.
2. How do you intend to identify products that meet the above criteria? What documentation will you require of the supplier?
3. Who, on your staff, will be responsible for monitoring this program? What are their qualifications to do so?

Subfactor B1(e) Submit with your offer a draft Environmental Management Program(EMP) for this operation, addressing the elements identified in the draft CONTRACT Section 6, Environmental and Cultural Protection. The Draft EMP will document processes and procedures to be established that ensure compliance with Applicable Laws related to protection, conservation and preservation of the environment.

Natural and cultural resources and associated values of the Park are protected, restored and maintained in good condition and managed within their broader ecosystem and cultural context. Specific objectives in the concessioner's EMP should include:

- Hazardous Materials and Waste Management
- Education of public regarding environmental protection/awareness
- Solid Waste Management (including recycling and composting where appropriate)
- Water and energy conservation
- Fuel storage and delivery systems must meet all applicable requirements including underground and aboveground storage
- Emergency Planning and Response
- Pollution Prevention and Waste Reduction
- Reduction of emissions from vehicle and other operations that affect Air Quality
- Reduction of noise and protection of natural quiet
- Pest management practices
- Sustainable design and construction practices
- Use of native species

PRINCIPAL SELECTION FACTOR 2. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROVIDING NECESSARY AND APPROPRIATE VISITOR SERVICES AT REASONABLE RATES.

Subfactor B2(a) Identify the authorized services identified in Section 3 of the draft CONTRACT you intend to provide. The National Park Service encourages (and will give credit in evaluation) the provision of as many of these services as possible. The National Park Service may choose to change one or more authorized services that you offer to provide to the required services in the final new concession contract.

Subfactor B2(b) Provide your specific plans for each of the required and/or authorized services. Remember that the more complete and well-thought-out your plans, the better support you give to your answers to the required subfactors.

Subfactor B2(c) Please provide the following information regarding your intention in implementing the Concessions Facilities Improvement Program required in the draft concession contract.

1. Describe your proposed construction schedule for each of the projects required by the Concession Facilities Improvements Program.

a. How do you propose to approach the planning, design and construction process?

b. What is the projected construction cost for each of these projects?

2. Describe construction projects you have managed or undertaken. Describe your involvement, the nature of the project, and the cost and size of the project. If you have not managed or undertaken construction projects, how do you intend to acquire the expertise to complete the project?

Subfactor B2(d) The Offeror must accept the proposed maintenance plan without condition. The draft contract requires the new concessioner to maintain the facilities and assigned lands to the satisfaction of the Director and in accordance with the maintenance plan attached to the draft contract. If you could make changes to the Maintenance Plan that would improve services to the visitors with respect to maintenance, please describe any additions or changes that you would propose to make. You can answer "Yes" to Part A and still answer this question.

Subfactor B2(e) If you could make changes to the Operating Plan that would improve services to the visitors with respect to operations, please describe any additions or changes that you would propose to make. You can answer "Yes" to Part A and still answer this question.

Subfactor B2(f) Submit a draft Risk Management Plan to address the elements of an effective health and safety program (Risk Management Program), according to the requirements of the draft contract for such a program. This plan must address the following:

- a. Management's Policy Statement, Duties, Employees' Responsibilities, and Administration
- b. Inspection and Abatement
- c. Accident Investigation and Reporting
- d. Safety/Health Committee
- e. Training
- f. Emergency Procedures

Subfactor B2(g) How will you train your employees about park resources to interpret the purpose and significance of the Park, surrounding area and the

National Park Service to the visitors and provide information to visitors, and to participate in cross training if required by the National Park Service?

Subfactor B2(h) The National Park Service wishes to continually upgrade gift and souvenir operations to focus more on the park's related themes. Merchandise should enhance appreciation and understanding of the park and the National Park System, the significance of the natural world and environment, and set a model of environmental responsibility. The draft Contract requires that the concessioner develop and implement a plan satisfactory to the Director that will assure that gift merchandise to be sold or provided reflects the purpose and significance of the park, including conservation of resources, geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

- a. If your proposed development includes a gift shop, submit a draft Gift Shop Mission Statement showing your plans for achieving this goal. How will you approach developing store theme and decor as well as the necessary policies and sources of merchandise to successfully effect this continual change? Include specifically how you will acquire and present merchandise that reflects the purpose and significance of the park.
- b. Provide ideas or sample products or descriptions of interpretive methods, media and/or material you propose to provide.

PRINCIPAL SELECTION FACTOR 3. THE EXPERIENCE AND RELATED BACKGROUND OF THE OFFEROR, INCLUDING THE PAST PERFORMANCE AND EXPERTISE OF THE OFFEROR IN PROVIDING THE SAME OR SIMILAR VISITOR SERVICES AS THOSE TO BE PROVIDED UNDER THE CONCESSION CONTRACT.

Subfactor B3(a). Describe the entity with which the National Park Service will contract. Clearly define the Offeror's relationship to any superior and/or subordinate entities.

Using the format and instructions on the next two pages identify the Offeror and each business organization, operator and any parties involved in management of the proposed concession operation. Add information necessary to make the relationships clear.

The following three elements give an overview of the information requested in this section.

1. Identify the "Offeror" formally. Has this business organization been in

existence for some time, is it new, or do you propose to establish it?

2. Explain the financial circumstances, legal form, formal structure and ownership of the primary business organization that would provide the services advertised if your proposal is chosen. Identify any related, subordinate or superior business organizations and any other organizations, contractors, or subcontractors that will have a substantial role in managing, directing, operating, or otherwise carrying out the services to be provided. If the business organization is to be created, what guarantees will be provided by the entity submitting the proposal?

3. Identify any layers of related, subordinate or superior entities, significant contractors/subcontractors, or other organizations or individuals that will act in concert to provide the services required. Describe each of them and their relationships.

Support for Subfactor B3(a):

Provide an organizational chart showing the principal lines of authority within your primary business organization. Specify any related, subordinate, or superior business organizations or any other organizations, contractors, or subcontractors identified within subfactor B3(a) above.

BUSINESS ORGANIZATION IDENTIFICATION FORM

Complete this form for your primary business organization, and each related, subordinate and superior business organization, or any other organization, business organization, contractor or subcontractor identified under Items 1 through 4 stated above.

A. Name: _____

B. Present Address: _____

C. Contact Person: _____

D. Present Telephone: _____

E. FAX Number: _____

E-Mail Address: _____

F. Form of business: Corporation Partnership ____ Individual
 Other ____
 (Sole Proprietor) (Explain)

G. Describe the expected role of each in providing this concession service:
 (parent, subsidiary, sub-contractor)

H. Ownership:

| Names and Addresses of Owners (Corp: Show Controlling Interest; Close Corp: Show All) | Number and Type of Shares or Percentage of Ownership | Total Current Value of Investment |
|---|---|--------------------------------------|
| | | |
| | | |
| | | |
| TOTAL OF ALL OWNERS | | |
| TOTAL SHARES OUTSTANDING | | |

I. If a corporation, list the names, addresses, and titles of corporate officers
 and the names and affiliations of the members of the Board of Directors:

| Name | Address | Title |
|------|---------|-------|
| | | |
| | | |
| | | |

State of Incorporation:

J. The following attachments must be provided as applicable for each subject
 of the form:

1. For offerors and concessioners who are corporations:

- Articles of Incorporation ||
- Bylaws
- Certificate from the state of incorporation indicating that the corporation is in "good standing."

2. For offerors and concessioners who are partnerships:

- Partnership agreements or joint venture agreements.

3. If the entity that is to be the concessioner is not formally in existence as of the time of submission of the proposal, demonstrate that the individual(s) or organization(s) that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in 36 CFR §51.3.

Subfactor B3(b): Demonstrate the Offeror's competence to manage and operate the specific types of business activities required in this prospectus. Answer the following required questions:

The National Park Service is looking for a business organization that has experience in managing the required and authorized services as described at the beginning of this principal factor and in the contract.

1. Give specific examples of business operations undertaken by the Offeror that demonstrate this type of experience.
2. Using the format shown on the following page, and adding to it as necessary, provide detailed resumes for all key personnel who will be actively involved in the management of this business. Identify the specific role the individual is to play and describe that person's qualifications to play that role. Use the following guidelines to help you:

Be sure to include the following where applicable:

- sole proprietor
- current and proposed partners
- key management employees, including the proposed on-site management
- owners of corporations
- operating officers who will be actively involved in the management of this business.

Identify the specific role each individual is to play and describe that person's qualifications to play that role.

When discussing work experience, be specific about

- size of operation
- dates
- area of operation
- specific duties
- number of people supervised
- hours worked per week
- other factors that would be helpful to reviewers.

Include

- training
- education
- training, special qualifications, ratings, or licenses needed in some special occupations.

Note that additional support for this subfactor may be provided, as described on the page after next.

**INDIVIDUAL EXPERIENCE AND RELATED BACKGROUND OF
CORPORATE MANAGEMENT STRUCTURE**

To be used in answering Required Subfactor B3(b)

Note to Offeror:

Complete for each person who will have any role in the management of this business.

- A. Individual's Name
- B. Name of Current Employer
- C. Address
- D. (Area Code +) Telephone Number
Fax Number
E-Mail Address
- E. Nature of Business
- F. Exact Title of Position (indicate if self-employed)
- G. Dates of Employment (from--to)
- H. Number of People Supervised
- I. Description of Duties and Responsibilities
- J. Education, Degrees, and Special Skills
- K. Role in Proposed Business
 - 1. Qualifications for That Role
 - 2. Estimated Hours per Week

Support for Subfactor B3(b).

1. Provide an on-site organizational chart showing the principal lines of authority between departments or functional areas and managers.

Include all key managerial and on-site managerial positions (planning, finance, administration, operations, maintenance, etc.) Provide names and resumes of individuals, background experience, and duties for all on-site managerial positions associated with administering the proposed Concession Contract. If the individuals are not known, identify positions and duties to be performed.

2. Describe the decision-making authority to be delegated to the on-site manager(s). Who will be the management decision-maker? With whom will the National Park Service deal regarding day-to-day operations and issues? If you can name the person or people to hold such positions, please do.
3. Indicate the number of employees in each department and provide summary descriptions of basic functions where those are not obvious by title. In addition, provide a description of any training programs to be used through out-sourcing to ensure core competency, and provide opportunities for advancement of employees.
4. Provide proposed wage levels and estimated hours per week for each position or group of positions.
5. What standards or procedures will you apply to the pre-screening, training, termination and hiring of personnel? (Applications, drug testing, law enforcement clearances, reference checks, and interviews requirements, etc.)
6. Define how you intend to initiate and carry out a drug-free environment and eliminate substance abuse in your work force. What will you do to identify individuals who abuse drugs and/or alcohol? How will you initiate a drug abuse and alcohol abuse educational program? What type of referral for treatment program will you provide? What type of commitment do/will you propose to help those who need assistance?
7. How will you ensure your employees will be hospitable and exercise courtesy and consideration in their relations with the public?
8. How will you achieve a constant standard level of knowledge among the staff about the park and its rules, regulations, special programs, as well as a consistent friendly and positive attitude? How would you go about setting standards and training to achieve those standards?

9. Outline your proposed skills training program.
10. List the important aspects of managing operations and clearly show how you would deal with them.

Subfactor B3(c). The Offeror gives information regarding any past business events.

Answer each of the following fully. The National Park Service will take into consideration circumstances surrounding any past events.

