

# PROSPECTUS

A Concession Business Opportunity for  
Ferry Service  
at Statue of Liberty National Monument and Ellis Island

**Solicitation#  
STLI001-07**



National Park Service  
U.S. Department of the Interior

Northeast Region



# PROSPECTUS

For Ferry Service  
at  
Statue of Liberty National Monument and Ellis Island

National Park Service  
Northeast Region

Contract No. CC-STLI001-07

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PROSPECTUS ISSUED:	<b>December 28, 2006</b>
SITE VISIT:	<b>January 9, 2007</b>
QUESTIONS DUE:	<b>January 16, 2007</b>
PROPOSALS DUE:	<b>February 26, 2007</b>

Questions and proposals must be **received** by the National Park Service no later than 4:00 P.M. on the due dates listed above and should be addressed to:

**National Park Service  
Northeast Region  
Attn: Pam McLay, Chief of Lands, Concessions, and Leasing  
200 Chestnut Street  
Philadelphia, PA 19106  
(215) 597-7055**

The National Park Service requires that questions be submitted by **both** hard copy and in an electronic format (either as a disk enclosed with hard copy or by email message to **NER\_STLI\_Concessions@nps.gov**)

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**BUSINESS OPPORTUNITY**

**For Ferry Service**

**at Statue of Liberty National Monument and Ellis Island**

**CC-STLI001-07**

*Department of the Interior*

National Park Service

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## SUMMARY OF BUSINESS OPPORTUNITY

The purpose of this Summary is to provide a synopsis of the key elements of National Park Service Draft Concession Contract CC-STLI001-07, including its exhibits (“Draft Contract”), included in this Prospectus, for the ferry service concession at the Statue of Liberty National Monument and Ellis Island. In the event of any inconsistency between the terms of the Draft Contract and this Summary, the Draft Contract will prevail.

### Nature of the Business and Services Provided

The Business Opportunity section of this Prospectus describes the commercial visitor services required within the Draft Contract. The following visitor services are required:

#### Required Visitor Services for the Draft Contract

<b>Ferry Service</b>	Year-round, scheduled boat transportation for Park visitors to, from and between Liberty and Ellis Islands; originating from and returning to NPS-approved locations in, adjoining, or in proximity to Battery Park (Manhattan) and Liberty State Park (Jersey City).
<b>Food and Beverage Service</b>	Sale of snack foods and non-alcoholic beverages on board vessels, as approved by the Superintendent.
<b>Merchandise Sales</b>	Sale of visitor convenience items and limited souvenirs on board vessels, as approved by the Superintendent.
<b>Statue of Liberty and Ellis Island Cruise (Island Cruise)</b>	Island Cruises departing from and returning to NPS-approved locations in, adjoining, or in proximity to Battery Park including an NPS-provided and/or approved interpretive program on board vessels describing the Park and its resources and stories. Passengers on the Island Cruises will not disembark at the Park, but the vessels will enter the off-shore Park boundary.
<b>Reservation and Ticketing System</b>	Reservation and sale of ferry tickets and audio tours and distribution of free monument tour passes.

The Concessioner is authorized but not required to provide the following visitor services during the term of the Draft Contract.

#### Authorized Services for the Draft Contract

<b>Additional Ferry Service</b>	Operation of additional ferry routes to other NPS destinations in and around New York Harbor, subject to approval by the Superintendent.
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## Annual Gross Revenues

Concessioner reported gross revenues for the past five years are shown below.

2001	2002	2003	2004	2005
\$21,628,500*	\$23,313,406	\$25,073,164	\$24,755,781**	\$35,490,323

Source: Concessioner Annual Financial Reports

\* This figure reflects the Park's closure from September 11, 2001, until December 20, 2001, when new security measures were put into place.

\*\* This figure represents the 9-month period 4/2004 through 12/2004. Prior to 2004, annual gross revenue figures correspond to a fiscal year ending in March. The fiscal year was changed to correspond to the calendar year in 2005. The Existing Concessioner reported gross revenue of \$27,687,052 for calendar year 2004.

## Minimum Franchise Fee

The Concessioner will pay the National Park Service a franchise fee of at least **18.0 percent** of annual gross receipts.

## Term of Draft Contract

10 years, expected to begin on September 17, 2007.

## Estimated Required Initial Investment

Possessory Interest	\$0
Marine Personal Property	\$18,732,000
Non-Marine Personal Property	\$668,000
Inventory	\$40,000
<b>Total</b>	<b>\$19,440,000</b>

Source: NPS Estimates

## No Preferred Offeror

The Director has determined that no Preferred Offeror for this Draft Contract exists pursuant to the terms of 36 CFR Part 51. This solicitation for commercial services is fully competitive.

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## INTRODUCTION

The National Park Service (also referred to as “NPS”) seeks proposals for the ferry service concession operation at the Statue of Liberty National Monument and Ellis Island (also referred to as “Park”). This Prospectus describes in general terms the existing operations and the future business opportunity associated with the attached Draft Concession Contract CC-STLI001-07. Offerors are responsible for reviewing all sections of this Prospectus and, specifically, the terms and conditions of the Draft Contract, including its exhibits, to determine the full scope of the future Concessioner’s responsibilities under the Draft Contract. The NPS is conducting this solicitation in accordance with the National Park Service Concessions Management Improvement Act of 1998 (PL 105-391) as implemented by the NPS in 36 C.F.R. Part 51. This Prospectus is issued under the authority of 36 C.F.R. Part 51. In the event of any inconsistency between the terms of this Prospectus and 36 C.F.R. Part 51, 36 C.F.R. Part 51 will control. In the event of any inconsistency between the terms of the Draft Contract and this prospectus, the Draft Contract will control. Copies of PL 105-391 and 36 C.F.R. Part 51 are included as Appendices to this Prospectus.

The term “Concessioner” as used in this Prospectus refers to the entity that will be the concessioner under the Draft Contract. The term “Existing Concessioner” refers to Circle Line-Statue of Liberty Ferry, Inc., the concessioner under the Existing Concession Contract (Existing Contract). The Existing Contract, CC-STLI001-89, as amended, is included as an Appendix to this Prospectus.

### ***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. *(16 USC 1)*

Additionally, through this “Organic Act,” the Congress declared that the National Park System should be:

...preserved and managed for the benefit and inspiration of all the people of the United States. *(16 USC 1a-1)*

To learn more about the National Park Service, visit our website at [www.nps.gov](http://www.nps.gov).

## STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND

Located on 12-acre Liberty Island in New York Harbor, the Statue of “Liberty Enlightening the World” was a gift of friendship from the people of France to the people of the United States and is a universal symbol of freedom and democracy. The Statue of Liberty was dedicated on October 28, 1886, designated as a National Monument in 1924, and restored for her centennial on July 4, 1986.

Opened on January 1, 1892, Ellis Island became the nation's premier federal immigration station. The island consists of 48 acres, more or less, of which 27.5 acres are uplands and the balance is submerged lands. In operation until 1954, the station processed over 12 million immigrant steamship passengers. The main building was restored after 30 years of abandonment and opened as a museum on September 10, 1990. Today, about 40% of America's population can trace their ancestry through Ellis Island.

One of the most popular national parks in the United States, the Statue of Liberty National Monument and Ellis Island together attracted over 4.2 million visitors in 2005. Arriving by ferry from Battery Park in New York City and Liberty State Park in New Jersey, domestic and international visitors of all ages enjoy self-guided tours, exhibits, ranger-led and audio tours, and other programs and activities on Liberty and Ellis Islands. The Park also hosts numerous school groups, special civic ceremonies, corporate and other events. Exhibit 1 presents photographs of Liberty Island and Ellis Island.

### Exhibit 1 Statue of Liberty and Ellis Island



Source: NPS

The Statue of Liberty and Ellis Island were included in the National Park System through presidential proclamations. Under the Antiquities Act of 1906 the President is authorized to “declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government...to be national monuments...” The first presidential proclamation for the Park came in 1924, when the site of the statue of “Liberty Enlightening the World” was declared a national monument. The Monument was expanded through presidential proclamation in 1933 adding all lands on what was then called Bedloe’s Island; at the same time, administration of the Monument was transferred to the National Park Service. Ellis Island became part of the Statue of Liberty National Monument through presidential proclamation in 1965.

The following statements, in addition to the National Park Service Organic Act, as amended, provide the foundation for Park management. Management seeks to protect the Park’s resources, while providing for “the benefit and enjoyment of the people” through interpretive programs, activities, and facilities.

### ***Park Mission***

- To inspire visitors to reflect on the meanings of liberty, opportunity, and their practices throughout the world and to engage people of all nations, ethnicities and interests in an ongoing dialogue about the continuing allure and application of these ideals.

### ***Park Purpose***

- To preserve, protect, and interpret these national and international symbols of freedom and migration.
- To promote understanding, reflection, and discussion of the changing meanings of liberty and opportunity.

### ***Park Significance***

- A gift from the people of France, the statue “Liberty Enlightening the World” is one of the world’s most recognizable icons. She endures as a highly potent symbol – inspiring contemplation, debate, and protest – of such ideals as liberty, freedom, peace, human rights, abolition of slavery, democracy, and opportunity. New meanings continually ascribed to her ensure her relevance and represent the unity and resilience of our nation and its people. Her design, a technological achievement of its time, lives on as an emblematic bridge between art and engineering.

- Ellis Island served as the leading immigration processing station for entry into the United States. Although only in operation from 1892 to 1954, Ellis Island is the preeminent symbol of the story of immigration and of the cultural richness of the United States. It is an unparalleled example of an all encompassing immigration operation that functioned like a city.

### *Park Interpretive Stories*

- **Symbol and Reality.** Both the Statue of Liberty and Ellis Island have become symbols around the world for the ideals of democracy and freedom. In democratic societies, how are these ideals being achieved? What are some disparities, tensions, or compromises that have emerged in democratic societies trying to achieve these goals?
- **Evolving Meanings.** Originally, the Statue of Liberty was a monument to political cooperation between France and America, the end of slavery and the promise of the Declaration of Independence – but she has evolved into much more than her creators imagined. She now represents universal concepts such as unity, pride, and resilience, as well as personal sentiments such as hope, freedom, and opportunity. What do the Statue of Liberty and Ellis Island mean to you?
- **Design, Context, and Location.** The engineering innovations used to create the Statue of Liberty – a monumental and enduring work of art – went on to be used to construct the skyscrapers of Manhattan, thereby linking her inextricably with the skyline of New York City. She is both a work of art and was an engineering marvel. The design and layout of Ellis Island is a study in form following function – it was a highly efficient government processing center and was ideal for healthcare, detention, and quarantine.

### *National Park Service Goals*

#### **Protect Park Resources**

- Natural and cultural resources and associated values are protected, restored, and maintained in good condition and managed within their broader ecosystem and cultural context.
- The National Park Service contributes to knowledge about natural and cultural resources and their associated values; management decisions about resources and visitors are based on adequate scholarly and scientific information.

#### **Provide for Visitor Enjoyment**

- Visitors safely enjoy and are satisfied with the availability, accessibility, diversity, and quality of park facilities, services, and appropriate recreational opportunities.

- Park visitors and the general public understand and appreciate the preservation of parks and their resources for this and future generations.

### **Ensure Organizational Effectiveness**

- The National Park Service uses current management practices, systems, and technologies to accomplish its mission.
- The National Park Service increases its managerial capabilities through initiatives and support from other agencies, organizations, and individuals.

The Park considers concessioners and other business operators within the Park to be critical participants whose actions have dramatic and important effects upon visitors and Park resources. As such, concessioners should understand and embrace the Park mission, work to help visitors appreciate the Park's purpose and significance, and help NPS achieve its goals while also striving to fulfill their own organizational and business goals.

Additional information about the Park is available at [www.nps.gov/stli](http://www.nps.gov/stli) and [www.nps.gov/elis](http://www.nps.gov/elis).

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## MARKET AREA OVERVIEW

### *New York Metropolitan Area Tourism Market*

New York City is recognized around the world as a premier tourism destination. In 2005, the city welcomed 42.6 million international and domestic tourists,<sup>1</sup> who came to experience a wide variety of attractions, including Broadway shows, world-class museums and parks, historic sites, restaurants and shopping.

The New York metropolitan area includes parts of New Jersey, including Bergen, Essex, Hudson, Middlesex, Passaic, and Union counties. These counties are grouped as the Gateway Region by the New Jersey state tourism commission. In 2005, the Gateway Region accounted for 20.9% of all tourism spending in New Jersey, or around \$7.6 billion.<sup>2</sup> There were an estimated 6.8 million total overnight tourist visits for the six-county region last year.

The events of September 11, 2001 had a noticeable impact on tourist visits to New York City. The number of visitors declined by 1.0 million between 2000 and 2001, and visitation increased by only 0.1 million in 2002. Since then, visitation has rebounded, increasing by an average of over 2 million visitors, or approximately 5%, per year from 2003 to 2005. Exhibit 2 illustrates this trend. Projected visitation for 2006 is 44.4 million.<sup>3</sup>

**Exhibit 2**  
**Visitors to New York City (millions), 2000-2005**

	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
<b>Total Visitors</b>	36.2	35.2	35.3	37.8	39.9	42.6
<b>Domestic</b>	29.4	29.5	30.2	33.0	33.8	35.8
<b>International</b>	6.8	5.7	5.1	4.8	6.2	6.8

*Source: NYC & Company*

New York City had 71,000 hotel rooms as of January 1, 2006, and hotel occupancy increased from 73.4% in 2001 to 85.5% in 2005, as shown in Exhibit 3. The average daily room rate increased to over \$240, reflecting strong demand.

<sup>1</sup> NYC & Company, <http://www.nycvisit.com>, formerly the New York Convention and Visitors Bureau. Statistics available online.

<sup>2</sup> New Jersey Commerce, Economic Growth and Tourism Commission, <http://www.state.nj.us/travel/index.html>.

<sup>3</sup> Ibid.

**Exhibit 3**  
**Hotel Occupancy and Average Daily Room Rate, 2000-2005**

	2000	2001	2002	2003	2004	2005
<b>Occupancy</b>	84.6%	73.4%	75.6%	76.3%	82.4%	85.5%
<b>Avg. Daily Rate</b>	\$237	\$204	\$198	\$199	\$210	\$243

*Source: NYC & Company*

**Seasonality**

The New York metropolitan area typically sees the least number of visitors during the winter months of January through March, and the greatest number during the autumn months of October through December. In contrast, the Park's highest season is during the summer months of June through August, when families with children can travel. The slowest time for Park visitation is January and February. Exhibit 4 presents monthly 2003 hotel occupancy rates.

**Exhibit 4**  
**New York City Hotel Occupancy by Month, 2003**

	Jan	Feb	Mar	Apr	May	Jun
<b>Occupancy Rate</b>	62%	63%	67%	65%	78%	80%
	Jul	Aug	Sep	Oct	Nov	Dec
<b>Occupancy Rate</b>	77%	81%	80%	89%	85%	86%

*Source: NYC & Company*

**Tourism Impact**

Visitor spending from New York City tourism in 2005 totaled \$22.8 billion, and this spending generated \$14.2 billion in wages for over 333,000 workers in the leisure and hospitality industry. In addition, visitor spending generated \$5.4 billion in tax revenue in 2005.<sup>4</sup> Dividing \$22.8 billion in spending by 42.6 million visitors, the average visitor spent \$535 during his or her stay in New York City in 2005. Historical visitor spending is presented in Exhibit 5.

**Exhibit 5**  
**Visitor Spending in New York City, 2000-2005**

	2000	2001	2002	2003	2004	2005
<b>Spending (billions)</b>	\$17.0	\$15.1	\$14.1	\$18.5	\$21.1	\$22.8
<b>Per Visitor</b>	\$470	\$429	\$399	\$489	\$529	\$535

*Source: NYC & Company*

<sup>4</sup> Ibid.

### ***Resident Demographics***

Most visitors to the Park come from outside the New York City metropolitan area; local residents account for 10% to 20% of visitation, according to some estimates. Exhibit 6 presents population growth data for both New York City and New Jersey.

**Exhibit 6**  
**Regional Population Growth, 2000-2005**

	<b>2000</b>	<b>2005</b>	<b>Annual Growth Rate</b>
<b>New York City</b>	8,008,278	7,956,113	-0.1%
<b>New Jersey</b>	8,414,350	8,521,427	0.3%

*Source: Census 2000 and Census Bureau estimates for 2005*

The population of New York City is estimated to have declined slightly since 2000, while the population of New Jersey has increased at a modest rate. Unlike positive trends in the number of tourist visits to New York City, local population growth is not projected to be a major driver of increased demand for the Park. Nevertheless, this local market could be considered an untapped market for future visitation, particularly during the off-peak seasons.

### ***Harbor Area Tourism***

Several ferry companies operate commuter ferry services in New York Harbor and there are numerous other tourist excursions, dinner cruises, and other activities for visitors and tourists.

In addition, several companies offer sightseeing cruises on the harbor with some interpretation, including one offered in conjunction with the National Parks of New York Harbor Conservancy, a not for profit partner of the National Park Service. A subsidiary of the Existing Concessioner offers harbor cruises from Battery Park, but these cruises are not authorized within the Existing Contract.

The National Park Service is committed to improving the visibility of and access to all NPS sites in and around New York Harbor. The 10 National Park Service units in metropolitan New York and New Jersey are working in collaboration to raise the visibility of the National Park Service and each of the parks, to expand opportunities for park visitors, to enhance the benefits the parks bring to the metropolitan area and to increase partnerships and public support. Six of the 10 NPS units are in Manhattan (General Grant NM, Hamilton Grange NM, Theodore Roosevelt Birthplace NHS, Castle Clinton NM, Federal Hall NM, and African Burial Ground NM), and St. Paul's Church NHS is in Westchester County. The other parks are Gateway National Recreation area (in Brooklyn, Queens, Staten Island, and Sandy Hook, NJ), Governor's Island Monument, and the Statue of Liberty National Monument and Ellis Island.

Enhancing tourism opportunities in and around New York Harbor is a high priority for the NPS. NPS is working with numerous partners including "friends" groups, and other for- and not-for-profit entities to develop new programs, plans and services. NPS is also committed to supporting the economic rebuilding of post-9/11 Lower Manhattan and has been active in the Museums of

Lower Manhattan coalition, NYC and Company, and with the Lower Manhattan Development Corporation.

To that end, NPS also participates in the Harbor District Advisory Board (HDAB). The HDAB was convened by NYC Deputy Mayor Dan Doctoroff to provide a forum in which a variety of public entities operating in and around the harbor could share information about their activities and plans. The intent is to look for ways in which the NPS could collaborate for more effective results, and, at a minimum, avoid unnecessary overlap or problems. The group is advisory only. Attendees include city and state parks, NPS, Battery Conservancy, Governors Island Preservation and Education Commission (GIPEC), Liberty State Park and others active on the waterfront. Through various contracts and grant applications the group is doing some market research into tourism opportunities and new water transportation strategies, as well as exploring designing a new Travelers Information System, or TIS, a web-based visit planning program that would encourage visitors to stay longer, visit more sites and make it easier for tourists to do both.

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## STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND VISITATION

### Access

Visitors access Liberty and Ellis Islands via ferry from either Battery Park in Manhattan or Liberty State Park in New Jersey. Ellis Island is approximately one and one-half miles from the southwest tip of Manhattan, and Liberty Island is less than one mile south of Ellis Island. Park Headquarters are located adjacent to the Main Building that houses the Immigration Museum on Ellis Island. Exhibit 7 presents an overview map of the Park.

**Exhibit 7**  
**Statue of Liberty National Monument and Ellis Island Map**



Source: NPS. Ferry routes depict current services.

### Visitation Data

The annual visitation figures reported in the NPS database (available to the public at [www2.nature.nps.gov/stats](http://www2.nature.nps.gov/stats)) include the total number of visitors to Liberty Island added to the total number of visitors to Ellis Island. Because many visitors stop at both islands, these visitation numbers include some double counting. Nevertheless, this is an important statistic for Park management purposes, and this method of counting has been applied consistently over time. Therefore, it provides a useful series for looking at trends in growth. Exhibit 8 presents annual visitation over the past 15 years, from 1991 to 2005.

**Exhibit 8**  
**Visitation to Statue of Liberty National Monument and Ellis Island, 1991-2005**

Year	Visitation	Percentage Change
1991	4,343,017	
1992	4,157,904	-4.3%
1993	4,112,003	-1.1%
1994	4,252,823	3.4%
1995	4,244,725	-0.2%
1996	4,494,076	5.9%
1997	4,738,388	5.4%
1998	5,200,633	9.8%
1999	5,370,015	3.3%
2000	5,509,706	2.6%
2001	4,317,998	-21.6%
2002	3,408,560	-21.1%
2003	3,231,247	-5.2%
2004	3,618,053	12.0%
2005	4,235,595	17.1%

Source: NPS

Visitation peaked in 2000, when 5,509,706 total visitors were reported at Liberty and Ellis Islands. The events of 9/11/01 contributed to visitation declines of over 21% in both 2001 and 2002. This was followed by a slight decline in 2003; visitation rebounded in 2004 (by 12.0%) and 2005 (by 17.1%).

Visitation data from the 1991-2000 period represents a much more “steady state” relative to the post-2001 period. Visitation between 1991 and 1995 was quite stable, ranging between 4.1 and 4.4 million and averaging 4.2 million. Between 1996 and 2000, visitation grew at rates ranging from 3% to 9%, and average visitation was almost 5.1 million. The average annual growth rate from midpoint to midpoint of the 1991-1995 and 1996-2000 periods was 3.7%.

**Ferry Ridership**

The number of ferry tickets sold annually is more relevant to the prospective Offeror than the park visitation statistic, due to the double counting mentioned previously. Growth rates in ferry ridership generally correspond with growth rates in the reported visitation statistic from year to year. Exhibit 9 presents ticket sales data from 2001 through 2005.

**Exhibit 9**  
**Ferry Ticket Sales, 2001-2005**

Year	2001	2002	2003	2004	2005
Number of Tickets Sold	3,290,092	2,636,167	2,515,443	2,844,206	3,188,783

Source: NPS

Dividing the 2005 visitation figure of 4,235,595 by the ticket sales figure of 3,188,783, it is apparent that about 30% of Park visitors visit both islands during a single visit.

Exhibit 10 presents data on the seasonality of ferry ridership based on monthly ticket sales in 2005.

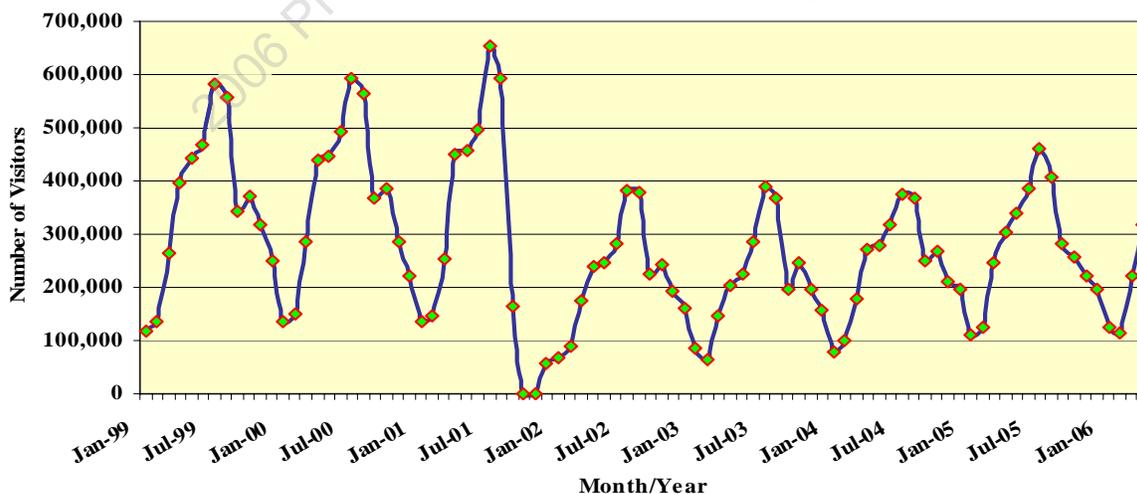
**Exhibit 10**  
**Monthly Ferry Ticket Sales, 2005**

Month	Tickets Sold	Share of Annual Total
January	107,434	3.4%
February	130,727	4.1%
March	267,329	8.4%
April	306,333	9.6%
May	335,281	10.5%
June	380,913	11.9%
July	431,873	13.5%
August	369,918	11.6%
September	245,120	7.7%
October	219,420	6.9%
November	211,212	6.6%
December	183,223	3.4%
<b>Total</b>	<b>3,188,783</b>	<b>100.0%</b>

Source: NPS

As the table shows, three-quarters of all visits occur from March through September. This seasonal pattern is shown graphically in Exhibit 11.

**Exhibit 11**  
**Monthly Park Visitation, January 1999-April 2006**



Source: NPS

***Visitor Profile***

In recent years, adult ferry ticket sales accounted for approximately 75% of all tickets sold, child tickets (available for children from 3 to 12 years of age) represented 11%, senior tickets (age 62 and over) represented 6% and Group tickets represented 8%. Children under 3 years old ride free. School groups are the only groups eligible for discounted tickets; both the students and supervising adults in the group receive the discount.

Historically, around 80% of all ferry passengers board at Battery Park in Manhattan, and 20% board at Liberty State Park in New Jersey. In 2005, 81.5% of Park visitors boarded the ferry at Battery Park in Manhattan.

Recent visitor surveys suggest that approximately 80% of visitors are from the U.S. and 20% are international but there are few statistics showing visitors' origins.

***Other Services***

In addition to the services provided under the Existing Contract, retail, food, and beverage services also are provided by other concessioners on Liberty and Ellis Islands.

2006 PROSPECTUS - FOR REFERENCE USE

### EXISTING CONCESSION OPERATIONS

The Existing Concession Contract between the NPS and the Existing Concessioner commenced on April 1, 1989 and originally expired on March 31, 2004. It was extended through March 31, 2007, and a continuation of services may be authorized beyond that date until the new contract's effective date to prevent an interruption in visitor services.

#### Exhibit 12 Existing Contract and Concessioner

Existing Contract	Existing Concessioner
CC-STLI001-89	Circle Line-Statue of Liberty Ferry, Inc.

The Existing Contract encompasses the required and authorized services presented in Exhibits 13 and 14:

#### Exhibit 13 Required Services Under Existing Contract

<b>Ferry Service</b>	Year-round scheduled passenger transportation by boat for Park visitors, to, from and between Liberty and Ellis Islands in Statue of Liberty National Monument; originating from and returning to locations in Battery Park (Manhattan) and Liberty State Park (Jersey City).
<b>Employee and Freight Transportation</b>	Transportation by boat to, from and between Liberty and Ellis Islands for employees and freight of National Park Service and its concessioner contractors on the islands.

#### Exhibit 14 Authorized Services Under the Existing Contract

<b>Food and Beverage</b>	Sale of snack foods and non-alcoholic beverages on board vessels.
<b>Merchandise Sales</b>	Sale of visitor use items approved by the Superintendent (e.g. film, single-use cameras, camera batteries, etc.). Sale of souvenirs and commemorative items on board vessels.

Additional details about each service are provided in the following pages.

## Ferry Service

Weather permitting, the ferries operate on a year-round schedule, seven days per week, with the exception of Christmas Day. Boats are required to depart for the Park from each originating location at least once each hour. The frequency of departures increases in high season. See Appendix N for examples of current ferry schedules. The Concessioner also makes the ferries available for special event transportation services for approximately 20 – 30 events a year to Liberty or Ellis Islands. See Appendix E for the current rates for special event transportation services. Rates under the Draft Contract will be approved in accordance with the provisions contained in Exhibit A, Operating Plan.

A total of 3,188,783 ferry tickets were sold in 2005. Ticket sales are broken down by category as shown in Exhibit 15.

**Exhibit 15**  
**Ferry Ticket Sales, 2005**

	<b>Adult</b>	<b>Senior</b>	<b>Child</b>	<b>Group</b>	<b>Total</b>
<b>Tickets Sold</b>	2,397,280	184,839	349,408	257,256	<b>3,188,783</b>

Source: NPS.

Exhibit 16 shows current and historically approved fares for the ferry. The same fare is charged for trips departing from Battery Park and those departing from Liberty State Park. Fares include visits to both islands and travel between islands. Group fares are available only for adult chaperoned school groups and the per person group fare is equal to the child fare.

**Exhibit 16**  
**Approved Ferry Rates, 1995-2005**

	<b>Adult</b>	<b>Senior</b>	<b>Child/Group</b>
<b>2005-Present</b>	\$11.50	\$9.50	\$4.50
<b>2002-2004</b>	\$10.00	\$8.00	\$4.00
<b>2001</b>	\$8.00	\$6.00	\$3.00
<b>1997-2000</b>	\$7.00	\$6.00	\$3.00
<b>1995-1996</b>	\$6.00	\$5.00	\$3.00

Source: NPS

**Exhibit 17**  
**Ferry Docked at Liberty Island**



*Source: NPS*

### **Employee and Freight Transportation**

Currently, employees of the NPS and of the concessioners operating on each island are permitted to ride the ferries free of charge. The Existing Concessioner currently delivers freight to the food and beverage and retail concessioner on Liberty Island for a fee.

### **Food and Beverage**

Food and beverage snack bars are located on each of the seven Existing Concessioner's boats. Fast food items (hot dogs, nachos, soft pretzels) and packaged snack foods (ice cream, candy, pastries), as well as a variety of drinks (soda, juice, coffee, tea, hot chocolate, and water) are available. A current approved price list is presented in Appendix E. The procedures for approval of items to be sold and rates are outlined in Exhibit A, Operating Plan.

### **Merchandise Sales**

Retail items are sold from the same counter as food and beverage items. Visitor convenience items for sale include maps, film, cameras, and batteries. Souvenirs include magnets, miniature statues, foam Statue of Liberty crowns, pens, pencils, pennants, calendars, post cards, and a variety of other items. A current approved price list is presented in Appendix E. Exhibit 18 shows the food & beverage and merchandise sales counter on one of the ferry boats. The procedures for approval of items to be sold and rates are outlined in Exhibit A, Operating Plan.

**Exhibit 18**  
**Food & Beverage and Merchandise Sales Counter**



*Source: NPS*

### **Ticketing and Monument Tour Passes**

The Existing Concessioner provides both an onsite point of sale ticketing operation, and a web-based ([www.statuereservations.com](http://www.statuereservations.com)) and telephone-based (1-800-STATUE4) advanced ticketing system. As part of the advanced ticketing system, the Existing Concessioner provides reservations for free passes for tours inside the monument (the pedestal of the Statue of Liberty). A monument tour pass can only be provided in advance with purchase of an advance ticket for the ferry ride. Advance ticket and timed passes for monument tours are picked up by visitors at “Will-Call” locations near the ticket booths.

Onsite ticketing operations currently operate from NPS assigned space within Castle Clinton National Monument located in Battery Park and in the space provided through a Memorandum of Understanding with Liberty State Park in the Central Railroad of New Jersey (CRRNJ) Terminal. The Existing Concessioner distributes the unreserved daily allotted free monument tour passes on a first come, first served basis at the ticket booths in Battery Park and Liberty State Park.

### **Audio Tours**

The Existing Concessioner sells an optional \$6.00 audio tour ticket in combination with ferry tickets. The ticket is exchanged for audio tour headsets upon arrival at a specified location on both Liberty and Ellis Islands, and the headsets cannot be taken on the ferries. The Existing Concessioner sells the tickets for the optional audio tour but does not distribute headsets, and shares the revenue from audio tour sales with other Park concessioners. The headsets are distributed by the island concessioners.

## **Embarkation Facilities**

**Battery Park.** The Existing Concessioner operates landing and docking facilities for ferry services to Liberty and Ellis Islands from Battery Park in New York through a License Agreement with the City of New York Parks and Recreation Department. The use of Landing slips 3, 4, and 5 and adjacent walkways is currently authorized by the License. The License currently requires annual payment of the higher of either \$500,000 or 7¼% of gross revenues derived from the Battery Park operation. The Existing Concessioner is required by the License to maintain and repair the landing slips and adjacent walkways and to keep the area clean, litter free, and neat. The original term of the License was for 12 years from April 1, 1992 to March 31, 2004. When the ferry contract with the National Park Service was extended, the License was also extended. To avoid an interruption of visitor services, it is anticipated that an additional extension will be granted to coincide with any continuation of authorized services by NPS until a new contract is in place. The License is included in Appendix K.

**Liberty State Park.** The Existing Concessioner operates landing and docking facilities for ferry services to Liberty and Ellis Islands from Liberty State Park in New Jersey through a Memorandum of Understanding (MOU) with the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry. The MOU authorizes a visitor staging and ticketing location in the CRRNJ Terminal as well as on a pier. The MOU currently requires annual payment of either \$75,000 or 7% of gross revenues derived from the Liberty State Park operation, whichever is higher. The Existing Concessioner is required by the MOU to maintain and repair the facilities and associated equipment and improvements. The original term of the MOU was three years, from June 13, 1994 to June 12, 1997, and it has been extended three times. When the ferry contract with the National Park Service was extended, the license was also extended. To avoid an interruption of visitor services, it is anticipated that an additional extension will be granted to coincide with any continuation of authorized services by NPS until a new contract is in place. The MOU is included in Appendix L.

## **Security Screening Facilities**

NPS operates temporary visitor screening facilities at Battery Park and Liberty State Park. All passengers and employees are screened prior to boarding the boats. Screening of the ferries consists of sweeping the vessels for explosives by specially trained explosive detection canines, managed by U.S. Park Police (USPP) officers. On a daily basis, prior to placing the vessel in service, the Existing Concessioner makes available to the USPP each vessel scheduled for service to, from and between Liberty and Ellis Islands at least one hour prior to departure at either the Battery Park or Liberty State Park screening sites.

## FUTURE CONCESSION OPERATIONS

The Draft Contract includes a description of required and authorized services. In case of any inconsistency between this section and the attached Draft Contract, the Draft Contract will control.

### *Visitor Services*

Exhibit 19 details the future visitor services to be required or authorized under the Draft Contract. Essential operating and maintenance requirements for each required service are provided in two of the exhibits to the Draft Contract otherwise identified as Operating and Maintenance Plans.