1. Has the Offeror ever defaulted from or been terminated from a management or concession contract, or been forbidden from contracting by a public agency or private company? If YES provide full details of the circumstances.

YES ____ NO ____

2. Describe any filings for bankruptcy, fines or penalties levied by government agencies, including but limited to any and all legal proceedings against the Offeror, that are related to your past performance in providing facilities and services similar to those described in the prospectus. Include the date of those occurrences and all related information.

Subfactor B3(d). Demonstrate the Offeror's ability and experience to carry out the Concession Facilities Improvement Program within the terms and conditions of the draft Contract. Describe construction projects you have managed or undertaken. Describe your involvement, the nature of the project, and the cost and size of the project. If you have not managed or undertaken construction projects, how do you intend to acquire the expertise to complete the project.

Subfactor B3(e). Please address the following:

1. Have you been involved in any projects involving the development of environmentally sensitive development projects? If so, describe your involvement, the nature of the project, and the cost and size of the project.
2. Construction of in-park facilities should reflect the natural and cultural setting within the park and create a sustainable environmentally-sensitive development. Provide a vision of the architectural theme and methods of incorporating the principles of sustainable design. The vision can be articulated through design concepts, sketches rendering and/or a narrative.
3. Construction of all kinds should harmoniously integrate with the local environment. Architectural style, design elements, and construction materials

should reflect the natural and cultural history of the Area. Additionally, NATIONAL PARK SERVICE is committed to the concepts of sustainable design, as defined by the American Institute of Architects. Please provide a description of your knowledge and experience of, and commitment to, sustainable design.

PRINCIPAL SELECTION FACTOR 4. THE OFFEROR'S FINANCIAL CAPABILITY

Subfactor B4(a). The offeror demonstrates a realistic estimate of acquisition, start-up, and operating costs of this business.

1. Summarize the offeror's acquisition costs for the proposed business as outlined. Note the definitions of kinds of property that follows.

| | |
|---|----|
| Tangible Property | \$ |
| Real Property (outside of the Park) | \$ |
| a. Initial construction or rehabilitation costs | |
| Contractual Building Program | \$ |
| Rehabilitation Cost | \$ |
| Initial Replacement | \$ |
| Other: _____ | \$ |
| Personal Property | |
| a. Furniture, Fixtures and Equipment | |
| Acquisition | \$ |
| New Items | \$ |
| b. Merchandise and Supplies | |
| Acquisition | \$ |
| New Inventory | \$ |
| c. Transportation Vehicles | |
| Acquisition | \$ |
| New Items | \$ |
| Intangible Property | |
| a. Organization Cost | \$ |
| Goodwill | \$ |
| Other: _____ | \$ |
| Other Working Capital | \$ |
| Other (Specify) _____ | \$ |
| TOTAL FUNDS NEEDED | \$ |

| | |
|------------------------------|---|
| Tangible Property - | Physical property of a relatively permanent character used in the normal conduct of a business. Examples of tangible property are buildings, equipment, machines, and tools. Such tangible property is depreciated rather than expensed. |
| Real Property - | Tangible property permanently affixed to land or other real property. Real Property includes structures, facilities and appurtenances such as loading docks, heating and air conditioning systems, and walks and drives. |
| Personal Property - | Tangible property associated with the operation of the business that is not affixed permanently to the realty. Examples of personal property include all furniture and fixtures that are movable, transportation vehicles and many others. |
| Intangible Property - | A long-term property item not having physical characteristics. Intangible property derives its value by affording special rights or advantages expected to contribute to the earnings of a business. Examples of intangible property include patents, copyrights, trademarks, organization cost and goodwill. Intangible assets are amortized, rather than depreciated. |
| Working Capital - | The excess of current assets over current liabilities. Current assets consist of cash, marketable securities, short-term receivables, inventories and prepaid expenses. Current liabilities include all debt that is considered payable within the accounting year. |

Subfactor B4(b). The offeror demonstrates that needed funding (equity and/or borrowed) is available.

The "needed funding" is the total acquisition cost for the business, amount listed as "TOTAL FUNDS NEEDED" from Subfactor B4(a).

1. Provide the following information appropriate for your current entity.

a. For offerors who are corporations or partnerships; provide

- the latest financial statement for your business and its parent company (if any),
- the notes to the statements,
- any Security Exchange Commission filings,
- similar explanatory material
- related audit report.

b. For sole proprietors, unconventional lenders or proposed individual investors: provide personal financial statements.

2. Attach your current credit report.

3. Identify the source(s) of all needed funds. Present specific and compelling evidence of your ability to obtain the necessary funds. Identify all sources and provide complete documentation. Explain fully the financial arrangements you propose to use, using the following guidelines:

a. Document each source and availability of all funds with your current audited financial statements, financing agreements, letters of commitment, or similar supporting documents.

b. If funds are to be obtained from lending institutions (banks, saving and loans, etc.) the letter of commitment must be on the lending institution's letterhead and include, as a minimum:

- The amount of the loan
- Amount of interest
- Term of the loan
- All encumbrances upon the loan.

c. If funds are to be obtained from an individual, provide the following as appropriate:

- Current personal financial statement for the lender
- Documentation of any assets to be sold
- Written commitment from the lender
- Any other assurances that make a compelling demonstration that the funds are available and committed.

d. Funds to be obtained from an existing asset must be supported. Prove in a compelling way that the asset will yield the necessary funds at the necessary time. The condition of the market for such items should indicate that you will be able to sell the asset at the necessary time and at a price sufficient to provide the funds needed. Provide the following documentation as appropriate:

- Description of the asset
- Condition of the asset
- Any encumbrances on that asset
- Qualified appraisals and other professional estimates of the value of the asset
- Proceeds of the sale of the assets.

Subfactor B4(c). The offeror demonstrates that its funding is adequate through its pro forma income statements and balance sheets, using the following guidelines:

Provide projected estimates of the revenues and expenses of the concession business in the form of annual pro forma income statements, balance sheets and statements of retained earnings for each year of the concession contract's term. These pro forma statements must be examined by an independent accounting firm or other economic and financial professionals with recognized experience in the accounting industry. A certification letter, on company letterhead, must be attached to the prospective financial statements giving some assurance as to the rationale used and comprehensive integrity of the pro forma statements.

- Use the format discussed in subfactor B4(d), which follows.
- Incorporate the annual inflation rate and estimates of real growth you anticipate.
- Attach your projections for revenue and expenses, along with your assumptions in establishing these projections.
- For the income statement and balance sheet, break down operating revenue and expenses by month for the first two years of operations.
- Show annual cash flow.
- Use the outlines given on the following pages. You may add to these outlines, but do not do less, do not reduce the captions called for, and do not change the order of items. This said, you may use your own presentation approach, using a computer, etc.
- Explain the assumptions on which your projections are based to a degree sufficient for reviewers to judge the validity of your estimates.
- More detail is preferred over less.

Only receipts and expenses related to the services required and authorized by the contract and for which approved rates are given, not other services (outside the park), are to be included in your pro forma statements.

Subfactor B4(d). Describe how your proposed financing arrangements, taken as a whole, are advantageous to the National Park Service through the term of the draft Contract, and how they are responsive to the need for a soundly financed operation with the least number of financing issues to be negotiated in the future.

FORMAT TO USE FOR PRO FORMA (PROJECTED) INCOME
STATEMENT

Show your Projections Annually for the Term of the Contract
Monthly for First Two Years

GROSS RECEIPTS (NET)

- Admissions
- Activity fees
- Food
- Beverage Sales (Alcoholic)
- Souvenir
- General Merchandise
- Other:

TOTAL GROSS RECEIPTS

COST OF SALES

- Food
- Beverage (Alcoholic)
- Souvenir
- General Merchandise
- Other:

TOTAL COST OF SALES

GROSS PROFIT

DIRECT EXPENSES

- Direct Payroll
- Payroll Taxes & Benefits
- Operating Supplies
- Contract Services
- Utilities
- Repair & Maintenance
- Auto Expense
- Other:

TOTAL DIRECT EXPENSES

ADMINISTRATIVE & GENERAL EXPENSES

- Officers Salaries
- Other Salaries

Payroll Taxes & Benefits
Office Supplies
Telephone
Management Fees
Overhead Expenses
Professional Fees
Advertising
Other:

TOTAL ADMINISTRATIVE AND & GENERAL EXPENSES

FIXED EXPENSES

Rental Fee(s)
Property Taxes
Insurance
Interest
Depreciation
Other:

TOTAL FIXED EXPENSES

GOVERNMENT FEES

Franchise Fee
Maintenance Reserve

TOTAL GOVERNMENT FEES

OTHER INCOME AND EXPENSES

Interest Income
Gain/Loss on sale of assets
Other:

INCOME BEFORE INCOME TAXES

INCOME TAXES

NET INCOME

**FORMAT TO USE FOR PRO FORMA (PROJECTED) CASH FLOW
STATEMENT**

Show your Projections Annually for the Term of the Contract

CASH FLOW

OPERATING ACTIVITIES

Net Income

Adjustment to reconcile net income to net cash provided by operating activities

Depreciation

Gain/Loss on fixed assets

Other:

Net cash provided by operating activities

FINANCING ACTIVITIES

Dividends

Notes Payable

Other:

Net cash used in financing activities

INVESTMENT ACTIVITIES

Purchase of fixed assets

Proceeds from sale of assets

Other:

Net cash used in investing activities

TOTAL CASH FLOW

FORMAT TO USE FOR PRO FORMA BALANCE SHEET FORMAT

Show your Projections Annually for the Term of the Contract

CURRENT ASSETS

Cash

Inventories

Other

Total

NET FIXED ASSETS

Fixed Assets

{Less} Accumulated Depreciation.

Total

OTHER ASSETS

Other Assets

Total

TOTAL ASSETS

CURRENT LIABILITIES

Accounts Payable

Current Maturities

Advance Deposits

Total

LONG-TERM LIABILITIES

TOTAL LIABILITIES

EQUITY/CAPITAL

TOTAL LIABILITIES & EQUITY

PRINCIPAL SELECTION FACTOR 5. FRANCHISE FEE AND OTHER FORMS OF FINANCIAL CONSIDERATION TO THE DIRECTOR

The offer of a higher minimum franchise fee than the minimum franchise fee stated in the prospectus is generally beneficial to NATIONAL PARK SERVICE and accordingly may result in a higher score under this selection factor. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

The minimum franchise fee acceptable to NATIONAL PARK SERVICE is 2.0% of annual gross receipts.

Subfactor B(5)(a) State the minimum franchise fee that you propose. (Such fee must at least equal the minimum franchise fee set forth above.) Express this fee as a percentage of annual gross receipts.

percent of annual gross receipts

Subfactor B(5)(b) The offeror may propose a graduated franchise fee based on particular levels of gross receipts (utilizing as a base, annual gross receipts of \$20 million) so long as the overall franchise fee proposed exceeds the minimum franchise fee set forth above. For example, instead of the minimum franchise fee on all annual gross receipts, an offeror may propose a 0% franchise fee on the first \$10 million of gross receipts; a 5.0% franchise fee on gross receipts between \$10 million and \$15 million, and a 10% franchise fee on receipts greater than \$15 million. The National Park Service will evaluate proposed franchise fee schedules in relation to the minimum fee and determine which would be in the best interest of NATIONAL PARK SERVICE.

SECONDARY SELECTION FACTORS

SECONDARY SELECTION FACTOR 1. THE QUALITY OF THE OFFEROR'S PROPOSAL TO CONDUCT ITS OPERATIONS IN A MANNER THAT FURTHERS THE PROTECTION, CONSERVATION AND PRESERVATION OF PARK AREA AND OTHER RESOURCES THROUGH ENVIRONMENTAL MANAGEMENT PROGRAMS AND ACTIVITIES, INCLUDING, WITHOUT LIMITATION, ENERGY CONSERVATION, WASTE REDUCTION, AND RECYCLING.

Subfactor(B)(S1)(a) Describe the Best Management Practices that you will apply in your operation (including, without limitation, the provision of visitor services, construction, maintenance, and acquisition) to further the protection, conservation, and preservation of the park and other resources.

1. What steps will you take to practice water and energy conservation in daily operations, as well as in the design, construction and/or rehabilitation of facilities?
2. How will you reduce or eliminate use of hazardous materials in your park operations, i.e., petroleum-based products, paint thinners, etc.?
3. Recycling of antifreeze and motor oil are objectives of the NATIONAL PARK SERVICE. How can you accomplish this in your operations?
4. Are there ways in which you can incorporate the use of alternative fuels into your park operations? What are they?
5. What other Best Management Practices can you employ to demonstrate that your company is a responsible steward of the environment and is utilizing the best available technology to protect park resources?

Subfactor(B)(S1)(b) The reduction of solid waste is an objective of the National Park Service.

1. A large volume of disposable serving products is utilized in food service operations authorized by this contract. How would you change the current operations to eliminate or significantly reduce the use of these products?
2. Thoughtful procurement of recyclable products can greatly reduce solid waste. Being sensitive to recycling markets in the area, how could you change your product line to ensure that more products could be recycled? For example, drinks in plastic bottles cannot be recycled as easily as those in aluminum or glass.

- 3 What other ideas do you have for reducing solid waste generated from your operations?

Subfactor (B)(S1)(c) Describe, in narrative form, your plans for communicating an environmental leadership ethic to park visitors and your own employees, as it relates to the resources of the park and to the environment generally.

SECONDARY SELECTION FACTOR 2, TERM OF CONTRACT

The Term of contract is limited by law to a maximum of 20 years. The National Park Service believes that 10 years is a minimum time necessary to establish and stabilize the proposed business.

Subfactor (B)(S2)(a) With due consideration for the minimum time needed to establish and stabilize the business (10 years) and the maximum term allowable by law (20 years) what is the minimum term of contract that you offer? Consider leasehold surrender interest provided by Sec. 9(C) of the Contract as well as long-term commitments in making your decision to offer a contract term between 10 and 20 years. The shortest term that may or may not be incremental to a term of 10 years is rated as best under this subfactor.

Subfactor (B)(S2)(b) If the offer is for a term of contract greater than 10 years, the additional proposed term must be demonstrated as necessary by:

1. Submit a pro forma for a 10-year term of contract, as required under Subfactor (B)(c) et seq., that shows the project to be not feasible.
2. Submit an additional pro forma for the project that shows the project to be feasible at the proposed term of contract.

Agreements to a 10 year term, assuming your pro forma shows your proposed investments to be prudent, or the best conclusive demonstrations by pro forma of need for a specific contract term between 10 and 20 years score best under subfactors (B)(S2)(a) and (b).

PUBLIC LAW 105-391

TITLE IV--NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT

- Sec. 401. Short title.
- Sec. 402. Congressional findings and statement of policy.
- Sec. 403. Award of concessions contracts.
- Sec. 404. Term of concessions contracts.
- Sec. 405. Protection of concessioner investment.
- Sec. 406. Reasonableness of rates.
- Sec. 407. Franchise fees.
- Sec. 408. Transfer of concessions contracts.
- Sec. 409. National Park Service Concessions Management Advisory Board.
- Sec. 410. Contracting for services.
- Sec. 411. Multiple contracts within a park.
- Sec. 412. Special rule for transportation contracting services.
- Sec. 413. Use of nonmonetary consideration in concessions contracts.
- Sec. 414. Recordkeeping requirements.
- Sec. 415. Repeal of National Park Service Concessions Policy Act.
- Sec. 416. Promotion of the sale of Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts.
- Sec. 417. Regulations.
- Sec. 418. Commercial use authorizations.
- Sec. 419. Savings provision.

401. SHORT TITLE

This title may be cited as the "National Park Service Concessions Management Improvement Act of 1998".

402. CONGRESSIONAL FINDINGS AND STATEMENT OF POLICY.

(a) Findings.--In furtherance of the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.), which directs the Secretary to administer units of the National Park System in accordance with the fundamental purpose of conserving their scenery, wildlife, and natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation and conservation of park resources and values requires that such public accommodations, facilities, and services as have to be provided within such units should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that--

(1) visitation will not unduly impair these resources and values; and

(2) development of public accommodations, facilities, and services within such units can best be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of such units.

(b) Policy.--It is the policy of the Congress that the development of public accommodations, facilities, and services in units of the National Park System shall be limited to those accommodations, facilities, and services that--

(1) are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located; and

(2) are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.

SEC 403. AWARD OF CONCESSIONS CONTRACTS.

In furtherance of the findings and policy stated in section 402, and except as provided by this title or otherwise authorized by law, the Secretary shall utilize concessions contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to units of the National Park System. Such concessions contracts shall be awarded as follows:

(1) Competitive selection process.--Except as otherwise provided in this section, all proposed concessions contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal, as determined by the Secretary through a competitive selection process. Such competitive process shall include simplified procedures for small, individually-owned, concessions contracts.

(2) Solicitation of proposals.--Except as otherwise provided in this section, prior to awarding a new concessions contract (including renewals or extensions of existing concessions contracts) the Secretary shall publicly solicit proposals for the concessions contract and, in connection with such solicitation, the Secretary shall prepare a prospectus and shall publish notice of its availability at least once in local or national newspapers or trade publications, and/or the Commerce Business Daily, as appropriate, and shall make the prospectus available upon request to all interested parties.

(3) Prospectus.--The prospectus shall include the following information:

(A) The minimum requirements for such contract as set forth in paragraph (4).

(B) The terms and conditions of any existing concessions contract relating to the services and facilities to be provided, including all fees and other forms of compensation provided to the United States by the concessioner.

(C) Other authorized facilities or services which may be provided in a proposal.

(D) Facilities and services to be provided by the Secretary to the concessioner, if any, including public access, utilities, and buildings.

(E) An estimate of the amount of compensation, if any, due an existing concessioner from a new concessioner under the terms of a prior concessions contract.

(F) A statement as to the weight to be given to each selection factor identified in the prospectus and the relative importance of such factors in the selection process.

(G) Such other information related to the proposed concessions operation as is provided to the Secretary pursuant to a concessions contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

(H) Where applicable, a description of a

preferential right to the renewal of the proposed concessions contract held by an existing concessioner as set forth in paragraph (7).

(4) Minimum requirements.--(A) No proposal shall be considered which fails to meet the minimum requirements as determined by the Secretary. Such minimum requirements shall include the following:

- (i) The minimum acceptable franchise fee or other forms of consideration to the Government.
- (ii) Any facilities, services, or capital investment required to be provided by the concessioner.
- (iii) Measures necessary to ensure the protection, conservation, and preservation of resources of the unit of the National Park System.

(B) The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that the person, corporation, or entity is not qualified, is not likely to provide satisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(C) If all proposals submitted to the Secretary either fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(D) The Secretary may not execute a concessions contract which materially amends or does not incorporate the proposed terms and conditions of the concessions contract as set forth in the applicable prospectus. If proposed material amendments or changes are considered appropriate by the Secretary, the Secretary shall resolicit offers for the concessions contract incorporating such material amendments or changes.

(5) Selection of the best proposal.--(A) In selecting the best proposal, the Secretary shall consider the following principal factors:

- (i) The responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.
- (ii) The experience and related background of the person, corporation, or entity submitting the proposal, including the past performance and expertise of such person, corporation or entity in providing the same or similar facilities or services.
- (iii) The financial capability of the person, corporation, or entity submitting the proposal.
- (iv) The proposed franchise fee, except that consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities to the public at reasonable rates.

(B) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

(C) In developing regulations to implement this title, the Secretary shall consider the extent to which plans for

employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in the operation of a concession, contracts should be identified as a factor in the selection of a best proposal under this section.

(6) Congressional notification.--The Secretary shall submit any proposed concessions contract with anticipated annual gross receipts in excess of \$5,000,000 or a duration of more than 10 years to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary shall not award any such proposed contract until at least 60 days subsequent to the notification of both committees.

(7) Preferential right of renewal.--(A) Except as provided in subparagraph (B), the Secretary shall not grant a concessioner a preferential right to renew a concessions contract, or any other form of preference to a concessions contract.

(B) The Secretary shall grant a preferential right of renewal to an existing concessioner with respect to proposed renewals of the categories of concessions contracts described by paragraph (8), subject to the requirements of that paragraph.

(C) As used in this title, the term "preferential right of renewal" means that the Secretary, subject to a determination by the Secretary that the facilities or services authorized by a prior contract continue to be necessary and appropriate within the meaning of section 402, shall allow a concessioner qualifying for a preferential right of renewal the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal for a proposed new concessions contract which authorizes the continuation of the facilities and services provided by the concessioner under its prior contract.

(D) A concessioner which successfully exercises a preferential right of renewal in accordance with the requirements of this title shall be entitled to award of the proposed new concessions contract to which such preference applies.

(8) Outfitter and guide services and small contracts.--(A) The provisions of paragraph (7) shall apply only to the following:

(i) Subject to subparagraph (B), outfitting and guide concessions contracts.

(ii) Subject to subparagraph (C), concessions contracts with anticipated annual gross receipts under \$500,000.

(B) For the purposes of this title, an "outfitting and guide concessions contract" means a concessions contract which solely authorizes the provision of specialized backcountry outdoor recreation guide services which require the employment of specially trained and experienced guides to accompany park visitors in the backcountry so as to provide a safe and enjoyable experience for visitors who otherwise may not have the skills and equipment to engage in such activity. Outfitting and guide concessioners, where otherwise qualified, include concessioners which provide guided river running, hunting, fishing, horseback, camping, and mountaineering experiences. An outfitting and guide concessioner is entitled to a preferential right of renewal under this title only if--

(i) the contract with the outfitting and guide

concessioner does not grant the concessioner any interest, including any leasehold surrender interest or possessory interest, in capital improvements on lands owned by the United States within a unit of the National Park System, other than a capital improvement constructed by a concessioner pursuant to the terms of a concessions contract prior to the date of the enactment of this title or constructed or owned by a concessioner or his or her predecessor before the subject land was incorporated into the National Park System;

(ii) the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extension thereof); and

(iii) the concessioner has submitted a responsive proposal for a proposed new contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(C) A concessioner that holds a concessions contract that the Secretary estimates will result in gross annual receipts of less than \$500,000 if renewed shall be entitled to a preferential right of renewal under this title if:

(i) the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extension thereof); and

(ii) the concessioner has submitted a responsive proposal for a proposed new concessions contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(9) New or additional services.--The Secretary shall not grant a preferential right to a concessioner to provide new or additional services in a unit of the National Park System.

(10) Secretarial authority.--Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concessions contract or to establish its terms and conditions in furtherance of the policies expressed in this title.