**Exhibit 19**  
**Visitor Services Specified in the Draft Contract**

Service	Draft Contract
<b>Transportation Services</b>	
Ferry Service	Required
Island Cruise	Required
Additional Ferry Routes to NPS Destinations	Authorized
<b>Other Services</b>	
Food and Beverage Service	Required
Merchandise Sales	Required
In-Transit Recorded Interpretive Program	Required
Audio Tour Sales	Required
Reservation and Ticketing System	Required

### **Ferry Service**

At a minimum, the Concessioner will provide seven (7) vessels with the passenger capacities listed in the CONTRACT available for use in fulfilling the terms of this contract. At a minimum, six (6) vessels shall be designated as primary vessels to provide boat transportation services to, from, and between Liberty and Ellis Islands. The Concessioner will make these vessels available for special event transportation services to Liberty or Ellis Islands.

Examples of current ferry schedules are presented in Appendix N. Schedules and frequency of departures are expected to continue in a similar manner under the new contract, 7 days a week, weather permitting, 364 days a year. No service is required on Christmas Day.

Because the existing NPS security screening facility in Battery Park often reaches capacity during peak season (screening and boarding an average maximum of approximately 700 passengers per boat), the departure site with the greatest potential for supplementing Park

visitation is Liberty State Park in New Jersey. During most of the year, there are times of the day both at Battery Park and Liberty State Park when additional visitors can be accommodated.

### **Statue of Liberty and Ellis Island Cruise (Island Cruise)**

The Island Cruise service will depart from NPS-approved locations in, adjoining, or in proximity to Battery Park in New York City and provide Park visitors with an interpretative, water-based tour with close-up views of the Statue of Liberty and Ellis Island. The Concessioner will offer an NPS-provided and/or approved interpretive program that provides an informative and inspirational experience for visitors, highlighting the Park and its resources and stories. The concession vessel will enter the Park water boundary for close up views, but passengers will not disembark at the Park. At a minimum, the Island Cruise will be offered from mid-March through New Year's Day.

The Concessioner may utilize one vessel for Island Cruise services if not needed to support the primary boats with any island evacuations as directed by the Superintendent. In the event of a disruption of ferry service by one of the primary vessels, the Concessioner will be required to make the Island Cruise vessel available to provide backup service to, from, and between Liberty and Ellis Islands. Any vessel that is used for the Island Cruise service will require security screening prior to being returned to ferry service operations.

It is envisioned that the Island Cruise will provide visitors with an alternative to visiting the islands when tickets have been sold out or allow a Park experience when the islands are closed. It also will offer an alternative experience for visitors who have limited time for their visit to the Park. The NPS may work with one of its non-profit partners to develop and provide the interpretive program for this service. The NPS estimates that over 300,000 Park visitors will take the Concessioner's Island Cruise annually. Ticket prices will be set at the same levels as ticket prices for ferry service to the islands.

### **Additional Ferry Routes to NPS Destinations**

Additional ferry services are authorized under the Draft Contract, subject to approval by the Park Superintendent. The NPS would like to expand access to other NPS units in and around New York Harbor with water transportation routes that are more effective or convenient than existing land-based transportation. Such routes could greatly enhance access to the rich recreational and natural resources in the area's national parks and provide connections between sites that share historical stories. Such routes may provide access to Governors Island and Gateway National Recreation Area (potential destinations include Sandy Hook, Fort Wadsworth, and Riis Landing). Offerors should consider potential links to existing public transportation services to create loops or "trails" and could consider working with one of the NPS not-for-profit partners to provide interpretative programs as part of this service.

## Food and Beverage Service

Food and beverage service on boats is required under the Draft Contract, and the Superintendent will approve the menu and prices. The emphasis will be on pre-prepared healthy and nutritious snack products such as fruits, vegetables and low-fat items.

## Merchandise Sales

Merchandise sales on board will emphasize visitor convenience items such as maps, film, cameras and batteries. Only limited souvenirs that relate to the Park's purpose, significance, and interpretive stories will be authorized and these will be approved by the Superintendent in advance.

## Visitor Experience and Interpretation

The visitor experience at the Statue of Liberty National Monument and Ellis Island includes the time visitors spend planning their trip, purchasing a ticket, waiting for the ferry, boarding the ferry, and riding the ferry to and from the Park. The Concessioner will provide information using a variety of methods to help visitors plan their trip and facilitate their visit. All concession employees will be courteous to visitors and have a customer-service orientation. To help improve the visitor experience from the trip planning stage through the visit to the Park, the Concessioner will incorporate interpretive themes and other Park messages into the ferry services through approved media.

- **In-transit recorded interpretive program:** An NPS-approved, recorded program is required during the ferry ride to help introduce visitors to the Park and New York Harbor.
- **Tickets:** Tickets and monument tour passes will have an interesting and appropriate graphic design provided or approved by the Superintendent and should be considered souvenirs of the trip to the Park.
- **Audio Tour Sales:** Under the new contract, the Concessioner will sell optional audio tours in combination with ferry tickets. The Park intends to work with a non-profit partner to develop the audio tour. The Concessioner will not be responsible for program development, management, content of the audio tour or for distribution of audio equipment such as headsets. Headsets will be available to visitors once they reach the islands in exchange for their proof of purchase. The Concessioner will bundle the audio tour as part of the overall transportation package and pass the revenue to the non-profit partner organization in exchange for a small handling fee to cover costs to the concessioner for conducting the transaction.
- **Signage and Display Graphics:** All signs will conform to NPS graphic standards (<http://www.hfc.nps.gov/uniguide/>) and have a design and interpretive message provided or approved by the Superintendent. The Concessioner will utilize branding and marketing products and activities designed by and to promote the National Park Service and activities in or around the New York City Harbor District. The Concessioner may also participate in developing strategies and design of such activities in consultation with the NPS.

## **Reservation and Ticketing System**

The Concessioner will be required to implement a reservation and ticketing system conforming to NPS specifications in the Draft Contract. These requirements include the ability to: manage reservations, issue tickets in advance, accept phone and Internet reservations (including international access), allow users to print tickets from their personal computers, bundle audio tours and free monument tour passes with ferry tickets, have an Internet interface explaining all services to visitors in multiple languages, enable generation of reports about visitor trends and other relevant statistics, and allow visitors to purchase tickets from the NPS assigned location at the ticket kiosk in Castle Clinton National Monument, at the Liberty State Park location, as well as from automated kiosks in other suitable locations integrated with the Internet system. Sales will be available through use of credit and debit cards.

The Concessioner may provide and operate the reservation and ticketing system, contract for the service with a private reservation and ticketing service, or use the reservation services through the federal government interagency National Recreation Reservation Service (NRRS). The NRRS includes reservations for camping, tour tickets, and picnic shelters, etc., in federal recreation areas including National Park Service areas around the country and is being expanded to provide a one point-of-access to information about nationwide recreational opportunities through the website at <http://www.recreation.gov>.

## **Employee and Freight Transportation**

Under the Draft Contract, employees and people on official business with the Park will travel on the NPS Park boat during its operating schedule and, otherwise, by Concessioner boats, at no charge, on a limited basis, provided space is available. Freight transportation to Liberty Island will not be required but could be negotiated directly by NPS, concessioners, and others and implemented with prior written approval of the Superintendent.

## **Island Support Facilities**

The concessioner will be assigned concession facilities on both islands including landing/departure facilities that are integral to the transportation services and visitor experiences. The Concessioner will be required, at its sole expense to operate and maintain the assigned landing/departure facilities on the islands (see Exhibit C of the Draft Contract) in compliance with all Applicable Laws.

## **Embarkation Facilities**

**Battery Park.** As of the effective date of the Contract, the Concessioner will be required to operate landing and docking/embarkation facilities at NPS-approved locations in, adjoining, or in proximity to Battery Park through a License Agreement or other appropriate agreement with the City of New York Parks and Recreation Department (City Parks). The use of landing slips 3, 4, and 5 and adjacent walkways will be authorized by the License. City Parks has entered into a Memorandum of Understanding (MOU) with the NPS agreeing to seek the approval required by applicable City laws, rules and regulations to grant a license to operate a ferry service for the

transportation of passengers between Battery Park and Liberty and Ellis Islands to the party which is designated by the NPS to provide such service and enters into a concession contract with the NPS. It is anticipated that the license will require similar responsibilities as the license currently granted for this purpose, and the fee for the license payable to City Parks is projected to require an annual payment of either a \$2,000,000 minimum or eight percent (8%) of the gross revenues from tickets sales for embarkation from Battery Park for the first five years of the concession contract, and 8½% for the second five years, whichever is higher. Subject to all necessary approvals, the term of the license will be coterminous with the period for which the ferry concession operator is authorized to provide ferry services to Liberty and Ellis Islands by the NPS.

The existing License and the MOU between NPS and City Parks are included in Appendix K. During the term of this contract, the NPS may require the Concessioner to move to another NPS-approved embarkation location in, adjoining, or in proximity to Battery Park. The concessioner's operations at this alternate location will be authorized by an agreement with similar terms to this License. The Concessioner will bear its own costs for any such move. In accordance with the MOU with City Parks, under these conditions, and after formal notification by NPS to City Parks, City Parks agreed not to pursue any claims for lost revenue from early termination of the Concessioner's license with City Parks.

**Liberty State Park.** The Concessioner will be required to operate landing and docking, embarkation facilities for ferry services to Liberty and Ellis Islands from Liberty State Park in New Jersey through an MOU with the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry (DEP). The State has entered into an MOU with the NPS which provides that the future MOU with the Concessioner will be similar to the existing MOU. The MOU will include a visitor staging area and ticketing location in the CRRNJ Railroad Terminal as well as a pier. DEP signed an MOU with the NPS agreeing to grant an MOU to the successful offeror for the Draft Contract. It is anticipated that the MOU will require annual payment of either \$100,000 or 7½% of the gross receipts derived from the Liberty State Park operation, whichever is higher. The current MOU is included in Appendix L with the MOU between NPS and DEP.

**Security Screening Facilities.** NPS will continue to operate the visitor screening facilities at Battery Park and Liberty State Park. All passengers and employees are screened prior to boarding the boats. Daily screening of the ferries consists of sweeping the vessels for explosives by specially trained explosive detection canines, managed by USPP officers. On a daily basis, prior to placing the vessel in service, the Concessioner will be required to make available to the USPP each vessel scheduled for service to, from and between Liberty and Ellis Islands at least one hour prior to departure at either the Battery Park or Liberty State Park screening sites.

## FINANCIAL AND OPERATING DATA

The Proposal Package requires Offerors to develop financial projections based on the services to be provided. In order to assist Offerors in the development of these projections, information regarding historical utilization and operating data as well as some baseline projections for the services to be provided under the Draft Contract are presented on the following pages. Please note that operating projections are only estimates based on National Park Service assumptions that were developed taking into account appropriate historical data, industry standards, and other comparable business information.

Some or all of the projections may not materialize and unanticipated events may occur that will affect these projections. Due to the fact that authorized services are services that may or may not be offered by the Concessioner, the estimates provided do not include revenues or expenses associated with authorized services. The Offeror should be appropriately cautious in the use of all operating estimates. Although the NPS does provide some financial projections, Offerors are responsible for producing their own prospective financial analyses and may not rely on the NPS projections. The NPS does not warrant and assumes no liability for the accuracy of the financial projections or estimates contained in this Prospectus.

### *Historical Contract Revenues*

The concession operation generated gross receipts of approximately \$35.5 million in 2005. Total concession revenues increased from 1995 to 2005 at an average annual rate of 7.1%, and from 2000-2005 at an average annual rate of 7.6%, despite the effects of the events of 9/11/01. The following table displays gross receipts over the last five years.

**Exhibit 20**  
Total Concession Revenue, 2001-2005

2001	2002	2003	2004	2005
\$21,628,500*	\$23,313,406	\$25,073,164	\$24,755,781**	\$35,490,323

Source: Concessioner Annual Financial Reports

\* This figure reflects the Park's closure from September 11, 2001, until December 20, 2001, when new security measures were put into place.

\*\* This figure represents the 9-month period 4/2004 through 12/2004. Prior to 2004, annual gross revenue figures correspond to a fiscal year ending in March. The fiscal year was changed to correspond to the calendar year in 2005. The Existing Concessioner reported gross revenue of \$27,687,052 for calendar year 2004.

Fare revenue typically accounts for over 90% of total concession revenue, as shown in the following table. The departmental shares of total revenue presented in Exhibit 21 have been stable over time.

**Exhibit 21**  
**Revenue Breakout by Department, 2005**

<b>Department</b>	<b>Share</b>
Ferry Transportation	90.7%
Food and Beverage Sales	4.4%
Merchandise Sales	2.5%
Audio Tour Sales	2.4%

*Source: NPS*

### Ferry Service Revenues

Historical ferry service revenues are presented below:

**Exhibit 22**  
**Ferry Service Revenue**

<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004*</b>	<b>2005</b>
\$20,025,000	\$22,004,000	\$22,882,000	\$22,123,222	\$32,188,000

*Source: Concessioner Annual Financial Reports*

\* 2004 data is for the 9-month period 4/2003-12/2004. Please see note to Exhibit 20.

Based on a projected visitation growth rate of 3.0%, similar to the “steady state” growth rate of 3.7% calculated between the midpoints of the 1991-1995 and 1996-2000 periods, expected ferry service revenues over the first three years of the contract period are presented in Exhibit 23. Fares at the beginning of the next contract will be: \$12.00 Adult, \$10.00 Senior, \$5.00 Child. Fares will remain constant until 2011. Note: The year “2008” corresponds to the period 9/17/07 to 9/16/08 in all of the projections presented here.

**Exhibit 23**  
**Ferry Service Revenue Projections, 2008-2010**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Ferry Service Revenue	\$36,769,000	\$37,872,000	\$39,008,000

*Source: NPS*

To maintain affordable fares for visitors from varying economic backgrounds, the Draft Contract provides a fare adjustment formula. The first fare increase may be granted to be effective no sooner than January 1, 2011. Fare increases will be based on inflationary growth as documented by the Consumer Price Index for All Urban Consumers in the New York City metropolitan area, available from the Bureau of Labor Statistics (<http://www.bls.gov/cpi/home.htm>). Additional details on the fare adjustment formula are presented in the Operating Plan, Exhibit A of the Draft Contract. Projected fares for the period 2011-2013 are \$13.30 Adult, \$11.10 Senior, \$5.60 Child, based roughly on expected inflation over 2008-2010 (fares will be rounded to the nearest \$0.10 increment). Ferry service revenue projections based on those fares are presented in Exhibit 24.

**Exhibit 24**  
**Ferry Service Revenue Projections, 2011-2013**

	<b>2011</b>	<b>2012</b>	<b>2013</b>
Ferry Service Revenue	\$45,055,000	\$46,355,000	\$47,598,000

Source: NPS

**Statue of Liberty and Ellis Island Cruise (Island Cruise)**

The estimated total market demand for cruises that include close up views of the Statue of Liberty is over one million passengers per year, and the Concessioner is expected to capture between one quarter to one third of this total demand. This corresponds to over 300,000 passengers, which is approximately 10% of demand for the ferry service. Applying this 10% ratio going forward, and assuming the same pricing schedule as the ferry service, Island Cruise revenue is projected to total 10% of ferry revenue in each year.

**Exhibit 25**  
**Island Cruise Revenue Projections, 2008-2010**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Island Cruise Revenue	\$3,677,000	\$3,787,000	\$3,901,000

Source: NPS

**Food and Beverage**

Based on historic trends and the projected schedule of ferry fares, food and beverage revenue is projected to total 5.0% of fare revenue going forward. Food and beverage service will be offered on both the ferry service and the Island Cruise. Exhibit 26 presents food and beverage revenue projections.

**Exhibit 26**  
**Food and Beverage Revenue Projections, 2008-2010**

	<b>2008</b>	<b>2009</b>	<b>2010</b>
Ferry Food and Beverage Revenue	\$1,857,000	\$1,912,000	\$1,970,000
Island Cruise Food and Beverage Revenue	\$186,000	\$191,000	\$197,000
Total Food and Beverage Revenue	\$2,043,000	\$2,103,000	\$2,167,000
Food and Beverage Revenue Per Passenger	\$0.53	\$0.53	\$0.53

Source: NPS

## Merchandise

Based on historic trends and the projected schedule of ferry fares, merchandise sales revenue is projected to total 3.2% of fare revenue going forward. Visitor convenience items and limited souvenirs will be offered on both the ferry service and the Island Cruise. Merchandise sales revenue projections are presented in Exhibit 27.

**Exhibit 27**  
**Merchandise Sales Revenue Projections, 2008-2010**

	2008	2009	2010
Ferry Merchandise Sales Revenue	\$1,066,044	\$1,098,026	\$1,130,966
Island Cruise Merchandise Sales Revenue	\$106,677	\$109,877	\$113,173
Total Merchandise Sales Revenue	\$1,172,721	\$1,207,903	\$1,244,140
Merchandise Sales Revenue Per Passenger	\$0.31	\$0.31	\$0.31

Source: NPS

## Audio Tour

The Concessioner will offer bundled audio tour tickets as an optional part of the overall transportation ticket. The Concessioner will retain a portion of the revenue as a handling fee to cover direct costs to the Concessioner for selling tickets for the tour and will pass the remaining revenue to the non-profit partner organization. The Concessioner will not be responsible for program development, management, content of the audio tour, or distribution of equipment and will not derive any revenue other than the handling fee, from the audio tour.

## Total Estimated Future Revenue

Based on the previously detailed revenue estimates, Exhibit 28 presents total projected future revenues, which incorporates anticipated future market conditions.

**Exhibit 28**  
**Total Estimated Future Revenue**

Department	2008	2009	2010
Ferry Service	\$36,769,000	\$37,872,000	\$39,008,000
Island Cruise	\$3,677,000	\$3,787,000	\$3,901,000
Food & Beverage	\$2,043,000	\$2,103,000	\$2,167,000
Merchandise	\$1,172,000	\$1,208,000	\$1,244,000
<b>Total</b>	<b>\$43,661,000</b>	<b>\$44,970,000</b>	<b>\$46,320,000</b>

Source: NPS

## ***Expenses***

Projected expenses are based on historical expenses, as well as industry comparables.

Cost of goods sold is estimated at 30.0% to 35.0% of food and beverage and merchandise sales, or 2.0% to 2.5% of gross revenue.

### **Direct Expenses**

Direct labor expense is estimated to amount to 25.0% to 30.0% of gross revenue. This expense includes all non-administrative workers including captains, chief engineers, deckhands, food service/merchandise sales workers and maintenance workers. The assumption is based in part on a maintenance operation similar to that of the Existing Concessioner. Offerors are not required to pattern their proposed maintenance program after the Existing Concessioner's, or to pursue locating their maintenance operation in the same location as the Existing Concessioner's operation.

The Existing Concessioner pays wages as specified in its current labor agreements with the Local 333, United Marine Division, I.L.A., AFL-CIO. The Department of Labor has determined that this Contract is subject to the terms of the Service Contract Act, 41 U.S.C.351-358. Future wage rates are projected to fall in line with the rates specified in these agreements. Copies of the current agreements are presented in the Attachment to Exhibit B of the Draft Contract.

Fuel expense is estimated at 2.5% to 3.0% of gross revenue. This is a conservatively high estimate based on fuel prices similar to those that prevailed in 2005.

Repair and maintenance expense, excluding labor, is estimated at 2.5-3.5% of gross revenue based on the historic average. This expense includes the Concessioner's maintenance responsibilities as identified in the Draft Contract's Maintenance Plan (Exhibit E). It does not include capital improvements, which will be funded by the NPS as specified in the Draft Contract.

Other direct expenses are estimated to total between 2.0% and 4.0% of gross revenue.

### **General and Administrative Expenses**

Officer and other salaries are projected to total between 5.0% and 7.0% of gross. This estimate includes all administrative and managerial positions.

Insurance expense is estimated at 4.0% to 6.0% of gross. A breakdown of required insurance coverage and additional detail is provided in Exhibit F of the Draft Contract.

Other general and administrative expenses are estimated to total between 11.0% and 14.0% of gross revenue. These expenses include legal expenses, office supplies, travel, telecommunications, contributions, audit expenses, advertising, and other administrative costs.

### Fixed Expenses

Rent expense is estimated at 1.5% to 2.5% of gross revenue and includes estimated rental payments for a maintenance yard, corporate headquarters, and back office operations. This expense is assumed to include utilities costs.

The concessioner will pay docking fees at both departure locations as described above, Future Concession Operations, Embarkation Facilities Section of this Business Opportunity. For projection purposes, NPS assumed 7.5% to 8.5% of gross revenues for docking fees. Exhibit 29 summarizes the expense projections described above.

**Exhibit 29**  
**Expense Estimates as Share of Gross Revenue**

<b>Expense</b>	<b>Share</b>
Cost of Goods Sold	2.0%-2.5%
Direct Labor	25.0%-30.0%
Fuel	2.5%-3.0%
Repair and Maintenance	2.5%-3.5%
Other Direct	2.0%-4.0%
Officer and Other Salaries	5.0%-7.0%
Insurance	4.0%-6.0%
Other General and Administrative	11.0%-14.0%
Rent	1.5%-2.5%
Dockage	7.5%-8.5%
<b>Total</b>	<b>63.0%-81.0%</b>

*Source: National Park Service*

Offerors are not bound by these projections. In preparing expense estimates, Offerors should take into account their own allocations of general and fixed expenses across their entire business operation. It is expected that some Offerors may project allocations of general and fixed expenses that are lower than the estimates presented here.

### Other Factors

Prospective Offerors should consider the potential effects of the following factors when preparing their proposals. The NPS considered these factors while developing this Prospectus and the estimates contained herein.

- **Weather:** Since the Park is partly an outdoor experience, weather can have important impacts on visitation. Cold, windy or rainy weather could affect visitation.
- **Tourism industry-wide factors:** A terrorist attack, contagious disease such as bird flu, or other scenarios could have a significant effect on air travel and on the tourism industry as a whole. Since the majority of visitors to the Park come from outside the immediate area of New York and New Jersey, such scenarios could have substantial impacts on Park visitation.
- **National Park Service improvement projects:** The National Park Service may fund and implement improvements, subject to available appropriations and compliance with Applicable Law, to areas in which the Concessioner operates during the course of the Draft Contract. Efforts will be made to minimize impacts to concessions operations and services. Examples include capital improvements to assigned dock facilities and dredging projects.

2006 PROSPECTUS - FOR REFERENCE USE

## INVESTMENT ANALYSIS

The Existing Contract requires the Existing Concessioner to sell and transfer to any successor all personal property of the Concessioner used or held for use in connection with concession operations. Section 12(b) of the existing contract states: “(i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in concessioner and government improvements, if any, as defined under this contract, and all other property of the Concessioner used or held for use in connection with such operations and (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from the Concessioner such possessory interests, if any, and such other property, and to pay the Concessioner the fair value thereof... .” A copy of the Existing Contract, CC-STLI001-89, as amended, can be found in Appendix A to this Prospectus. NPS estimates of these costs are stated below.

Offerors should not rely on NPS estimates in preparing and submitting proposals in response to this Prospectus. It is the responsibility of Offerors to make their own estimates of the compensation that must be paid to the Existing Concessioner under the terms of the Existing Contract. A list of property that the NPS identified as used or held for use in current concession operations, that the successful Offeror may be required to purchase pursuant to the Existing Contract, is included in Appendices F and G to this Prospectus. The list is not necessarily complete. Offerors must make their own determinations as to the scope of property that is to be purchased from the Existing Concessioner.

### Personal Property

Marine – Marine Personal Property to be sold and transferred by the Existing Concessioner to a successor has an estimated fair value of \$18.7 million in September 2007. This estimate includes all seven ferry boats and the equipment and fixtures in the maintenance shop operated by the Existing Concessioner. For purposes of NPS’s analysis, it is assumed that none of the existing boats will need to be replaced over the next contract period.

Non-Marine – The estimated fair value of the Existing Concessioner’s non-marine personal property to be transferred to a successor is estimated to be approximately \$668,000 in 2007. There are numerous items included within this group of property, including office equipment and business systems, furniture, and fixtures. Due to depreciation and obsolescence, some of this personal property will need to be replaced over the contract period.

Inventory – The Existing Contract also requires the Concessioner to purchase the operating inventory from the Existing Concessioner. The estimated value of this inventory, which consists of food items and merchandise, is \$40,000 at the beginning of the next contract period, based on historical inventory levels.

### Negotiation and Dispute Resolution

The actual purchase price for all marine and non-marine personal property and inventory will be negotiated by the Existing Concessioner and its successor. Section 12(b) of the Existing Contract defines the valuation formulas for this property.

If the Existing Concessioner and the Concessioner cannot agree upon the value of any item or items, resolution will occur by the process described in the Existing Contract.

### Required Initial Investment

The NPS estimates of the initial investment required of the Concessioner are presented in Exhibit 30.

**Exhibit 30**  
**Estimated Required Initial Investment**

Marine Personal Property	\$18,732,000
Non-Marine Personal Property	\$668,000
Inventory	\$40,000
<b>Total</b>	<b>\$19,440,000</b>

*Source: NPS Estimates*

Offerors should also consider investments in miscellaneous start-up costs and working capital that would be necessary in addition to the estimated required investments presented in Exhibit 30.

### FRANCHISE FEE

The minimum franchise fee under the Draft Contract is **18.0** percent of annual gross receipts.

### TERM AND EFFECTIVE DATE OF DRAFT CONTRACT

This Draft Contract is for a term of ten years beginning on its effective date, estimated as September 17, 2007. The effective date of the Draft Contract is subject to change prior to contract award if determined necessary by the NPS. The expiration date of the Draft Contract will be changed to continue the same term length from any adjustment to the effective date.

### SITE VISIT

A one-day site visit for prospective Offerors will occur on Tuesday, January 9, 2007. At that time, an overview of the Park will be provided by NPS Concession Program and Park managers, and a tour will be given of existing concession facilities associated with this Draft Contract. ALL PARTIES intending to attend the scheduled site visit MUST SEND AN EMAIL MESSAGE TO NER\_STLI\_Concessions@nps.gov, Attention: David Funk, (413) 323-9170, by COB Thursday, January 4, 2007 in order to receive further instructions and for security screening purposes. The email should provide at a minimum a listing all attendees by full name, organization, address and phone contact number. In addition the email address and phone contact number of the organization's primary contact is required for coordination purposes.

Further information and additional directions will be sent by return email message to the organization's identified primary contact.

# **PROPOSAL INSTRUCTIONS**

**For Ferry Service  
at Statue of Liberty National Monument and Ellis Island**

**CC-STLI001-07**

*Department of the Interior*

**National Park Service**

2006 PROSPECTUS FOR REFERENCE USE

## PROPOSAL INSTRUCTIONS

### 1) Response Requirements for Submission of Proposal

- a) This Prospectus is issued under the authority of 36 CFR Part 51 (incorporated by reference herein). In the event of any inconsistency between the terms of this Prospectus and 36 CFR Part 51, 36 CFR Part 51 will control. The Service presumes that all persons that submit a proposal in response to this Prospectus are informed of the provisions of 36 CFR Part 51.
- b) Proposals for the draft contract must be received by the due date and time shown on the front page of this Prospectus.
- c) 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 Service 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.
- d) Information “required by the Prospectus” refers to information expressly required by the Prospectus and that is material, as determined by the Service, to an effective evaluation of the proposal under the applicable selection factor.

### 2) Form in Which Proposal Must be Submitted

- a) Offerors 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 a signed Offeror’s Transmittal Letter without alteration (except for filling in the indicated blanks) and a completed copy of Part A of the Proposal Package will make your proposal non-responsive.
- b) Please number each page and section in your completed proposal. Add information to your proposal only to the extent that it is necessary and relevant to respond to the factor. Each page should have a heading identifying the selection factor and subfactor to which the information contained on the page responds. It is important that your response stays within the organizational framework in the Proposal Package and provides all relevant information directly in response to each selection factor. However, the Service may consider relevant information contained elsewhere in a proposal in assessing the proposal’s response to each particular selection factor.

### 3) Submission Protocol

- a) Submit 6 (six) identical hard copies and one electronic copy, identical to the hard copy. In order to facilitate discussion and review of proposals among evaluation panel members, the electronic copy must be in a format that can be shared, copied, and passed easily. Microsoft Office programs or an Adobe PDF electronic version that allows for

copying and pasting of text using Adobe Reader software is acceptable. However, you must provide all financial spreadsheets in Microsoft Excel. In the event of a discrepancy between the electronic copy and the hard copies, information on the hard copies will control.

- b) Enclose copies in a sealed envelope with the following marked on the envelope:
  - (1) "CONCESSION PROPOSAL, MAILROOM DO NOT OPEN"
  - (2) The due date specified on the inside cover of the Prospectus for receipt of the proposal by the Service.
  - (3) The name and address of the Offeror.
- c) The Service, at the appropriate address, must receive proposals by the time and date shown on the inside cover of this Prospectus.

#### **4) Proposals Considered Public Document**

- a) All proposals submitted in response to this Prospectus may be disclosed by the Service to any person, upon request, to the extent required or authorized by the Freedom of Information Act (5 USC 552).
- b) If you believe that your proposal contains trade secrets or confidential commercial and financial information exempt from disclosure under the Freedom of Information Act, 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.

- c) Information so identified shall not be made public by the Service except in accordance with law.

#### **5) Questions**

If you do not understand something in this Prospectus, you must submit your questions in writing as identified on the inside cover of this Prospectus. Your questions must be submitted both in hard copy and by electronic medium (either as a disk enclosed with the hard copy or by a simultaneous email message to [NER\\_STLI\\_Concessions@nps.gov](mailto:NER_STLI_Concessions@nps.gov)) by the

date and to the person noted on the inside cover of the Prospectus. Your questions must specify the section of the Prospectus that is the subject of your inquiry. The 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 may not be answered. Because the Service must provide equal information to all Offerors, there must be sufficient time allowed to inform all interested parties of such questions and answers.

## 6) Evaluation of Proposals

- a) The Service will apply the principal selection factors and secondary factors as set forth in 36 CFR Part 51 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation discussing any subfactors when applicable and other supporting information.
- b) For each selection factor, the Service 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 principal 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). Secondary selection factor 1 will be scored from zero to three, secondary selection factor 2 will be scored from zero to two, secondary selection factor 3 will be scored from zero to one. The Service then will assign a cumulative point score to each proposal based on the assigned score for each selection factor.

- c) 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 new 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 Service. 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.

- d) Secondary Selection Factors. The secondary selection factors are:

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 the

park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling.

Secondary Selection Factor 2. The quality of the Offeror's proposal relating to the required Island Cruise Service.

Secondary Selection Factor 3. The quality of the Offeror's proposal relating to Additional Ferry Routes in New York Harbor.

## **7) Process of Selecting the Best Proposal**

The Service will select the responsive proposal with the highest cumulative point score as the best proposal. If two or more responsive proposals receive the same highest point score, then the Service will select as the best proposal (from among the responsive proposals with the same highest point score) the responsive proposal that the Service 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 Selection 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)).

## **8) Preferred Offeror Determinations**

The National Park Service Concessions Management Improvement Act (P.L. 105-391) includes a preference for a preferred Offeror to the award of a qualified concession contract.

Under the provisions of 36 CFR Part 51, the Service has determined that this is not a qualified concession contract, and therefore, no preferred Offeror for this contract exists.

## **9) Congressional Review Process**

Concession contracts issued for a term of more than ten 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 annual gross receipts are anticipated to exceed \$5,000,000.

## **10) Cautions to Offerors about Submission and Evaluation of Proposals**

- a) All information regarding this Prospectus will be issued in writing. No Service representative 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.
- b) The proposal includes the selection factors to be used by the Service to evaluate proposals. Under each factor, the 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.

- c) This Prospectus and related documents reflect the views and objectives of the Service with regard to the proposed concession operation. Should you believe any statement in the Prospectus to be inaccurate, you must submit questions to the Service both in hard copy and by electronic medium (either as a disk enclosed with the hard copy or by a simultaneous email message to [NER\\_STLI\\_Concessions@nps.gov](mailto:NER_STLI_Concessions@nps.gov)) by the date and to the person noted on the inside cover of the Prospectus. Send your comments to the office named in the cover of this Prospectus for the receipt of proposals.
- d) The information provided in this Prospectus, including the Appendices, is provided to allow Offerors to understand the operations and terms of the new concession contract. Offerors are encouraged to thoroughly review all information and required submittal documents before beginning to prepare a proposal.
- e) A proposal to expand the scope of investment, facilities, and/or services beyond those called for in this Prospectus will not be considered in the evaluation of proposals.
- f) 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.
- g) If you propose to make any financial commitments and considerations in response to any selection factor, your proposal will be closely reviewed and analyzed against your financial statements and supporting documents with appropriate review of feasibility. Such documents reviewed and analyzed will include but not be limited to the Business Organization and Credit Information, pro forma income statements, audited financial statements and balance sheets contained in your proposal.
- h) The proposal and related materials submitted should reflect the entire proposal you are making. The 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, and other appropriate information. Do not assume that the Service knows anything about you or your proposal. Do not assume that any information about you or your proposal, any previous correspondence or previous submissions are in the possession of or will be considered by the Service. This is true even if you are the current concessioner or have operated another concession within the park area or National Park System. In making its selection of the best proposal submitted in response to the Prospectus, the Service will consider all information submitted by offerors and has the right but not the obligation to consider any other available information related to the matter.
- i) The attached draft concession contract and its exhibits set forth the terms and conditions under which the concession operation is to be conducted. The Service may amend a Prospectus and/or extend the submission date prior to the proposal due date. The Service also may cancel a solicitation at any time before the award of the concession contract if the Service 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).

- j) Except as provided under 36 CFR § 51.4, the terms, conditions and determinations of the Prospectus and the terms and conditions of the draft concession contract as described in the Prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded.
- k) The Service 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 Service to do so, and unless the Service provides all Offerors that submitted proposals a similar opportunity to amend or supplement their proposals.
- l) The selected Offeror must execute the concession contract promptly after the selection of the best proposal, and within the time period specified by the Service. If the selected Offeror fails to execute the concession contract within the time period specified by the Service, the Service will select another responsive proposal for award of the concession contract, or will cancel the selection and may resolicit a new concession contract.
- m) 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 identified on the front page of this Prospectus.
- n) The 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, including, without limitation, investments, facilities, services, and other commitments.
- o) 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 Service. Offerors may not rely on any representations of the Service in this regard.
- p) Unless otherwise expressly stated, the new concession contract does not permit the provision of visitor services by the concessioner through subconcession or other third party agreements, including management agreements. Accordingly, the entity that is to be the Concessioner under the new concession contract, unless the contract expressly states to the contrary, must have the capability to provide all visitor services under the new concession contract without the assistance of third parties. Joint ventures, partnerships, and other business entities are permitted.

# **PROPOSAL PACKAGE**

**For Ferry Service  
at Statue of Liberty National Monument and Ellis Island**

**CC-STLI001-07**

*Department of the Interior*

National Park Service

2006 PROSPECTUS FOR REFERENCE USE

## PROPOSAL SUBMISSION TERMS & CONDITIONS

- 1) The Offeror's Transmittal 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 terms and conditions of the Contract. The letter must bear original signatures and be included in the Offeror's response package. The Service 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 unconditional Offeror's Transmittal Letter.
- 2) The Proposal Package is drafted upon the assumption that an Offeror is the same legal entity that will execute the new concession contract as the Concessioner. 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 financially and managerially capable of carrying out the terms of the contract. In addition, the Offeror must unconditionally state and guarantee in its proposal that the Offeror will provide the Concessioner with all funding, management and/or other resources that the proposal offers.

To: Regional Director  
Northeast Region  
National Park Service  
200 Chestnut Street  
Philadelphia, PA 19106

Dear Regional Director:

The Offeror hereby agrees to provide visitor services at Statue of Liberty National Monument and Ellis Island in accordance with the terms and conditions specified in the Concession Contract No. STLI001-07, provided in the Prospectus issued by the public notice as listed on [www.fedbizopps.gov](http://www.fedbizopps.gov) and to execute the draft concession contract without substantive modification (except as may be required by the National Park Service pursuant to the terms of the Prospectus).

The Offeror is enclosing the required "PROPOSAL" which, by this reference, is made a part hereof.

The Offeror certifies that the information furnished herewith is complete, true, and correct, and recognizes that false statements may subject the Offeror to criminal penalties of 18 U.S.C. 1001.

The Offeror agrees to meet all the minimum requirements of the draft concession contract, and the Prospectus, and that the Offeror has provided all of the mandatory information specified in the Prospectus.

The Offeror certifies in accordance with 43 CFR Part 42 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.

The Offeror, by submitting this Proposal hereby agrees, 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.
4. To operate under the NPS-approved rates for services provided to visitors.
5. To acquire the Personal Property of the existing Concessioner under the terms of the existing concession contract.
6. To resolve any dispute regarding the value of the property of the existing Concessioner in accordance with the terms of the existing concession contract and to allow the Service to participate in the Personal Property value determination in the same manner and to the same extent as provided for with respect to Possessory Interest value determinations as described in 36 CFR Part 51 Subpart H.
7. [Include only if the Offeror is not to be the Concessioner under the draft concession contract.] To provide the entity that is to be the Concessioner under the draft concession contract with the funding, management and other resources described in our proposal.

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 \_\_\_\_\_

\_\_\_\_\_

2006 PROSPECTUS - FOR REFERENCE USE

**CERTIFICATE OF Limited Liability CORPORATION (LLC) OFFEROR**

(Offerors who are not LLCs should skip this certificate)

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the LLC named as Offeror herein; that \_\_\_\_\_, ho 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 LLC 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 \_\_\_\_\_

\_\_\_\_\_

2006 PROSPECTUS - FOR REFERENCE USE

## PART A

The minimum requirements for the draft concession contract are identified in this Part A of the Proposal Package. If the Offeror, in its transmittal letter, does not agree to these minimum requirements, the proposal will be considered non-responsive. A copy of Part A must be included in the Offeror's response package. (The requirements of Part B of this Proposal Package outline detailed subfactor submissions referenced in this part, as well as additional secondary 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.***

The Offeror agrees 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 draft 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.***

The Offeror agrees to comply with all the terms and conditions specified in the Concession Contract, including its exhibits.

The Offeror agrees to operate at the NPS-approved rates during the term of the Concession Contract until such time as a new rate schedule is approved as outlined in the draft concession contract. Approved rates upon contract effective date are \$12.00 Adult, \$10.00 Senior, and \$5.00 Child.

The Offeror agrees to accept the Concession Facilities and any assigned government personal property "as is," as required by the draft concession contract, Section 8(f).

The Offeror agrees to embark from the points specified and/or approved by NPS.

The Offeror accepts the draft Operating Plan included as Exhibit A of the Draft Contract.

The Offeror accepts the draft Maintenance Plan included as Exhibit E of the Draft Contract.

The Offeror agrees to implement an equal opportunity program and comply with the terms of the equal opportunity and handicapped access requirements of the Draft Contract.

The Offeror agrees to comply with all Applicable Laws regarding wages, including, without limitation, the terms of the Service Contract Act.

The Offeror agrees to develop and implement an effective documented Risk Management Program, prior to the first scheduled passenger carrying trip and in accordance with the requirements of the Draft Contract, particularly its draft Operating Plan, Exhibit A.

The Offeror agrees to meet the public liability and property insurance requirements of the draft concession contract Exhibit F and agrees to provide property and liability insurance of at least the types and levels of coverage described in the draft concession contract.

*Principal Selection Factors 3 and 4 do not have minimum requirements for Part A.*

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

The Offeror agrees to at least the minimum Franchise Fee of **18.0 percent** of annual gross receipts.

2006 PROSPECTUS - FOR REFERENCE USE

## PART B

### **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. (0-5 Points)***

#### **Subfactor 1a: Natural Resources**

One NPS objective is to protect, preserve and maintain the natural resources of the Statue of Liberty National Monument and Ellis Island within the Park's surrounding ecosystem. Specifically, the NPS would like the concession operations described in this Prospectus to protect the water quality, air quality, soundscape and other natural resources of the Park and New York Harbor. While Applicable Laws ensure some measure of protection, the NPS is interested in knowing how your proposed operation will be managed to meet the objective.

- 1) Describe what standards, methods and practices you will apply to protect and mitigate any unavoidable impact on the water quality, air quality, soundscape and other natural resources of the Park and New York Harbor while providing the required and authorized services.
- 2) When addressing water quality, describe how you will eliminate or minimize waste, spills and releases of, or pollution from, petroleum products, wastewater and other hazardous and solid wastes that will be used or generated by your proposed operations. Specifically address vessel fuel, sewage management and waste stream management at all passenger embarkation and other docking facilities both within and outside the Park.
- 3) Describe how you propose to update, retrofit, and/or modify the vessels used in the operation throughout the term of the contract to ensure that best management and other practices are implemented to protect natural resources and mitigate the impacts of your operation. Describe the monitoring system(s) you will use to determine when any such updates, retrofits, and/or modifications are appropriate and how you will schedule the updates, retrofits, and/or modifications to avoid disruption of services.
- 4) If you propose to add or replace vessels during the term of the contract to meet the requirements of the contract, describe how you will ensure that the new vessels meet the highest environmental standards for protecting the water quality, air quality, soundscape and other natural resources of the Park and New York Harbor.
- 5) Describe how you will inform and educate Park visitors about the Park to build support and advocacy for protection of natural resources in a manner that will complement, be consistent with, and enhance NPS interpretive efforts.

**Subfactor 1b: Historic and Cultural Resources**

Another NPS objective is to protect, preserve and maintain the historic and cultural resources of the Statue of Liberty National Monument and Ellis Island. One method to accomplish this objective is to inform and educate Park visitors by interpreting historic and cultural resources.

Describe how you will inform and educate Park visitors to build support and advocacy for protection of the Park's historic and cultural resources in a manner that will complement, be consistent with, and enhance NPS interpretive efforts. In particular, describe:

- 1) The interpretive messages and programs you propose on primary ferry vessels for Park visitors who will disembark and experience the historic and cultural resources on Liberty and Ellis Islands.
- 2) Additional interpretive messages and programs you propose on Island Cruise vessels for Park visitors who will experience Park historic and cultural resources from off-shore.
- 3) Other opportunities you will use to inform and educate Park visitors about Park historic and cultural resources such as providing information and signage at ticket windows, embarkation points, web sites, and other points of contact with Park visitors.
- 4) How you will work with Park staff to develop your interpretive messages and programs to complement, be consistent with, and enhance NPS interpretive efforts.
- 5) The employee training you propose to help accomplish this objective.

**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.**

**(0-5 Points)**

For this selection factor, the Park's objective is a high quality visitor experience in all of the Concessioner's operations identified in the Draft Contract. The Concessioner's operations affect every visitor to the Statue of Liberty and Ellis Island. The NPS strives to make tickets available to the fully diverse range of potential visitors and desires that the Concessioner will effectively manage and transport visitors within the available time and space constraints. On many peak summer weekend days, 14,000 park visitors may board ferries from Battery Park in Manhattan, and over 3,000 from Liberty State Park in New Jersey. Though many factors influence this objective, the Service's focus is on the following areas:

- Reservations and Ticketing
- Marketing and Departure Distribution
- Customer Service and Visitor Experience

**Subfactor 2a: Reservations and Ticketing**

Managing a high volume of visitors requires an efficient reservation and ticketing system. NPS wants the majority of tickets for each boat to be for specific boarding time frames and purchased in advance; however, NPS also wants some number of tickets to be available for sale to walk-up visitors. In addition, NPS plans to continue to offer free monument tour passes in combination with ferry tickets.

Describe the reservation and ticketing system you intend to use for this operation including the following:

- 1) The methods of ticket sales and distribution (possibilities include Internet sales, printing tickets from home, purchasing and/or retrieving pre-purchased tickets from automated kiosks, will-call windows, in-person sales at a ticket kiosk, telephone sales).
- 2) The design of the Internet site including languages, security features, and ease of use. Provide printed, mock-up "screen shots" of the proposed site and ticket design.
- 3) How you will track and manage ticket inventories (including how you would determine the number of advance tickets sold for each departure time and allow for a reasonable number of walk-up sales). You must account for the current security screening capacity of approximately 700 passengers per boat and coordinating ferry ticket sales with the distribution of a limited number of free monument tour passes each day.

- 4) Support activities (including how you would staff an office to provide telephone support for domestic and international callers, and details about any other types of support you would implement).
- 5) How you will continually evaluate the reservation and ticketing system (including the types of reports you would provide to NPS, strategies for better understanding visitor trends, auditing and preventing ticket scalping, and the types of visitor and NPS feedback you would seek to make changes to the system as necessary).
- 6) How the system will contribute to the reduction of wait times for visitors at the embarkation point(s).
- 7) Given that there is no system in place that accomplishes the Service's objectives, what is your proposed schedule for implementation of this system with key dates identified in order to accomplish the various features of the reservation and ticketing system.

If you have experience providing these types of services, please describe such experience and include a critical analysis of what made the efforts successful and how you could have improved the efforts.

#### **Subfactor 2b: Marketing and Visitor Departure Distribution**

The NPS wants the Concessioner to explore ways to better distribute park visitation throughout the year, by, for example, encouraging visitation during off peak hours and days, from underutilized embarkation facilities, and from untapped markets (such as local residents in the metropolitan area).

Please describe your proposed strategy and implementation plan including a description of the size and scope of operation that you will use to enhance the ferry services under this concession contract. At a minimum, specifically address how you would:

- 1) Effectively and efficiently use both embarkation locations
- 2) Alleviate long wait times
- 3) Target local (New York and New Jersey) residential markets
- 4) Encourage visitation during off-peak times and seasons
- 5) Employ marketing strategies to increase overall visitation taking into account seasonal visitation trends
- 6) Develop promotional opportunities and outreach programs for targeted visitors and groups

If you have experience providing these types of services, please describe such experience and include a critical analysis of what made the efforts successful and how you could have improved the efforts.

#### **Subfactor 2c: Visitor Experience**

The Service invites proposals that will enhance the entire visitor experience—from trip planning with the Concessioner and the initial contact all the way through the completion of the visit to the Park. For the following questions address at a minimum five phases of the visitor's experience for the ferry service and Island Cruises identified below:

- Trip planning
  - Ticket purchasing
  - Pre-boarding and waiting periods
  - Time on board the vessel, and
  - Conclusion at the debarkation point
- 1) Describe the efforts you will provide, including interpretive programs to increase the visitor's knowledge of the Park. Describe how you would adapt such efforts during peak and off peak operating seasons and during inclement weather.
  - 2) Describe how you will provide a quality visitor experience to all visitors regardless of cultural background or language spoken, age, and disabilities
  - 3) Describe how you would monitor the success of these efforts through visitor feedback and other measures.
  - 4) Describe how you will provide a quality visitor experience through customer service including, but not limited to:
    - Courtesy, appearance, and professionalism of employees;
    - Resolution of complaints and timely responses to questions, etc.
    - Web site and other sources of information

If you have experience providing these types of services, please describe such experience and include a critical analysis of what made the efforts successful and how you could have improved the efforts.

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

**(0-5 Points)**

*To assist in the evaluation of proposals under this and other selection factors, please provide the following information regarding your organizational structure. This information will not be scored for selection purposes, but may be used for assessing your response to the various selection factors.*

*Offeror's Organizational Structure.* Describe the entity with which the National Park Service will contract. Clearly define the Offeror's relationship to all superior and/or subordinate entities. Identify the entity, if one exists, that has the authority to allocate funds, hire, and fire management employees of the business entity that will hold the contract with the National Park Service. If this entity is a public corporation with a Board of Directors, provide information about the makeup and selection of the Board. Identify a majority shareholder or shareholder with controlling interest, if either exists. If the entity is a Limited Liability Company or Partnership, identify and provide information about each member or partner.

Using the Business Organization Form located in the Proposal Package form section, identify the Offeror and each business organization, operator, and any parties involved in the management of the proposed concession operation. Use the form appropriate for your organization (Partnership, Sole Proprietorship, Corporation, or Limited Liability Company) and include all information necessary to make the relationships among parties clear. When completed, the Business Organization and Credit Information form should convey the following information:

- 1) Identify the Offeror formally.
- 2) Explain the legal form and formal structure of the Offeror.
- 3) Identify and describe the owners of the Offeror, including, without limitation, all levels of parent organizations, their relationship to the Offeror, and the precise extent of their ownership interest.
- 4) Identify all related, subordinate, or superior business organizations and any other organizations, contractors, or subcontractors that will have a significant role in managing, directing, operating, or otherwise carrying out the services to be provided by the Offeror. Describe in detail how these relationships will work formally and in practice.
- 5) Identify how long the Offeror has existed as a legal entity.
- 6) Submit your organization documents (e.g., partnership agreement, articles of incorporation, bylaws, etc.).

**BUSINESS ORGANIZATION  
PARTNERSHIP OR SOLE PROPRIETOR  
(PRINCIPAL SELECTION FACTOR 3)**

<b>Name of Entity</b>	
<b>Address</b>	
<b>Telephone Number</b>	
<b>Fax Number</b>	
<b>Email Address</b>	
<b>Contact Person</b>	
<b>Title</b>	
<b>Tax ID #</b>	
<b>Form of Business:</b>	
<input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Other (please describe) _____	
<b>Years in Business</b>	

<b>OWNERSHIP</b>			
<b>Names And Addresses Of Each Partner Or Sole Proprietor</b>	<b>Percentage of Ownership</b>	<b>Current Value of Business</b>	<b>Role in Providing Concession Services</b>

**BUSINESS ORGANIZATION  
CORPORATION  
(PRINCIPAL SELECTION FACTOR 3)**

*Complete separate form for the submitting corporation and the parent corporation (include all partners in a joint venture).*

<b>Name of Entity</b>	
<b>Address</b>	
<b>Telephone Number</b>	
<b>Fax Number</b>	
<b>Email Address</b>	
<b>Contact Person</b>	
<b>Title</b>	
<b>Tax ID#</b>	
<b>State of Incorporation</b>	
<b>Date of Incorporation</b>	

<b>OWNERSHIP</b>	<b>NUMBER AND TYPE OF SHARES OR PERCENTAGE OF OWNERSHIP</b>	<b>CURRENT VALUE OF INVESTMENT</b>
Names and Addresses of those with controlling interest or key principals of corporation		
<b>Total of All</b>		
<b>Total Shares Outstanding</b>		

<b>CORPORATE OFFICERS AND BOARD OF DIRECTOR</b>	<b>ADDRESS</b>	<b>TITLE AND/OR AFFILIATION</b>

**Subfactor 3a: Organizational Structure**

Demonstrate that your organization is structured and staffed to effectively carry out the responsibilities of the Draft Contract by providing the following information:

Clearly outline the organizational structure you will use to manage and execute the services contemplated under the new contract. To the extent that support services such as purchasing or human resources will be provided by a corporate parent, clearly identify how this support will benefit the operation. Provide the principal lines of authority between departments and managers.

Describe the qualifications of the person you will employ for each of the following positions. Include relevant experience, minimum qualifications, certifications (if applicable), and education in a consistent format.

- Corporate officer(s)/executives with responsibility for directly supervising the general manager or any other member of the management team for this contract;
- General Management Team;
- Departmental and/or area managers including, but not limited to for the following departments: ferry operations, vessel maintenance, ticketing and reservations, physical security specialist, and food and beverage/merchandise sales.
- Environmental manager.

In addition, provide workforce estimates in Full Time Equivalents (FTE) for each operating department (i.e., reservations, ferry and cruise operations, retail sales) during the high season (summer) and the rest of the year.

**Subfactor 3b: Experience Managing Ferry Operations**

Describe your experience managing ferry or other marine passenger transportation operations particularly your experience with high demand, high passenger volumes and similar scope of services to those offered under the Draft Contract. Your examples should include the following:

- 1) Name and location of operation
- 2) Scope of services offered and description of routes
- 3) Operating season information and seasonal adjustments you made, including any changes to operations during non-peak seasons and/or hours
- 4) Size of operation
  - Number of vessels and passenger capacities
  - Gross revenues for the most recent three years of operation in which the Offeror was involved with the business
  - Service volume (e.g., number of passengers, number of daily departures)

- 5) Nature of the Offeror's involvement
- 6) Tenure of the Offeror's involvement
- 7) Current status of business (e.g., owned and operated by Offeror, sold, open but no longer operated by Offeror, closed, etc.)
- 8) Number of employees; full-time employees, part-time employees, and seasonal employees; segregated by peak and off-peak seasons

### **Subfactor 3c: Human Resources**

A high quality, customer service-oriented, skilled, and motivated employee staff is a critical component of meeting visitor needs at the Park. With this in mind:

Demonstrate your ability to hire and maintain a high quality work-force. The NPS believes that high-quality, skilled, motivated employees are an essential component of the delivery of visitor services. To a large extent, quality service is dependent on the courtesy, appearance, and knowledge of front-line employees. Your commitment to quality human resources is an indicator of your potential for successfully providing services at the Park.

- 1) Describe what you believe constitutes a "high quality workforce" and explain how you will attract and maintain one.
- 2) Identify what efforts you will undertake to support high morale and to retain both year-round and seasonal employees at all levels within your organization. Please address benefits packages, incentives, counter-seasonal employment opportunities, recruitment and retention, and similar programs you will implement to prevent employee turnover.
- 3) Please outline the training you will provide to your staff in the areas of guest service and knowledge of the purpose and significance of the Park. Please identify the type of staff to be trained, training subjects, frequency of training, and how training will be documented.

### **Subfactor 3d: Violations, Fines, and Penalties**

- 1) Has the Offeror, parent company or any of its principals, at any time in the last five years, whether as a principal or employee of Offeror or otherwise, received any Notice of Violations (NOVs), fines, and/or penalties exclusive from marine casualties, which are described below, from a federal or state regulatory agency? If the answer is yes, provide the following:
  - a) A description of the NOV, fine and/or penalty
  - b) When and who issued the NOV, fine and/or penalty
  - c) How you addressed the NOV, fine and/or penalty
  - d) How you will ensure that the problem does not recur

- 2) Demonstrate the Offeror's management of marine violations, accidents, and casualties that may occur in its operation, including but not limited to grounding, loss of primary propulsion, passengers required to transfer from one vessel to another vessel during a tour, collision, flooding, capsizing, fire, explosion, loss of life or reportable injury incurred or received for the period beginning five years prior to the submission of your proposal by:
- a) the Offeror and any of its affiliate, parent, or predecessor companies/business entities;
  - b) the vessels you propose to use in this concession contract;
  - c) all vessel captains that will operate the vessels proposed for use in this concession contract.

For each incident, provide a copy of the official report, notice of violation, notification letter, fine and/or penalty received from the U.S. Coast Guard, the Occupational Safety and Health Administration, the Environmental Protection Agency, State specific Public Health Inspector, U.S. Public Health Service, NPS or other environmental or health regulatory agencies. If a copy of the official report is not available, explain why the report is not available, and fully explain the circumstances of the incident. For each incident, describe how the incident was addressed, and what corrective action, if any, was taken. If you have *not* experienced any such incidents, please expressly state in the proposal for each category (a-c) that you have not experienced any such incident.

**PRINCIPAL SELECTION FACTOR 4. THE FINANCIAL CAPABILITY OF THE OFFEROR TO CARRY OUT ITS PROPOSAL. (0 – 5 Points)**

*General Notes:*

- In the event the Offeror is not the legal entity that is to be the Concessioner, provide the information described below with respect to both the Offeror, including all partners in a joint venture, and the proposed Concessioner. 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 financially and managerially capable of carrying out the terms of the Contract. In addition, the Offeror must unconditionally state and guarantee in the proposal that the Offeror will provide the Concessioner with all funding, management, and/or other resources that the proposal offers. This factor will be evaluated, in part, taking into consideration the financial capability of the offeror to conduct any services authorized and proposed by the offeror and any additional commitments made in the proposal. For purposes of evaluation, please include all of your assumptions regarding these additionally proposed services and financial projections within the format herein.

**Subfactor 4a: Financial and Credit History**

Demonstrate that you have a credible, proven track record of meeting your financial obligations by providing the following:

- 1) The completed Business History Information form provided at the end of this section.
- 2) Audited financial statements for the two most recent fiscal years, with all notes to the financial statements. Financial statements should be provided for the Offeror AND all parent companies. Personal financial statements must be provided for any owners of a sole proprietorship or general partners within a partnership. If the requested information is not available or not representative of your financial history, present an explanation in sufficient detail to enable a reviewer to fully understand the reasons why, and provide comparable evidence, accompanied by a description, of your financial track record.
- 3) A CURRENT credit report (within the last six months) from a major credit reporting company such as Equifax, Experian, or Dun & Bradstreet.

**Subfactor 4b: Concession Financial Projections**

Demonstrate that that you understand the financial obligations and benefits of the Draft Contract by providing the following:

- 1) Provide your estimate of the acquisition and start-up costs of this business using the Initial Investment and Start-Up Cost form (a sample of this form is located at the end of this section) included in the Excel spreadsheets provided in the Appendix to this Prospectus. Explain fully the methodology and the assumptions used to develop the estimate. The information provided should be of sufficient detail to allow a reviewer to fully understand how the estimates were determined.
- 2) Using the Excel spreadsheets provided in the Appendix to this Prospectus (samples of these forms are located at the end of this section), provide estimates of prospective revenues and expenses of the concession business in the form of annual prospective income and cash flow statements for the entire term of the Concession Contract.

Additional general notes regarding the provided forms in the attached appendix:

- The Service has provided forms that request the information in the format it desires. These forms may differ from the format and requirements set forth in generally accepted auditing standards (GAAS) with regard to prospective financial statements. The Service does NOT request that the prospective financial statements be reviewed in accordance with GAAS. In situations where the information requested departs from GAAS, the Service requests that the information be provided in the format requested and NOT in conformance with GAAS.
- You may expand on the information requested on the form, but do not provide less, do not reduce the captions (line-items) called for, and do not change the order of items.
- Do not add or eliminate rows on the Excel spreadsheets provided in the Appendix to this Prospectus. Columns should not be deleted; however, columns may be added to adjust the number of years to the Draft Contract term, if necessary. If you wish to provide additional information, do so in additional spreadsheets, outside of the ones provided. If additional information is provided, clearly identify how it fits into the income statement, cash flow, and/or assumption tables. For the purpose of the pro forma statements utilize the calendar year as the fiscal year.
- Provide a clear and concise narrative explanation of the method(s) used to prepare the estimates and the assumptions on which your projections are based. Information must be sufficiently detailed to fully understand how the estimates were determined.
- Complete all of the forms provided and submit both a hard copy and an Excel spreadsheet file. Failure to provide all of the information requested on these forms may result in a reduced score. Use the electronic version of the Operating Assumptions and Prospective Income Statement form provided in the appendix. The financial basis of any projections that show significantly increased revenues and/or decreased expenses from the projections provided in the Prospectus should be fully explained.

**Subfactor 4c: Sources of Funds**

Demonstrate your ability to obtain the required funds by providing credible, compelling documentation. Fully explain the financial arrangements you propose, using the following guidelines:

- A) If funds are to be obtained from operating cash flows, document each source and availability of these funds by referencing your previous and current audited financial statements.
- B) If funds are to be obtained from lending institutions (banks, savings and loans, etc.), provide financing agreements, letters of commitment or similar supporting documents. Also, include a letter (addressed to the National Park service from the Lender), which provides compelling documentation as to the likely amount of funds available to the offeror at the start of the Draft Contract. Include the lending institution contact name on the letter and authorize the lending institution to release any information to the National Park Service concerning relevant financing arrangements.
- C) If funds are to be obtained from an individual, or a corporation whose primary fund source is an individual, provide the following as appropriate:
  - i) Current personal financial statement for the primary source of funds.
  - ii) Documentation of any assets to be sold.
  - iii) Written funding commitment from the individual or corporation.
  - iv) Any other assurances or documentation that makes a compelling demonstration that the funds are available.
- D) If funds are to be obtained from working capital liabilities (such as advanced deposits or accounts payable), please provide an estimates and a rationale for each estimate. The information provided should be of sufficient detail to allow a reviewer to fully understand how the estimates were determined.
- E) If funds are to be obtained from another source (i.e., a corporation whose primary fund source is not an individual), provide the following as appropriate:
  - i) Written funding commitment from the fund source.
  - ii) Any other documentation that is necessary to create a compelling demonstration that the funds required to operate this business opportunity are available.

**BUSINESS HISTORY INFORMATION**  
(PRINCIPAL SELECTION FACTOR 4 – SUBFACTOR 4A)

Business History Information should be provided for the Offeror AND all parent companies.

1. List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the *past 10 years*. (If none, please indicate)

Name of Property	City State	Property Type	Approximate Loan Amount	Lender	Year of Event

Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.

2. Describe any pending litigation or current lawsuits (other than those covered adequately by insurance) which if adversely resolved would materially impact the financial position of the Offeror.

2006 PROSPECTUS - FOR REFERENCE USE

**PRINCIPAL SELECTION FACTOR 5. THE AMOUNT OF THE FRANCHISE FEE, IF ANY, AND/OR OTHER FORMS OF FINANCIAL CONSIDERATION TO THE DIRECTOR (0-4 Points)**

The minimum franchise fee acceptable to the Service is eighteen percent (18.0%) of gross receipts.

The offer of a higher franchise fee than this minimum is generally beneficial to the Service and accordingly will generally 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.

**Subfactor 5a: Franchise Fee**

State the 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. Do not propose a franchise fee percentage that changes by the level of gross receipts or by year of contract.

\_\_\_\_\_ percent of annual gross receipts

2006 PROSPECTUS - FOR REFERENCE USE

## 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 THE PARK AREA AND OTHER RESOURCES THROUGH ENVIRONMENTAL MANAGEMENT PROGRAMS AND ACTIVITIES, INCLUDING, WITHOUT LIMITATION, ENERGY CONSERVATION, WASTE REDUCTION, AND RECYCLING. (0-3 points)**

*Note to Offeror:* This secondary selection factor focuses on environmental management programs and activities that promote general environmental objectives such as waste reduction, fuel efficiency, recycling, etc. Please avoid overlap between your response here and your response to Principal Selection Factor 1.

Minimizing solid waste generation is an important environmental management goal of the Park.

### **Subfactor 1a: Solid Waste Generation and Disposal**

Please describe any additional efforts beyond compliance with all Applicable Laws that you will take to minimize solid waste generation including, but not limited to, a reduction of the amount of solid waste through efforts such as minimizing the amount of waste to be disposed of, reuse and composting activities.

Describe what environmentally preferable products and other means you will use to minimize the amount of solid waste generated during production or manufacturing, packaging and distribution, use, or disposal of the product as compared with a competing product that serves the same purpose. Be sure to describe why the product is environmentally preferable (i.e., how it has a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose).

### **Subfactor 1b: Recycling**

Describe the items you will recycle and procedures for recycling those materials including, but not limited to, how you will collect and dispose of specific recyclable materials. The Draft Contract identifies some materials that are required to be recycled, but you are encouraged to propose recycling more materials.

**SECONDARY SELECTION FACTOR 2. ISLAND CRUISE SERVICE (0-2 points)**

The Draft Contract requires the next Concessioner to provide a Statue of Liberty/Ellis Island Cruise, departing from and returning to an NPS-approved location in, near, adjoining, or in proximity to Battery Park in New York City. The Cruise is an additional service and alternative for Park visitors that will provide close-up views of the Statue of Liberty and Ellis Island from off-shore and offer an NPS-approved interpretive program. This service will provide an informative and inspirational experience for visitors, highlighting the Park and its resources and stories. Minimum requirements for this service are outlined in the Draft Contract, Exhibit A, Operating Plan. The Concessioner will provide this service to visitors for the same fare as the required ferry services.

The NPS objective for this service is to provide Park visitors with a wider variety of opportunities to experience the Park by offering:

- An alternative to riding the primary ferry boats when peak operations in Manhattan might otherwise discourage visitation.
- An alternative experience when the maximum number of ferry tickets have been sold and screening and boarding capacity limits have been reached.
- An interpretive experience when the islands are closed.

**Fleet Management**

In accordance with the terms of the Existing Contract, the seven boats utilized in the current operation will be transferred to the Concessioner awarded the next contract. Under the Draft Contract, six boats are required to provide the primary service, passenger transportation to and from the Park. The priority use of the boats is to ensure adequate ferry transportation to, from, and between Liberty and Ellis Islands at all times. The seventh boat is often needed to assist during peak operations. The seventh boat will be available for the Island Cruise unless needed: 1) to assist with transporting visitors from the islands in the afternoon, 2) in an emergency evacuation of the islands, 3) to substitute for a vessel undergoing service, or 4) to accommodate increased ferry demand in the future.

Describe how you will manage or supplement the current inventory of boats to accommodate the Island Cruise, addressing:

- 1) How you will schedule boats and staff to ensure availability of both the primary ferry services and the Island Cruise service for your proposed season of operation (i.e., during the minimum period required in the Operating Plan or on a year-round basis). Also, describe any additional hours of operation you propose to offer the Island cruise service beyond the required minimum hours.

- 2) If you propose to use only the existing inventory of seven boats, explain how you will schedule and transition the seventh boat between the Island Cruise and primary ferry services accounting for the required security screening of all boats.
- 3) If your proposal includes supplementing the existing fleet of boats, please provide information on any proposed vessel's passenger capacity, engine specifications, USCG captain license requirements, special features and services that will be offered on board, and if available, age, name, and USCG registration number. A better answer may demonstrate the features of such additional boats that meet the objectives of the Park described in Principal Selection Factor 1b.

2006 PROSPECTUS - FOR REFERENCE USE

**SECONDARY SELECTION FACTOR 3. ADDITIONAL FERRY ROUTES (0-1 point)**

The Draft Contract authorizes (subject to the Superintendent's approval) the next Concessioner to offer ferry services to other NPS units in and around New York Harbor, including, but not limited to, Governors Island and Gateway National Recreation Area. Potential destinations include Governors Island, Sandy Hook, Fort Wadsworth, and Riis Landing. The NPS would like to expand access to these other NPS units with water transportation routes that are more convenient than existing land-based transportation. A map of these locations is included in Appendix O.

Limited market data exists relative to the demand for ferry services to most of these destinations. Due to seasonality and the nature of recreational activity at the sites, some routes may only be financially feasible when they are a part of other existing similar operations. Due to the long distances between departure points and the Gateway National Recreation Area destinations, ferries much faster than the Statue of Liberty and Ellis Island ferry boats may be required.

Please describe the processes you would use to make a determination on whether to initiate service from Battery Park, Liberty State Park, or other locations to any or all of these destinations and how you would implement a decision to proceed. Your response should include, at a minimum, the following for each destination listed above:

- 1) Assessment of market potential.
- 2) Design, development and implementation of services (i.e., schedule and types of boats and docking and embarkation requirements).
- 3) Marketing the service to target audiences developed when assessing market potential.
- 4) Working in consultation with the Service to implement these new routes.
- 5) Determine appropriate assets and vessels (now owned or which will be acquired for the operation) to use for service to these areas.

**CATEGORY II CONTRACT**  
**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**NATIONAL PARK SERVICE**

FERRY SERVICE  
AT STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND

**CONCESSION CONTRACT NO. CC-STLI001-07**

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[Name of Concessioner]

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[Address, including email address and phone number]

Doing Business As

Covering the Period

**September 17, 2007** through **September 16, 2017**<sup>1</sup>

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<sup>1</sup> The effective date of the contract is subject to change prior to contract award if determined necessary by the Service due to transfer timing issues. The expiration date of the contract will be changed to continue the same term length from any changed effective date. This footnote is to be deleted prior to contract execution.

**CONCESSION CONTRACT****TABLE OF CONTENTS****IDENTIFICATION OF THE PARTIES****SEC. 1. 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

**SEC. 4. CONCESSIONER PERSONNEL****SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

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

**SEC. 6. 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

**SEC. 8. 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

<b>SEC. 9.</b>	<b>MAINTENANCE</b>
	A. Maintenance Obligation
	B. Maintenance Plan
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**[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"):

**[LIMITED LIABILITY COMPANY]**

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 limited liability company 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 of, doing business as \_\_\_\_\_, hereinafter referred to as the "Concessioner":

**WITNESSETH:**

**THAT WHEREAS**, Statue of Liberty National Monument and Ellis Island is administered by the Director as a unit of the national park system to conserve scenery and the natural and historic objects and 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-STLI001-07 (“CONTRACT”) shall be effective as of **September 17, 2007** and shall be for the term of 10 years until its expiration on **September 16, 2017**.