(11) Exceptions.--Notwithstanding the provisions of this section, the Secretary may award, without public solicitation, the following:

(A) A temporary concessions contract or an extension of an existing concessions contract for a term not to exceed 3 years in order to avoid interruption of services to the public at a unit of the National Park System, except that prior to making such an award, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid such interruption.

(B) A concessions contract in extraordinary circumstances where compelling and equitable considerations require the award of a concessions contract to a particular party in the public interest. Such award of a concessions contract shall not be made by the Secretary until at least 30 days after publication in the Federal Register of notice of the Secretary's intention to do so and the reasons for such action, and submission of notice to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

SEC. 404. TERM OF CONCESSIONS CONTRACTS.

A concessions contract entered into pursuant to this title shall generally be awarded for a term of 10 years or less. However, the Secretary may award a contract for a term of up to 20 years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.

SEC 405. PROTECTION OF CONCESSIONER INVESTMENT.

(a) **Leasehold Surrender Interest Under New Concessions Contracts.--** On or after the date of the enactment of this title, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concessions contract shall have a leasehold surrender interest in such capital improvement subject to the following terms and conditions:

(1) A concessioner shall have a leasehold surrender interest in each capital improvement constructed by a concessioner under a concessions contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner's leasehold surrender interest in the capital improvement.

(2) A leasehold surrender interest--

(A) may be pledged as security for financing of a capital improvement or the acquisition of a concessions contract when approved by the Secretary pursuant to this title;

(B) shall be transferred by the concessioner in connection with any transfer of the concessions contract and may be relinquished or waived by the concessioner; and

(C) shall not be extinguished by the expiration or other termination of a concessions contract and may not be taken for public use except on payment of just compensation.

(3) The value of a leasehold surrender interest in a capital improvement shall be an amount equal to the initial value (construction cost of the capital improvement), increased (or decreased) in the same percentage increase (or decrease) as the percentage increase (or decrease) in the Consumer Price Index, from the date of making the investment in the capital improvement by the concessioner to the date of payment of the value of the leasehold surrender interest, less depreciation of the capital improvement as evidenced by the condition and prospective serviceability in comparison with a new unit of like kind.

(4) Effective 9 years after the date of the enactment of this Act, the Secretary may provide, in any particular new concession contract the Secretary estimates will have a leasehold surrender interest of more than \$10,000,000, that the value of any leasehold surrender interest in a capital improvement shall be based on either (A) a reduction on an annual basis, in equal portions, over the same number of years as the time period associated with the straight line depreciation of the initial value (construction cost of the capital improvement), as provided by applicable Federal income tax laws and regulations in effect on the day before the date of the enactment of this Act or (B) such alternative formula that is consistent with the objectives of this title. The Secretary may only use such an alternative formula if the Secretary determines,

after scrutiny of the financial and other circumstances involved in this particular concession contract (including providing notice in the Federal Register and opportunity for comment), that such alternative formula is, compared to the standard method of determining value provided for in paragraph (3), necessary in order to provide a fair return to the Government and to foster competition for the new contract by providing a reasonable opportunity to make a profit under the new contract. If no responsive offers are received in response to a solicitation that includes such an alternative formula, the concession opportunity shall be resolicited with the leasehold surrender interest value as described in paragraph (3).

(5) Where a concessioner, pursuant to the terms of a concessions contract, makes a capital improvement to an existing capital improvement in which the concessioner has a leasehold surrender interest, the cost of such additional capital improvement shall be added to the then current value of the concessioner's leasehold surrender interest.

(b) Special Rule for Existing Possessory Interest.--

(1) A concessioner which has obtained a possessory interest as defined pursuant to Public Law 89-249 (commonly known as the National Park Service Concessions Policy Act; 16 U.S.C. 20 et seq.), as in effect on the day before the date of the enactment of this Act, under the terms of a concessions contract entered into before that date shall, upon the expiration or termination of such contract, be entitled to receive compensation for such possessory interest improvements in the amount and manner as described by such concessions contract. Where such a possessory interest is not described in the existing contract, compensation of possessory interest shall be determined in accordance with the laws in effect on the day before the date of enactment of this Act.

(2) In the event such prior concessioner is awarded a new concessions contract after the effective date of this title replacing an existing concessions contract, the existing concessioner shall, instead of directly receiving such possessory interest compensation, have a leasehold surrender interest in its existing possessory interest improvements under the terms of the new contract and shall carry over as the initial value of such leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as of the termination date of the previous contract. In the event of a dispute between the concessioner and the Secretary as to the value of such possessory interest, the matter shall be resolved through binding arbitration.

(3) In the event that a new concessioner is awarded a concessions contract and is required to pay a prior concessioner for possessory interest in prior improvements, the new concessioner shall have a leasehold surrender interest in such prior improvements and the initial value in such leasehold surrender interest (instead of construction cost), shall be an amount equal to the value of the existing possessory interest as of the termination date of the previous contract.

(c) Transition to Successor Concessioner.--Upon expiration or termination of a concessions contract entered into after the effective date of this title, a concessioner shall be entitled under the terms of the concessions contract to receive from the United States or a

successor concessioner the value of any leasehold surrender interest in a capital improvement as of the date of such expiration or termination. A successor concessioner shall have a leasehold surrender interest in such capital improvement under the terms of a new contract and the initial value of the leasehold surrender interest in such capital improvement (instead of construction cost) shall be the amount of money the new concessioner is required to pay the prior concessioner for its leasehold surrender interest under the terms of the prior concessions contract.

(d) Title to Improvements.--Title to any capital improvement constructed by a concessioner on lands owned by the United States in a unit of the National Park System shall be vested in the United States.

(e) Definitions.--For purposes of this section:

(1) Consumer price index.--The term "Consumer Price Index" means the "Consumer Price Index--All Urban Consumers" published by the Bureau of Labor Statistics of the Department of Labor, unless such index is not published, in which case another regularly published cost-of-living index approximating the Consumer Price Index shall be utilized by the Secretary; and

(2) Capital improvement.--The term "capital improvement" means a structure, fixture, or nonremovable equipment provided by a concessioner pursuant to the terms of a concessions contract and located on lands of the United States within a unit of the National Park System.

(f) Special Reporting Requirement.-- Not later than 7 years after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives containing a complete analysis of the concession program as well as--

(1) an assessment of competition in the solicitation of prospectuses, fair and/or increased return to the Government, and improvement of concession facilities and infrastructure; and

(2) an assessment of any problems with the management and administration of the concession program that are a direct result of the implementation of the provisions of this title.

SEC. 406. REASONABLENESS OF RATES.

(a) In General.--Each concessions contract shall permit the concessioner to set reasonable and appropriate rates and charges for facilities, goods, and services provided to the public, subject to approval under subsection (b).

(b) Approval by Secretary Required.--A concessioner's rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. The Secretary shall approve rates and charges that the Secretary determines to be reasonable and appropriate. Unless otherwise provided in the contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and

materials, and type of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking into account the factors referred to in the preceding sentence.

(c) Implementation of Recommendations.--Not later than 6 months after receiving recommendations from the Advisory Board established under section 409(a) regarding concessioner rates and charges to the public, the Secretary shall implement the recommendations or report to the Congress the reasons for not implementing the recommendations.

SEC. 407. FRANCHISE FEES.

(a) In General.--A concessions contract shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

(b) Amount of Franchise Fee.--The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concessions contract shall be specified in the concessions contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. The Secretary shall include in concessions contracts with a term of more than 5 years a provision which allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such extraordinary unanticipated changes. Such provision shall provide for binding arbitration in the event that the Secretary and the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

(c) Special Account.--All franchise fees (and other monetary consideration) paid to the United States pursuant to concessions contracts shall be deposited into a special account established in the Treasury of the United States. Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the National Park System regardless of the unit of the National Park System in which the funds were collected. The funds deposited into the special account shall remain available until expended.

(d) Subaccount for Each Unit.--There shall be established within the special account required under subsection (c) a subaccount for each unit of the National Park System. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single unit of the National Park System under concessions contracts. The funds credited to the subaccount for a unit of the National Park System shall be available for expenditure by the Secretary, without further appropriation, for use at the unit for visitor services and for purposes of funding high-priority and urgently necessary resource management programs and operations. The funds credited to a subaccount shall remain available until expended.

SEC. 408. TRANSFER OF CONCESSIONS CONTRACTS

(a) Approval of the Secretary.--No concessions contract or leasehold surrender interest may be transferred, assigned, sold, or otherwise conveyed

or pledged by a concessioner without prior written notification to, and approval by, the Secretary.

(b) Conditions.--The Secretary shall approve a transfer or conveyance described in subsection (a) unless the Secretary finds that--

(1) the individual, corporation or entity seeking to acquire a concessions contract is not qualified or able to satisfy the terms and conditions of the concessions contract;

(2) such transfer or conveyance would have an adverse impact on (A) the protection, conservation, or preservation of the resources of the unit of the National Park System or (B) the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of such transfer or conveyance are likely, directly or indirectly, to reduce the concessioner's opportunity for a reasonable profit over the remaining term of the contract, adversely affect the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of such facilities and services.

(c) Transfer Terms.--The terms and conditions of any contract under this section shall not be subject to modification or open to renegotiation by the Secretary because of a transfer or conveyance described in subsection (a), unless such transfer or conveyance would have an adverse impact as described in paragraph (2) of subsection (b).

SEC. 409. NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT ADVISORY BOARD.

(a) Establishment.--There is hereby established a National Park Service Concessions Management Advisory Board (in this title referred to as the "Advisory Board") whose purpose shall be to advise the Secretary and National Park Service on matters relating to management of concessions in the National Park System.

(b) Duties.--

(1) Advice.--The Advisory Board shall advise on each of the following:

(A) Policies and procedures intended to assure that services and facilities provided by concessioners are necessary and appropriate, meet acceptable standards at reasonable rates with a minimum of impact on park resources and values, and provide the concessioners with a reasonable opportunity to make a profit.

(B) Ways to make National Park Service concessions programs and procedures more cost effective, more process efficient, less burdensome, and timelier.

(2) Recommendations.--The Advisory Board shall make recommendations to the Secretary regarding each of the following:

(A) National Park Service contracting with the private sector to conduct appropriate elements of concessions management and providing recommendations to make more efficient, less burdensome, and timelier the review or approval of concessioner rates and charges to the public.

(B) The nature and scope of products which qualify

as Indian, Alaska Native, and Native Hawaiian handicrafts within this meaning of this title.

(C) The allocation of concession fees.

The initial recommendations under subparagraph (A) relating to rates and charges shall be submitted to the Secretary not later than one year after the first meeting of the Board.

(3) Annual report.--The Advisory Board, commencing with the first anniversary of its initial meeting, shall provide an annual report on its activities to the Committee on Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(c) Advisory Board Membership.--Members of the Advisory Board shall be appointed on a staggered basis by the Secretary for a term not to exceed 4 years and shall serve at the pleasure of the Secretary. The Advisory Board shall be comprised of not more than seven individuals appointed from among citizens of the United States not in the employment of the Federal Government and not in the employment of or having an interest in a National Park Service concession. Of the seven members of the Advisory Board--

(1) one member shall be privately employed in the hospitality industry and have both broad knowledge of hotel or food service management and experience in the parks and recreation concessions business;

(2) one member shall be privately employed in the tourism industry;

(3) one member shall be privately employed in the accounting industry;

(4) one member shall be privately employed in the outfitting and guide industry;

(5) one member shall be a State government employee with expertise in park concession management;

(6) one member shall be active in promotion of traditional arts and crafts; and

(7) one member shall be active in a nonprofit conservation organization involved in parks and recreation programs.

(d) Termination.--The Advisory Board shall continue to exist until December 31, 2008. In all other respects, it shall be subject to the provisions of the Federal Advisory Committee Act.

(e) Service on Advisory Board.--Service of an individual as a member of the Advisory Board shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Advisory Board shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or other comparable provisions of Federal law.

SEC. 410. CONTRACTING FOR SERVICES

(a) Contracting Authorized.--(1) To the maximum extent practicable, the Secretary shall contract with private entities to conduct or assist in those elements of the management of the National Park Service concessions program considered by the Secretary to be suitable for non-Federal performance. Such management elements include each of the following:

(A) Health and safety inspections.

- (B) Quality control of concessions operations and facilities
- (C) Strategic capital planning for concessions facilities.
- (D) Analysis of rates and charges to the public.

(2) The Secretary may also contract with private entities to assist the Secretary with each of the following:

- (A) Preparation of the financial aspects of prospectuses for National Park Service concessions contracts.
- (B) Development of guidelines for a national park system capital improvement and maintenance program for all concession occupied facilities.
- (C) Making recommendations to the Director of the National Park Service regarding the conduct of annual audits of concession fee expenditures.

(b) Other Management Elements.--The Secretary shall also consider, taking into account the recommendations of the Advisory Board, contracting out other elements of the concessions management program, as appropriate.

(c) Condition.--Nothing in this section shall diminish the governmental responsibilities and authority of the Secretary to administer concessions contracts and activities pursuant to this title and the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.). The Secretary reserves the right to make the final decision or contract approval on contracting services dealing with the management of the National Park Service concessions program under this section.

411. MULTIPLE CONTRACTS WITHIN A PARK.

If multiple concessions contracts are awarded to authorize concessioners to provide the same or similar outfitting, guiding, river running, or other similar services at the same approximate location or resource within a specific national park, the Secretary shall establish a comparable franchise fee structure for all such same or similar contracts, except that the terms and conditions of any existing concessions contract shall not be subject to modification or open to renegotiation by the Secretary because of an award of a new contract at the same approximate location or resource.

412. SPECIAL RULE FOR TRANSPORTATION CONTRACTING SERVICES.

Notwithstanding any other provision of law, a service contract entered into by the Secretary for the provision solely of transportation services in a unit of the National Park System shall be no more than 10 years in length, including a base period of 5 years and annual extensions for an additional 5-year period based on satisfactory performance and approval by the Secretary.

413. USE OF NONMONETARY CONSIDERATION IN CONCESSIONS CONTRACTS.

Section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), relating to the leasing of buildings and properties of the United States, shall not apply to contracts awarded by the Secretary pursuant to this title.

414. RECORDKEEPING REQUIREMENTS.

(a) In General.--Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessions contract have been and are being faithfully performed, and the Secretary and any duly authorized representative of the Secretary shall, for

the purpose of audit and examination, have access to such records and to other books, documents, and papers of the concessioner pertinent to the contract and all terms and conditions thereof.

(b) Access to Records.--The Comptroller General or any duly authorized representative of the Comptroller General shall, until the expiration of 5 calendar years after the close of the business year of each concessioner or subconcessioner, have access to and the right to examine any pertinent books, papers, documents and records of the concessioner or subconcessioner related to the contract or contracts involved.

SEC. 415. REPEAL OF NATIONAL PARK SERVICE CONCESSIONS POLICY ACT

(a) Public Law 89-249 (commonly known as the National Park Service Concessions Policy Act; 16 U.S.C. 20 et seq.) is repealed. The repeal of such Act shall not affect the validity of any concessions contract or permit entered into under such Act, but the provisions of this title shall apply to any such contract or permit except to the extent such provisions are inconsistent with the terms and conditions of any such contract or permit. References in this title to concessions contracts awarded under authority of such Act also apply to concessions permits awarded under such authority.

(b) Conforming Amendments.--(1) The fourth sentence of section 3 of the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 3), is amended--

(A) by striking all through "no natural" and inserting "No natural,"; and

(B) by striking the last proviso in its entirety.

(2) Section 12 of Public Law 91-383 (commonly known as the National Park System General Authorities Act; 16 U.S.C. 1a-7) is amended by striking subsection (c).

(3) The second paragraph under the heading "National Park Service" in the Act of July 31, 1953 (67 Stat. 261, 271), is repealed.

(c) ANILCA.--Nothing in this title amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

SEC. 416. PROMOTION OF THE SALE OF INDIAN, ALASKA NATIVE, NATIVE SAMOAN, AND NATIVE HAWAIIAN HANDICRAFTS.

(a) In General.--Promoting the sale of authentic United States Indian, Alaskan Native, Native Samoan, and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of units of the National Park System is encouraged, and the Secretary shall ensure that there is a continuing effort to enhance the handicraft trade where it exists and establish the trade in appropriate areas where such trade currently does not exist.

(b) Exemption From Franchise Fee.--In furtherance of these purposes, the revenue derived from the sale of United States Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts shall be exempt from any franchise fee payments under this title.

SEC. 417. REGULATIONS.

As soon as practicable after the effective date of this title, the

Secretary shall promulgate regulations appropriate for its implementation. Among other matters, such regulations shall include appropriate provisions to ensure that concession services and facilities to be provided in a unit of the National Park System are not segmented or otherwise split into separate concessions contracts for the purposes of seeking to reduce anticipated annual gross receipts of a concessions contract below \$500,000. The Secretary shall also promulgate regulations which further define the term "United States Indian, Alaskan Native, and Native Hawaiian handicrafts" for the purposes of this title.

SEC. 418. COMMERCIAL USE AUTHORIZATIONS.

(a) In General.--To the extent specified in this section, the Secretary, upon request, may authorize a private person, corporation, or other entity to provide services to visitors to units of the National Park System through a commercial use authorization. Such authorizations shall not be considered as concessions contracts pursuant to this title nor shall other sections of this title be applicable to such authorizations except where expressly so stated.

(b) Criteria for Issuance of Authorizations.--

(1) Required determinations.--The authority of this section may be used only to authorize provision of services that the Secretary determines will have minimal impact on resources and values of the unit of the National Park System and are consistent with the purpose for which the unit was established and with all applicable management plans and park policies and regulations.

(2) Elements of authorization.--The Secretary shall--

(A) require payment of a reasonable fee for issuance of an authorization under this section, such fees to remain available without further appropriation to be used, at a minimum, to recover associated management and administrative costs;

(B) require that the provision of services under such an authorization be accomplished in a manner consistent to the highest practicable degree with the preservation and conservation of park resources and values;

(C) take appropriate steps to limit the liability of the United States arising from the provision of services under such an authorization; and

(D) have no authority under this section to issue more authorizations than are consistent with the preservation and proper management of park resources and values, and shall establish such other conditions for issuance of such an authorization as the Secretary determines appropriate for the protection of visitors, provision of adequate and appropriate visitor services, and protection and proper management of the resources and values of the park.

(c) Limitations.--Any authorization issued under this section shall be limited to--

(1) commercial operations with annual gross receipts of not more than \$25,000 resulting from services originating and provided solely within a unit of the National Park System pursuant to such authorization;

(2) the incidental use of resources of the unit by

commercial operations which provide services originating and terminating outside of the boundaries of the unit; or

(3) such uses by organized children's camps, outdoor clubs and nonprofit institutions (including back country use) and such other uses as the Secretary determines appropriate.

Nonprofit institutions are not required to obtain commercial use authorizations unless taxable income is derived by the institution from the authorized use.

(d) Prohibition on Construction.--An authorization issued under this section shall not provide for the construction of any structure, fixture, or improvement on federally-owned lands within the boundaries of a unit of the National Park System.

(e) Duration.--The term of any authorization issued under this section shall not exceed 2 years. No preferential right of renewal or similar provisions for renewal shall be granted by the Secretary.

(f) Other Contracts.--A person, corporation, or other entity seeking or obtaining an authorization pursuant to this section shall not be precluded from also submitting proposals for concessions contracts.

SEC. 419. SAVINGS PROVISION

(a) Treatment of Glacier Bay Concession Permits Prospectus.--Nothing contained in this title shall authorize or require the Secretary to withdraw, revise, amend, modify, or reissue the February 19, 1998, Prospectus Under Which Concession Permits Will be Open for Competition for the Operation of Cruise Ship Services Within Glacier Bay National Park and Preserve (in this section referred to as the "1998 Glacier Bay Prospectus"). The award of concession permits pursuant to the 1998 Glacier Bay Prospectus shall be under provisions of existing law at the time the 1998 Glacier Bay Prospectus was issued.

(b) Preferential Right of Renewal.--Notwithstanding any provision of this title, the Secretary, in awarding future Glacier Bay cruise ship concession permits covering cruise ship entries for which a preferential right of renewal existed prior to the effective date of this title, shall provide for such cruise ship entries a preferential right of renewal, as described in subparagraphs (C) and (D) of section 403(7). Any Glacier Bay concession permit awarded under the authority contained in this subsection shall expire by December 31, 2009.

DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
36 CFR PART 51--CONCESSION CONTRACTS

Subpart A--Authority and Purpose
Sec.

- 51.1 What does this part cover?
- 51.2 What is the policy underlying concessions contracts?

Subpart B--General Definitions

- 51.3 How are terms defined in this part?

Subpart C--Solicitation, Selection and Award Procedures

- 51.4 How will the Director invite the general public to apply for the award of a concession contract?
- 51.5 What information will the prospectus include?
- 51.6 Will a concession contract be developed for a particular potential offeror?
- 51.7 How will information be provided to a potential offeror after the prospectus is issued?
- 51.8 Where will the Director publish the notice of availability of the prospectus?
- 51.9 How do I get a copy of the prospectus?
- 51.10 How long will I have to submit my proposal?
- 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?
- 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?
- 51.13 When will the Director determine if proposals are responsive?
- 51.14 What happens if no responsive proposals are submitted?
- 51.15 May I clarify, amend or supplement my proposal after it is submitted?
- 51.16 How will the Director evaluate proposals and select the best one?
- 51.17 What are the selection factors?
- 51.18 When must the Director reject a proposal?
- 51.19 Must the Director award the concession contract that is set forth in the prospectus?
- 51.20 Does this part limit the authority of the Director?
- 51.21 When must the selected offeror execute the concession contract?
- 51.22 When may the Director execute the concession contract?

Subpart D--Non-Competitive Award of Concession Contracts

- 51.23 May the Director extend an existing concession contract without a public solicitation?
- 51.24 May the Director award a temporary concession contract without a public solicitation?
- 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Subpart E--Right of Preference to a New Concession Contract

- 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?
- 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?
- 51.28 When will the Director determine whether a concessioner is a preferred offeror?
- 51.29 How will I know when a preferred offeror exists?
- 51.30 What must a preferred offeror do before it may exercise a right of preference?
- 51.31 What happens if a preferred offeror does not submit a responsive proposal?
- 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?
- 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

51.35 What happens to a right of preference if the Director receives no responsive proposals?

Subpart F--Determining a Preferred Offeror

51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?