## 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 Statue of Liberty National Monument and Ellis Island.

(c) “Best Management Practices” or “BMPs” are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner’s operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) “Concession Facilities” shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements, assigned to 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;
- (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) "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.

(l) "Superintendent" means the manager of the Area.

(m) "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 provide the following visitor services during the term of this CONTRACT:

- (i) Year-round, scheduled ferry boat transportation for Park visitors to, from and between Liberty and Ellis Islands; originating from and returning to NPS-approved locations in, adjoining, or in proximity to Battery Park (Manhattan) and Liberty State Park (Jersey City).
- (ii) Sale of snack foods and non-alcoholic beverages on board vessels, as approved by the Superintendent.
- (iii) Sale of visitor convenience items and limited souvenirs on board vessels, as approved by the Superintendent.
- (iv) Island Cruises departing from and returning to NPS approved locations in, adjoining, or in proximity to Battery Park including an NPS-provided and/or approved interpretive program on board vessels describing the Park and its resources and stories. Passengers on the Island Cruises will not disembark at the Park, but the vessels will enter the off-shore Park boundary.
- (v) Reservation and sale of ferry tickets and audio tours and distribution of free monument tour passes.

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

- (i) Operation of additional ferry routes to other NPS destinations in and around New York Harbor, subject to approval by the Superintendent.

#### (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 A. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the 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) Impartiality as to 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 B.

(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) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. 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) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.
- (b) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit B.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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:

Superintendent: Cynthia Garrett  
Park Name: Statue of Liberty National Monument  
Address: [INSERT]  
Attention: [INSERT]

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

Concessioner: [INSERT]  
Address: [INSERT]  
Attention: [INSERT]

## 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.

(iii) 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.

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

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

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

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

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

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will 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 11 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 remediate 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, remediate, 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 Concession Facilities as described in Exhibit C to the Concessioner for the purposes of this CONTRACT. The Concessioner shall not be authorized to construct any Capital Improvements (as defined in Applicable Laws including without limitation 36 CFR Part 51) upon Area lands. The Concessioner shall not obtain a Leasehold Surrender Interest or other compensable interest in Capital Improvements constructed or installed in violation of this CONTRACT.
- (2) The Director shall from time to time amend Exhibit C to reflect changes in Concession Facilities assigned to the Concessioner.

### **(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:

- (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 15. No 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 D to the Concessioner as of the effective date of this CONTRACT. This Exhibit D 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**

(1) 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.

(2) 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.

## **SEC. 9. MAINTENANCE**

### **(a) Maintenance Obligation**

Subject to the limitations set forth in Section 8(a)(1) of this CONTRACT, the Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and grounds-keeping, 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 E. 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. 10. 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 quarterly 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. 11. 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 F. 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 businessperson 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 coverages 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 coverages.

### **(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 F. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit F.

(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 F 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 F 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 F.

(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 12 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 (as defined in Applicable Laws including without limitation 36 CFR Part 51) or other compensable interest as a result of the use of these insurance proceeds.

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

**SEC. 12. 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 .

**SEC. 13. 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 \$500,000, 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 \$500,000, 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.

#### **SEC. 14. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this CONTRACT:

##### **(a) Insurance Certification**

As specified in Section 11, 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. 15. 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 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 15(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, no 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). 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.

(3) Prior to and upon the expiration or termination of this CONTRACT for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this CONTRACT after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit G to this CONTRACT, "Transition to New Concessioner." This Section and Exhibit G shall survive the expiration or termination of this CONTRACT.

#### **SEC. 16. 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 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. 17. 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, Part 42, 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 the CONTRACT as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CONCESSIONER**

**UNITED STATES OF AMERICA**

BY \_\_\_\_\_  
(Title)  
(Company Name)

BY \_\_\_\_\_  
Director  
National Park Service

DATE \_\_\_\_\_

DATE \_\_\_\_\_

**[CORPORATIONS]**

ATTEST:

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**[SOLE PROPRIETORSHIP]**

WITNESSES:

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
TITLE \_\_\_\_\_

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
TITLE \_\_\_\_\_

**[PARTNERSHIP]**

WITNESSES AS TO EACH:

[Concessioner]

NAME \_\_\_\_\_

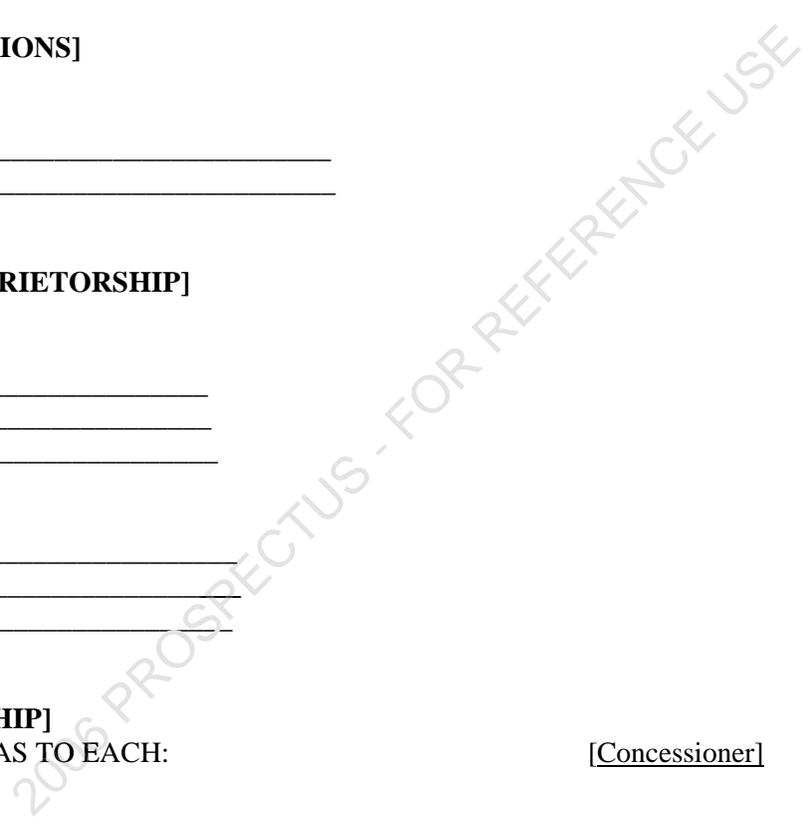
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- EXHIBIT A OPERATING PLAN**
- EXHIBIT B NONDISCRIMINATION**
- EXHIBIT C ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS**
- EXHIBIT D ASSIGNED GOVERNMENT PERSONAL PROPERTY**
- EXHIBIT E MAINTENANCE PLAN**
- EXHIBIT F INSURANCE REQUIREMENTS**
- EXHIBIT G TRANSITION REQUIREMENTS**

2006 PROSPECTUS - FOR REFERENCE USE

**STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND**

**CC-STLI001-07**

**CONTRACT EXHIBITS**

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**INTRODUCTION**

This Operating Plan between \_\_\_\_\_ (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "NPS") serves as a supplement to Concession Contract CC-STLI001-07 (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the NPS with regard to Concession Facilities and vessels, related support facilities, and other property 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 of Statue of Liberty National Monument and Ellis Island ("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.

**1. DEFINITIONS**

In addition to all defined terms contained in the CONTRACT, its Exhibits and 36 CFR Part 51, the following definitions apply to this Operating Plan:

- **Environmentally Preferable** refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.

- **Hazardous Substance** refers to any hazardous waste, hazardous chemical or hazardous material. Further clarification on hazardous substances can be found in 29 CFR 1910.120, Occupational Safety and Health Standards, Hazardous Waste Operations and Emergency Response, at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/29cfr1910\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/29cfr1910_04.html).

- **Incidental** refers to a spill or release of a hazardous substance, which does not pose a significant safety or health hazard to employees in the immediate vicinity or to the employee cleaning it up, nor does it have the potential to become an emergency within a short time frame. Incidental releases are limited in quantity, exposure potential, or toxicity and present minor safety or health hazards to employees in the immediate work area or those assigned to clean them up. Employees who are familiar with the hazards of the chemicals with which they are working may safely clean up an incidental spill.

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**2. MANAGEMENT, ORGANIZATION AND RESPONSIBILITIES**

**Concessioner**

The Concessioner shall employ a manager, who carries out the terms of this CONTRACT in the operation of the concession services and Concession

Facilities, related support facilities, and other property for the purposes authorized by the CONTRACT. To achieve an effective and efficient working relationship between the Concessioner and the NPS, the Concessioner must designate one representative who has full authority to act as a liaison in all matters related to this CONTRACT. Including at a minimum:

- 1) **Staff.** The Concessioner will employ a staff with the expertise to operate all services required and/or authorized under this CONTRACT.
- 2) **Physical Security Specialist.** The Concessioner will employ a physical security specialist to coordinate security matters with the United States Park Police due to the unique security requirements at the Park.
- 3) **Reservation and Ticketing System Manager.** The Concessioner will employ a reservation and ticketing system specialist who also will serve as manager of Internet services and activities.
- 4) **Managers and Supervisors.** The Concessioner will furnish the NPS with an initial list identifying key concession management and supervisory personnel and their job titles, with updates as changes occur.
- 5) **Communication and Meetings.** The Concessioner will foster effective communications by holding regular meetings with those entities that have daily operational responsibilities on Liberty Island and Ellis Island.

## **NPS**

- 1) **Superintendent.** The Superintendent manages the total Park operation. The Superintendent carries out the policies and directives of the NPS. The Superintendent is supported by a Deputy Superintendent for Operations and a Deputy Superintendent for Business Management, Planning, and Development.
- 2) **Concessions Management Division.** The Concessions Management Division is responsible for developing, negotiating, and administering the NPS's commercial and real estate activities and facility-based partnerships, which include all concession activities. This Division coordinates the functions of other NPS divisions relating to all concession operations. The Concessions Management Division is the primary contact for all matters related to the administration of this CONTRACT and shall be the first point of contact for any questions.

*CC-STLI001-07 Contract Exhibit A: Operating Plan Page A-3*

- a) The Chief of the Concessions Management Division or his/her designee makes recommendations to the Superintendent on all aspects of the Concessioner's operation. He/she has authority from the Superintendent to make field decisions that pertain to the concessions operation, and acts as liaison between the Concessioner and Superintendent. The Superintendent

will notify the Concessioner of the name and contact information for the Chief. He/she ensures necessary evaluations and inspections are performed, including those required by the NPS Public Health Program, Park Safety Officer, fire inspectors, U.S. Coast Guard, and the Concessioner review program. The Chief is responsible for reviewing and recommending for approval all concessioner rates in accordance with this CONTRACT. The Chief will identify appropriate individuals at Statue of Liberty National Monument and Ellis Island to participate in the meetings required by this Plan. He/she coordinates media relations and activities with the Concessioner and appropriate NPS personnel. He/she also is responsible for matters pertaining to filming, charters, private or public special events.

b) Concession Management Specialists review and/or coordinate the Concessioner's operational and maintenance responsibilities, including but not limited to: rate approvals, provision of quality visitor services, schedule changes; advertisements; annual financial reports; insurance coverage; and any other CONTRACT requirements.

c) The Concessions Management Specialists coordinate with other Park staff to review and evaluate the Concessioner's Risk Management Program and Environmental Management Program required under this contract.

3) **NPS Public Health Program.** NPS Public Health consultants, in coordination with the U.S. Coast Guard and the New York City Department of Health, inspect food and beverage services, water, and waste water systems, in accordance with Applicable Laws, including without limitation, compliance with Public Health standards.

4) **United States Park Police.** The United States Park Police (USPP), part of NPS, provides law enforcement services for the Park. The USPP initiate, review, supervise, and coordinate the activities of personnel who provide public safety (law enforcement, fire, emergency medical and physical security) functions. USPP serve as the direct line of communication to the Concessioner on matters related to fire management, law enforcement, search and rescue, emergency medical services, emergency management operations, physical security, and resource protection.

5) **Division of Interpretation and Visitor Services.** The Chief of Interpretation and Visitor Services is responsible for matters pertaining to interpretation, environmental education, and public information. This Division, along with the Division of Museum Services, in coordination with the Chief of the Concessions Management Division, monitors and evaluates concession interpretive activities, and reviews Concessioner interpretive materials. Interpretive rangers provide interpretive programs for the visiting public and advise the Concessioner about interpretive matters, including

concession staff training. Interpretive rangers may assist with concession operational evaluations.

6) **Maintenance Division.** The Chief, Division of Maintenance is responsible for matters pertaining to maintenance and supervises the activities of the Park's facility management staff. The Chief of Maintenance provides day-to-day supervision over all maintenance activities and operations, including any utilities provided by the NPS. He/She advises the Concessioner on maintenance matters.

a) NPS project managers provide overall supervision and coordination with the Concessioner on specific NPS construction projects.

b) The Facility Operations Specialist is responsible for coordinating Environmental Management activities and is responsible for matters pertaining to natural resources management such as integrated pest management, air quality monitoring, vegetation management, fish and wildlife management, and hazard tree mitigation.

7) **Museum Services Division.** The Chief, Museum Services Division advises the Concessioner about the care, treatment, and preservation of cultural resources/historic structures and for coordination of environmental (NEPA and NHPA) compliance activities.

8) **Administration.** The Administrative Officer is responsible for certain matters related to fiscal management associated with the concession activities, including franchise fees and utilities payments.

### 3. TRANSPORTATION SERVICES AND OPERATIONS

All services shall be provided in a consistent, high quality manner and in compliance with all Applicable Laws including without limitation NPS and United States Coast Guard (USCG) regulations. NPS standards identified in NPS 48 Concessioner Review Program (Operational Performance) are considered service minimums. The Concessioner is expected to meet or exceed these standards. The Concessioner shall be responsible for monitoring its operations on an ongoing basis to assure that quality standards are consistently met.

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#### A) Ferry Services

1) **Primary Ferry Service.** The Concessioner will provide year-round, scheduled passenger boat transportation for Park visitors to, from and between Liberty and Ellis Islands, originating from and returning to NPS-approved locations in, adjoining, or in proximity to Battery Park (Manhattan) and Liberty State Park (Jersey City).

2) **Statue of Liberty and Ellis Island Cruise (Island Cruise).** The Concessioner will offer an NPS approved interpretive program that provides

an informative and inspirational experience for visitors, highlighting the Park and its resources and stories. Passengers will not disembark on either island. At a minimum, the Island Cruise will be offered from mid-March through New Year's Day.

a) The Island Cruise will provide an alternative to visiting the islands when tickets have been sold out and allow a Park experience when the islands are closed. It also will offer an alternative experience for visitors who have limited time for their visit to the Park.

b) The primary ferry services bringing visitors to and from the islands are the priority service. This may mean that Island Cruise services will need to be cancelled from time to time in support of the primary services. The Superintendent will be notified of a proposed cancellation of Island Cruise services and will approve or disapprove the cancellation.

c) The Island Cruise service will depart from Battery Park and provide visitors with interpretation about and close-up views of the Statue of Liberty and Ellis Island. The boat will not dock at either island but will be required to provide part of the interpretive program while inside the Park's boundary.

d) The Island Cruise will travel first to the area in front of the Statue of Liberty; the ferry will stop and provide visitors with an interpretive program about the Statue of Liberty. Next it will travel to Ellis Island, enter the Ellis Island ferry slip, stop and provide an interpretive program about Ellis Island.

e) The Service may work with one of its non-profit partners to develop and provide the interpretive program.

3) **Special Events.** The Concessioner will coordinate with the Concessions Management Division to provide special event transportation services to Liberty or Ellis Islands. All requests for charters and special events shall be immediately referred to the Park's Concessions Management Division, which will coordinate the Park's review and any subsequent approvals of these requests. No charters and events may take place without the prior written approval of the Superintendent.

4) **Transportation for Government Business.** Employees and people doing business with the park, as designated by the Superintendent, will travel by NPS Park boat

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during its operating schedule and, otherwise, by Concessioner boats at no charge on a limited basis provided space is available.

## **B) Vessels**

1) **Fleet.** At a minimum, the Concessioner shall make seven (7) vessels with the passenger capacities listed below available for use in fulfilling the terms of this contract. Changes to the below inventory will require prior written approval of the Superintendent.

Vessel	USC G ID #	Gross/ Net Tons	Buil d Year	Manufactur er	Passenge r Capacity
Miss Gatewa y	64781 6	95/72	1982	Blount	500
Miss Ellis Island	97403 2	93/63	1991	Blount	799
Miss New Jersey	97731 8	93/63	1991	Blount	799
Miss New York	99337 0	94/63	1993	Blount	799
Miss Circle Line	29534 0	369/25 1	1964	Wiley	1,035
Miss Liberty	26739 4	98/66	1954	Blount	827
Miss Freedo m	58211 1	98/74	1977	Blount	564

2) **Primary Vessels.** At a minimum, six (6) vessels shall be designated as primary vessels to provide boat transportation services to, from, and between Liberty and Ellis Islands.

3) **Island Cruise.** At minimum, one (1) vessel shall be used to provide Island Cruise services if not needed to assist with transporting visitors from Liberty and Ellis Islands when departure waiting lines cannot be accommodated by the six primary boats in a timely manner. This boat(s) will also be available to support the primary boats with any emergency evacuations from the Park as directed by the Superintendent. The Concessioner shall submit for prior written approval by the Superintendent the vessel(s) designated to provide the Island Cruise.

4) **Backup Vessels.** In the event of a disruption of service by one of the primary vessels, the Concessioner shall immediately notify the Park and make the Island Cruise vessel available to provide backup service to, from, and between Liberty and Ellis Islands. Additionally, if more than one vessel is inoperable at the same time, the Concessioner shall immediately notify the Park in writing and shall use its resources to reposition vessels from its current

fleet, or charter, lease or otherwise acquire appropriate capacity vessels on a temporary basis as reasonably required by the NPS for its operations.

5) **Special Events.** The Concessioner will coordinate with the Concessions Management Division to provide appropriate vessels for special event transportation services.

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6) **Vessel Acquisition.** The Concessioner will own or control all vessels used by the Concessioner in performance of this CONTRACT. If changes to the fleet are proposed subsequent to award of the CONTRACT, prior written approval of the Superintendent is required prior to placing the vessel(s) into operation. Any changes to the Concessioner's fleet must have the prior written approval of the Superintendent.

7) **Licensing, Insurance, Maintenance and Registration.** In accordance with Applicable Laws, including, without limitation, federal, state, and local law and regulations, the Concessioner will properly register, license, insure, and maintain all vessels and equipment used in the performance of this CONTRACT. The Concessioner will inform the Park prior to any vessel being removed from service for inspections or repairs requiring the vessel to be dry docked.

8) **Identification.** In addition to USCG regulations regarding vessel identification, the Concessioner will discretely identify vessels with the Concessioner's company name and logo. These and any other markings will be subject to the approval of the Superintendent.

9) **Manner of Use.** The Concessioner agrees not to use or permit the use of the Concessioner's ferries in a negligent or improper manner that endangers the public, crew, or employees of the NPS or is in any violation of any law.

10) **Concessioner Fee Responsibility.** The Concessioner will pay all of its docking fees, storage charges, fines, and business fees including registration, and licensing resulting from operations and the requirements of the USCG, USPHS, State and local government and the NPS.

11) **Boarding Apparatus.** The Concessioner will provide and properly maintain all passenger boarding apparatus, docking and mooring lines, and all other gear necessary to provide the services required in accordance with all Applicable Laws including without limitation the terms of this CONTRACT.

12) **Mitigation of Disturbance.** The Concessioner will minimize noise generated from its operations, including without limitation, engine use (rpms) at docks to minimize noise levels and emissions. Captains/crews shall not shine spotlights directly at the islands during night operations. The Concessioner will take every precaution to ensure that vessel wakes will not injure a visitor, damage other vessels, or damage Park resources. The Concessioner will operate with minimum wake when within 200 feet of the shoreline.

## Vessel Inventory

1) **Listing of Vessels.** The Concessioner will provide the Superintendent with a current list of vessels used in the operation annually and no later than February 1 of the year it is in effect. The listing will include at a minimum: passenger capacity, engine

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specifications, age, name, USCG registration number, and names of captains licensed to operate that particular vessel.

2) **Updates.** Any time a vessel used in the operation is modified, retrofitted, upgraded, refurbished, acquired, or disposed of, the Concessioner will update the vessel listing and provide it to the Superintendent. The Concessioner will submit all such proposed changes for the Superintendent's approval in advance.

3) **Environmental Performance.** The Concessioner will investigate methods and strategies to make vessels more environmentally friendly (e.g., generate fewer emissions).

## Schedules

1) **Primary Ferry Service.** The Concessioner will provide required services for NPS visitors every day of the year (364 days) except December 25<sup>th</sup> (Christmas Day), weather permitting.

a) The Concessioner shall comply with approved schedules.

b) The Concessioner will submit a written schedule of proposed changes in operating hours for all services for the Superintendent's approval. No schedule changes will be implemented without the Superintendent's approval.

c) The NPS will give reasonable notice of any schedule changes that it may initiate. The Concessioner will comply with these schedule changes.

2) **Island Cruises.** At minimum, the first sail shall be on or before 11:00 in the morning with the last sail no earlier than 7:00 in the evening with the potential for extended hours in peak season.

a) The Concessioner will submit a proposed schedule for the Island Cruise for the Superintendent's approval.

b) Once approved, no schedule changes will be implemented without the Superintendent's approval.

c) The NPS will give reasonable notice of any schedule changes that it may initiate. The Concessioner will comply with these schedule changes.

3) **Special Events.** Ferry service will be provided for approved special events associated with Liberty and Ellis Islands according to the schedule worked out for the event with the Concessions Management Division staff.

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4) **Park Closures**

- a) **Inclement Weather and Non-Emergency Situations.** Any changes in the daily schedule because of inclement weather or other unusual circumstances other than emergency situations (as determined by the vessel captain) require advance approval from the Superintendent or designee. When appropriate, the Concessioner shall notify the Superintendent of potential weather or other problems that might affect visitor safety and request a closure. The decision to close and the appropriate closing schedule, except in emergency conditions, will be made by the Superintendent.
- b) **Ferry Schedule Interruption.** In the event of any interruption of the established schedule due to mechanical breakdown or any other event, the Concessioner shall at its sole expense retrieve any stranded visitors as soon as practicable, given the circumstances causing the interruption in service.
- c) **Public Health, Safety, and Security.** When necessary for safety, public health, environmental, and/or security reasons, the Superintendent or designee will notify the Concessioner of the need to close and determine an appropriate closing schedule.

**Island Support Facilities**

Both islands have landing/departure facilities that are integral to the transportation services and visitor experiences.

- 1) **Operations and Maintenance.** The Concessioner agrees, at its sole expense, to operate and maintain assigned facilities in compliance with all Applicable Laws (see Maintenance Plan).
- 2) **Support Facility Staff.** The Concessioner will employ staff specifically dedicated and trained to facilitate safe movement of passengers between the vessel and the dock. This staff will also provide general visitor services, including greeting visitors and providing information to Park visitors.
- 3) **Customer Service Personnel.** The Concessioner will provide customer service personnel to help NPS manage visitor assembly areas and supervise boat loading, inform visitors of schedule changes and weather conditions, and ensure that visitor questions are thoroughly answered.

**Embarkation Facilities**

- 1) **Battery Park.** The Concessioner will operate landing and docking facilities for ferry services to Liberty and Ellis Islands from NPS-approved locations in, adjoining, or in close proximity to Battery Park in New York initially through a License or other agreement with the City of New York Parks and Recreation Department. Landing

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slips 3, 4, and 5 and adjacent walkways will be included in the License. During the term of this contract, the NPS may require the Concessioner to move to another NPS-approved embarkation location in, adjoining, or in proximity to the existing Battery Park location. The Concessioner's operation at this alternate location will be authorized by City Parks through an agreement with similar terms to the License Agreement. The Concessioner will bear its own costs for any such move.

- 2) **Liberty State Park.** The Concessioner will operate landing and docking/embarkation facilities for ferry services to Liberty and Ellis Islands from Liberty State Park in New Jersey through a Memorandum of Understanding (MOU) or similar agreement with the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry. The MOU will include a visitor staging and ticketing location in the Central Railroad of New Jersey (CRRNJ) Terminal as well as a pier. During the course of this contract, the NPS may require the Concessioner to move to another NPS-approved location and enter into a similar agreement for those facilities.

#### **G) Security Screening of Vessels**

- 1) **Daily Screening.** Screening consists of sweeping the vessels for explosives by specially trained explosive detection canines, managed by USPP officers. All areas of the vessel must be made accessible to the USPP officer. On a daily basis, prior to placing the vessel in service, the Concessioner will make available to the USPP each vessel that is scheduled for service to, from and between Liberty and Ellis Islands at least one hour prior to departure at either the Battery Park or Liberty State Park screening sites. The USPP are solely responsible for releasing the vessel for service.

- 2) **Staff.** Any concession employee who is aboard a vessel prior to its screening must debark while the screening of the vessel is taking place. All employees must be individually screened before re-boarding.

- 3) **Other Agencies.** In the event that a given vessel cannot be cleared for service by USPP, the NYPD or Jersey City explosives unit may be called upon for a more intensive evaluation of suspect items.

- 4) **Interruption of Service.** If for any reason a vessel is taken out of service during its regular schedule to, from or between Liberty and Ellis Islands, the screening process must be repeated before the vessel returns to service.

5) **USPP Access.** An officer of the USPP, in uniform or in plain clothes, may board vessels and travel with any vessel at any time.

6) **Special Events.** Vessels scheduled for passenger service for a special event, if they have been taken out of service to, from or between Liberty and Ellis Islands, must be screened no later than one hour prior to its scheduled departure from the Battery Park

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or Liberty State Park screening sites, or from the Concessioner maintenance facility, as appropriate.

## **H) Security Screening of Visitors and Employees**

1) **NPS Responsibility.** The NPS manages the flow of visitors and employees into, through, and out of the screening facilities to ensure the integrity of the screening operation. Note that the current NPS screening facility capacity in Battery Park limits the number of passengers that can be screened and boarded to an average maximum of approximately 700 passengers per boat.

2) **Types of Screening.** Visitors and employees are screened for weapons, explosives and other prohibited items by magnetometer clearance and x-ray of packages and baggage.

3) **Prohibited Items.** No packages, backpacks, bags, etc. greater than 12" x 6" x 8" are allowed on board.

4) **Visitors.** All visitors to the park are screened at the departure facilities at Liberty State Park or Battery Park prior to boarding any vessel.

5) **Priority Screening for Employees.** Employees from the NPS, the Concessioner, contractors, Park partners, and other Park concession operations, and VIPs, when traveling on Concession boats, are also screened prior to boarding facilities at Liberty State Park and Battery Park. To avoid interruption of operations these persons are screened on a priority basis.

## **I) Emergency Contacts and Access**

The Concessioner will supply a minimum of four (4) names and phone numbers to the Chief, Concessions Management Division for emergency contacts who will be called in the event of a fire, intrusion, or other emergency. All Concession Facilities and vessels are to be accessible to responding emergency crews 24 hours a day.

## **J) Security Plans**

1) **Security Plan Development.** The Concessioner shall develop, in coordination with the NPS, United States Coast Guard, and any other applicable local, state or federal agencies, a plan that addresses all aspects of Homeland Security. The plan should conform to Maritime Transportation

Security Act regulations for security plans (33 CFR Part 104). The Concessioner shall provide this plan to the Superintendent within 120 days of execution of the CONTRACT.

2) **USPP Assistance.** The USPP is available to assist the Concessioner with physical security needs and evaluations. The specifics of intrusion protection required by the Concessioner shall be determined with and approved by the USPP.

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3) **Superintendent Approval.** The Concessioner shall submit all security plans to the Superintendent for approval.

### **K) Rates for Ferry Services and Island Cruises**

1) **Rate Determination.** The NPS will determine rates pursuant to all Applicable Laws, including without limitation, the NPS Concession Management Rate Approval Guide and the contract-prescribed rate determination method stated herein. The NPS reserves the right, at any time during the term of the CONTRACT, to re-evaluate and change rate determination methods.

2) **Initial Rates.** Rates for primary ferry services and the Island Cruise provided by the Concessioner are established as follows: as of the effective date of the CONTRACT, the rates are set at \$12.00 Adult, \$10.00 Senior and \$5.00 Child/Group.

a) The Concessioner will prominently post all rates for services provided to the visiting public.

b) All members of the visiting public shall be treated equally in regard to rates charged and services offered. The Concessioner shall not discriminate in rates charged to any member of the general public.

3) **Rate Increases and Approvals.** For the term of this Contract, the Concessioner may request a rate increase every three years. The first fare increase may be granted to be effective no sooner than January 1, 2011. Any rate increase requests as allowed below will be submitted to the Superintendent in writing 60 days prior to the effective date of the new proposed rates. This effective date will be no sooner than the first day of the calendar year following the year in which the rate increase is requested.

The October 2007 CPI-U for the New York metropolitan area will serve as the baseline CPI through the entire contract period. The maximum rate increase will be based on the October CPI that prevails in the calendar year prior to the date of the rate increase. The calculated fare will be rounded to the nearest \$0.10 increment. Formulas are as follows:

**EXAMPLE:**

Fare in 2011 = (Fare in 2008) x (October 2010 CPI-U)/(October 2007 CPI-U)  
Fare in 2014 = (Fare in 2008) x (October 2013 CPI-U)/(October 2007 CPI-U)  
Fare in 2017 = (Fare in 2008) x (October 2016 CPI-U)/(October 2007 CPI-U)

**Example:** Assume the CPI-U for the New York metropolitan area is 100.0 in October 2007, and that it is 111.0 in October 2010.  
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The calculated Adult fare in 2011 would be  $(\$12.00) \times (111.0)/(100.0)$ , or \$13.32, which rounds down to \$13.30. The calculated Senior fare would be  $(\$10.00) \times (111.0)/(100.0)$ , or \$11.10, which doesn't round either up or down and the fare is \$11.10. The calculated Child fare in 2011 would be  $(\$5.00) \times (111.0)/(100.0)$ , or \$5.55, which rounds up to \$5.60.

The NPS will approve, disapprove, or adjust rates and will inform the Concessioner of its decision as promptly as possible. Any change in applicable deposit and refund policies must be submitted with rate requests.

4) **Rate Reductions.** The Concessioner may propose rate reductions as an incentive for visitation during off-season and off-time visitation. All reduced rates proposed for this purpose, for sale to organized groups, and for any other purpose must be approved by the Superintendent.

#### L) Rates for Special Events

1) **Initial Rates.** Initial rates for special event transportation services are subject to approval by the Superintendent.

2) **Request Submittal for Annual Rate Changes.** The Concessioner will submit requests for rate changes in writing at least 60 days prior to the anticipated implementation dates, brochure publication dates and customer notification. Successful requests require support by established criteria and comparable data. The information to be included in the request is set forth in the NPS Concession Management Rate Approval Guide, included in an Appendix to the Prospectus. The Superintendent will evaluate one (1) rate change request per calendar year unless the Superintendent determines that an exception is warranted due to extenuating circumstances.

3) **Rate Determination and Method** 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. The Service will determine rates by the following prescribed rate determination methods, as deemed appropriate by the Superintendent. Rate determinations will be made in accordance with the guidelines included in the most recent Concession Management Rate Approval Guide, currently dated September 2002. The primary method of rate approval for this contract will be comparability.

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### 4. RESERVATIONS AND TICKETING

#### A) System Requirements

The Concessioner will implement a ticketing system that includes the ability to: manage reservations, issue tickets in advance, accept phone and Internet reservations (including international access), allow users to print tickets from their personal computers ensuring procedures to authenticate the validity of the printed ticket by the Concessioner and the NPS (monument tour passes), coordinate the sale of audio tours and distribution of monument tour passes with the sale of ferry tickets, provide an Internet offering interface in multiple languages, enable generation of reports about visitor trends and other relevant statistics, and allow visitors to purchase tickets from the NPS assigned location at the ticket booth in Castle Clinton National Monument, the Liberty State Park location, as well as from automated kiosks integrated with the Internet system. Sales will be available through credit and debit cards.

## **B) Reservation and Ticketing Operations**

The Concessioner will adequately staff and operate a computerized reservation service for walk-up sales seven (7) days a week during normal business hours, at a minimum one hour before and one half hour after sailings; telephone sales seven (7) days a week during normal business hours, at a minimum 8am-7pm Eastern time; and an Internet sales Web site. Recorded NPS information will be provided for guests waiting in a “hold” status for telephone sales, including a statement identifying that the Concessioner is operating pursuant to a concession contract with the NPS. Telephone hold times shall routinely last no longer than five minutes. The Concessioner will provide a Voice Response System 24 hours a day, to include without limitation: schedules, fares, transit options, directions, parking and other essential information.

1) **Telephone Service for the Hearing Impaired.** The Concessioner will provide telephone service (e.g., TTY, TDD or text telephone, or new technologies as they become available) for hearing-impaired visitors during the hours of its staffed ticket sales. Employees will be fully trained to operate all specialized equipment to accommodate hearing-impaired visitors.

2) **Ticket Sales.** The Concessioner will offer computerized reservation and ticketing service for the passenger ferry, the Island Cruise, sale of the audio tour, and reservations of free monument tour passes, and any additional ferry services authorized. These sales and reservations may only be made as specifically approved by the NPS.

3) **Security Procedures.** The Concessioner will implement procedures that will prevent tickets from being obtained or used for distribution or re-sale by any person or entity not so authorized. These procedures shall address sales through all available media including, without limitation, walk-up, telephone, Internet/website, kiosk and mail. The Concessioner shall update these procedures periodically, but in no event less

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often than semiannually, and shall provide copies of these procedures to the NPS. The NPS has the right to require specific adjustments be made to these procedures.

4) **Auditor.** The Concessioner shall utilize a third party auditor on a twice yearly basis to evaluate individual sales effectiveness and elimination of

second/third party sales/street sales and to provide a written report to the NPS regarding the results of the evaluation.

5) **Updates and Changes.** The Concessioner shall notify and coordinate with the NPS webmaster when updates/changes are made to its website that may/do impact the Statue of Liberty National Monument and Ellis Island website information; so that any link adjustments may be made in a timely manner. This shall include, but not be limited to, fare and schedule changes, changes to any specific information regarding visits to Liberty and Ellis Island, security procedures, ticket reservation/purchase procedures, emergency procedures, and the Concessioner's internal web configuration.

6) **Implementation.** Internet, telephone, and walkup ticket sales will be available starting on the effective date of the CONTRACT.

7) **Advertising.** The Concessioner shall obtain written approval from the Superintendent prior to releasing any advertising or public information about ticketing or reservations, regardless of the medium.

### **C) Advance Reservations and Ticket Sales**

The Concessioner will allow reservations and ticket sales up to one (1) year and one (1) day in advance, or as far in advance as the current schedule allows. Ticket sales will be limited to 700 passengers, or each boat's maximum passenger capacity, whichever is lower, to account for current security screening capacity. Advance reservations and ticket sales will be limited to \_\_\_\_\_% of each boat's ticket sales (percentage to be determined by NPS and the Concessioner) to allow for an appropriate level of same-day walk-up ticket sales.

### **D) Refund Policy**

The refund policy shall be available to all ticket purchasers.

1) **Advance Notice.** For all purchasers of tickets for primary ferry services, if cancellation is made twenty-four (24) or more hours in advance of a reservation, the Concessioner will refund the ticket in full. Rates at time of purchase shall be honored at the time of refund. Refunds will be processed within fourteen days of cancellation.

2) **Island Cruise.** In addition to the 24-hour cancellation, for purchasers of tickets for the Island Cruise, full refunds shall be provided up to the scheduled departure time if the Island Cruise is cancelled due to unforeseen circumstances.

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3) **Park Closure.** The Concessioner shall also provide refunds for all services as a result of security, safety, weather, or similar closures.

### **E) Ticket Windows**

The Concessioner will be assigned the kiosk at Castle Clinton National Monument in Battery Park as the primary location for ticketing operations in New York City. At Liberty State Park, the concessioner will provide a ticket window at the Central New Jersey Railroad Terminal through the agreement between the Concessioner and Department of Environmental Protection (DEP)/Liberty State Park.

- 1) **Will Call.** The Concessioner will provide ticket windows at Castle Clinton and at Liberty State Park, including “Will Call” windows.
- 2) **Posting of Schedules.** An accurate, visible schedule of all Liberty and Ellis Island boat departures and a “next available sailing” notice will be on prominent display in this area at all times.
- 3) **Supervision.** A Concessioner supervisor and/or a qualified designee will be available at the ticket booth to address and resolve visitor complaints and problems.
- 4) **Signage.** All ticketing related signs will conform to NPS graphic standards and displays should have an interesting and appropriate graphic design provided or approved by the Superintendent. No handwritten signs will be used.
- 5) **Marketing Activities.** The Concessioner will utilize any branding and marketing products and activities designed to promote the National Park Service and activities in or around the New York City Harbor District. The Concessioner may also participate in developing strategies and design of such activities in consultation with the NPS.

#### **F) Automated Ticketing Kiosks**

The Concessioner will also provide automated ticketing kiosks at the Embarkation Facilities and other suitable locations in the New York metropolitan area. The Concessioner will submit proposed locations for ticketing kiosks for the Superintendent’s approval.

#### **G) Internet Services**

- 1) **Web Site.** The concessioner will provide an Internet site that fully describes all available services and specific rates (i.e., transportation, monument tours, audio tours, Island Cruise, interpretive programs, charters and special events, etc.). The website shall also provide: (1) directions to the departure facilities and descriptions of all available transportation alternatives, (2) information on access by persons with disabilities, (3) descriptions of security requirements for access to the Park and the

monument, (4) information about Statue of Liberty National Monument and Ellis Island history, experiences, and resources, and (5) information and/or links to learn about other National Parks.

2) **Survey.** The Concessioner shall develop and submit for the Superintendent's prior written approval a customer satisfaction survey that will be incorporated in the reservation and ticketing system. The goal of this survey will be to help NPS capture visitor satisfaction with all elements of the Park experience. The Concessioner will explore appropriate and park-related incentives for visitors to respond to the survey after their visit to the Park.

## **5. FOOD AND BEVERAGE**

**A) Food and Beverage Services: Snack Bar.** The Concessioner will offer snack bar food and non-alcoholic beverage services on the vessels.

1) The Concessioner will conduct these services in full compliance with all Applicable Laws.

2) The Concessioner will work with the NPS to create a menu offering healthy and nutritious snack products (e.g., organic, locally grown products, fresh, low-fat, no trans-fat, etc.).

3) The Concessioner shall submit its menu for food and beverage services to NPS for approval prior to commencing its food and beverage operations.

4) The Concessioner will annually review its menu and explore new and healthful food and beverage alternatives and ways to improve services. Food and beverage tasting sessions will be scheduled with the Park at least once each year to introduce proposed new items.

### **B) Food and Beverage Operations**

1) **Training and Certification.** All food handlers who provide snack bar service will be fully trained. Food handlers in a training status will be accompanied by a certified food handler. Serve Safe Certifications or equivalent as determined by the Superintendent, must be available for review by NPS personnel, and must be renewed according to State of New York and New Jersey regulations.

2) **Cleanliness.** Food storage areas will be kept clean and neat.

3) **Signage.** All food and beverage signage will conform to NPS graphic standards and displays will have an appropriate graphic design approved by the Superintendent. No handwritten signs will be used.

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## **6. MERCHANDISE**

### **A) Merchandise Sales Service**

The Concessioner will offer merchandise sales on the vessels.

1) **Visitor convenience items.** Merchandise sales will emphasize visitor convenience items such as maps, film, cameras and batteries.

2) **Limited souvenirs.** Only limited souvenirs that relate to the Park's purpose, significance, and interpretive stories will be authorized and these will be approved by the Superintendent in advance.

## **B) Merchandise Sales Operations**

- 1) **Merchandise Plan.** The Concessioner shall submit its proposed merchandise plan to the Superintendent for approval prior to commencing its merchandising operation.
  - a) **Changes and Improvements.** The Concessioner will annually review its merchandise list and explore new visitor convenience items and souvenir alternatives and ways to improve services. Review sessions will be scheduled with the Park at least once each year to introduce proposed new items.
  - b) **Display.** Merchandise will be professionally displayed, clean, neat, and uncluttered.
  - c) **Signage.** All merchandising signage will conform to NPS graphic standards and displays will have an appropriate graphic design approved by the Superintendent. No handwritten signs will be used.

## **7. RATES FOR FOOD, BEVERAGE AND MERCHANDISE**

### **A) Initial Rates**

Initial rates for food, beverage, and merchandise are subject to approval by the Superintendent.

### **B) Request Submittal for Annual Rate Changes**

The Concessioner will submit requests for rate changes in writing at least 60 days prior to the anticipated implementation dates, brochure publication dates and customer notification. Successful requests require support by established criteria and comparable data. The information to be included in the request is set forth in the NPS Concession Management Rate Approval Guide With regard to each service required and authorized under the CONTRACT, the Superintendent will evaluate one (1) rate  
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change request per calendar year unless the Superintendent determines that an exception is warranted due to extenuating circumstances.

### **C) Rate Determination**

It is the objective of the Service to ensure that the Concessioner's rates are commensurate with the level of services and facilities provided, and are reasonable, justified, and comparable with similar facilities and services provided by the private sector.

### **D) Rate Method**

The Service will determine rates for each revenue outlet by the following prescribed rate determination methods, as deemed appropriate by the

Superintendent. Rate determinations will be made in accordance with the guidelines included in the most recent Concession Management Rate Approval Guide, currently dated September 2002.

- 1) **Food and Beverage—Comparability.** The NPS will review selected comparables for rate comparability in accordance with current NPS guidelines.
- 2) **Merchandise—Merchandise Markup and Competitive Market Declaration.** Merchandise Markup will be used for visitor convenience items and Competitive Market Declaration (CMD) will be used for limited souvenirs. On an annual basis, the Superintendent will provide the Concessioner with maximum markups.

#### **E) Rate Approval**

1) **Maximum and Minimum Rates.** All maximum and minimum rates related to the Concession operation are subject to the final written approval of the Superintendent.

2) **Approval Timing.** The Service may approve, disapprove or adjust rates and will inform the Concessioner within 60 days of the rate request submittal. During the peak visitor use season (March 1 through October 1), an additional 30 days may be necessary to complete the comparability study. It is the responsibility of the Concessioner to submit rate requests in a timely manner to ensure that the proper rates are approved in order to take into consideration any seasonality of the service and to take full advantage of marketing the services. Should special conditions require a quicker than normal response, the Concessioner will clearly explain these conditions in writing with the request. The NPS will attempt to accommodate this request; however, this will not be normal procedure.

3) **Approved Rate Posting.** The Concessioner will prominently post all rates for goods and services provided to the visiting public in all locations and through all media directed at Park visitors.

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#### **F) Purchasing**

1) **Competitive Purchasing.** The Concessioner will engage in competitive specification purchasing. Purchases may be made from a facility operated or owned by the Concessioner or a parent company, provided the product is comparable in quality and price.

2) **Discounts.** The Concessioner will take advantage of all available trade, cash and quantity discounts and rebates and pass them through to the consumer or the operation.

3) **Environmental Purchasing.** The Concessioner will purchase environmentally preferable products where economically and technically feasible and appropriate.

## 8. INTERPRETATION

### A) Operations

1) **Visitor Experience.** The visitor experience at the Statue of Liberty National Monument and Ellis Island includes the time spent purchasing a ticket, waiting for the ferry, boarding the ferry, and riding the ferry to and from the Park. All Concession employees will demonstrate courtesy to visitors and have a customer-service orientation. Information will be provided using a variety of media to help visitors plan their trips and facilitate their visits. To help improve the visitor experience, the concessioner will incorporate Park interpretive stories into the ferry services through approved interpretive media.

2) **Interpretative Messages.** The Concessioner will explore a wide variety of methods to convey the purpose and significance of the Park, interpretive stories, and resource protection objectives to Park visitors. Messages should also be conveyed on NPS goals and other national parks in metropolitan New York and New Jersey. The approved interpretive program will provide an informative and inspirational program to visitors.

3) **Wayfinding, Orientation Signage and Display Graphics.** All signs will conform to NPS graphic standards (<http://www.hfc.nps.gov/uniguide/>) and have a design and interpretive message provided or approved by the Superintendent. The Concessioner will utilize any branding and marketing products and activities designed by and to promote the National Park Service and activities in or around the New York City Harbor District. The Concessioner may also participate in developing strategies and design of such activities in consultation with the NPS. All signs will conform to NPS graphic standards and displays will have an interesting and appropriate graphic design and interpretive message provided or approved by the Superintendent.

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4) **Interpretive Plan.** The Concessioner shall submit a written plan to the Superintendent for approval prior to commencing interpretive programs. This interpretive plan shall outline the interpretive programs and methods the Concessioner will implement to educate visitors about the NPS mission and about the Statue of Liberty National Monument and Ellis Island. Additional efforts should explain any environmental programs or initiatives implemented by the Concessioner.

#### a) **Minimum Components of Interpretive Plan**

i) Public outreach and education activities regarding Park purposes, significance, and interpretive stories, as well as other NPS destinations. Internet links will be included as appropriate.

- ii) Ways to facilitate educational programs for school groups visiting Liberty and Ellis Island.
- iii) Interpretive materials to be provided at Embarkation Facilities and on all vessels including at minimum, interpretive maps, brochures and exhibits prominently displayed at locations within the vessels and to serve waiting lines and areas.
- iv) An NPS-approved, recorded program will be provided during the ferry ride to help introduce visitors to the Park and New York Harbor.
- v) Tickets and monument tour passes will have an interesting and appropriate graphic design and interpretive message provided or approved by the Superintendent and will be considered souvenirs of the trip to the Park.
- vi) Audio tours will be offered in combination with ferry ticket sales. The Concessioner will not be responsible for program development, management, content of the audio tour, or distribution of any equipment for the tour.

## **B) Collaboration**

Interpretation will be a collaborative effort between the NPS and the Concessioner. The Concessioner will train key public-contact staff members in applicable interpretive techniques. Employees will demonstrate their knowledge of the NPS mission, the NPS, Liberty and Ellis Island, and the history of the Statue of Liberty National Monument and Ellis Island. The Division of Interpretation and Visitor Services will advise/assist the Concessioner in the development of interpretive programs which encompass all of these efforts.

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## **9. MARKETING STRATEGY**

### **A) Marketing Plan**

The Concessioner shall develop and submit for approval to the NPS within ninety (90) days of the effective date of the CONTRACT a marketing plan for sales of tickets during both peak and non-peak periods. The marketing plan shall include at a minimum:

- 1) Marketing strategy that addresses multiple sales mediums, such as Internet, phone, kiosks, tour agents, etc.
- 2) Most effective and widest variety of options for purchasing tickets.
- 3) Branding strategy.
- 4) Incorporation of interpretive materials and media throughout the booking process both prior to and during visits.
- 5) Advertising venues, including without limitation print, cable TV, transit ads, etc.

## **B) Advertising and Public Information**

- 1) **Promotional Material.** All promotional material, regardless of medium, must be approved by the Superintendent prior to dissemination. Promotional material must include a statement that the Concessioner is an “authorized Concessioner of the National Park Service, Department of the Interior.” All changes to promotional material or proposed new promotional material shall be submitted to the Superintendent for review at least thirty (30) days prior to projected need or printing date. Longer periods may be required for major projects or where NPS assistance is required to help develop the product. The Concessioner will contact park staff well in advance to establish specific time frames for each project.
- 2) **Media and Public Relations.** All media requests/contacts shall be immediately referred to the Superintendent. All press releases regarding Statue of Liberty National Monument and Ellis Island and its operations shall be presented in draft form to the Superintendent for approval prior to dissemination. All media tours of Liberty and Ellis Island shall be approved by the Superintendent.

## **10. CONCESSIONER HIRING**

- A) All policies and procedures established by the Concessioner pursuant to Sec. 4, paragraph (d) of the CONTRACT shall meet the requirements and comply with this section.

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### **B) Hiring Policies**

- 1) **Staffing Levels.** The Concessioner will hire an appropriate number of employees to ensure safe and quality performance at all times for all required or authorized services identified in the CONTRACT. The Concessioner will initially review its staffing with the NPS, and periodically, or at the request of the NPS, correct any staffing issues.
- 2) **Drug-Free Policy.** The Concessioner will implement a drug-free policy for all concession employees to assure that employees and operations are not affected by drug use.
- 3) **Certifications and Licenses.** All vessel crew members shall maintain current U.S. Coast Guard (USCG) certifications and/or licenses. All licenses and/or certifications will be available for inspection upon request.

### **C) Employee Background Checks**

- 1) **Policies.** The Concessioner will establish hiring policies that will include appropriate reviews of applicants for employment. The Concessioner will not hire any person known to have an outstanding warrant for arrest and will secure this information prior to hiring new employees.

2) **Concessioner Responsibility.** The Concessioner is responsible, at its own expense, for ensuring that background checks and security clearances are conducted and concluded on all job applicants prior to employment.

a) The Concessioner will provide job applicant information required to conduct such background checks and security clearances to the NPS for use by the Federal Protective Service (FPS) or another entity designated to conduct such checks and clearances. The Concessioner will reimburse the NPS for the cost to perform background checks for the purposes of the CONTRACT. The current estimated cost of a background check by FPS is \$100 per employee.

b) The Superintendent will either approve or deny employment for all applicants in a timely fashion.

c) Background checks shall consider but not be limited to the applicant's history or lack of:

- Criminal or dishonest conduct;
- Material, intentional false statement or deception or fraud in examination or appointment;
- Alcohol abuse of a nature and duration which suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others;
- Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation;
- Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force;
- Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

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d) Persons with a criminal record of Part 1 Offenses as categorized in the Uniform Crime Reporting Handbook (2004 – U.S. Department of Justice, Federal Bureau of Investigation – see [www.fbi.gov/ucr/handbook/ucrhandbook04.pdf](http://www.fbi.gov/ucr/handbook/ucrhandbook04.pdf)) will not be approved for employment. Part 1 Offenses include: Criminal Homicide, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny–theft, Motor Vehicle Theft, and Arson. Persons with a record of Part 2 Offenses and unlisted petty crimes may be approved for employment after appropriate evaluation as follows.

e) Evaluation of an applicant with a record of any of the above may be based on, but not limited to:

- The nature of the position for which the person is applying or in which the person is employed;
- The nature and seriousness of the conduct;
- The circumstances surrounding the conduct;
- How recently the conduct occurred;
- The age of the person involved at the time of the conduct;
- Contributing societal conditions; and
- The absence or presence of rehabilitation or efforts toward rehabilitation.

f) The Concessioner shall inform employees and potential employees, in writing, that any individuals required to register with a law enforcement agency (drug offenders and sex offenders) must also register with the NPS's Criminal Investigations Unit.

#### **D) Employee/Staffing Practices**

1) **Appearance and Attitude.** All employees in direct contact with the general public shall wear a clean, suitable uniform with a personal nametag that identifies the individual as concession staff, and be appropriately groomed. Employees will project a hospitable, helpful, friendly, positive attitude, be capable of and willing to answer visitor questions, provide visitor assistance, and shall meet the employment and training requirements set forth in Section 4(a) of the CONTRACT. The Concessioner shall take appropriate steps to enforce these requirements. The NPS reserves the right to require removal of personnel failing to perform to these standards to the extent authorized by all Applicable Laws.

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2) **Affirmative Action Plan.** The Concessioner shall maintain and implement an affirmative action plan, as required by law. This plan must be available to all employees upon request.

3) **Employee Handbook.** The Concessioner will develop an Employee Handbook and submit for the Superintendent's approval. Any changes to the Handbook will be approved by the Superintendent in advance.

#### **E) NPS Employees and Families**

The Concessioner shall not employ in any status an NPS employee, his/her spouse, or minor children of NPS employees without the Superintendent's written approval. Employees must submit a written request to the Superintendent. At a minimum, the Concessioner shall not employ in any status the spouse or children of the Superintendent, Deputy Superintendent, Chief of Concessions Management and staff, Safety Officer, or Public Health Consultant.

#### **F) Orientation and Training**

1) **Startup Training Requirements.** The Concessioner will develop a training plan for each position description and submit it to the Superintendent for approval within 90 days of contract inception. The plan will identify

specific training programs (e.g. safety, public health, environmental management, first aid, customer service, security, NPS regulations, Park purpose, significance and interpretation) and identify the employees that must complete each type of training and the amount of time they must spend in training. In addition, it will specify the deadline by which each employee will have to complete all required training and identify frequency for refresher training. The Superintendent may request modification if the proposed training program is deemed unsatisfactory.

2) **Orientation.** The Concessioner will provide orientation for all employees and will inform employees of NPS and park regulations and requirements that affect their employment and activities. Additional orientation pertinent to the Statue of Liberty National Monument and Ellis Island will be conducted by the Concessioner with NPS consultation and participation. The orientation will include general resource protection and environmental management information.

3) **Ongoing Training.** The Concessioner will provide the required, appropriate, and applicable training to each employee, prior to job assignments and/or working with the public for all services required or authorized by the CONTRACT. Refresher training will be provided as necessary and/or as required by Applicable Laws. This will include hospitality and customer service training for all employees who have direct visitor contact and/or who provide visitor information. Food, beverage, and merchandising training will be provided to appropriate employees. The NPS will provide orientation(s) to managers on an annual basis or as needed for new hires. The Concessioner will maintain a list of training conducted and employees who participated.

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#### 4) **Security training for Concessioner employees**

a) On a periodic basis, all employees of the Concessioner shall take part in training in security awareness and security procedures.

b) The USPP offers a number of training courses to which the Concessioner is invited. NPS will notify the Concessioner when training is offered. Some examples of training that has been held in the past include:

- Tourism and Security
- Crime Prevention Training
- Threat Awareness
- Global Security Awareness
- Emergency Evacuation
- Tabletop Exercises (Emergency Situation Gaming)
- Cultural Sensitivity Awareness
- Violence Prevention

c) The Concessioner may propose or contract for Security training of its employees with the approval of the Superintendent.

5) **Interpretive Training.** The Concessioner will develop for the approval of the Superintendent interpretive training for all employees who provide interpretive and/or informational services. The training will be conducted as necessary throughout the year to ensure that all staff have adequate knowledge of the Park in order to carry out these services. This training will assist the Concessioner in preparing and conducting effective interpretive programs.

6) **Compliance Training.** The Concessioner training program will address training to comply with all Applicable Laws including, without limitation, additional training identified in its Park-approved Environmental Management Program, Risk Management Program, and other required programs.

7) **Training for Temporary Workers.** The Concessioner will provide appropriate training for all persons who provide temporary services. The training requirements will be established based on the position, nature and duration of services being provided.

## **11. OPERATIONS EVALUATIONS**

### **A) Inspections**

The NPS, its designated agents, and appropriate regulatory entities will periodically and annually inspect services and operations under this CONTRACT in accordance with NPS *CC-STLI001-07 Contract Exhibit A: Operating Plan Page A-27*

guidelines and all Applicable Laws, without limitation, to ensure compliance with public health, risk management, environmental management, and maintenance and operating standards. These inspections will include, but are not limited to U.S. Coast Guard inspections, structural fire inspections, Public Health Service inspections, and environmental audits.

### **B) Facilities Inspections**

The NPS shall have the right to inspect and evaluate all Concession Facilities and other property and support facilities used or held for use in providing concession services under the CONTRACT for all purposes including preparing a prospectus for a succeeding concession contract.

### **C) Food Service Sanitation**

The Concessioner will maintain and follow a formal, written food service sanitation self-inspection program. The NPS will review the reports generated as part of the Concessioner's program to monitor effectiveness and require updates to the program as necessary.

### **D) Fire Inspections**

1) The New York and Jersey City Fire Departments may conduct periodic inspections of all Concession Facilities, related support facilities (including the Landing Facilities), and other property. The concessioner will notify the

Park upon notification of any planned inspection and upon conclusion of any unannounced inspection and provide copies of all reports received based on any inspection to the Park within 3 days of receipt. Corrections of any violations identified by them will be made through coordination with the NPS.

2) The Concessioner will perform periodic interior and exterior fire inspections of all Concession Facilities, related support facilities (including Landing Facilities and maintenance facilities), and other property. Written records verifying the completion of such inspections will be maintained by the Concessioner and available to the NPS upon request.

#### **E) U.S. Coast Guard Inspections**

Vessels will be made available for U.S. Coast Guard inspections.

#### **F) Correction of Deficiencies**

The Concessioner must be responsive to dates assigned for correction of deficiencies and any required abatement plans for correction of identified deficiencies. The Concessioner will meet with NPS officials to schedule and prioritize correction of deficiencies and improvement programs resulting from these inspections. Failure to correct deficiencies in a timely manner may result in the requirement of a performance bond in accordance with *CC-STLI001-07 Contract Exhibit A: Operating Plan Page A-28*

Section 12(a) of this CONTRACT, and/or termination of the contract by the Director for default pursuant to Section 15 of this CONTRACT - Suspension, Termination and Expiration.

### **12. CONCESSIONER REPORTING REQUIREMENTS**

#### **A) Computerized Information Management System**

The Concessioner shall implement a computerized information management system (CIMS) that tracks, sorts, and generates reports on its operations by category and activity in a variety of ways. The Concessioner will meet with the NPS within 60 (sixty) days of the effective date of the CONTRACT to identify specific reporting requirements. At a minimum, the Superintendent will be provided monthly and annual visitation reports, statistics on ticket sales by age classification, statistics on where visitors are coming from, visitor trends, and other relevant information.

#### **B) Vessel Reporting**

The NPS will be provided copies of each vessel's United States Coast Guard (USCG) Certificate of Inspection annually. The Concessioner shall also provide the NPS any associated reports or documents prepared for or by the USCG and document complete compliance with all Applicable Laws including, but not limited to, USCG passenger vessel fire protection regulations in Title 46 of the Code of Federal Regulations.

#### **C) Incident Reporting**

The Concessioner shall comply with any (i) hazardous material, hazardous substance, chemical or pollutant release(s), (ii) fatalities, injuries, and illness, (iii) fire, or (iv) boat accidents (including, without limitation, all groundings) reporting

requirements to government agencies (including, without limitation, the U. S. Coast Guard) directly applicable to Concessioner under all Applicable Laws. Notice of such reporting shall be reported in writing concurrently to the NPS. In addition, Concessioner shall inform the NPS of all communications with the U.S. Coast Guard pertaining to such incidents. The Concessioner shall ensure that any oral reports of such incidents are followed by a written report that includes a detailed description of the incident.

The Concessioner shall immediately report to the Park Communication Center (emergency number: (212) 363-3260): any visitor or employee fatalities or injuries; any incidents involving fires or other property damages; all motor vehicle or vessel accidents; any incident that affects or may affect the Park's resources or the normal routine of ongoing operations; and any known or suspected violations of the law, any notices of safety (vessel or otherwise) complaints and/or inspections.

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#### **D) Human Illness Reporting**

Any suspected outbreak of human illness, whether involving employees or visitors, is to be reported immediately to the Concession Management Division. A suspected outbreak of human illness is two or more persons with common symptoms that could be associated with contaminated water or food sources or other adverse environmental conditions.

#### **E) Environmental Management Plans and Reports**

##### **1) Concessioner Responsibility**

- a) Environmental Management Program (EMP). The Concessioner will develop, document, and implement an EMP in accordance with Section 6 of this CONTRACT.
- b) The Concessioner will develop all plans and submit all reports as required by Applicable Laws, including without limitation, the following:
  - 29 CFR 1910.1200 regarding Inventory of Hazardous Substances
  - Emergency Planning and Community Right to Know Act regarding Extremely Hazardous Substances
  - Resource Conservation and Recovery Act (RCRA) regarding Inventory of Waste Streams
  - 29 CFR 1910.1200 regarding Hazard Communication Programs
  - 29 CFR 1910.134 regarding Respiratory Protection Programs
  - 29 CFR 1910.38 regarding Emergency Action Plans
  - 29 CFR 1910.120 regarding Emergency Response Plans
  - NPS Integrated Pest Management policies
  - NPS Solid Waste Management Handbook specific to Solid Waste Reporting

#### **F) Annual Financial Reporting**

The Concessioner shall provide the NPS an Annual Financial Report (AFR) in a form provided by NPS within 60 days after the conclusion of the Concessioner's fiscal year. Revenue and expenses for the categories of ferry services, Island Cruises, special event ferry transportation, and any other distinct authorized operation shall be reported as separate departments.

The AFR must also include financial reports for all operations conducted by the Concessioner that provide services in addition to those specified in the NPS contract, which use any personal property, real property, personal services, and/or contracted services that are also used to provide the NPS contracted services. All revenue and expense line items for such additional services must be reported separately from the NPS

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operating departments in accordance with the requirements specified in Section 10(b) of this CONTRACT. The methods for allocating costs between the NPS contracted services and the additional services must be explained in auditor/reviewer notes.

### **13. UTILITY RESPONSIBILITY**

The Concessioner is responsible for providing its own utilities, including electricity and telephone at the Castle Clinton kiosk. The Concessioner is responsible for making direct payments to utility suppliers.

### **14. DOCUMENTED RISK MANAGEMENT PROGRAM**

#### **A) Safe and Healthful Environment**

The Concessioner will provide a safe and healthful environment in accordance with all Applicable Laws, including without limitation the Occupational Safety and Health Act of 1970 and the NPS Risk Management Program (Guideline DO-50A, B and C).

#### **B) Risk Management Plan**

The Concessioner will develop, maintain, and implement a documented safety program (Risk Management Plan), in accordance with all Applicable Laws, including without limitation NPS 48. The Risk Management Plan will be submitted to the Superintendent for approval prior to the first scheduled boat trip operated by the Concessioner. This plan must address the following:

- 1) Management's Policy Statement, Duties, Employees' Responsibilities and Administration
- 2) Inspection and Abatement
- 3) Accident/Investigation and Reporting
- 4) Safety/Health Committee
- 5) Training
- 6) Emergency Procedures

## 15. LOST AND FOUND POLICY

Each found item shall be tagged, listing the item found, location found, date and time found, and by whom it was found. The Concessioner shall secure property in a central location and maintain an accurate log of items and make it available to the NPS upon request. If an item is

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not claimed within seven (7) days, it shall be turned over to the NPS in accordance with the NPS Lost and Found Policy. The Concessioner shall attempt to identify the ownership of the found item, attempt to contact the owner, and provide all this information to the NPS.

## 16. VISITOR COMMENTS AND COMPLAINTS

### A) Comments and Complaints Received by the NPS

The NPS will forward comments or complaints regarding the Concessioner's operations to the Concessioner for a timely review. The Concessioner will respond to the Superintendent and only the Superintendent in writing within five working days. A copy of any NPS response will be forwarded to the Concessioner.

### B) Comments and Complaints Received by the Concessioner

The Concessioner shall provide the Superintendent any comments or complaints it receives directly, within five working days. No response from the Concessioner may be released without the Superintendent's approval.

### C) Secret Shopper

The Concessioner will contract for a "secret shopper" at least twice per year to assist the Superintendent's in determining overall customer satisfaction. The goal of the "secret shopper" is to evaluate the Concession Operation and determine visitor satisfaction with all elements of the concession experience. The evaluation reports will be provided, within 10 days of visit, directly by the "secret shopper" to the Superintendent, Attention: Chief of Concessions at the address listed below.

### D) Public Notice

The following notice will be prominently posted and communicated to visitors:

*This service is operated by \_\_\_\_\_, a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Prices are approved by the National Park Service.*

*Please address comments to:*

*Superintendent*

*Statue of Liberty National Monument and Ellis Island*

*Liberty Island*

*New*

*York,*

*NY*

*10004*

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## 17. SMOKING

Smoking is prohibited on board all vessels and all indoor areas within the assigned Concession Facilities and is only allowed on Liberty and Ellis Islands and in Castle

Clinton National Monument in outdoor areas pursuant to all Applicable Laws. Specific attention shall be given to assure appropriate disposal of all smoking materials. The Concessioner will post notices in all public areas as necessary. All Concessioner employees and contractors shall follow these guidelines.

Dated at Statue of Liberty National Monument this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
NATIONAL PARK SERVICE

\_\_\_\_\_  
Superintendent  
Statue of Liberty National Monument and Ellis Island

2006 PROSPECTUS - FOR REFERENCE USE

**EXHIBIT A**  
**OPERATING PLAN**  
**STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND**

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## INTRODUCTION

This Operating Plan between \_\_\_\_\_ (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "NPS") serves as a supplement to Concession Contract CC-STLI001-07 (hereinafter referred to as the "CONTRACT"). It describes specific operating responsibilities of the Concessioner and the NPS with regard to Concession Facilities and vessels, related support facilities, and other property 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 of Statue of Liberty National Monument and Ellis Island ("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.

### 1. DEFINITIONS

In addition to all defined terms contained in the CONTRACT, its Exhibits and 36 CFR Part 51, the following definitions apply to this Operating Plan:

- **Environmentally Preferable** refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.
- **Hazardous Substance** refers to any hazardous waste, hazardous chemical or hazardous material. Further clarification on hazardous substances can be found in 29 CFR 1910.120, Occupational Safety and Health Standards, Hazardous Waste Operations and Emergency Response, at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/29cfr1910\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/29cfr1910_04.html).
- **Incidental** refers to a spill or release of a hazardous substance, which does not pose a significant safety or health hazard to employees in the immediate vicinity or to the employee cleaning it up, nor does it have the potential to become an emergency within a short time frame. Incidental releases are limited in quantity, exposure potential, or toxicity and present minor safety or health hazards to employees in the immediate work area or those assigned to clean them up. Employees who are familiar with the hazards of the chemicals with which they are working may safely clean up an incidental spill.

## 2. MANAGEMENT, ORGANIZATION AND RESPONSIBILITIES

### A) Concessioner

The Concessioner shall employ a manager, who carries out the terms of this CONTRACT in the operation of the concession services and Concession Facilities, related support facilities, and other property for the purposes authorized by the CONTRACT. To achieve an effective and efficient working relationship between the Concessioner and the NPS, the Concessioner must designate one representative who has full authority to act as a liaison in all matters related to this CONTRACT. Including at a minimum:

- 1) **Staff.** The Concessioner will employ a staff with the expertise to operate all services required and/or authorized under this CONTRACT.
- 2) **Physical Security Specialist.** The Concessioner will employ a physical security specialist to coordinate security matters with the United States Park Police due to the unique security requirements at the Park.
- 3) **Reservation and Ticketing System Manager.** The Concessioner will employ a reservation and ticketing system specialist who also will serve as manager of Internet services and activities.
- 4) **Managers and Supervisors.** The Concessioner will furnish the NPS with an initial list identifying key concession management and supervisory personnel and their job titles, with updates as changes occur.
- 5) **Communication and Meetings.** The Concessioner will foster effective communications by holding regular meetings with those entities that have daily operational responsibilities on Liberty Island and Ellis Island.

### B) NPS

- 1) **Superintendent.** The Superintendent manages the total Park operation. The Superintendent carries out the policies and directives of the NPS. The Superintendent is supported by a Deputy Superintendent for Operations and a Deputy Superintendent for Business Management, Planning, and Development.
- 2) **Concessions Management Division.** The Concessions Management Division is responsible for developing, negotiating, and administering the NPS's commercial and real estate activities and facility-based partnerships, which include all concession activities. This Division coordinates the functions of other NPS divisions relating to all concession operations. The Concessions Management Division is the primary contact for all matters related to the administration of this CONTRACT and shall be the first point of contact for any questions.