51.37 How will the Director determine that a new concession contract is a qualified concession contract?

51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?

51.39 What are some examples of outfitter and guide concession contracts?

51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

51.42 Are there exceptions to this compensable interest prohibition?

51.43 Who will make the determination that a concession contract is an outfitter and guide contract?

51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

51.49 May the Director grant a right of preference except in accordance with this part?

51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

Subpart G--Leasehold Surrender Interest

51.51 What special terms must I know to understand leasehold surrender interest?

51.51 How do I obtain a leasehold surrender interest?

51.52 51.53 When may the Director authorize the construction of a capital improvement?

51.54 What must a concessioner do before beginning to construct a capital improvement?

51.55 What must a concessioner do after substantial completion of the capital improvement?

51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?

51.59 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

51.62 What is the process to determine a leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

51.63 When a new concessioner pays a concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

- 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?
- 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?
- 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?
- 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

Subpart H--Possessory Interest

- 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?
- 51.69 What happens if there is a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?
- 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?
- 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?
- 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

Subpart I--Concession Contract Provisions

- 51.73 What is the term of a concession contract?
- 51.74 When may a concession contract be terminated by the Director?
- 51.75 May the Director segment or split concession contracts?
- 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?
- 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?
- 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?
- 51.79 May the Director waive payment of a franchise fee or other payments?
- 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?
- 51.81 May the Director include "special account" provisions in concession contracts?
- 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?
- 51.83 Handicrafts. [Reserved]

Subpart J--Assignment or Encumbrance of Concession Contracts

- 51.84 What special terms must I know to understand this part?
- 51.85 What assignments require the approval of the Director?
- 51.86 What encumbrances require the approval of the Director?
- 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?
- 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?
- 51.89 What happens if there is a default on an encumbrance approved by the Director?
- 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?
- 51.91 What information may the Director require in the application?
- 51.92 What are standard proformas?

- 51.93 If the transaction includes more than one concession contract, how must required information be provided?
- 51.94 What information will the Director consider when deciding to approve a transaction?
- 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?
- 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?
- 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

Subpart K--Information and Access to Information

- 51.98 What records must the concessioner keep and what access does the Director have to records?
- 51.99 What access to concessioner records will the Comptroller General have?
- 51.100 When will the Director make proposals and evaluation documents publicly available?

Subpart L--The Effect of the 1998 Act's Repeal of the 1965 Act

- 51.101 Did the 1998 Act repeal the 1965 Act?
- 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?
- 51.103 Severability.

Subpart M-- Information Collection

- 51.104 Have information collection procedures been followed?

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq., particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

Subpart A--Authority and Purpose

Sec. 51 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq. and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105-391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

Sec. 51.2 What is the policy underlying concessions contracts?

(Federal Register: September 7, 2000 (Volume 65, Number 174))
[Rules and Regulations]
[Page 54155]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr07se00-12]

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AC72

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Technical corrections.

SUMMARY: This action makes technical corrections to regulations concerning the determination of a preferred offeror to correct a typographical error and to delete confusing and unnecessary provisions.

EFFECTIVE DATE: September 7, 2000

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

SUPPLEMENTARY INFORMATION: The National Park Service published in final in the Federal Register on April 17, 2000 (65 FR 20630), an amendment to 36 CFR part 51 to reflect the changes in policies and procedures applicable to National Park Service concession contracts resulting from the passage of Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

Section 51.40(c) has been determined by the National Park Service to be confusing and unnecessary in light of the entirety of Sec. 51.40. Specifically, Sec. 51.40(c) has been misunderstood to suggest that in order for a portion of a park area to be determined "backcountry" for purposes of 36 CFR part 51, the area must be inaccessible by motorized vehicle.

This is not the meaning of Sec. 51.40. Rather, the section is intended to mean that the accessibility of a portion of a park area to motorized vehicles is only one consideration that may be taken into account in determining the existence of "backcountry" for purposes of determining which concession contracts are outfitter and guide contracts under 36 CFR part 51. As stated in Sec. 51.40, determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area are made on a park-by-park basis, taking into account the park area's particular geographic circumstances.

Accessibility of an area by motorized vehicles is only a possible consideration in this determination.

In order to correct the confusion caused by Sec. 51.40(c), the National Park Service has determined to delete 36 CFR 51.40(c) as confusing and unnecessary. The overall intentions of Sec. 51.40 remain the same with the deletion of Sec. 51.40(c), as Sec. 51.40(a) continues to provide that remoteness from roads and developed areas is a possible factor in determining "backcountry" for purposes of 36 CFR part 51.

In addition, Sec. 51.46 of the final regulation contains a typographical error, the inadvertent inclusion of the date "May 17, 2000," in its text.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

Accordingly, 36 CFR part 51 is corrected by making the following correcting amendments:

PART 51--CONCESSION CONTRACTS

1. The authority citation for part 51 continues to read as follows:

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq., particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

Sec. 51.40 [Amended]

2. In Sec. 51.40, paragraph (c) is removed.
3. In Sec. 51.40, paragraphs (d) and (e) are redesignated as paragraphs (c) and (d).
4. In Sec. 51.46, the last sentence is corrected by removing the date "May 17, 2000".

Dated: August 30, 2000.
Cynthia Orlando,
Acting Associate Director, Park Operations and Education.
[FR Doc. 00-22859 Filed 9-6-00; 8:45 am]
BILLING CODE 4310-70-P

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

Subpart B--General Definitions

Sec. 51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The 1965 Act means Public Law 89-249, commonly known as the National Park Service Concession Policies Act of 1965.

A 1965 Act concession contract is a concession contract or permit entered into under the authority of the 1965 Act.

The 1998 Act means Title IV of Public Law 105-391.

The award of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A concession contract (or contract) means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the meaning of 41 U.S.C. 601 et seq. (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A concessioner is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A franchise fee is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

Offeror means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

Possessory interest means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A possessory interest concession contract means a 1965 Act concession contract that provides the concessioner a possessory interest.

A preferred offeror is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A qualified concession contract is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A qualified person is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A responsive proposal means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A right of preference is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

Visitor services means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

Subpart C--Solicitation, Selection and Award Procedures

Sec. 51.4 How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.

(b) Except as provided under Sec. 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than eighteen months prior to the expiration of a related existing concession contract.

Sec. 51.5 What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

- (1) The minimum acceptable franchise fee or other forms of consideration to the Government;
 - (2) The minimum visitor services that the concessioner is to be authorized to provide;
 - (3) The minimum capital investment, if any, that the concessioner must make;
 - (4) The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and
 - (5) Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;
- (b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;
- (c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;
- (d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;
- (e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;
- (f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession contract for the three most recent years; merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and
- (g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

Sec. 51.6 Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.

Sec. 51.7 How will information be provided to a potential offeror after the prospectus is issued?

Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

Sec. 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The

Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

51.9 How do I get a copy of the prospectus?

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing, binding and mailing costs.

51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

Sec. 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or resolicited solicitation for a concession contract.

Sec. 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus--a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than \$100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

Sec. 51.13 When will the Director determine if proposals are responsive?

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

Sec. 51.14 What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

51.15 May I clarify, amend or supplement my proposal after it is submitted?

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

Sec. 51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in Sec. 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in Sec. 51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of this part. Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

51.17 What are the selection factors?

(a) The five principal selection factors are:

(1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

(2) The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

(3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

- (4) The financial capability of the offeror to carry out its proposal; and
 - (5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.
- (b) The secondary selection factors are:
- (1) The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than \$100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and
 - (2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.
- (c) A prospectus may include subfactors under each of the principal and secondary factors to describe specific elements of the selection factor.

Sec. 51.18 When must the Director reject a proposal?

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

Sec. 51.19 Must the Director award the concession contract that is set forth in the prospectus?

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

Sec. 51.20 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.

Sec. 51.21 When must the selected offeror execute the concession contract?

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession

contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

Sec. 51.22 When may the Director award the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of \$5,000,000 or of more than 10 years in duration, or, pursuant to Sec. 51.24(b), the Director must submit the concession contract to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

Subpart D--Non-Competitive Award of Concession Contracts

Sec. 51.23 May the Director extend an existing concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, e.g., the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the Federal Register of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

Sec. 51.24 May the Director award a temporary concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate, e.g., the Director may award one temporary contract with a three year term, two consecutive temporary contracts, one with a two year term and one with a one year term, or three consecutive temporary contracts with a term of one year each, to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the Federal Register of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may not be awarded to continue visitor services provided under an extended concession contract except as permitted by paragraph (b) of this section.

(b) Notwithstanding the last sentence of paragraph (a) of this section, the Director may award a temporary concession contract for consecutive terms not to exceed three years in the aggregate to

authorize the continuing conduct of visitor services that were conducted under a concession contract that was in effect as of November 13, 1998, and that either had been extended as of that date or was due to expire by December 31, 1998, and was subsequently extended. The Director must personally approve the award of a temporary concession contract in these circumstances and may do so only if the Director determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary concession contract have been considered and found infeasible. The Director must publish a notice of his intention to award a temporary concession contract to a specified person under this paragraph and the reasons for the proposed award in the Federal Register at least 60 days before the temporary concession contract is awarded. In addition, the Director must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the proposed award of a temporary concession contract under this paragraph at least 60 days before the temporary concession contract is awarded. A temporary concession contract awarded under the authority of this paragraph will be considered as a contract extension for purposes of determining the existence of a preferred offeror under Sec. 51.44.

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract which replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under the extended concession contract that was replaced by the temporary concession contract under paragraph (b) of this section.

Sec. 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinant of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the Federal Register at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

Subpart E--Right of Preference to a New Concession Contract

Sec. 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

Sec. 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

51.28 When will the Director determine whether a concessioner is a preferred offeror?

Subject to Secs. 51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

Sec. 51.29 How will I know when a preferred offeror exists?

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

51.30 What must a preferred offeror do before it may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

Sec. 51.31 What happens if a preferred offeror does not submit a responsive proposal?

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

Sec. 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

Sec. 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

Sec. 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

Sec. 51.35 What happens to a right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

Subpart F--Determining a Preferred Offeror

Sec. 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

- (a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;
- (b) The applicable new contract is a qualified concession contract as determined under this part; and
- (c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

Sec. 51.37 How will the Director determine that a new concession contract is a qualified concession contract?

A new concession contract is a qualified concession contract if the Director determines that:

- (a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either
- (b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than \$500,000 in the first 12 months of its term; or
- (c) The new concession contract is an outfitter and guide concession contract as described in this part.

Sec. 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

- (a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and
- (b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

Sec. 51.39 What are some examples of outfitter and guide concession contracts?

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

Sec. 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

- (a) The operations occur in areas remote from roads and developed areas;
- (b) The operations are conducted within a designated natural area of a park area;
- (c) The operations occur in areas that are inaccessible by motorized vehicle;
- (d) The operations occur in areas where search and rescue support is not readily available; and
- (e) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

Sec. 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area

Sec. 51.42 Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

- (a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and
- (b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

Sec. 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

Sec. 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this determination in consideration of annual evaluations made by the Director of the concessioner's performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

Sec. 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.

Sec. 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner's performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period) May 17, 2000, the prospectus must be amended to

delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

Sec. 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30 days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the appeal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

Sec. 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.

Sec. 51.49 May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

Sec. 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

Subpart G--Leasehold Surrender Interest

Sec. 51.51 What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

Arbitration means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

A capital improvement is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

Construction cost of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP). The term "construct" or "construction" as used in this part also means "install" or "installation" of fixtures where applicable.