- a) The Chief of the Concessions Management Division or his/her designee makes recommendations to the Superintendent on all aspects of the Concessioner's operation. He/she has authority from the Superintendent to make field decisions that pertain to the concessions operation, and acts as liaison between the Concessioner and Superintendent. The Superintendent will notify the Concessioner of the name and contact information for the Chief. He/she ensures necessary evaluations and inspections are performed, including those required by the NPS Public Health Program, Park Safety Officer, fire inspectors, U.S. Coast Guard, and the Concessioner review program. The Chief is responsible for reviewing and recommending for approval all concessioner rates in accordance with this CONTRACT. The Chief will identify appropriate individuals at Statue of Liberty National Monument and Ellis Island to participate in the meetings required by this Plan. He/she coordinates media relations and activities with the Concessioner and appropriate NPS personnel. He/she also is responsible for matters pertaining to filming, charters, private or public special events.
  - b) Concession Management Specialists review and/or coordinate the Concessioner's operational and maintenance responsibilities, including but not limited to: rate approvals, provision of quality visitor services, schedule changes; advertisements; annual financial reports; insurance coverage; and any other CONTRACT requirements.
  - c) The Concessions Management Specialists coordinate with other Park staff to review and evaluate the Concessioner's Risk Management Program and Environmental Management Program required under this contract.
- 3) **NPS Public Health Program.** NPS Public Health consultants, in coordination with the U.S. Coast Guard and the New York City Department of Health, inspect food and beverage services, water, and waste water systems, in accordance with Applicable Laws, including without limitation, compliance with Public Health standards.
  - 4) **United States Park Police.** The United States Park Police (USPP), part of NPS, provides law enforcement services for the Park. The USPP initiate, review, supervise, and coordinate the activities of personnel who provide public safety (law enforcement, fire, emergency medical and physical security) functions. USPP serve as the direct line of communication to the Concessioner on matters related to fire management, law enforcement, search and rescue, emergency medical services, emergency management operations, physical security, and resource protection.
  - 5) **Division of Interpretation and Visitor Services.** The Chief of Interpretation and Visitor Services is responsible for matters pertaining to interpretation, environmental education, and public information. This Division, along with the Division of Museum Services, in coordination with the Chief of the Concessions Management Division, monitors and evaluates concession interpretive activities, and reviews Concessioner interpretive materials. Interpretive rangers provide interpretive programs for the visiting public and advise the Concessioner about interpretive matters, including

- concession staff training. Interpretive rangers may assist with concession operational evaluations.
- 6) **Maintenance Division.** The Chief, Division of Maintenance is responsible for matters pertaining to maintenance and supervises the activities of the Park's facility management staff. The Chief of Maintenance provides day-to-day supervision over all maintenance activities and operations, including any utilities provided by the NPS. He/She advises the Concessioner on maintenance matters.
    - a) NPS project managers provide overall supervision and coordination with the Concessioner on specific NPS construction projects.
    - b) The Facility Operations Specialist is responsible for coordinating Environmental Management activities and is responsible for matters pertaining to natural resources management such as integrated pest management, air quality monitoring, vegetation management, fish and wildlife management, and hazard tree mitigation.
  - 7) **Museum Services Division.** The Chief, Museum Services Division advises the Concessioner about the care, treatment, and preservation of cultural resources/historic structures and for coordination of environmental (NEPA and NHPA) compliance activities.
  - 8) **Administration.** The Administrative Officer is responsible for certain matters related to fiscal management associated with the concession activities, including franchise fees and utilities payments.

### **3. TRANSPORTATION SERVICES AND OPERATIONS**

All services shall be provided in a consistent, high quality manner and in compliance with all Applicable Laws including without limitation NPS and United States Coast Guard (USCG) regulations. NPS standards identified in NPS 48 Concessioner Review Program (Operational Performance) are considered service minimums. The Concessioner is expected to meet or exceed these standards. The Concessioner shall be responsible for monitoring its operations on an ongoing basis to assure that quality standards are consistently met.

## A) Ferry Services

- 1) **Primary Ferry Service.** The Concessioner will provide year-round, scheduled passenger boat transportation for Park visitors to, from and between Liberty and Ellis Islands, originating from and returning to NPS-approved locations in, adjoining, or in proximity to Battery Park (Manhattan) and Liberty State Park (Jersey City).
- 2) **Statue of Liberty and Ellis Island Cruise (Island Cruise).** The Concessioner will offer an NPS approved interpretive program that provides an informative and inspirational experience for visitors, highlighting the Park and its resources and stories. Passengers will not disembark on either island. At a minimum, the Island Cruise will be offered from mid-March through New Year's Day.
  - a) The Island Cruise will provide an alternative to visiting the islands when tickets have been sold out and allow a Park experience when the islands are closed. It also will offer an alternative experience for visitors who have limited time for their visit to the Park.
  - b) The primary ferry services bringing visitors to and from the islands are the priority service. This may mean that Island Cruise services will need to be cancelled from time to time in support of the primary services. The Superintendent will be notified of a proposed cancellation of Island Cruise services and will approve or disapprove the cancellation.
  - c) The Island Cruise service will depart from Battery Park and provide visitors with interpretation about and close-up views of the Statue of Liberty and Ellis Island. The boat will not dock at either island but will be required to provide part of the interpretive program while inside the Park's boundary.
  - d) The Island Cruise will travel first to the area in front of the Statue of Liberty; the ferry will stop and provide visitors with an interpretive program about the Statue of Liberty. Next it will travel to Ellis Island, enter the Ellis Island ferry slip, stop and provide an interpretive program about Ellis Island.
  - e) The Service may work with one of its non-profit partners to develop and provide the interpretive program.
- 3) **Special Events.** The Concessioner will coordinate with the Concessions Management Division to provide special event transportation services to Liberty or Ellis Islands. All requests for charters and special events shall be immediately referred to the Park's Concessions Management Division, which will coordinate the Park's review and any subsequent approvals of these requests. No charters and events may take place without the prior written approval of the Superintendent.
- 4) **Transportation for Government Business.** Employees and people doing business with the park, as designated by the Superintendent, will travel by NPS Park boat

during its operating schedule and, otherwise, by Concessioner boats at no charge on a limited basis provided space is available.

## B) Vessels

- 1) **Fleet.** At a minimum, the Concessioner shall make seven (7) vessels with the passenger capacities listed below available for use in fulfilling the terms of this contract. Changes to the below inventory will require prior written approval of the Superintendent.

Vessel	USCG ID #	Gross/Net Tons	Build Year	Manufacturer	Passenger Capacity
Miss Gateway	647816	95/72	1982	Blount	500
Miss Ellis Island	974032	93/63	1991	Blount	799
Miss New Jersey	977318	93/63	1991	Blount	799
Miss New York	993370	94/63	1993	Blount	799
Miss Circle Line	295340	369/251	1964	Wiley	1,035
Miss Liberty	267394	98/66	1954	Blount	827
Miss Freedom	582111	98/74	1977	Blount	564

- 2) **Primary Vessels.** At a minimum, six (6) vessels shall be designated as primary vessels to provide boat transportation services to, from, and between Liberty and Ellis Islands.
- 3) **Island Cruise.** At minimum, one (1) vessel shall be used to provide Island Cruise services if not needed to assist with transporting visitors from Liberty and Ellis Islands when departure waiting lines cannot be accommodated by the six primary boats in a timely manner. This boat(s) will also be available to support the primary boats with any emergency evacuations from the Park as directed by the Superintendent. The Concessioner shall submit for prior written approval by the Superintendent the vessel(s) designated to provide the Island Cruise.
- 4) **Backup Vessels.** In the event of a disruption of service by one of the primary vessels, the Concessioner shall immediately notify the Park and make the Island Cruise vessel available to provide backup service to, from, and between Liberty and Ellis Islands. Additionally, if more than one vessel is inoperable at the same time, the Concessioner shall immediately notify the Park in writing and shall use its resources to reposition vessels from its current fleet, or charter, lease or otherwise acquire appropriate capacity vessels on a temporary basis as reasonably required by the NPS for its operations.
- 5) **Special Events.** The Concessioner will coordinate with the Concessions Management Division to provide appropriate vessels for special event transportation services.

- 6) **Vessel Acquisition.** The Concessioner will own or control all vessels used by the Concessioner in performance of this CONTRACT. If changes to the fleet are proposed subsequent to award of the CONTRACT, prior written approval of the Superintendent is required prior to placing the vessel(s) into operation. Any changes to the Concessioner's fleet must have the prior written approval of the Superintendent.
- 7) **Licensing, Insurance, Maintenance and Registration.** In accordance with Applicable Laws, including, without limitation, federal, state, and local law and regulations, the Concessioner will properly register, license, insure, and maintain all vessels and equipment used in the performance of this CONTRACT. The Concessioner will inform the Park prior to any vessel being removed from service for inspections or repairs requiring the vessel to be dry docked.
- 8) **Identification.** In addition to USCG regulations regarding vessel identification, the Concessioner will discretely identify vessels with the Concessioner's company name and logo. These and any other markings will be subject to the approval of the Superintendent.
- 9) **Manner of Use.** The Concessioner agrees not to use or permit the use of the Concessioner's ferries in a negligent or improper manner that endangers the public, crew, or employees of the NPS or is in any violation of any law.
- 10) **Concessioner Fee Responsibility.** The Concessioner will pay all of its docking fees, storage charges, fines, and business fees including registration, and licensing resulting from operations and the requirements of the USCG, USPHS, State and local government and the NPS.
- 11) **Boarding Apparatus.** The Concessioner will provide and properly maintain all passenger boarding apparatus, docking and mooring lines, and all other gear necessary to provide the services required in accordance with all Applicable Laws including without limitation the terms of this CONTRACT.
- 12) **Mitigation of Disturbance.** The Concessioner will minimize noise generated from its operations, including without limitation, engine use (rpms) at docks to minimize noise levels and emissions. Captains/crews shall not shine spotlights directly at the islands during night operations. The Concessioner will take every precaution to ensure that vessel wakes will not injure a visitor, damage other vessels, or damage Park resources. The Concessioner will operate with minimum wake when within 200 feet of the shoreline.

### C) Vessel Inventory

- 1) **Listing of Vessels.** The Concessioner will provide the Superintendent with a current list of vessels used in the operation annually and no later than February 1 of the year it is in effect. The listing will include at a minimum: passenger capacity, engine

- specifications, age, name, USCG registration number, and names of captains licensed to operate that particular vessel.
- 2) **Updates.** Any time a vessel used in the operation is modified, retrofitted, upgraded, refurbished, acquired, or disposed of, the Concessioner will update the vessel listing and provide it to the Superintendent. The Concessioner will submit all such proposed changes for the Superintendent's approval in advance.
  - 3) **Environmental Performance.** The Concessioner will investigate methods and strategies to make vessels more environmentally friendly (e.g., generate fewer emissions).

#### D) Schedules

- 1) **Primary Ferry Service.** The Concessioner will provide required services for NPS visitors every day of the year (364 days) except December 25<sup>th</sup> (Christmas Day), weather permitting.
  - a) The Concessioner shall comply with approved schedules.
  - b) The Concessioner will submit a written schedule of proposed changes in operating hours for all services for the Superintendent's approval. No schedule changes will be implemented without the Superintendent's approval.
  - c) The NPS will give reasonable notice of any schedule changes that it may initiate. The Concessioner will comply with these schedule changes.
- 2) **Island Cruises.** At minimum, the first sail shall be on or before 11:00 in the morning with the last sail no earlier than 7:00 in the evening with the potential for extended hours in peak season.
  - a) The Concessioner will submit a proposed schedule for the Island Cruise for the Superintendent's approval.
  - b) Once approved, no schedule changes will be implemented without the Superintendent's approval.
  - c) The NPS will give reasonable notice of any schedule changes that it may initiate. The Concessioner will comply with these schedule changes.
- 3) **Special Events.** Ferry service will be provided for approved special events associated with Liberty and Ellis Islands according to the schedule worked out for the event with the Concessions Management Division staff.

#### 4) **Park Closures**

- a) **Inclement Weather and Non-Emergency Situations.** Any changes in the daily schedule because of inclement weather or other unusual circumstances other than emergency situations (as determined by the vessel captain) require advance approval from the Superintendent or designee. When appropriate, the Concessioner shall notify the Superintendent of potential weather or other problems that might affect visitor safety and request a closure. The decision to close and the appropriate closing schedule, except in emergency conditions, will be made by the Superintendent.
- b) **Ferry Schedule Interruption.** In the event of any interruption of the established schedule due to mechanical breakdown or any other event, the Concessioner shall at its sole expense retrieve any stranded visitors as soon as practicable, given the circumstances causing the interruption in service.
- c) **Public Health, Safety, and Security.** When necessary for safety, public health, environmental, and/or security reasons, the Superintendent or designee will notify the Concessioner of the need to close and determine an appropriate closing schedule.

#### **E) Island Support Facilities**

Both islands have landing/departure facilities that are integral to the transportation services and visitor experiences.

- 1) **Operations and Maintenance.** The Concessioner agrees, at its sole expense, to operate and maintain assigned facilities in compliance with all Applicable Laws (see Maintenance Plan).
- 2) **Support Facility Staff.** The Concessioner will employ staff specifically dedicated and trained to facilitate safe movement of passengers between the vessel and the dock. This staff will also provide general visitor services, including greeting visitors and providing information to Park visitors.
- 3) **Customer Service Personnel.** The Concessioner will provide customer service personnel to help NPS manage visitor assembly areas and supervise boat loading, inform visitors of schedule changes and weather conditions, and ensure that visitor questions are thoroughly answered.

#### **F) Embarkation Facilities**

- 1) **Battery Park.** The Concessioner will operate landing and docking facilities for ferry services to Liberty and Ellis Islands from NPS-approved locations in, adjoining, or in close proximity to Battery Park in New York initially through a License or other agreement with the City of New York Parks and Recreation Department. Landing

slips 3, 4, and 5 and adjacent walkways will be included in the License. During the term of this contract, the NPS may require the Concessioner to move to another NPS-approved embarkation location in, adjoining, or in proximity to the existing Battery Park location. The Concessioner's operation at this alternate location will be authorized by City Parks through an agreement with similar terms to the License Agreement. The Concessioner will bear its own costs for any such move.

- 2) **Liberty State Park.** The Concessioner will operate landing and docking/embarkation facilities for ferry services to Liberty and Ellis Islands from Liberty State Park in New Jersey through a Memorandum of Understanding (MOU) or similar agreement with the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry. The MOU will include a visitor staging and ticketing location in the Central Railroad of New Jersey (CRRNJ) Terminal as well as a pier. During the course of this contract, the NPS may require the Concessioner to move to another NPS-approved location and enter into a similar agreement for those facilities.

#### G) Security Screening of Vessels

- 1) **Daily Screening.** Screening consists of sweeping the vessels for explosives by specially trained explosive detection canines, managed by USPP officers. All areas of the vessel must be made accessible to the USPP officer. On a daily basis, prior to placing the vessel in service, the Concessioner will make available to the USPP each vessel that is scheduled for service to, from and between Liberty and Ellis Islands at least one hour prior to departure at either the Battery Park or Liberty State Park screening sites. The USPP are solely responsible for releasing the vessel for service.
- 2) **Staff.** Any concession employee who is aboard a vessel prior to its screening must disembark while the screening of the vessel is taking place. All employees must be individually screened before re-boarding.
- 3) **Other Agencies.** In the event that a given vessel cannot be cleared for service by USPP, the NYPD or Jersey City explosives unit may be called upon for a more intensive evaluation of suspect items.
- 4) **Interruption of Service.** If for any reason a vessel is taken out of service during its regular schedule to, from or between Liberty and Ellis Islands, the screening process must be repeated before the vessel returns to service.
- 5) **USPP Access.** An officer of the USPP, in uniform or in plain clothes, may board vessels and travel with any vessel at any time.
- 6) **Special Events.** Vessels scheduled for passenger service for a special event, if they have been taken out of service to, from or between Liberty and Ellis Islands, must be screened no later than one hour prior to its scheduled departure from the Battery Park

or Liberty State Park screening sites, or from the Concessioner maintenance facility, as appropriate.

#### H) Security Screening of Visitors and Employees

- 1) **NPS Responsibility.** The NPS manages the flow of visitors and employees into, through, and out of the screening facilities to ensure the integrity of the screening operation. Note that the current NPS screening facility capacity in Battery Park limits the number of passengers that can be screened and boarded to an average maximum of approximately 700 passengers per boat.
- 2) **Types of Screening.** Visitors and employees are screened for weapons, explosives and other prohibited items by magnetometer clearance and x-ray of packages and baggage.
- 3) **Prohibited Items.** No packages, backpacks, bags, etc. greater than 12" x 6" x 8" are allowed on board.
- 4) **Visitors.** All visitors to the park are screened at the departure facilities at Liberty State Park or Battery Park prior to boarding any vessel.
- 5) **Priority Screening for Employees.** Employees from the NPS, the Concessioner, contractors, Park partners, and other Park concession operations, and VIPs, when traveling on Concession boats, are also screened prior to boarding facilities at Liberty State Park and Battery Park. To avoid interruption of operations these persons are screened on a priority basis.

#### I) Emergency Contacts and Access

The Concessioner will supply a minimum of four (4) names and phone numbers to the Chief, Concessions Management Division for emergency contacts who will be called in the event of a fire, intrusion, or other emergency. All Concession Facilities and vessels are to be accessible to responding emergency crews 24 hours a day.

#### J) Security Plans

- 1) **Security Plan Development.** The Concessioner shall develop, in coordination with the NPS, United States Coast Guard, and any other applicable local, state or federal agencies, a plan that addresses all aspects of Homeland Security. The plan should conform to Maritime Transportation Security Act regulations for security plans (33 CFR Part 104). The Concessioner shall provide this plan to the Superintendent within 120 days of execution of the CONTRACT.
- 2) **USPP Assistance.** The USPP is available to assist the Concessioner with physical security needs and evaluations. The specifics of intrusion protection required by the Concessioner shall be determined with and approved by the USPP.

- 3) **Superintendent Approval.** The Concessioner shall submit all security plans to the Superintendent for approval.

**K) Rates for Ferry Services and Island Cruises**

- 1) **Rate Determination.** The NPS will determine rates pursuant to all Applicable Laws, including without limitation, the NPS Concession Management Rate Approval Guide and the contract-prescribed rate determination method stated herein. The NPS reserves the right, at any time during the term of the CONTRACT, to re-evaluate and change rate determination methods.
- 2) **Initial Rates.** Rates for primary ferry services and the Island Cruise provided by the Concessioner are established as follows: as of the effective date of the CONTRACT, the rates are set at \$12.00 Adult, \$10.00 Senior and \$5.00 Child/Group.
- a) The Concessioner will prominently post all rates for services provided to the visiting public.
- b) All members of the visiting public shall be treated equally in regard to rates charged and services offered. The Concessioner shall not discriminate in rates charged to any member of the general public.
- 3) **Rate Increases and Approvals.** For the term of this Contract, the Concessioner may request a rate increase every three years. The first fare increase may be granted to be effective no sooner than January 1, 2011. Any rate increase requests as allowed below will be submitted to the Superintendent in writing 60 days prior to the effective date of the new proposed rates. This effective date will be no sooner than the first day of the calendar year following the year in which the rate increase is requested.

The October 2007 CPI-U for the New York metropolitan area will serve as the baseline CPI through the entire contract period. The maximum rate increase will be based on the October CPI that prevails in the calendar year prior to the date of the rate increase. The calculated fare will be rounded to the nearest \$0.10 increment. Formulas are as follows:

**EXAMPLE:**

Fare in 2011 = (Fare in 2008) x (October 2010 CPI-U)/(October 2007 CPI-U)

Fare in 2014 = (Fare in 2008) x (October 2013 CPI-U)/(October 2007 CPI-U)

Fare in 2017 = (Fare in 2008) x (October 2016 CPI-U)/(October 2007 CPI-U)

**Example:** Assume the CPI-U for the New York metropolitan area is 100.0 in October 2007, and that it is 111.0 in October 2010.

The calculated Adult fare in 2011 would be  $(\$12.00) \times (111.0)/(100.0)$ , or \$13.32, which rounds down to \$13.30. The calculated Senior fare would be  $(\$10.00) \times (111.0)/(100.0)$ , or \$11.10, which doesn't round either up or down and the fare is \$11.10. The calculated Child fare in 2011 would be  $(\$5.00) \times (111.0)/(100.0)$ , or \$5.55, which rounds up to \$5.60.

The NPS will approve, disapprove, or adjust rates and will inform the Concessioner of its decision as promptly as possible. Any change in applicable deposit and refund policies must be submitted with rate requests.

- 4) **Rate Reductions.** The Concessioner may propose rate reductions as an incentive for visitation during off-season and off-time visitation. All reduced rates proposed for this purpose, for sale to organized groups, and for any other purpose must be approved by the Superintendent.

#### L) Rates for Special Events

- 1) **Initial Rates.** Initial rates for special event transportation services are subject to approval by the Superintendent.
- 2) **Request Submittal for Annual Rate Changes.** The Concessioner will submit requests for rate changes in writing at least 60 days prior to the anticipated implementation dates, brochure publication dates and customer notification. Successful requests require support by established criteria and comparable data. The information to be included in the request is set forth in the NPS Concession Management Rate Approval Guide, included in an Appendix to the Prospectus. The Superintendent will evaluate one (1) rate change request per calendar year unless the Superintendent determines that an exception is warranted due to extenuating circumstances.
- 3) **Rate Determination and Method** 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. The Service will determine rates by the following prescribed rate determination methods, as deemed appropriate by the Superintendent. Rate determinations will be made in accordance with the guidelines included in the most recent Concession Management Rate Approval Guide, currently dated September 2002. The primary method of rate approval for this contract will be comparability.

#### **4. RESERVATIONS AND TICKETING**

##### **A) System Requirements**

The Concessioner will implement a ticketing system that includes the ability to: manage reservations, issue tickets in advance, accept phone and Internet reservations (including international access), allow users to print tickets from their personal computers ensuring procedures to authenticate the validity of the printed ticket by the Concessioner and the NPS (monument tour passes), coordinate the sale of audio tours and distribution of monument tour passes with the sale of ferry tickets, provide an Internet offering interface in multiple languages, enable generation of reports about visitor trends and other relevant statistics, and allow visitors to purchase tickets from the NPS assigned location at the ticket booth in Castle Clinton National Monument, the Liberty State Park location, as well as from automated kiosks integrated with the Internet system. Sales will be available through credit and debit cards.

##### **B) Reservation and Ticketing Operations**

The Concessioner will adequately staff and operate a computerized reservation service for walk-up sales seven (7) days a week during normal business hours, at a minimum one hour before and one half hour after sailings; telephone sales seven (7) days a week during normal business hours, at a minimum 8am-7pm Eastern time; and an Internet sales Web site. Recorded NPS information will be provided for guests waiting in a "hold" status for telephone sales, including a statement identifying that the Concessioner is operating pursuant to a concession contract with the NPS. Telephone hold times shall routinely last no longer than five minutes. The Concessioner will provide a Voice Response System 24 hours a day, to include without limitation: schedules, fares, transit options, directions, parking and other essential information.

- 1) **Telephone Service for the Hearing Impaired.** The Concessioner will provide telephone service (e.g., TTY, TDD or text telephone, or new technologies as they become available) for hearing-impaired visitors during the hours of its staffed ticket sales. Employees will be fully trained to operate all specialized equipment to accommodate hearing-impaired visitors.
- 2) **Ticket Sales.** The Concessioner will offer computerized reservation and ticketing service for the passenger ferry, the Island Cruise, sale of the audio tour, and reservations of free monument tour passes, and any additional ferry services authorized. These sales and reservations may only be made as specifically approved by the NPS.
- 3) **Security Procedures.** The Concessioner will implement procedures that will prevent tickets from being obtained or used for distribution or re-sale by any person or entity not so authorized. These procedures shall address sales through all available media including, without limitation, walk-up, telephone, Internet/website, kiosk and mail. The Concessioner shall update these procedures periodically, but in no event less

- often than semiannually, and shall provide copies of these procedures to the NPS. The NPS has the right to require specific adjustments be made to these procedures.
- 4) **Auditor.** The Concessioner shall utilize a third party auditor on a twice yearly basis to evaluate individual sales effectiveness and elimination of second/third party sales/street sales and to provide a written report to the NPS regarding the results of the evaluation.
  - 5) **Updates and Changes.** The Concessioner shall notify and coordinate with the NPS webmaster when updates/changes are made to its website that may/do impact the Statue of Liberty National Monument and Ellis Island website information; so that any link adjustments may be made in a timely manner. This shall include, but not be limited to, fare and schedule changes, changes to any specific information regarding visits to Liberty and Ellis Island, security procedures, ticket reservation/purchase procedures, emergency procedures, and the Concessioner's internal web configuration.
  - 6) **Implementation.** Internet, telephone, and walkup ticket sales will be available starting on the effective date of the CONTRACT.
  - 7) **Advertising.** The Concessioner shall obtain written approval from the Superintendent prior to releasing any advertising or public information about ticketing or reservations, regardless of the medium.

### C) Advance Reservations and Ticket Sales

The Concessioner will allow reservations and ticket sales up to one (1) year and one (1) day in advance, or as far in advance as the current schedule allows. Ticket sales will be limited to 700 passengers, or each boat's maximum passenger capacity, whichever is lower, to account for current security screening capacity. Advance reservations and ticket sales will be limited to \_\_\_\_% of each boat's ticket sales (percentage to be determined by NPS and the Concessioner) to allow for an appropriate level of same-day walk-up ticket sales.

### D) Refund Policy

The refund policy shall be available to all ticket purchasers.

- 1) **Advance Notice.** For all purchasers of tickets for primary ferry services, if cancellation is made twenty-four (24) or more hours in advance of a reservation, the Concessioner will refund the ticket in full. Rates at time of purchase shall be honored at the time of refund. Refunds will be processed within fourteen days of cancellation.
- 2) **Island Cruise.** In addition to the 24-hour cancellation, for purchasers of tickets for the Island Cruise, full refunds shall be provided up to the scheduled departure time if the Island Cruise is cancelled due to unforeseen circumstances.

- 3) **Park Closure.** The Concessioner shall also provide refunds for all services as a result of security, safety, weather, or similar closures.

#### **E) Ticket Windows**

The Concessioner will be assigned the kiosk at Castle Clinton National Monument in Battery Park as the primary location for ticketing operations in New York City. At Liberty State Park, the concessioner will provide a ticket window at the Central New Jersey Railroad Terminal through the agreement between the Concessioner and Department of Environmental Protection (DEP)/Liberty State Park.

- 1) **Will Call.** The Concessioner will provide ticket windows at Castle Clinton and at Liberty State Park, including “Will Call” windows.
- 2) **Posting of Schedules.** An accurate, visible schedule of all Liberty and Ellis Island boat departures and a “next available sailing” notice will be on prominent display in this area at all times.
- 3) **Supervision.** A Concessioner supervisor and/or a qualified designee will be available at the ticket booth to address and resolve visitor complaints and problems.
- 4) **Signage.** All ticketing related signs will conform to NPS graphic standards and displays should have an interesting and appropriate graphic design provided or approved by the Superintendent. No handwritten signs will be used.
- 5) **Marketing Activities.** The Concessioner will utilize any branding and marketing products and activities designed to promote the National Park Service and activities in or around the New York City Harbor District. The Concessioner may also participate in developing strategies and design of such activities in consultation with the NPS.

#### **F) Automated Ticketing Kiosks**

The Concessioner will also provide automated ticketing kiosks at the Embarkation Facilities and other suitable locations in the New York metropolitan area. The Concessioner will submit proposed locations for ticketing kiosks for the Superintendent's approval.

#### **G) Internet Services**

- 1) **Web Site.** The concessioner will provide an Internet site that fully describes all available services and specific rates (i.e., transportation, monument tours, audio tours, Island Cruise, interpretive programs, charters and special events, etc.). The website shall also provide: (1) directions to the departure facilities and descriptions of all available transportation alternatives, (2) information on access by persons with disabilities, (3) descriptions of security requirements for access to the Park and the

- monument, (4) information about Statue of Liberty National Monument and Ellis Island history, experiences, and resources, and (5) information and/or links to learn about other National Parks.
- 2) **Survey.** The Concessioner shall develop and submit for the Superintendent's prior written approval a customer satisfaction survey that will be incorporated in the reservation and ticketing system. The goal of this survey will be to help NPS capture visitor satisfaction with all elements of the Park experience. The Concessioner will explore appropriate and park-related incentives for visitors to respond to the survey after their visit to the Park.

## 5. **FOOD AND BEVERAGE**

**A) Food and Beverage Services: Snack Bar.** The Concessioner will offer snack bar food and non-alcoholic beverage services on the vessels.

- 1) The Concessioner will conduct these services in full compliance with all Applicable Laws.
- 2) The Concessioner will work with the NPS to create a menu offering healthy and nutritious snack products (e.g., organic, locally grown products, fresh, low-fat, no trans-fat, etc.).
- 3) The Concessioner shall submit its menu for food and beverage services to NPS for approval prior to commencing its food and beverage operations.
- 4) The Concessioner will annually review its menu and explore new and healthful food and beverage alternatives and ways to improve services. Food and beverage tasting sessions will be scheduled with the Park at least once each year to introduce proposed new items.

### **B) Food and Beverage Operations**

- 1) **Training and Certification.** All food handlers who provide snack bar service will be fully trained. Food handlers in a training status will be accompanied by a certified food handler. Serve Safe Certifications or equivalent as determined by the Superintendent, must be available for review by NPS personnel, and must be renewed according to State of New York and New Jersey regulations.
- 2) **Cleanliness.** Food storage areas will be kept clean and neat.
- 3) **Signage.** All food and beverage signage will conform to NPS graphic standards and displays will have an appropriate graphic design approved by the Superintendent. No handwritten signs will be used.

## 6. MERCHANDISE

### A) Merchandise Sales Service

The Concessioner will offer merchandise sales on the vessels.

- 1) **Visitor convenience items.** Merchandise sales will emphasize visitor convenience items such as maps, film, cameras and batteries.
- 2) **Limited souvenirs.** Only limited souvenirs that relate to the Park's purpose, significance, and interpretive stories will be authorized and these will be approved by the Superintendent in advance.

### B) Merchandise Sales Operations

- 1) **Merchandise Plan.** The Concessioner shall submit its proposed merchandise plan to the Superintendent for approval prior to commencing its merchandising operation.
  - a) **Changes and Improvements.** The Concessioner will annually review its merchandise list and explore new visitor convenience items and souvenir alternatives and ways to improve services. Review sessions will be scheduled with the Park at least once each year to introduce proposed new items.
  - b) **Display.** Merchandise will be professionally displayed, clean, neat, and uncluttered.
  - c) **Signage.** All merchandising signage will conform to NPS graphic standards and displays will have an appropriate graphic design approved by the Superintendent. No handwritten signs will be used.

## 7. RATES FOR FOOD, BEVERAGE AND MERCHANDISE

### A) Initial Rates

Initial rates for food, beverage, and merchandise are subject to approval by the Superintendent.

### B) Request Submittal for Annual Rate Changes

The Concessioner will submit requests for rate changes in writing at least 60 days prior to the anticipated implementation dates, brochure publication dates and customer notification. Successful requests require support by established criteria and comparable data. The information to be included in the request is set forth in the NPS Concession Management Rate Approval Guide. With regard to each service required and authorized under the CONTRACT, the Superintendent will evaluate one (1) rate

change request per calendar year unless the Superintendent determines that an exception is warranted due to extenuating circumstances.

### C) Rate Determination

It is the objective of the Service to ensure that the Concessioner's rates are commensurate with the level of services and facilities provided, and are reasonable, justified, and comparable with similar facilities and services provided by the private sector.

### D) Rate Method

The Service will determine rates for each revenue outlet by the following prescribed rate determination methods, as deemed appropriate by the Superintendent. Rate determinations will be made in accordance with the guidelines included in the most recent Concession Management Rate Approval Guide, currently dated September 2002.

- 1) **Food and Beverage—Comparability.** The NPS will review selected comparables for rate comparability in accordance with current NPS guidelines.
- 2) **Merchandise—Merchandise Markup and Competitive Market Declaration.** Merchandise Markup will be used for visitor convenience items and Competitive Market Declaration (CMD) will be used for limited souvenirs. On an annual basis, the Superintendent will provide the Concessioner with maximum markups.

### E) Rate Approval

- 1) **Maximum and Minimum Rates.** All maximum and minimum rates related to the Concession operation are subject to the final written approval of the Superintendent.
- 2) **Approval Timing.** The Service may approve, disapprove or adjust rates and will inform the Concessioner within 60 days of the rate request submittal. During the peak visitor use season (March 1 through October 1), an additional 30 days may be necessary to complete the comparability study. It is the responsibility of the Concessioner to submit rate requests in a timely manner to ensure that the proper rates are approved in order to take into consideration any seasonality of the service and to take full advantage of marketing the services. Should special conditions require a quicker than normal response, the Concessioner will clearly explain these conditions in writing with the request. The NPS will attempt to accommodate this request; however, this will not be normal procedure.
- 3) **Approved Rate Posting.** The Concessioner will prominently post all rates for goods and services provided to the visiting public in all locations and through all media directed at Park visitors.

## F) Purchasing

- 1) **Competitive Purchasing.** The Concessioner will engage in competitive specification purchasing. Purchases may be made from a facility operated or owned by the Concessioner or a parent company, provided the product is comparable in quality and price.
- 2) **Discounts.** The Concessioner will take advantage of all available trade, cash and quantity discounts and rebates and pass them through to the consumer or the operation.
- 3) **Environmental Purchasing.** The Concessioner will purchase environmentally preferable products where economically and technically feasible and appropriate.

## 8. INTERPRETATION

### A) Operations

- 1) **Visitor Experience.** The visitor experience at the Statue of Liberty National Monument and Ellis Island includes the time spent purchasing a ticket, waiting for the ferry, boarding the ferry, and riding the ferry to and from the Park. All Concession employees will demonstrate courtesy to visitors and have a customer-service orientation. Information will be provided using a variety of media to help visitors plan their trips and facilitate their visits. To help improve the visitor experience, the concessioner will incorporate Park interpretive stories into the ferry services through approved interpretive media.
- 2) **Interpretative Messages.** The Concessioner will explore a wide variety of methods to convey the purpose and significance of the Park, interpretive stories, and resource protection objectives to Park visitors. Messages should also be conveyed on NPS goals and other national parks in metropolitan New York and New Jersey. The approved interpretive program will provide an informative and inspirational program to visitors.
- 3) **Wayfinding, Orientation Signage and Display Graphics.** All signs will conform to NPS graphic standards (<http://www.hfc.nps.gov/uniguide/>) and have a design and interpretive message provided or approved by the Superintendent. The Concessioner will utilize any branding and marketing products and activities designed by and to promote the National Park Service and activities in or around the New York City Harbor District. The Concessioner may also participate in developing strategies and design of such activities in consultation with the NPS. All signs will conform to NPS graphic standards and displays will have an interesting and appropriate graphic design and interpretive message provided or approved by the Superintendent.