Consumer Price Index means the national "Consumer Price Index--All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

Depreciation means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

Eligible direct costs means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

Eligible indirect costs means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

Fixtures and non-removable equipment are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term "fixture" as used in this part includes the term "non-removable equipment."

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

Leasehold surrender interest concession contract means a concession contract that provides for leasehold surrender interest in capital improvements.

Leasehold surrender interest value means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;
- (3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if

applicable, the date on which a concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

Pre-rehabilitation value of an existing structure means the replacement cost of the structure less depreciation.

Real property improvements means real property other than land, including, but not limited to, capital improvements.

Related capital improvement or related fixture means a capital improvement in which a concessioner has a leasehold surrender interest.

Replacement cost means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Substantial completion of a capital improvement means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

Sec. 51.52 How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

Sec. 51.53 When may the Director authorize the construction of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

Sec. 51.54 What must a concessioner do before beginning to construct a capital improvement?

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must

specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

Sec. 51.55 What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

Sec. 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under Sec. 51.57. The Director may at any time amend a construction cost determination (subject to arbitration under Sec. 51.57) if the Director determines that it was based on false, misleading or incomplete information.

Sec. 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Sec. 51.56. If a timely request is not made, the Director's determination of construction cost under Sec. 51.56 shall be the final determination of the construction cost. The arbitration procedures are described in Sec. 51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

Sec. 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

- (a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;
- (b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and
- (c) May relinquish or waive a leasehold surrender interest.

Sec. 51.59 Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest within the meaning of this part and for all other purposes.

Sec. 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

Sec. 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in

addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

Sec. 51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for arbitration as to the leasehold surrender interest values upon request of the Director or the concessioner. The arbitration procedures are described in Section 51.51. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

Sec. 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under Sec. 51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

Sec. 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part.

Sec. 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

Sec. 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

Sec. 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

Subpart H--Possessory Interest

Sec. 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

Sec. 51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior

concessioner's possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director's written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

Sec. 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner's possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

Sec. 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in Sec. 51.51.

Sec. 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1965 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of

leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

Subpart I--Concession Contract Provisions

Sec. 51.73 What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

Sec. 51.74 When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in park areas.

Sec. 51.75 May the Director segment or split concession contracts?

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than \$500,000.

Sec. 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a "preferential right to new or additional services" means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

Sec. 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

Sec. 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

Sec. 51.79 May the Director waive payment of a franchise fee or other payments?

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

Sec. 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director

because of the award of a new concession contract at the same approximate location or utilizing the same resource.

Sec. 51.81 May the Director include "special account" provisions in concession contracts?

(a) The Director may not include in concession contracts "special account" provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital improvements, and, government personal property, assigned to the concessioner by a concession contract.

Sec. 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

Sec. 51.83 Handicrafts. [Reserved]

Subpart J--Assignment or Encumbrance of Concession Contracts

Sec. 51.84 What special terms must I know to understand this part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A controlling interest in a concession contract means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A controlling interest in a concessioner means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A "controlling interest" in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner. The term "controlling interest" in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

Rights to operate and/or manage under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

Sec. 51.85 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as "assignments" for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

Sec. 51.86 What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as "encumbrances" for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

Sec. 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

(a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

Sec. 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

Sec. 51.89 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

Sec. 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

Sec. 51.91 What information may the Director require in the application?

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

- (a) All instruments proposed to implement the transaction;
- (b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;
- (c) A narrative description of the proposed transaction;
- (d) A statement as to the existence and nature of any litigation relating to the proposed transaction;
- (e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;
- (f) A detailed description of all financial aspects of the proposed transaction;
- (g) Prospective financial statements (proformas);
- (h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and
- (i) Such other information as the Director may require to make the determinations required by this subpart.

Sec. 51.92 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A "standard proforma" is one that:

- (a) Provides projections, including revenues and expenses that are consistent with the concessioner's past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;
- (b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and
- (c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

Sec. 51.93 If the transaction includes more than one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

Sec. 51.94 What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

Sec. 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

Sec. 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

Sec. 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

Subpart K--Information and Access to Information

Sec. 51.98 What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to

parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).

51.99 What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

Sec. 51.100 When will the Director make proposals and evaluation documents publicly available?

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

Subpart L--The Effect of the 1998 Act's Repeal of the 1965 Act

5 101 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

Sec. 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a "renewal preference" in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals

only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

Sec. 51.103 Severability

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

Subpart M--Information Collection

Sec. 51.104 Have information collection procedures been followed?

(a) The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The information collection for submission of proposals in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq. and assigned clearance number 1024-0125, extended through May 30, 2000. An information collection for proposed transfers of concession operations is covered by OMB Approval No. 1024-0126 effective through August 31, 2002.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(c) Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approval. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approvals. These additional information collection requirements will not be implemented until OMB approves the emergency request. The Director will publish a Federal Register notice when OMB has approved these requirements.

NATIONAL PARK SERVICE AND ITS MISSION

THE NATIONAL PARK SERVICE AND ITS MISSION

America's National Park Service was created by Congress to "... conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, the Congress has declared that the National Park System should be, "... preserved and managed for the benefit and inspiration of all the people of the United States." The National Park Service has as its overall mission the preservation and public enjoyment of significant aspects of the nation's natural and cultural heritage.

The National Park Service is an agency (bureau) of the Department of the Interior. The Department of the Interior, through its various bureaus, has responsibility for much of our nationally owned public lands and natural and cultural resources. This includes fostering wise use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The department also encourages stewardship and citizen responsibility for the public lands and promotes citizen participation in their care.

The National Park Service is managed by its Director who makes its policies under the direction of the Secretary of the Interior and through the Assistant Secretary, Fish and Wildlife and Parks. The Director seeks advice on policy and other concession-related matters from the Office of Concession Management. This office includes branches for financial, contracting, and planning and program matters.

CONCESSION PROGRAM MANAGEMENT

Concession Contract Management

As one of the means by which the public can be provided the facilities and services they need to enjoy national park areas, Congress has established a concession program in the National Park Service through the National Park Service Concessions Management Improvement Act of 1998 (Public Law 105-391). Title 36 of the Code of Federal Regulations contains important regulations for the preservation of the parks and administration of concession operations (36 CFR 51). Concession activities are also subject to Management Policies of the National Park Service.

The Secretary of the Interior, and them to whom he/she has delegated authority, are authorized to enter into concession contracts. The National Park Service may provide "necessary and appropriate" facilities and services for the visiting public through concession contracts.

These services include a wide variety of commercial visitor services from backcountry guiding to first-class hotel operations provided by private corporations, partnerships, individuals, or other entities under contract with the National Park Service. All exist for the purpose of providing park visitors with the services and accommodations that are necessary and appropriate for their full enjoyment of America's National Park Service-administered areas. The determination of which facilities and services are necessary and appropriate is made through the National Park Service's planning process. Needs vary with the purposes of the various park areas and their individual circumstances at the time of contracting.

The preceding description covers only the primary laws directly affecting the management of a National Park Service concession. Many other federal statutes apply. State and local laws and

regulations may also apply depending on the nature of park jurisdiction. Some areas are exclusively federal in jurisdiction while others involve state and local jurisdiction.

The services to be provided under this contract are to be performed under the applicable laws, regulations, policies, and planning existing now or established during the term of the contract.

Concession contracts are issued under regulations unique to the National Park Service Concession Management Program. They are not subject to the Federal Acquisition Regulations (FAR).

Concession Program Management

The National Park Service Concession Program represents the interests of the National Park Service through three subdivisions: park, regional and Washington offices including the Concessions Program Center in Denver.

At each park there is, at the least, an individual assigned the task of being the concessioner's immediate contact. This may be a part-time duty in a park where concession activities are minor in nature. For parks with larger operations, a full-time staff will manage the park's immediate relationship with its concessioners and support the park superintendent.

For management purposes, the National Park Service is divided into seven regions, each with an office of the Regional Director. Each Regional Director's office has an office providing various technical functions including an Office of Concession Program Management. This concession management group provides advice to the region's parks and to the Regional Director and provides a variety of support functions to parks for contracting and other work.

In Washington, D.C., a staff of specialists makes policy recommendations to the Director and manages problem issues. This office is under the leadership of the Concession Program Manager, National Park Service. This office is part of the Park Operation and Education subdivision of the Washington office.

The Concession Program Center (CPC), located in Denver, CO, provides nationwide assistance in a variety of subjects relating to the concession management program. The CPC does feasibility studies, calculates insurance replacement cost values, carries out concession planning as separate assignments or as part of overall park planning teams, and undertakes a variety of special projects required to serve park goals.

Program Management - Operating Programs and Practices

While the role of a concessioner must include well defined business-oriented goals and management, in order for the park/concessioner relationship to be successful, the concessioner must also adopt the goals of the park as its own and make the achievement of park objectives for visitor service and other matters part of the concessioner's objectives.

Concessioners and their staffs are important members of the park community. Park visitors often have more contact with and receive more information from concession employees than park staff. These contacts can have a significant effect on the quality of the visitor's experience. Concessioners often occupy important historic structures and have, through their operations, meaningful effects on park resources.

To manage all these effects, Concession Program Management in the National Park Service has developed operating programs and practices. These allow the National Park Service to supervise concessioner activities in an orderly way and establish certain unique approaches to conducting hospitality and recreation services in the National Park System.

Resource Protection Considerations. The National Park Service expects its concessioners to join with the Service in fulfillment of its mission, and to give special attention in their operations to the preservation, conservation, and protection of park resources and the environment.

Routine business operations, educational activities and employee programs must be conducted in accordance with all applicable environmental laws, and in a manner and by such methods that minimize negative environmental impacts on the parks and that encourage others to do the same.

Issues and technologies change over time. The following provide some idea of the Service's current resource protection objectives.

1. Solid waste disposal is a major environmental issue as well as a costly problem. The concessioner will be expected to reduce, reuse, and recycle. The new concessioner should actively work to reduce the amount of trash and waste generated, to acquire products with consideration given to the ability to reuse or recycle the product and its packaging, and to recycle all materials possible. An approach that minimizes such trash and ensures recycling where possible is necessary.
2. Water and energy conservation must be practiced in daily operations and incorporated into the design and construction of both rehabilitated and new facilities.
3. 3. Concessioner-operated underground and above-ground tanks for building and vehicle fuels, whether Government or Concessioner owned, must meet all of the requirements of Federal, state, and local law and regulation. Responsibilities include cleanup of spillage or leaks, demonstration of financial responsibility, and fulfillment of reporting requirements.
4. The effect of vehicles and other operations on air quality is of concern to the National Park Service. Fuel and engine technology is evolving in ways that will benefit air quality. Concession operations should adapt their operations to such changes as they are proven to be reliable and effective.
5. Operations may be conducted in a natural area with a variety of wildlife. The new concessioner must conduct its operations under Service direction for mitigating human-wildlife interactions.

6. Employee orientation programs and development must genuinely emphasize the importance of the park's natural and cultural resources and the necessary consideration for them due from all employees.
7. The Integrated Pest Management Program ensures that use of chemicals to control plant and insect pests is strictly regulated to minimize such uses and that such applications are the last resort in control efforts. The concessioner must work with the park in implementation of this program in its operations and in the areas for which it is responsible.