- 4) **Interpretive Plan.** The Concessioner shall submit a written plan to the Superintendent for approval prior to commencing interpretive programs. This interpretive plan shall outline the interpretive programs and methods the Concessioner will implement to educate visitors about the NPS mission and about the Statue of Liberty National Monument and Ellis Island. Additional efforts should explain any environmental programs or initiatives implemented by the Concessioner.

a) **Minimum Components of Interpretive Plan**

- i) Public outreach and education activities regarding Park purposes, significance, and interpretive stories, as well as other NPS destinations. Internet links will be included as appropriate.
- ii) Ways to facilitate educational programs for school groups visiting Liberty and Ellis Island.
- iii) Interpretive materials to be provided at Embarkation Facilities and on all vessels including at minimum, interpretive maps, brochures and exhibits prominently displayed at locations within the vessels and to serve waiting lines and areas.
- iv) An NPS-approved, recorded program will be provided during the ferry ride to help introduce visitors to the Park and New York Harbor.
- v) Tickets and monument tour passes will have an interesting and appropriate graphic design and interpretive message provided or approved by the Superintendent and will be considered souvenirs of the trip to the Park.
- vi) Audio tours will be offered in combination with ferry ticket sales. The Concessioner will not be responsible for program development, management, content of the audio tour, or distribution of any equipment for the tour.

**B) Collaboration**

Interpretation will be a collaborative effort between the NPS and the Concessioner. The Concessioner will train key public-contact staff members in applicable interpretive techniques. Employees will demonstrate their knowledge of the NPS mission, the NPS, Liberty and Ellis Island, and the history of the Statue of Liberty National Monument and Ellis Island. The Division of Interpretation and Visitor Services will advise/assist the Concessioner in the development of interpretive programs which encompass all of these efforts.

## 9. MARKETING STRATEGY

### A) Marketing Plan

The Concessioner shall develop and submit for approval to the NPS within ninety (90) days of the effective date of the CONTRACT a marketing plan for sales of tickets during both peak and non-peak periods. The marketing plan shall include at a minimum:

- 1) Marketing strategy that addresses multiple sales mediums, such as Internet, phone, kiosks, tour agents, etc.
- 2) Most effective and widest variety of options for purchasing tickets.
- 3) Branding strategy.
- 4) Incorporation of interpretive materials and media throughout the booking process both prior to and during visits.
- 5) Advertising venues, including without limitation print, cable TV, transit ads, etc.

### B) Advertising and Public Information

- 1) **Promotional Material.** All promotional material, regardless of medium, must be approved by the Superintendent prior to dissemination. Promotional material must include a statement that the Concessioner is an “authorized Concessioner of the National Park Service, Department of the Interior.” All changes to promotional material or proposed new promotional material shall be submitted to the Superintendent for review at least thirty (30) days prior to projected need or printing date. Longer periods may be required for major projects or where NPS assistance is required to help develop the product. The Concessioner will contact park staff well in advance to establish specific time frames for each project.
- 2) **Media and Public Relations.** All media requests/contacts shall be immediately referred to the Superintendent. All press releases regarding Statue of Liberty National Monument and Ellis Island and its operations shall be presented in draft form to the Superintendent for approval prior to dissemination. All media tours of Liberty and Ellis Island shall be approved by the Superintendent.

## 10. CONCESSIONER HIRING

- A) All policies and procedures established by the Concessioner pursuant to Sec. 4, paragraph (d) of the CONTRACT shall meet the requirements and comply with this section.

## B) Hiring Policies

- 1) **Staffing Levels.** The Concessioner will hire an appropriate number of employees to ensure safe and quality performance at all times for all required or authorized services identified in the CONTRACT. The Concessioner will initially review its staffing with the NPS, and periodically, or at the request of the NPS, correct any staffing issues.
- 2) **Drug-Free Policy.** The Concessioner will implement a drug-free policy for all concession employees to assure that employees and operations are not affected by drug use.
- 3) **Certifications and Licenses.** All vessel crew members shall maintain current U.S. Coast Guard (USCG) certifications and/or licenses. All licenses and/or certifications will be available for inspection upon request.

## C) Employee Background Checks

- 1) **Policies.** The Concessioner will establish hiring policies that will include appropriate reviews of applicants for employment. The Concessioner will not hire any person known to have an outstanding warrant for arrest and will secure this information prior to hiring new employees.
- 2) **Concessioner Responsibility.** The Concessioner is responsible, at its own expense, for ensuring that background checks and security clearances are conducted and concluded on all job applicants prior to employment.
  - a) The Concessioner will provide job applicant information required to conduct such background checks and security clearances to the NPS for use by the Federal Protective Service (FPS) or another entity designated to conduct such checks and clearances. The Concessioner will reimburse the NPS for the cost to perform background checks for the purposes of the CONTRACT. The current estimated cost of a background check by FPS is \$100 per employee.
  - b) The Superintendent will either approve or deny employment for all applicants in a timely fashion.
  - c) Background checks shall consider but not be limited to the applicant's history or lack of:
    - Criminal or dishonest conduct;
    - Material, intentional false statement or deception or fraud in examination or appointment;
    - Alcohol abuse of a nature and duration which suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others;

- Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation;
  - Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force;
  - Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.
- d) Persons with a criminal record of Part 1 Offenses as categorized in the Uniform Crime Reporting Handbook (2004 – U.S. Department of Justice, Federal Bureau of Investigation – see [www.fbi.gov/ucr/handbook/ucrhandbook04.pdf](http://www.fbi.gov/ucr/handbook/ucrhandbook04.pdf)) will not be approved for employment. Part 1 Offenses include: Criminal Homicide, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny–theft, Motor Vehicle Theft, and Arson. Persons with a record of Part 2 Offenses and unlisted petty crimes may be approved for employment after appropriate evaluation as follows.
- e) Evaluation of an applicant with a record of any of the above may be based on, but not limited to:
- The nature of the position for which the person is applying or in which the person is employed;
  - The nature and seriousness of the conduct;
  - The circumstances surrounding the conduct;
  - How recently the conduct occurred;
  - The age of the person involved at the time of the conduct;
  - Contributing societal conditions; and
  - The absence or presence of rehabilitation or efforts toward rehabilitation.
- f) The Concessioner shall inform employees and potential employees, in writing, that any individuals required to register with a law enforcement agency (drug offenders and sex offenders) must also register with the NPS's Criminal Investigations Unit.

#### **D) Employee/Staffing Practices**

- 1) **Appearance and Attitude.** All employees in direct contact with the general public shall wear a clean, suitable uniform with a personal nametag that identifies the individual as concession staff, and be appropriately groomed. Employees will project a hospitable, helpful, friendly, positive attitude, be capable of and willing to answer visitor questions, provide visitor assistance, and shall meet the employment and training requirements set forth in Section 4(a) of the CONTRACT. The Concessioner shall take appropriate steps to enforce these requirements. The NPS reserves the right to require removal of personnel failing to perform to these standards to the extent authorized by all Applicable Laws.

- 2) **Affirmative Action Plan.** The Concessioner shall maintain and implement an affirmative action plan, as required by law. This plan must be available to all employees upon request.
- 3) **Employee Handbook.** The Concessioner will develop an Employee Handbook and submit for the Superintendent's approval. Any changes to the Handbook will be approved by the Superintendent in advance.

#### **E) NPS Employees and Families**

The Concessioner shall not employ in any status an NPS employee, his/her spouse, or minor children of NPS employees without the Superintendent's written approval. Employees must submit a written request to the Superintendent. At a minimum, the Concessioner shall not employ in any status the spouse or children of the Superintendent, Deputy Superintendent, Chief of Concessions Management and staff, Safety Officer, or Public Health Consultant.

#### **F) Orientation and Training**

- 1) **Startup Training Requirements.** The Concessioner will develop a training plan for each position description and submit it to the Superintendent for approval within 90 days of contract inception. The plan will identify specific training programs (e.g. safety, public health, environmental management, first aid, customer service, security, NPS regulations, Park purpose, significance and interpretation) and identify the employees that must complete each type of training and the amount of time they must spend in training. In addition, it will specify the deadline by which each employee will have to complete all required training and identify frequency for refresher training. The Superintendent may request modification if the proposed training program is deemed unsatisfactory.
- 2) **Orientation.** The Concessioner will provide orientation for all employees and will inform employees of NPS and park regulations and requirements that affect their employment and activities. Additional orientation pertinent to the Statue of Liberty National Monument and Ellis Island will be conducted by the Concessioner with NPS consultation and participation. The orientation will include general resource protection and environmental management information.
- 3) **Ongoing Training.** The Concessioner will provide the required, appropriate, and applicable training to each employee, prior to job assignments and/or working with the public for all services required or authorized by the CONTRACT. Refresher training will be provided as necessary and/or as required by Applicable Laws. This will include hospitality and customer service training for all employees who have direct visitor contact and/or who provide visitor information. Food, beverage, and merchandising training will be provided to appropriate employees. The NPS will provide orientation(s) to managers on an annual basis or as needed for new hires. The Concessioner will maintain a list of training conducted and employees who participated.

#### 4) **Security training for Concessioner employees**

- a) On a periodic basis, all employees of the Concessioner shall take part in training in security awareness and security procedures.
  - b) The USPP offers a number of training courses to which the Concessioner is invited. NPS will notify the Concessioner when training is offered. Some examples of training that has been held in the past include:
    - Tourism and Security
    - Crime Prevention Training
    - Threat Awareness
    - Global Security Awareness
    - Emergency Evacuation
    - Tabletop Exercises (Emergency Situation Gaming)
    - Cultural Sensitivity Awareness
    - Violence Prevention
  - c) The Concessioner may propose or contract for Security training of its employees with the approval of the Superintendent.
- 5) **Interpretive Training.** The Concessioner will develop for the approval of the Superintendent interpretive training for all employees who provide interpretive and/or informational services. The training will be conducted as necessary throughout the year to ensure that all staff have adequate knowledge of the Park in order to carry out these services. This training will assist the Concessioner in preparing and conducting effective interpretive programs.
- 6) **Compliance Training.** The Concessioner training program will address training to comply with all Applicable Laws including, without limitation, additional training identified in its Park-approved Environmental Management Program, Risk Management Program, and other required programs.
- 7) **Training for Temporary Workers.** The Concessioner will provide appropriate training for all persons who provide temporary services. The training requirements will be established based on the position, nature and duration of services being provided.

## 11. **OPERATIONS EVALUATIONS**

### A) **Inspections**

The NPS, its designated agents, and appropriate regulatory entities will periodically and annually inspect services and operations under this CONTRACT in accordance with NPS

guidelines and all Applicable Laws, without limitation, to ensure compliance with public health, risk management, environmental management, and maintenance and operating standards. These inspections will include, but are not limited to U.S. Coast Guard inspections, structural fire inspections, Public Health Service inspections, and environmental audits.

#### **B) Facilities Inspections**

The NPS shall have the right to inspect and evaluate all Concession Facilities and other property and support facilities used or held for use in providing concession services under the CONTRACT for all purposes including preparing a prospectus for a succeeding concession contract.

#### **C) Food Service Sanitation**

The Concessioner will maintain and follow a formal, written food service sanitation self-inspection program. The NPS will review the reports generated as part of the Concessioner's program to monitor effectiveness and require updates to the program as necessary.

#### **D) Fire Inspections**

- 1) The New York and Jersey City Fire Departments may conduct periodic inspections of all Concession Facilities, related support facilities (including the Landing Facilities), and other property. The concessioner will notify the Park upon notification of any planned inspection and upon conclusion of any unannounced inspection and provide copies of all reports received based on any inspection to the Park within 3 days of receipt. Corrections of any violations identified by them will be made through coordination with the NPS.
- 2) The Concessioner will perform periodic interior and exterior fire inspections of all Concession Facilities, related support facilities (including Landing Facilities and maintenance facilities), and other property. Written records verifying the completion of such inspections will be maintained by the Concessioner and available to the NPS upon request.

#### **E) U.S. Coast Guard Inspections**

Vessels will be made available for U.S. Coast Guard inspections.

#### **F) Correction of Deficiencies**

The Concessioner must be responsive to dates assigned for correction of deficiencies and any required abatement plans for correction of identified deficiencies. The Concessioner will meet with NPS officials to schedule and prioritize correction of deficiencies and improvement programs resulting from these inspections. Failure to correct deficiencies in a timely manner may result in the requirement of a performance bond in accordance with

Section 12(a) of this CONTRACT, and/or termination of the contract by the Director for default pursuant to Section 15 of this CONTRACT - Suspension, Termination and Expiration.

## **12. CONCESSIONER REPORTING REQUIREMENTS**

### **A) Computerized Information Management System**

The Concessioner shall implement a computerized information management system (CIMS) that tracks, sorts, and generates reports on its operations by category and activity in a variety of ways. The Concessioner will meet with the NPS within 60 (sixty) days of the effective date of the CONTRACT to identify specific reporting requirements. At a minimum, the Superintendent will be provided monthly and annual visitation reports, statistics on ticket sales by age classification, statistics on where visitors are coming from, visitor trends, and other relevant information.

### **B) Vessel Reporting**

The NPS will be provided copies of each vessel's United States Coast Guard (USCG) Certificate of Inspection annually. The Concessioner shall also provide the NPS any associated reports or documents prepared for or by the USCG and document complete compliance with all Applicable Laws including, but not limited to, USCG passenger vessel fire protection regulations in Title 46 of the Code of Federal Regulations.

### **C) Incident Reporting**

The Concessioner shall comply with any (i) hazardous material, hazardous substance, chemical or pollutant release(s), (ii) fatalities, injuries, and illness, (iii) fire, or (iv) boat accidents (including, without limitation, all groundings) reporting requirements to government agencies (including, without limitation, the U. S. Coast Guard) directly applicable to Concessioner under all Applicable Laws. Notice of such reporting shall be reported in writing concurrently to the NPS. In addition, Concessioner shall inform the NPS of all communications with the U.S. Coast Guard pertaining to such incidents. The Concessioner shall ensure that any oral reports of such incidents are followed by a written report that includes a detailed description of the incident.

The Concessioner shall immediately report to the Park Communication Center (emergency number: (212) 363-3260): any visitor or employee fatalities or injuries; any incidents involving fires or other property damages; all motor vehicle or vessel accidents; any incident that affects or may affect the Park's resources or the normal routine of ongoing operations; and any known or suspected violations of the law, any notices of safety (vessel or otherwise) complaints and/or inspections.

## **D) Human Illness Reporting**

Any suspected outbreak of human illness, whether involving employees or visitors, is to be reported immediately to the Concession Management Division. A suspected outbreak of human illness is two or more persons with common symptoms that could be associated with contaminated water or food sources or other adverse environmental conditions.

## **E) Environmental Management Plans and Reports**

### **1) Concessioner Responsibility**

- a) Environmental Management Program (EMP). The Concessioner will develop, document, and implement an EMP in accordance with Section 6 of this CONTRACT.
- b) The Concessioner will develop all plans and submit all reports as required by Applicable Laws, including without limitation, the following:
  - 29 CFR 1910.1200 regarding Inventory of Hazardous Substances
  - Emergency Planning and Community Right to Know Act regarding Extremely Hazardous Substances
  - Resource Conservation and Recovery Act (RCRA) regarding Inventory of Waste Streams
  - 29 CFR 1910.1200 regarding Hazard Communication Programs
  - 29 CFR 1910.134 regarding Respiratory Protection Programs
  - 29 CFR 1910.38 regarding Emergency Action Plans
  - 29 CFR 1910.120 regarding Emergency Response Plans
  - NPS Integrated Pest Management policies
  - NPS Solid Waste Management Handbook specific to Solid Waste Reporting

## **F) Annual Financial Reporting**

The Concessioner shall provide the NPS an Annual Financial Report (AFR) in a form provided by NPS within 60 days after the conclusion of the Concessioner's fiscal year. Revenue and expenses for the categories of ferry services, Island Cruises, special event ferry transportation, and any other distinct authorized operation shall be reported as separate departments.

The AFR must also include financial reports for all operations conducted by the Concessioner that provide services in addition to those specified in the NPS contract, which use any personal property, real property, personal services, and/or contracted services that are also used to provide the NPS contracted services. All revenue and expense line items for such additional services must be reported separately from the NPS

operating departments in accordance with the requirements specified in Section 10(b) of this CONTRACT. The methods for allocating costs between the NPS contracted services and the additional services must be explained in auditor/reviewer notes.

### **13. UTILITY RESPONSIBILITY**

The Concessioner is responsible for providing its own utilities, including electricity and telephone at the Castle Clinton kiosk. The Concessioner is responsible for making direct payments to utility suppliers.

### **14. DOCUMENTED RISK MANAGEMENT PROGRAM**

#### **A) Safe and Healthful Environment**

The Concessioner will provide a safe and healthful environment in accordance with all Applicable Laws, including without limitation the Occupational Safety and Health Act of 1970 and the NPS Risk Management Program (Guideline DO-50A, B and C).

#### **B) Risk Management Plan**

The Concessioner will develop, maintain, and implement a documented safety program (Risk Management Plan), in accordance with all Applicable Laws, including without limitation NPS 48. The Risk Management Plan will be submitted to the Superintendent for approval prior to the first scheduled boat trip operated by the Concessioner. This plan must address the following:

- 1) Management's Policy Statement, Duties, Employees' Responsibilities and Administration
- 2) Inspection and Abatement
- 3) Accident/Investigation and Reporting
- 4) Safety/Health Committee
- 5) Training
- 6) Emergency Procedures

### **15. LOST AND FOUND POLICY**

Each found item shall be tagged, listing the item found, location found, date and time found, and by whom it was found. The Concessioner shall secure property in a central location and maintain an accurate log of items and make it available to the NPS upon request. If an item is

not claimed within seven (7) days, it shall be turned over to the NPS in accordance with the NPS Lost and Found Policy. The Concessioner shall attempt to identify the ownership of the found item, attempt to contact the owner, and provide all this information to the NPS.

## 16. VISITOR COMMENTS AND COMPLAINTS

### A) Comments and Complaints Received by the NPS

The NPS will forward comments or complaints regarding the Concessioner's operations to the Concessioner for a timely review. The Concessioner will respond to the Superintendent and only the Superintendent in writing within five working days. A copy of any NPS response will be forwarded to the Concessioner.

### B) Comments and Complaints Received by the Concessioner

The Concessioner shall provide the Superintendent any comments or complaints it receives directly, within five working days. No response from the Concessioner may be released without the Superintendent's approval.

### C) Secret Shopper

The Concessioner will contract for a "secret shopper" at least twice per year to assist the Superintendent's in determining overall customer satisfaction. The goal of the "secret shopper" is to evaluate the Concession Operation and determine visitor satisfaction with all elements of the concession experience. The evaluation reports will be provided, within 10 days of visit, directly by the "secret shopper" to the Superintendent, Attention: Chief of Concessions at the address listed below.

### D) Public Notice

The following notice will be prominently posted and communicated to visitors:

*This service is operated by \_\_\_\_\_, a Concessioner under contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. Prices are approved by the National Park Service.*

*Please address comments to:*

*Superintendent  
Statue of Liberty National Monument and Ellis Island  
Liberty Island  
New York, NY 10004*

**17. SMOKING**

Smoking is prohibited on board all vessels and all indoor areas within the assigned Concession Facilities and is only allowed on Liberty and Ellis Islands and in Castle Clinton National Monument in outdoor areas pursuant to all Applicable Laws. Specific attention shall be given to assure appropriate disposal of all smoking materials. The Concessioner will post notices in all public areas as necessary. All Concessioner employees and contractors shall follow these guidelines.

Dated at Statue of Liberty National Monument this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NATIONAL PARK SERVICE

\_\_\_\_\_

Superintendent  
Statue of Liberty National Monument and Ellis Island

**EXHIBIT B**  
**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:**

- (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (ii) Facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

**2) The Concessioner is prohibited from:**

- (i) Publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (ii) Discriminating by segregation or other means against any person.

**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 disabled person shall, because a Concessioner's facilities are inaccessible to or unusable by disabled 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 a disability:

- 1) Deny a qualified disabled person the opportunity to participate in or benefit from the aid, benefit, or service;
- 2) Afford a qualified disabled 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 disabled 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 disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as those provided to others;
- 5) Aid or perpetuate discrimination against a qualified disabled person by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- 6) Deny a qualified disabled person the opportunity to participate as a member of planning or advisory boards; or
- 7) Otherwise limit a qualified disabled 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 disabled 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 disabled persons. Notwithstanding, each departure point will be fully accessible.

## **Section III: Requirements Related to the Service Contract Act of 1965**

(a) Service Contract Act of 1965, as amended: This contract is subject to the Service Contract Act of 1965, as amended (*41 U.S.C. 351 et seq.*) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the

contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe

benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in subpart D of 29 CFR part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of § 4.1b(b) of 29 CFR part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in § 4.10 of 29 CFR part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in § 4.11 of 29 CFR part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a

result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor:

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to § 4.6(1)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of

failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term contractor as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term Government prime contractor.

(k)(1) As used in these clauses, the term service employee means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term service employee includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits
To be completed following award of this CONTRACT	-----

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (§ 4.173 of Regulations, 29 CFR part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, *18 U.S.C. 1001*.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the

employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in parts 525 and 528 of title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) Where an employee engaged in an occupation in which he or she customarily and regularly receives more than \$ 30 a month in tips, the amount of tips received by the employee may be credited by the employer against the minimum wage required by Section 2(a)(1) or 2(b)(1) of the Act to the extent permitted by section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes

shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

2006 PROSPECTUS - FOR REFERENCE USE

**ATTACHMENT TO EXHIBIT B**

**UNION CONTRACTS**

2006 PROSPECTUS - FOR REFERENCE USE

**AGREEMENT**

**between**

**CIRCLE LINE STATUE OF LIBERTY FERRY, INC.**

**and**

**LOCAL 333, UNITED MARINE DIVISION  
I.L.A., AFL-CIO**

**April 1, 2006  
to  
March 31, 2009**

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2006 PROSPECTUS - FOR REFERENCE USE

**THIS AGREEMENT** is made and entered into between the owners and operators of the **CIRCLE LINE STATUE OF LIBERTY FERRY, INC.**, (hereinafter called the "Employer") and **LOCAL 333, UNITED MARINE DIVISION, I.L.A., AFL-CIO**, (hereinafter called the "Union"), representing Captains, Engineers, and Deckhands employed by the aforesaid Employer.

**WHEREAS**, the Union has warranted and represented that it represents a majority of the Employees covered by this Agreement and the Employer has therefore recognized the Union as the sole and exclusive bargaining agent for all Employees covered by this Agreement with respect to wages, hours and other conditions of employment; and

**WHEREAS**, it is the intention of the parties to this Agreement to insure peaceful adjustment and settlements of grievances and to prevent strikes, lockouts or interruption of work and interference with the efficient operation of the Employer's business.

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the Employer and the Union agree as follows:

## **SECTION I**

### **APPLICATION OF AGREEMENT**

(A) This Agreement applies only to Licensed and Unlicensed Employees employed on vessels owned or operated by the Employer in the Port of New York and used in the Statue of Liberty and Ellis Island operations and to licensed and unlicensed Employees employed on the Miss New York (or any replacement vessel) when it is used for sightseeing trips in New York harbor.

(B) Employees shall be categorized as Tier One and Tier Two Employees.

1. "Tier One Employees" shall consist of the most senior twenty-three (23) employees in the deck department (Captains and Deckhands) and the most senior two (2) employees in the engine department (Engineers) as well as those employees who worked for the Company prior to March 31, 2003; provided, however, that as each of these last-referenced employees resigns, is discharged or becomes one of the most senior 23 employees in the deck department or one of the two most senior employees in the engine department, he shall not be replaced as a Tier One Employee; and provided further, that Tier One Employees shall refer to only the above-referenced 25 most senior employees for purposes of Section IX (B) (option of working a sixth day) and Section XII (see paragraph 8 below).

2. The number of Tier One Employees, therefore, shall eventually be limited to the 23 most senior employees in the deck department and the two most senior employees in the engine department.

3. "Tier Two Employees" shall consist of all employees who were employed by the Employer after March 31, 2003.

4. When a Tier One Employee resigns or is discharged, he shall be replaced by the most senior person in the department in which the resignation or discharge occurred and the replacement shall immediately be regarded as a Tier One Employee for purposes of this Agreement.

## SECTION II

### EMPLOYMENT

(A) During the life of this Agreement, the Employer shall be the sole judge of whether the applicants for employment are satisfactory, qualified, competent and experienced.

(B) When a vacancy exists in the deck or engine department, the Employer will promptly notify the Union of the vacancy in order that the Union may have the opportunity of referring qualified applicants to the Employer, and the Union may consider that a vacancy has not been filled until the Employer notifies the Union of the name of the person who has been employed. The Union represents that it will

conduct its hiring hall in a manner that will not violate the National Labor Relations Act.

(C) Every new Employee shall be on probation for the first sixty (60) working days of employment. Upon satisfactory completion of the applicable probationary period, seniority will be computed from the date of hire.

(D) At any time during the probationary period, the Employer shall have the right to discipline or discharge a probationary employee who, in its sole discretion, the Employer believes is unsatisfactory. Any such employee disciplined or discharged shall have the right to file a grievance but shall not have the right to submit the grievance to arbitration.

(E) Nothing in this Agreement shall be construed to prevent the Employer from discharging Employees for cause or because such Employees are not satisfactory, qualified, competent or experienced as to which the Employer shall be the sole judge.

(F) All present Employees covered by this bargaining unit shall be required to be or become members of the Union within thirty-one (31) days, and thereafter to remain members of the Union in good standing as a condition of continued employment. All new Employees shall be required to become members of the Union within thirty-one (31) days of their date of hire and thereafter to remain members of the Union in good standing as a condition of continued employment. The Employer agrees that insofar as it may lawfully do so it will give full effect to this paragraph.

### **SECTION III**

#### **EMPLOYEES SUBJECT TO ORDERS OF EMPLOYER'S APPOINTEE**

While on board vessels owned or operated by the Employer, or on piers or other properties owned or controlled by the Employer, all Employees shall be under the direction and subject only to orders of such person or persons as the Employer may designate or appoint.

## **SECTION IV**

### **STOPPAGE OF WORK**

The Union in its own behalf and in behalf of the Employees, agrees that during the life of this Agreement, there shall be no strikes, "sit downs," sympathy strikes, or stoppages, picketing or cessation of work by the Union or the Employees, and to that end the Union and the Employees agree not to stop, hinder, or restrain, nor to instigate or encourage any other person to stop, hinder, or restrain, the Employer's vessels in any manner from carrying on the Employer's business, and Employees who do not abide by the provisions of this section may be discharged by the Employer. Upon the violation of this section by the Union or any of the Employees, this Agreement may be terminated by the Employer.

## **SECTION V**

### **LOCKOUTS**

The Employer agrees that during the life of this Agreement, there shall be no lockout of the Employees, and upon violation of this provision by the Employer, this Agreement may be terminated by the Union. However, the prohibition against lockouts contained herein shall not be construed to prevent the Employer from laying up any vessel or discontinuing its operation and laying off its crews (Employees), in whole or in part, at any time when for business reasons the Employer deems it advisable to do so.

## **SECTION VI**

### **LAWS, RULES AND REGULATIONS**

In the event of the application during the life of this Agreement of any law, rule or regulation affecting the manning of vessels or hours of labor, the wage scale and working conditions provided herein may, at the option of the Union or the Employer be referred to an "Adjustment Committee" for readjustment and revision. It is agreed, however, that if the Coast Guard amends its regulations to require additional deckhands

on any of the vessels operated by the Employer, these positions shall be filled by reclassifying concession workers as "concession workers/deckhands."

## SECTION VII

### EXISTING WAGES AND NUMBER OF EMPLOYEES

The Company may deploy its vessels as it sees fit. During the life of this Agreement, the Employer shall not reduce (except as may be permitted by Section VI) the scale of wages which were paid at the time of the effective day of this Agreement without obtaining the consent of the Union. The Employer retains the right to operate the boats with the number of crew required by the Coast Guard certification.

## SECTION VIII

### WAGE SCALE

#### Effective April 1, 2006

	<u>TIER 1</u>	<u>TIER 2</u>
Captain	\$30.22	\$26.25
Chief Engineer	\$29.63	\$25.20
Deckhand	\$23.12	\$17.85

#### Effective April 1, 2007

	<u>TIER 1</u>	<u>TIER 2</u>
Captain	\$31.13	\$27.04
Chief Engineer	\$30.52	\$25.96
Deckhand	\$23.81	\$18.39

#### Effective April 1, 2008

	<u>TIER 1</u>	<u>TIER 2</u>
Captain	\$32.06	\$27.85
Chief Engineer	\$31.44	\$26.73
Deckhand	\$24.53	\$18.94

All employees who have or who obtain a master's or engineer's license shall receive a one time bonus payment of \$500 on December 31, 2006, 2007 and 2008, less all statutory deductions.

## SECTION IX

### HOURS OF WORK

(A) The work week for all Employees shall begin on Monday and end on Sunday and payday shall be the following Wednesday.

The Company shall notify Employees as far in advance as possible of the schedule of sailings it has agreed to with the National Park Service. Employees shall then be expected to work the schedule of days they elect and shall have the responsibility to notify the Company no later than twenty-four hours in advance when they are unable to work on a particular day.

If an Employee notifies the Company that he shall be absent by 1:00 p.m. of the day preceding the absence, the Company shall attempt to replace the absent Employee with a currently employed employee; if it is unsuccessful it shall request a replacement from the hiring hall.

(B) Tier One Employees:

Five days shall constitute a normal work week; Tier One Employees shall have the option of working a sixth day. Eight (8) consecutive hours shall constitute a day's work; all hours worked in excess of eight (8) hours shall be compensated for at the rate of time and one-half. Each Employee shall have one designated day off per week. In the event a Tier One Employee works on Statue Of Liberty Ferry Services on a Saturday or Sunday, or is required to work on his designated day off (call-in) he shall be paid overtime at the rate of time and one-quarter for all hours worked.

Overtime, however, shall not be paid for the first eight (8) hours of weekend work on the Miss New York (or any replacement vessel); provided, however, that Tier One Employees shall be paid for overtime worked in excess of 8 hours.

Hours worked on sightseeing vessels and ferry vessels shall be added together to determine overtime pay entitlement.

The 23 most senior employees in the deck department and two most senior employees in the engine department shall be paid overtime at the rate of time and one-half for the first day the employee works on a weekend; time and one-quarter for all hours the second day the employee works on a weekend; and time and one-half if the above referenced employees are required to work on their designated day off and the designated day off is on a weekend.

**(C) Tier Two Employees:**

Five (5) days shall constitute a normal work week. Each Tier Two Employee shall have one designated day off per week. Tier Two Employees shall be paid at the rate of time and one-half for all work performed in excess of forty (40) hours in the work week.

Overtime, however, shall not be paid for weekend work on the Miss New York (or any replacement vessel); provided, however, that Tier Two Employees shall be paid for overtime worked in excess of 40 hours.

Hours worked on sightseeing vessels and ferry vessels shall be added together to determine overtime pay entitlement.

**(D)** Employees who work at least eight hours on a vessel providing ferry service shall be given the option of working on that vessel if it is assigned Liberty Island /Ellis Island charter work covered by this Agreement. If one or more such Employees elects to work on the chartered vessel, or if other Employees accept an assignment to work on the chartered vessel, they shall be paid for the hours they are assigned to work, but for no less than four hours, at the rate of time and one-half. Employees working on a chartered vessel shall not be paid for any time other than the time they are directed to work on the vessel.

(E) Tier 2 Employees shall be paid at the rate of time and one quarter for all hours worked when they are called in to work between January 1, 2007 and March 15, 2007. This provision may be continued in either or both of the 2007-2008 and 2008-2009 contract years at the Company's discretion.

**SECTION X**

**SECURITY**

Deckhands serving on the Miss New York shall be responsible for checking passengers' bags, knapsacks, etc. at the direction of the Company's security officer or other designated representative. The Company shall provide appropriate training to deckhands who may be assigned this responsibility.

**SECTION XI**

**HANDLING FREIGHT**

No crew member shall be required to handle any package or item of freight which weighs in excess of 100 pounds nor shall he be required to handle in excess of twelve items in any one day.

**SECTION XII**

**GUARANTEED PAY**

Employees who are working according to a regular schedule of sailings and Employees who are called in to substitute for such Employees shall normally be paid no less than eight hours pay. When, however, the Company is unable to sail one or more vessels because of circumstances beyond its control, including, but not limited to, weather conditions and United States Park Service directives, Employees who show up

to work but cannot work at all or for the full day shall be paid for four hours if they work for four hours or less; and for eight hours if they work for more than four hours.

Employees who are advised not to report to work before they leave home shall not be paid if they are not assigned work.

### SECTION XIII

#### VACATIONS

The 25 most senior Tier One Employees shall accrue one day's vacation with pay for each month employed during the course of the year; vacation shall be calculated on a monthly basis. The remaining Tier One Employees' vacation time shall be calculated by dividing the total number of days they have worked by 22 and multiplying the resulting number by the number of "days for each month employed" each Employee is entitled to by virtue of his length of service. (E.g., an Employee with 10 years of service who works 242 days would receive 16.5 days vacation:  $242 \div 22 = 11 \times 1.5 = 16.5$ .)

It is understood and agreed, however, that should a man resign or be discharged for cause he shall not be entitled to any vacation credits.

Any Tier One Employee who has been in the employ of the Employer for five (5) years as of the date on which his vacation commences will be entitled to a vacation at the rate of one day and one-quarter for each month employed during the course of the year.

Any Tier One Employee who has been in the employ of the Employer for ten (10) years as of the date on which his vacation commences will be entitled to a vacation at the rate of one day one-half for each month employed during the course of the year.

Any Tier One Employee who has been in the employ of the Employer for fifteen (15) years as of the date on which his vacation commences will be entitled to a vacation at the rate of two days for each month employed during the course of the year.

Tier Two Employees shall be entitled to one day's vacation with pay for every twenty-two days actually worked.