The overall objective of Resource Protection is to conduct operations in a steadily evolving way oriented towards the use of efficient and cost-effective approaches that minimize negative impacts on our environment and to encourage others to do so too, for the same cost-effective and self-protective reasons.

Environmental Management Program. The Environmental Management Program provides park-specific information about the concessioner's role in providing its services in an environmentally sensitive manner. Environmental management programs include such topics as hazardous waste management, etc.

The successful offeror must submit a proposed initial environmental management program as part of the Proposal. A final program must be submitted to NPS for approval within 60 days after the effective date of the new concession contract. The approved program must be adhered to by the concessioner. It will be reviewed on no less than an annual basis.

Construction. Construction of all kinds should harmoniously integrate with the environment where it is located. Facilities that are cultural resources should be managed so as to maintain their intrinsic qualities through sustained conservation. Architectural style, design elements and construction materials should reflect the park and its history.

Plans and specifications for any and all construction and landscaping development on government-owned lands assigned to the new concessioner must be approved in writing by the National Park Service before the work may be started. Plans must be prepared in accordance with National Park Service standards. The National Park Service microfilms all plans for retention.

Construction codes to be followed are nationally applicable codes such as the Uniform Building Code and the National Fire Protection Association codes, including the National Fire Code, in the latest editions. Regional and local codes are followed where they set a higher standard than national codes or address unique issues. Even where park jurisdiction requires local codes to apply, higher standards in national codes will be used for concessioner construction.

The seismic safety standards to be applied to new buildings designed and constructed within the National Park Service System are:

1. 1991 International Conference of Building Officials Uniform Building Code.
2. 1992 Supplement to the Buildings Officials Conference of America National Building Code.
3. 1992 Amendments to the Southern Building Code Congress Standard Building Code.

4. State, county, and local jurisdictions having specific seismic safety standards

Interpretation. The National Park Service expects that its concessioners will, in appropriate ways, interpret park natural and cultural resources to park visitors and concession employees, with the objective of instilling in them an appreciation of the park area. Concessioner interpretive messages should include safety, local resource management issues and objectives, history of the area, and interpretive themes identified in the Park's Interpretive Themes. These opportunities and responsibilities are more specifically identified in the contract and operating plan for this operation.

Rates For Services. Rates and prices charged are subject to prior approval of the National Park Service. Reasonableness and appropriateness of rates and charges will be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due allowances for length of season, provision for peak loads, accessibility and cost of labor and material, and type of patronage with consideration given to other factors deemed relevant (See PL 105-391). The National Park Service concession rate approval program identifies several methods by which comparable rates may be established. It is the responsibility of the regional director to approve the method used and the responsibility of the superintendent to approve rates.

To reduce government expenses, the concessioner will be required to provide reduced rates for lodging and transportation to government employees on official business. Reduced rates under this program may only be provided for lodging and transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. All other rates for all other goods and services are to be charged to all government employees and their dependents in the same manner as to general park visitors.

Equal Opportunity. The National Park Service is interested in having its concession operations reflect, through its employees, the cultural and ethnic diversity of the area in which they operate and of the nation as a whole. The National Park Service is also interested in having participation in the management of the new concession by minority and women professionals. The National Park Service believes that a varied and diverse concession workforce will better serve the increasingly varied and diverse clientele that uses the Nation's national park areas. A program for minority and women employees that advances these goals is very desirable.

Facility and Service Accessibility. The concessioner will be required to comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. Compliance with ADAAG meets all accessibility requirements under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

An offeror must demonstrate a commitment to full participation for persons with disabilities. This commitment must represent opportunities for both mainstreaming individuals into the normal use patterns of concession facilities as well as the willingness to provide specialized accommodation and programs.

The Service recognizes that there are significant variations among concession activities as to the possible range of accessibility and accommodation. However, each concessioner will be expected to handle accessibility issues and inquiries in a supportive and assisting manner that provides maximum opportunities for persons of all abilities.

Utilities. Where utility services are readily available, concessioners will be required to obtain them from local sources. In other circumstances, the National Park Service may furnish utilities to concessioners. Rates for services furnished by the National Park Service shall be based on actual operating costs, according to procedures established by the Director.

Maintenance Plan. The maintenance plan provides park-specific information about required maintenance. The park will describe the interaction of park maintenance activities with concessioner activities and will specify and describe any maintenance tasks unique to the particular park that must be performed by concessioners and those, if any, that will be the responsibility of the National Park Service.

The concessioner generally will be required to maintain, repair, and perform improvements on all assigned concession facilities, including cyclic maintenance, ground maintenance, landscaping, and all necessary "housekeeping" activities associated with the concession operation, to the satisfaction of the National Park Service. The National Park Service, in consultation with the concessioner, will determine the specific maintenance responsibilities and establish priorities and projected completion dates.

The maintenance plan is initiated at the park level and signed by the park superintendent. Typically, superintendents will ask concessioners to consult on the content of such plans. Such plans may not alter provisions in the body of the contract document or National Park Service policy.

The initial maintenance plan is Exhibit H to the contract. It will be reviewed on no less than an annual basis, and changes will be made as determined appropriate by the National Park Service.

Operating Plan. The operating plan includes such details about the operations as are necessary for the concessioner and the National Park Service to operate smoothly together, and provides the concessioner with information as to what specific operating practices are considered satisfactory in the circumstances of a particular park.

Operating plans include such things as hours of operation, scope and quality of service, management information, lost and found procedures, reservations, advance deposits, cancellations and refund policy, convention policy, rates, safety, sanitation, security, and health care, concession employees and employment, complaint review process, prior notification of changes in key management staff, and other areas of concern. The operating plan is initiated at the park level and signed by the park superintendent. Typically, superintendents will ask concessioners to consult on the content of such plans. Such plans may not alter provisions in the body of the contract document or Service policy.

The initial operating plan is an exhibit to the contract. It will be reviewed on no less than an annual basis, and changes will be made as determined appropriate by the National Park Service.

Sale of Souvenirs and Handicrafts. The selection and sale of gifts, souvenirs, and handicrafts in areas administered by the National Park Service is restricted in certain ways by National Park Service policies. The selection of items is limited to those that are appropriate for the public use and appreciation of the park. The sale of appropriate handicrafts associated with or interpretive of an area is especially encouraged. The concessioner will work with the park and its interpretive staff to determine what sorts of merchandise are most appropriate for the park area.

Insurance. The proposed contract requires the concessioner to insure any buildings, structures, equipment, furnishings and betterments, and merchandise used in the operation. In addition, the concessioner must carry liability insurance adequate for the types of activities it conducts.

The contract requires the new concessioner to purchase and maintain various types of insurance. Minimum coverage limits, as required, are provided in Exhibit I of the draft Contract.

Preference in the Award of a New Contract. Under the National Park Service Concessions Management Improvement Act of 1998, certain existing satisfactory concessioners are entitled to a preference in the award of certain new concession contracts. Specifically, concessioners with annual gross receipts of less than \$500,000 and all concessioners who are solely authorized to provide outfitting and guide services may exercise this right under certain conditions. The scope of this preference is further described by National Park Service regulations (36 CFR Part 51).

Sub-Concessioners. By policy, the National Park Service discourages subcontracting. Subcontracting is not essential to providing quality service to the public and, therefore, the new concession contract prohibits subconcessioners.

Historic Preservation and the National Register of Historic Places. Some facilities used by concessioners are on or may be eligible for the National Register of Historic Places. These are required to be maintained in accordance with the Secretary's Standards for Historic Preservation. This can be more time consuming and expensive than operations in nonhistoric buildings.

If such facilities will be used by the concessioner under this contract, requirements will be more fully described in the applicable contract. The preferred approach is to use a Historic Structures Report as a source for significance, and a Historic Structure Preservation Guide to become aware of maintenance techniques and standards. If such documents do not exist for these facilities, more detailed project consultation will be required prior to working on the affected buildings. Carrying out such maintenance requires specially-trained maintenance staff.

Compliance with Federal, State and Local Laws. Concessioners operate on Federal land but within the jurisdictional framework established by the application of park jurisdiction. Federal statutes apply to concession operations. State and local laws and regulations may also apply.

Concessioner Risk Management Program. The Concessioner will develop, maintain and implement a documented Risk Management (Safety) Program. This written program describes procedures, policies and documentation for a process to minimize incidents and accidents that will affect the visitor, concession employees and the facilities. The program shall include the following elements appropriate to the size and scope of the required service:

- a. Management's Policy Statement, Duties, Employee's Responsibilities, and Administration.
- b. Inspection and Abatement
- c. Accident Investigation and Reporting
- d. Safety/Health Committee
- e. Training
- f. Emergency Procedures

Program Management - Financial Programs and Practices

The intention of the National Park Service is to contract with private businesses and individuals to conduct concession activities that are necessary to achieve park goals rather than to have the government conduct those activities directly. The National Park Service requires the payment of a franchise fee based on the probable value of the opportunity provided by the government.

Concessioner Pays Operating Costs. The costs of operation will be covered by the concessioner.

Real Property in a Park Belongs to the National Park Service. If real property improvements are made, the title to them will belong to the United States. However, under the terms of the applicable Contract, the United States may have an obligation to compensate a concessioner in the future for those real property improvements. Under new concession contracts, this obligation to compensate is referred to in the contract as "leasehold surrender interest."

Real Property Outside the Park Belongs to the Concessioner. Concessioners who invest in real property outside of a park area for the purposes of supporting in-park operations are not obliged to sell that property to any incoming concessioner. The government will not compensate concessioners for such property or require any incoming operator to purchase such property.

Personal Property Belongs to the Concessioner. Concessioners, not the government, are the owners of most types of personal property. Under new concession contracts, the government will not require any incoming concessioner to purchase such personal property.

Businesses May Not Be Sold Without Approval. Concession contracts may not be sold or encumbered without the prior approval of the National Park Service. Policies and procedures are described in 36 CFR, Part 51, Subpart J. Among other matters, the National Park Service is required to make certain findings before approving a sale, transfer, or encumbrance.

No Guarantee of Profit. There is no guarantee of any profit over the term of a concession contract or of a profit in any given year. It is the responsibility of the offeror to assure itself that the terms of its offer provide it a reasonable opportunity for profit.

Concessioner Review Program. The regional director, through the park superintendent and his/her designated representatives, will maintain a continuing review of concession operations and management. This continuing review will determine if the concessioner is complying with all provisions of the contract and will evaluate the concessioner's operation to determine if satisfactory performance as required by Public Law 105-391 is being provided. This concessioner review program will include, but not be limited to:

- The quality of the service rendered to the public;
The prices that are charged the public;
- The condition of the premises;
The appearance and conduct of employees;
- The degree to which facilities are properly maintained and repaired as required by the particular concession authorization;

The nondiscrimination policies of the concessioner with relation to both employment and service to the public;

Compliance with the Concessioner Risk Management Program;

- Compliance with U.S. Public Health Service standards and requirements and state and local health codes that may be applicable;

Compliance with practices that foster a safe environment for the public; and

Compliance with the various administrative and financial requirements of the contract, including any applicable construction program.

Compliance with the Environmental Management Program

Periodic written evaluations will be prepared by the applicable park, usually two or three times a year, following the procedures and requirements of the National Park Service concessioner review program. From these evaluations an annual rating is established. Failure to operate in a manner satisfactory under the requirements of the concessioner review program may be cause for termination of a concession authorization.