Accrued and unused vacation entitlements shall be paid to Employees no later than January 15<sup>th</sup> of the year following the year in which the vacation was earned.

#### **SECTION XIV**

##### **OVERTIME**

Overtime shall be paid for at the appropriate overtime rate in increments of one-half (1/2) hour to crew members who remain on the boat available for work for the full half hour; any crew member who leaves prior to the expiration of the half hour shall be paid in an increment of one-quarter (1/4) hour. The Captain must remain the full half hour if any crew member remains for the full half hour. The Captain shall enter into the log the reasons why some or all of the crew members worked overtime hours, the work each crew member performed and the time each crew member left the vessel.

#### **SECTION XV**

##### **HOLIDAYS**

The Employer recognizes New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day as holidays and shall pay Tier One Employees a full day's pay at the rate of straight time for such holidays off, and an additional full day's pay at the rate of time and one-half if such Employees work on the holiday. If any Employee is required to work on a holiday that falls on his regularly scheduled day off, he shall be given reasonable notice in advance by the Employer.

When a Tier One Employee is required to work on Christmas Day or New Year's Day he shall be paid twelve (12) hours straight time pay in addition to his regular days pay at time and one-half.

Tier One Employees shall be paid holiday pay only if they work the day before or the day after the day on which the holiday is observed.

Tier Two Employees shall not receive holiday pay but shall be paid at the rate of time and one-half if they work on Christmas Day, New Year's Day, Independence Day, Labor Day or Easter Sunday.

Any holidays set forth above which fall on a Saturday shall be celebrated on the previous Friday and holidays falling on a Sunday shall be celebrated on the following Monday.

## **SECTION XVI**

### **BEREAVEMENT LEAVE**

The Company shall pay three (3) days bereavement leave to Tier One Employees for time taken to attend the wake or funeral of a member of his immediate family, including father, mother, wife, child, brothers, sisters, father-in-law or mother-in-law.

## **SECTION XVII**

### **JURY DUTY**

The Company shall compensate Tier One Employees for losses in pay occasioned by Employees who are required to serve on a jury. Employees requesting reimbursement under this Section shall tender appropriate evidence of their jury service and shall be paid the difference between their per diem jury pay and the amount the Company would have paid them had they worked a regularly scheduled, eight hour day; and provided, however, that no Employee shall be compensated for missed overtime or

premium pay opportunities under this Section; and provided further, that the Company shall be obliged to reimburse an Employee for no more than ten days of jury duty served in any calendar year.

## **SECTION XVIII**

### **MAINTENANCE AND CURE**

When an Employee becomes ill or is injured under circumstances entitling him to maintenance and cure under general Maritime Law principles, he shall be paid a minimum of \$45.00 per day for each day or part thereof of entitlement.

Maintenance shall not be paid while an Employee is a patient in a hospital.

In adjusting maintenance and cure for legitimate outpatient treatment, the Employer will compensate the Employee on the basis of \$15.00 per day subject to the production of a "not-fit-for-duty" Certificate.

## **SECTION XIX**

### **TRAVEL TIME**

(A) All Employees are to report to work at the Brooklyn Navy Yard, Brooklyn, New York, or such other semi-permanent or permanent location when the Brooklyn Navy Yard is not available. Such Employees shall be paid from the hour at which they are required to, and actually report on board the vessels ready to sail at the Brooklyn Navy Yard or other semi-permanent or permanent location, until such time as they are released by the Employer at the Brooklyn Navy Yard or other semi-permanent or permanent location.

(B) If the Company directs Employees to deliver a vessel to a shipyard other than the Brooklyn Navy Yard, it shall provide return transportation to the Brooklyn Navy Yard for those Employees, or reimburse them if they secure their own transportation.

**SECTION XX**  
**EMPLOYER'S CONTRACT**

It is mutually agreed that should the Employer be unable to renew its current contract for the running of the "Statue of Liberty Run," or be unable to obtain a new contract, that on such date that it must cease operation, this contract will automatically terminate as to it.

**SECTION XXI**  
**SENIORITY**

The Employer shall prepare and publish separate seniority lists in the deck department and engineering department; all layoffs will be made in the inverse order of seniority and rehiring will be made in the inverse order of laying off. Employees shall not be laid off out of the order of seniority except in the case of personal emergencies, such as illness in the family. No employee shall be permitted to "bump" a less senior employee on another vessel unless he has been laid off for an indefinite period of time. Employees who take an early layoff without the permission of the Company shall be placed at the bottom of the seniority list.

**SECTION XXII**  
**SUSPENSION OR DISCHARGE**

Any Employee suspended or discharged by the Employer shall be entitled to a hearing provided his request is made within five (5) working days (exclusive of Saturday and Sunday) after his suspension or discharge. The hearing shall be held within three (3) days after receipt of such notice by the Employer, and the Employee shall be entitled to be represented at the hearing by the Union. If the hearing does not result in reinstatement of the Employee, the Union shall have the right to submit the matter to arbitration, as provided in the contract. If the hearing results in the Employee

being reinstated, he shall be restored to his former position and seniority rights and the Employer shall pay him any unpaid wages if so required by the Arbitrator.

## **SECTION XXIII**

### **GRIEVANCE AND ARBITRATION**

(A) Any dispute or grievance, whether or not involving the interpretation or application of this Agreement, may be determined directly between the Employer and the Union representative, provided that no such determination shall be a precedent.

(B) Any grievance, dispute, complaint or claim arising out of or related to the Agreement, and not resolved under paragraph "A" of this Section, shall be submitted to a pre-appointed panel known as the Quick Settlement Committee.

The Quick Settlement Committee shall, no later than 48 hours after receipt of telephonic or telegraphic notice of the aggrieved party, convene a hearing at such place as the signatories to the Collective Bargaining Agreement shall determine.

The Quick Settlement Committee shall be composed of three (3) representatives of the Employer and three (3) representatives of the United Marine Division, Local 333, I.L.A., AFL-CIO and such alternatives as each side may elect. The parties may, by mutual consent, extend the time for the hearing period, provided telephonic, email or facsimile (fax) notice is given to the Committee within the 48 hour period. In the event any party fails to appear at any hearing the party failing to appear shall be deemed to have waived its right to contest its non-participation, and the Committee shall proceed forthwith to determine the issue.

If the Committee is unable to agree upon any adjustment of any complaint, grievance or controversy, either party may demand an arbitration ("Expedited Arbitration"), at any time after the matter has been considered by the Quick Settlement Committee. The parties will submit the dispute according to the normal procedures of the American Arbitration Association.

In the event that an arbitrator find a breach of this Agreement or any of the terms thereof, the arbitrator may issue any and all mandatory directions, prohibitions or orders directed to or against any party breaching this Agreement or any part thereof. The arbitrator shall have no power to change, amend, modify, add to or subtract from or otherwise alter this Agreement.

The arbitrator shall issue a short form award at the end of the hearing unless the time to render an award is extended by mutual consent. The arbitrator shall issue a more detailed decision within 30 days after the rendition of such short form award setting forth the reasons for this award.

The decision of the arbitrator shall be final and binding upon the parties hereto, and they agree to abide by such decision. The arbitrator shall have full authority to interpret and apply the provisions of the collective bargaining agreement and to fashion any appropriate remedy. The Employer and the Union shall each be responsible for one-half the expense of the arbitration. Such arbitration shall be conducted in accordance with the rules and regulations then prevailing of the American Arbitration Association.

## SECTION XXIV

### INSURANCE AND PENSIONS

#### (A) Insurance

The Employer shall continue to provide the same or a similar plan to the Employees. Prior to the expiration of the Company's contract with its current health insurance carrier in September, 2006, the Company and the Union shall cooperate in discussing with the current carrier or another carrier the possibility of offering less expensive medical insurance plans; if an agreement is reached with the carrier selected to offer less expensive plans, and an employee chooses a less expensive plan, the Company shall contribute to the employee's coverage the same amount it was contributing on September 30, 2006, provided, however, it shall contribute for any

employee no greater amount than is necessary to pay for the plan selected. The Company, in turn, shall not contribute any more for an individual employee's health insurance coverage after September 30, 2006 than it was contributing before September 30, 2006. If the total premium is less than the Employer's current share, the Employer shall pay the entire premium, but the Employee shall not receive the difference between the Employer's current share and the new plan.

Tier Two Employees shall be eligible for participation in the Company's medical insurance plan after six (6) months or twelve hundred (1200) hours of employment, whichever occurs earlier. All Employees must work one hundred twenty (120) hours in a given month in order to be covered in the following month. Employees must actually work the 1200 or the 120 hours, not simply be paid for that time. The medical insurance program shall provide employees with the following benefits:

1. effective no later than thirty days after the execution of this Agreement, a death benefit of \$40,000 with double the amount of such indemnity for death by accident or dismemberment, subject to the terms and conditions in the Group Insurance policies;
2. non-occupational accident and sickness benefits of \$135.00 per week, payable in the case of accident from the first day of the accident, or in the case of sickness, from the eighth day of illness, for a maximum of 26 weeks for any one disability; and
3. hospital, medical, major medical and surgical benefits applicable to Employees and dependents of the Employees subject to the terms and conditions of the plan presently in place or a substitute plan providing substantially equivalent benefits.

Subject to the provisions of this Section XXIV(A), the Employer shall pay eighty (80%) percent of the premium charged by providers of the medical insurance plan and Employees shall pay twenty (20%) percent of the premiums charged. The Employees' contribution shall be deducted from their paychecks in accordance with IRS regulations.

**(B) Pension Plan**

From April 1, 2006 through March 31, 2007, the Employer shall contribute 3% of the straight time portion only of the first forty (40) hours worked (or less than forty hours if less than forty hours are worked) during the payroll week into a 401(k) type retirement plan ("Plan") for Employees who satisfy the Plan's eligibility criteria. As of April 1, 2007, the employer shall contribute 3% on all hours work worked into the Plan for employees who satisfy the Plan's eligibility criteria. In all years of this Agreement, Tier One Employees shall vest 100% immediately in the amounts contributed to their accounts. Tier Two Employees eligible for participation in the Plan shall vest in 20% of the amounts contributed to their accounts for each year they work the required number of hours for continued participation in the Plan. Tier Two employees, however, shall vest 100% immediately in amounts they elect to contribute to the plan. The Employer's contribution shall be made no later than February 28<sup>th</sup> of the year following the year in which the work generating the contributions was performed.

**(C) Notice to Employer**

Retiring Employees must give sixty (60) days written notice of their intent to retire to the Employer.

**SECTION XXV****CLEANING LATE BOAT**

When the Employer decides that the late boat requires a cleaning before scheduled sailing time, it shall direct the Deckhand or Deckhands of the subject vessel to perform such cleaning and designate their starting time for such cleaning, and the Deckhand or Deckhands of such vessels shall be compensated at the rate of time and one-half for such cleaning time.

**SECTION XXVI****PAINTING**

Painting aboard a vessel in operation shall be done at such times as the Captain, in his discretion specifies, except that there shall be no painting within enclosed passenger areas while the vessel is underway.

**SECTION XXVII****FIRE FIGHTING SCHOOL/LICENSE UPGRADES/ANNUAL PHYSICAL**

If licenses employees are required by Coast Guard regulations to attend a fire fighting school, the Company shall pay up to two (2) days wages at base rates.

If licensed employees are required by law or Coast Guard regulations to renew or upgrade existing licenses and the process of renewing or upgrading requires them to miss a regularly scheduled day of employment, such licensed Employees shall be reimbursed for up to one day (eight (8) hours) wages at their base hourly rate during the terms of the Agreement. In addition, if the United States Coast Guard requires a licensed employee to undergo additional training as a condition of maintaining a current license or as a condition of obtaining additional endorsements that will be necessary for licensed personnel to perform their required duties, the Company shall pay eight hours pay at straight time rates for each day or part of a day an employee devotes to obtaining such additional training. This payment shall not be available for crew members who are obtaining a license.

Each USCG licensed crew member shall submit to an annual physical examination by a physician of his choice by no later than March 31st each year to ensure he is physically capable of performing the tasks associated with his position. The results of the examination shall be submitted to the Company.

**SECTION XXVIII**  
**READYING BOAT**

When a boat has been tied up for five days or less, the crew will be given one-half hour to ready the boat. When a boat has been tied up for more than five days the crew will be given one hour to ready the boat.

**SECTION XXIX**  
**LINE-HANDLERS**

New York line-handlers shall receive the same wages as the New York Deckhands and can be used as Deckhands in an emergency. In addition to the regular run, line-handlers shall be employed on all Charter runs. Work assigned to line-handlers may also be assigned to persons outside the bargaining unit at the Company's discretion.

Michael Monaghan shall continue to work his normal schedule as the linecatcher at Liberty Island.

**SECTION XXX**  
**SUCCESSORS**

This Agreement shall be binding upon the parties hereto, and their successors and assigns, and no provision herein contained shall be nullified or affected in any manner as a result of any consolidation, sale, transfer or assignment by the Employer herein to any other person, firm or corporation. The Employer agrees that it will not conclude any of the above transactions unless an agreement has been entered into as a result of which this Agreement shall continue to be binding on the person, firm or corporation continuing the business, it being the intent of the parties that this Agreement shall remain in effect for the full term hereof regardless of any changes in the management, location, form of business organization or ownership.

**SECTION XXXI**

~~ARTICLE IV - TERM OF AGREEMENT AND AUTOMATIC RENEWAL~~

This Agreement is effective as of 12:01 A.M., April 1, 2006, and it shall remain in force and effect to and including March 31, 2009, and shall be automatically renewed thereafter from year to year, or by agreement for any longer period, unless at least sixty (60) days before the expiration date designated herein or the expiration date of any renewal period, written notice of termination is given by certified mail, return receipt requested, by either party to the other, addressed in the case of the Employer to Local 333, United Marine Division, I.L.A., AFL-CIO, 552 Bay Street, Staten Island, NY 10304, and in the case of the Union to Circle Line-Statue of Liberty Ferry Incorporated, 17 Battery Place, New York, NY 10004.

**IN WITNESS WHEREOF**, the parties hereto have caused the Agreement to be signed by their respective representatives thereunto duly authorized to execute it on their behalf.

**CIRCLE LINE STATUE OF LIBERTY FERRY, INC.**

By: \_\_\_\_\_  
Kevin A. Moran  
President

Dated \_\_\_\_\_

**LOCAL 333 UNITED MARINE DIVISION, I.L.A., AFL-CIO**

By: John Healy  
John Healy  
President

Dated: 6/1/06

**SIDELETTER #1**

As of April 1, 2006

Mr. John Healy  
President  
Local 333, United Marine Division, ILA, AFL-CIO  
552 Bay Street  
Staten Island, NY 10304

Re: Circle Line Statue of Liberty Ferry/Local 333, UMD, ILA  
2006-2009 Collective Bargaining Agreement

Dear John:

Circle Line Statue of Liberty Ferry, Inc. ("Statue Ferry") and Local 333, United Marine Division, ILA, AFL-CIO ("Local 333") recently completed negotiations toward a new contract that is effective as of April 1, 2006 and expires on March 31, 2009. In the course of these negotiations, representatives of Statue Ferry and Local 333 agreed to the following:

1. if the Company receives a three year extension of its contract with the National Park Service and if the Company receives a \$1 per ticket increase from the National Park Service, the Company will pay Tier One employees at the rate of time and one half for all hours worked on Saturday and Sunday;
2. Raymond Morris, Richard Brown and Michael Dunn, III shall be paid at the rate of \$28.54 effective April 1, 2006, \$29.40 effective April 1, 2007 and \$30.28 effective April 1, 2008, when they work as deckhands on the *Miss Circle Line*, *Miss Liberty* or vessels that replace them; provided, however, that these individuals shall receive these rates only when working aboard a vessel or vessels that replace the *Miss Circle Line* or *Miss Liberty* and not when they are working as deckhands on other vessels; provided further, that if two of the named individuals are working on board one of the vessels, only one person shall receive these rates; and finally, provided that Mr. Brown shall receive these rates only when he replaces Mr. Dunn, III or Mr. Morris as a deckhand on board a vessel replacing the *Miss Circle Line* or *Miss Liberty*.
3. If the Company withdraws the *Miss Circle Line* or the *Miss Liberty* from service, Kevin Reynolds, Jr. and Luciano Tirkovich shall, at their request, be transferred to any vessel which replaces the *Miss Liberty* or the *Miss Circle Line*.

Very truly yours,

*R. G. McGuire*

Raymond G. McGuire

**AGREED TO AND ACCEPTED**

**LOCAL 333, UNITED MARINE  
DIVISION, AFL-CIO**

By: *John Healy*  
John Healy

6/1/06

2006 PROSPECTUS - FOR REFERENCE USE

**AGREEMENT**

**between**

**CIRCLE LINE - STATUE OF LIBERTY FERRY, INC.**

**and**

**LOCAL 333, UNITED MARINE DIVISION, I.L.A., AFL-CIO**

**September 15, 2006**

**to**

**September 14, 2009**

2006 PROSPECTUS - FOR REFERENCE USE

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2006 PROSPECTUS - FOR REFERENCE USE

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2006 PROSPECTUS - FOR REFERENCE USE

## AGREEMENT

**THIS AGREEMENT** is made and entered into as of September 15, 2006 by and between the owners and operators of the **CIRCLE LINE STATUE OF LIBERTY FERRY, INCORPORATED** (hereinafter called the "Employer") and **LOCAL 333, UNITED MARINE DIVISION, I.L.A., AFL-CIO**, (hereinafter called the "Union") representing Concession Managers, Concession Helpers, and Utility Workers (hereinafter called "Employees") employed by the aforesaid Employer.

**WHEREAS**, the National Labor Relations Board has certified that the Union represents a majority of the Employees in a bargaining unit described as including: "All full-time and regular part-time employees including concession workers and utility workers performing miscellaneous duties employed by the Employer at or from Castle Clinton, Battery Park, New York, New York and Liberty State Park, Jersey City, New Jersey," and excluding: "All ticket sellers, cashiers, office clericals, other employees, and guards, professional employees, and supervisors as defined in the Act;" and

**WHEREAS**, it is the intention of the parties to this Agreement, to insure peaceful adjustment and settlement of grievances and to prevent strikes, lockouts or interruption of work, and interference with the efficient operations of the Employer's business:

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, the Employer and the Union agree as follows:

## ARTICLE I

### GENERAL PROVISIONS APPLICABLE TO ALL EMPLOYEES

#### **A. APPLICATION OF AGREEMENT**

1. This Agreement applies only to those Employees identified in the National Labor Relations' Board description of the bargaining unit who are employed on or in connection with vessels owned or operated by the Employer in the Port of New York and used to transport passengers to Liberty Island and to Ellis Island.

2. The term of the agreement shall be from September from September 15, 2006 until September 14, 2007 or until the loss of the National Park Service Contract, whichever event occurs first.

#### **B. EMPLOYMENT**

1. During the life of the Agreement, the Employer shall be the sole judge of whether applicants for employment are satisfactory, qualified, competent and experienced.

##### **2. Probationary Period**

(a) Every new Employee shall be on probation for the first forty five (45) working days of employment. Upon satisfactory completion of the applicable probationary period, seniority will be computed from the date of hire.

(b) At any time during the probationary period, the Employer shall have the right to discipline or discharge any person who, in its sole discretion, the Employer believes is unsatisfactory. Any such person disciplined or discharged shall have the right to file a grievance but shall not have the right to submit the grievance to arbitration.

3. Nothing in this Agreement shall be construed to prevent the Employer from discharging Employees for cause or for the reason that such Employees are not satisfactory, qualified, competent or experienced as to which the Employer shall be the sole judge.

4. All present Employees covered by this bargaining unit shall be required to be or become members of the Union within thirty-one (31) days, and thereafter to remain members of the Union in good standing as a condition of continued employment. All new Employees shall be required to become members of the Union within thirty-one (31) days of their date of hire, and thereafter to remain members of the Union in good standing as a condition of continued employment. The Employer agrees that, insofar as it may lawfully do so, it will give full effect to this Paragraph (B).

**5. Dues Check-Off**

Upon receipt of signed authorization from an Employee in the bargaining unit, the Employer shall deduct from the Employee's pay the dues and initiation fee payable by such Employee to the Union. Deductions on account of Union dues shall be made from the first paycheck to be received by the Employee in each month after receipt of the authorization by the Employer. Deductions shall be remitted to the Union by the 15th of every month. The Company shall furnish the Union with a record of each such deduction showing the amount and the Employee from whom such deduction was made.

**C. SUSPENSION OR DISCHARGE**

Any Employee suspended or discharged by the Employer shall be entitled to a hearing provided his request is made within five (5) working days (exclusive of Saturday and Sunday) after his suspension or discharge. The hearing shall be held

within three (3) days after receipt of such notice by the Employer, and the Employee shall be entitled to be represented at the hearing by the Union. If the hearing does not result in reinstatement of the Employee and if the Union still considers the Employee to have been suspended or discharged without cause, the Union shall have the right to submit the matter to arbitration, as provided in the contract.

**D. EMPLOYEES SUBJECT TO ORDERS OF EMPLOYER'S APPOINTEE**

All Employees shall be under the direction and subject only to orders of such person or persons as the Employer may designate or appoint.

**E. STOPPAGE OF WORK**

The Union, in its own behalf and in behalf of the Employees, agrees that during the life of this Agreement, there shall be no strikes, "sit-downs," sympathy strikes or work stoppage, picketing or cessation of work by the Union or the Employees and to that end the Union and Employees agree not to stop, hinder or restrain, nor to instigate or encourage any other person to stop, hinder or restrain the Employer's vessels in any manner from carrying on the Employer's business, and Employees who do not abide by the Provisions of this Section may be discharged by the Employer. Upon the violation of this Section by the Union or any of the Employees, this Agreement may be terminated by the Employer.

**F. LOCKOUTS**

The Employer agrees that during the life of this Agreement there shall be no lockout of the Employees and upon violation of this provision by the Employer, this Agreement may be terminated by the Union. However, the prohibition against lockouts contained herein shall not be construed to prevent the Employer from laying up any vessels, or discontinuing their operation and laying off their crews (Employees) in whole

or in part, at any time when for business reasons the Employer deems it advisable to do so.

**G. EXISTING WAGES**

During the life of this Agreement, the Employer shall not reduce the scale of wages which were paid at the time of the effective date of this Agreement, without obtaining the consent of the Union.

**H. NO SPLIT TIME**

The Employer shall pay not less than one full day's pay to any Employee; there shall be no split time, except hourly overtime.

**I. HOLIDAYS**

The Employer recognizes New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Martin Luther King, Jr. Day as holidays. Employees who work or are on paid vacation one day in the payroll period in which a holiday is observed shall receive a full day's pay (i.e., eight (8) straight time hours) for such holidays off. Employees on whose behalf contributions are made to the 401K Plan under Section 11.B. and who are required to work Thanksgiving, New Year's Day, Veteran's Day, Martin Luther King, Jr. Day Washington's Birthday or Lincoln's Birthday shall receive holiday pay of eight hours wages at the overtime rate of time and one-half plus regular pay for a minimum of eight hours and overtime pay for all time worked over eight hours in accordance with the overtime provisions. Except as noted above, employees who are required to work on Memorial Day, Independence Day, Labor Day, Washington's Birthday, Lincoln's Birthday or Veteran's Day shall receive holiday pay of eight hours wages at straight time plus regular pay for a minimum of eight hours and

overtime pay for all time worked over eight hours in accordance with the overtime provisions. Any hours worked in excess of eight (8) straight time hours shall be compensated at the overtime rate of time and one-half.

**J. ADJUSTMENT AND ARBITRATION OF DISPUTES**

1. Any dispute or grievance, whether or not involving the interpretation or application of this Agreement, may be determined directly between the Employer and the Union representative, provided that no such determination shall be precedent.

2. Any grievance, dispute, complaint or claim arising out of or related to the Agreement, and not resolved under Paragraph "A" of this Section, shall be submitted to a pre-appointed panel known as the Quick Settlement Committee.

The Quick Settlement Committee shall, no later than 48 hours after receipt of telephonic or telegraphic notice of the aggrieved party, convene a hearing at such place as the signatories to the collective bargaining agreement shall determine.

The Quick Settlement Committee shall be composed of three (3) representatives of the Employer and three (3) representatives of the United Marine Division, Local 333, I.L.A., AFL-CIO, three representatives of the Employer and such alternatives as each side may elect. The parties may, by mutual consent, extend the time for the hearing period, provided telephonic or telegraphic notice is given to the Committee within the 48 hour period. In the event any party fails to appear at any hearing the party failing to appear shall be deemed to have waived its right to contest its non-participation, and the Committee shall proceed forthwith to determine the issue.

If the Committee is unable to agree upon any adjustment of any complaint, grievance or controversy, either party may demand an arbitration ("Expedited Arbitration"), at any time after the matter has been considered by the Quick Settlement

Committee. The parties will submit the dispute according to the normal procedures of the American Arbitration Association.

In the event that a breach of this Agreement or any of the terms thereof has been found, the arbitrator may issue any and all mandatory directions, prohibitions or orders directed to or against any party breaching this Agreement or any party thereof. The arbitrators shall have no power to change, amend, modify, add to or subtract from, or otherwise alter this Agreement.

The arbitrator shall issue an oral, short form award at the end of the hearing unless the time to render an award is extended by mutual consent. The arbitrator shall issue a more detailed decision within 30 days after the rendition of such short form award setting forth the reasons for this award.

The decision of the arbitrator shall be final and binding upon the parties hereto, and they agree to abide by such decision. The arbitrator shall have full authority to interpret and apply the provisions of the collective bargaining agreement and to fashion any appropriate remedy. The Employer and the Union shall share equally the expense of the arbitration. Such arbitration shall be conducted in accordance with the rules and regulations then prevailing of the American Arbitration Association.

**K. INSURANCE AND PENSIONS**

The following Insurance and Pension provisions shall apply to full-time year-round Employees of the Employer and shall not apply to casual or seasonal employees.

**1. Insurance**

The Employer shall continue to provide medical insurance coverage, life insurance coverage (minimum benefits of twelve thousand (\$40,000) dollars and non-

occupational disability insurance coverage (minimum benefits of one hundred thirty five (\$135) dollars per week) for full-time, year round employees. Effective September 15, 2006, all employees participating in the Company-sponsored medical insurance plan shall pay 20% of the premium cost of their coverage; their share of the Company's total contribution shall be deducted from their paycheck **each pay period**.

**2. 401K Plan**

The Employer shall continue to contribute three percent (3%) of each covered employee's gross wages to an Employer-sponsored deferred contribution plan ("401K Plan") subject to applicable local, state and federal laws. Employees must be at least twenty-one years of age and must work a minimum of one thousand (1,000) hours in a calendar year to be eligible to participate in the 401K Plan in the following calendar year. Employees who qualify for participation must work a minimum of five hundred (500) hours in each successive calendar year before contributions shall be made on their behalf to the 401K Plan. The Employer shall contribute 3% of the entire gross wages earned in a given calendar year for eligible employees who work more than five hundred hours in that year.

**L. SENIORITY**

The Employer agrees to allow employees to elect to be laid-off in order of seniority. All rehiring will be made in the order of seniority. Other employees shall be laid-off and recalled on a seniority basis where fitness and ability are equal.

**M. PROMOTIONS**

Promotions shall be based on seniority. When a more senior employee is not selected for a promotion, the Employer shall make reasonable efforts to

communicate the reasons for its decision. Upon inquiry the Employer shall also communicate to the Union the reasons for its decision.

After two seasons of employment as an Apprentice Helper, an employee shall be promoted to Snackbar Helper. All other employees will receive the rate of pay in effect as of the date of their promotion.

Past practice to the contrary notwithstanding, the Employer shall have complete discretion in making promotions from Snackbar Helper to Snackbar Manager; no employee shall be entitled to a promotion by virtue of years of service or responsibilities assigned by the Employer.

**N. BEREAVEMENT LEAVE**

The Company shall pay two (2) days bereavement leave to any regularly employed, full-time Employee for time taken to attend the wake or funeral of a member of his/her immediate family, including father, mother, spouse, child, brothers, sisters, father-in-law or mother-in-law.

**O. JURY DUTY**

The Company shall compensate regularly employed, full-time Employees for losses in pay occasioned by required jury service. Employees requesting reimbursement under this Section shall tender appropriate evidence of their jury service and shall be paid the difference between their per diem jury pay and the amount the Company would have paid them had they worked a regularly scheduled, eight hour day; provided, however, that no Employee shall be compensated for missed overtime or premium pay opportunities under this Section; and provided further, that the Company shall be obliged to reimburse an Employee for no more than ten days of jury duty served in any calendar year.

## ARTICLE II

### A. WAGE SCALE

Effective from September 15, 2006 to September 14, 2007<sup>1</sup>

<u>Classification</u>	<u>Minimum Rate</u>	<u>Overtime Rate</u>
Snackbar Manager	\$13.36	\$20.04
Snackbar Helper	\$9.24	\$13.86
Utility Worker	\$9.24	\$13.86
Apprentice Helper	\$8.00	\$12.00

Pension contributions for employees who are eligible to have contributions made on their behalf shall be made on the salary paid to each eligible employee, as well as on any bonus monies as defined in Sections 2(a) and (b) of this Article distributed to such employees during the life of this agreement.

In addition to the hourly wage, the Snackbar Manager shall also receive 2 and 1/2% of the weekly gross receipt less shortages.

Additional commissions may be paid by the Employer, at its option, but shall not be required by this Agreement, any other provision to the contrary notwithstanding.

### B. BONUSES

1. The Company shall pay a bonus in the following amounts to the following employees on the dates specified:

(a) Full-time employees who began their employment with the company prior to January 1, 2004, and who are still employed on the date of

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<sup>1</sup> See term of agreement provision, Article I, B of this agreement.

distribution, shall be paid a bonus equal to 5% of their W-2 earnings for calendar year 2005, but not less than \$750.00. This payment shall be made in one lump sum on or before December 15, 2006.

(b) Full-time employees who began their employment with the Company after January 1, 2004 but before December 31, 2004 shall be paid a bonus equal to 4% of each employee's W-2 earnings for 2005 but not less than \$500.00. This payment shall be made in one lump sum on or before December 15, 2006.

2. Employees whose employment began on or after January 1, 2005 shall be paid a bonus equal to 3% of their W-2 earnings for 2005 but no less than \$250.00. This payment shall be made in one lump sum on or before December 15, 2006.

#### C. SNACKBAR MANAGERS

When concession stands are open on the vessels specified below, one employee on the Ms. Gateway, one employee on the Ms. Liberty, one employee on the Ms. Freedom, one employee on the Ms. Ellis Island, one employee on the Ms. New York, one employee on the Ms. New Jersey, and one employee on the Ms. Circle Line shall be classified as Snackbar Managers.

If an employee who is not a manager works as a relief manager, that employee shall be paid the wage rate of Snack Bar Manager. Employees shall be appointed to a manager's position at the Employer's discretion.

**D. HOURS OF WORK AND OVERTIME**

**1. Pyramiding Overtime**

There shall be no pyramiding of overtime or other premium payments provided for under the terms of this Agreement.

**2. Stipulated Work Week**

The work week begins on Monday and terminates on Sunday of each week. Pay day shall be on Wednesday of each week. The Employer will make every effort to provide designated days off according to seniority. However, when circumstances do not permit providing days off according to seniority for any Employee, such Employee shall accept any day(s) as his/her day(s) off during that work week. If an Employee is required to work six or seven days in any work week, he/she shall be paid at the rate of time and one-half for all hours worked on the sixth or seventh day in the work week.

**3. Overtime**

Overtime at the rate of time and one-half shall be paid for all hours worked in excess of eight hours in any one day. Overtime shall be paid in increments of one-quarter hour.

**E. VACATIONS**

Each Employee will be entitled to one day's pay of eight (8) hours at the regular hourly rate for every twenty-two days worked. It is understood and agreed, however, that should an Employee resign, quit or be discharged for cause, he shall not be entitled to or receive any vacation benefits.

Any Employee who has been in the employ of the Employer for five (5) years as of the date on which his vacation commences will be entitled to a vacation at the

rate of one day and one-quarter (1 1/4) for each month employed during the course of the year.

Any Employee who has been in the employ of the Employer for ten (10) years as of the date on which his vacation commences will be entitled to a vacation at the rate of one day and one-half (1 1/2) for each month employed during the course of the year.

Any Employee who has been in the employ of the Employer for fifteen (15) years as of the date on which his vacation commences will be entitled to a vacation at the rate of two (2) days for each month employed during the course of the year.

Vacation pay shall be at the rate paid to Employees at the time they take vacation or receive payment for unused vacation.

**F. NOTICE OF LAYOFF**

The Employer shall give all Employees seven (7) days notice before laying off any Employee.

**G. SUCCESSORS**

This Agreement shall be binding upon the parties hereto, and their successors and assigns, and no provision herein contained shall be nullified or affected in any manner as a result of any consolidation, sale, transfer or assignment by the Employer herein to any other person, firm or corporation. The Employer agrees that it will not conclude any of the above transactions unless an agreement has been entered into as a result of which this Agreement shall continue to be binding on the person, firm or corporation continuing the business, it being the intent of the parties that this Agreement shall remain in effect for the full term hereof regardless of any changes in the management, location, form of business organization or ownership.

**ARTICLE III**

**EFFECTIVE DATE OF AGREEMENT AND TERMINATION**

The period of Agreement shall be from September 15, 2006 to September 14, 2007.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective representatives thereunto duly authorized.

\_\_\_\_\_  
**CIRCLE LINE – STATUE OF  
LIBERTY FERRY, INC.**

\_\_\_\_\_  
**LOCAL 333**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**DATE**

2006 PROSPECTUS - FOR REFERENCE USE

**EXHIBIT C****ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)****LAND ASSIGNED**

35 square feet (7' x 5') of land on Ellis Island, located adjacent to the intersection of the seawall walkway and the walkway leading from the seawall to the front entrance of the Main Building, is assigned to the Concessioner for the use of a dock shack (assigned government personal property) in conducting its operations under this CONTRACT. This land is generally depicted on the diagram of Ellis Island presented in this exhibit.

**REAL PROPERTY IMPROVEMENTS ASSIGNED**

The following real property improvements are assigned to the Concessioner for use in conducting its operations under this CONTRACT. These improvements are generally depicted on the diagrams on the following pages.

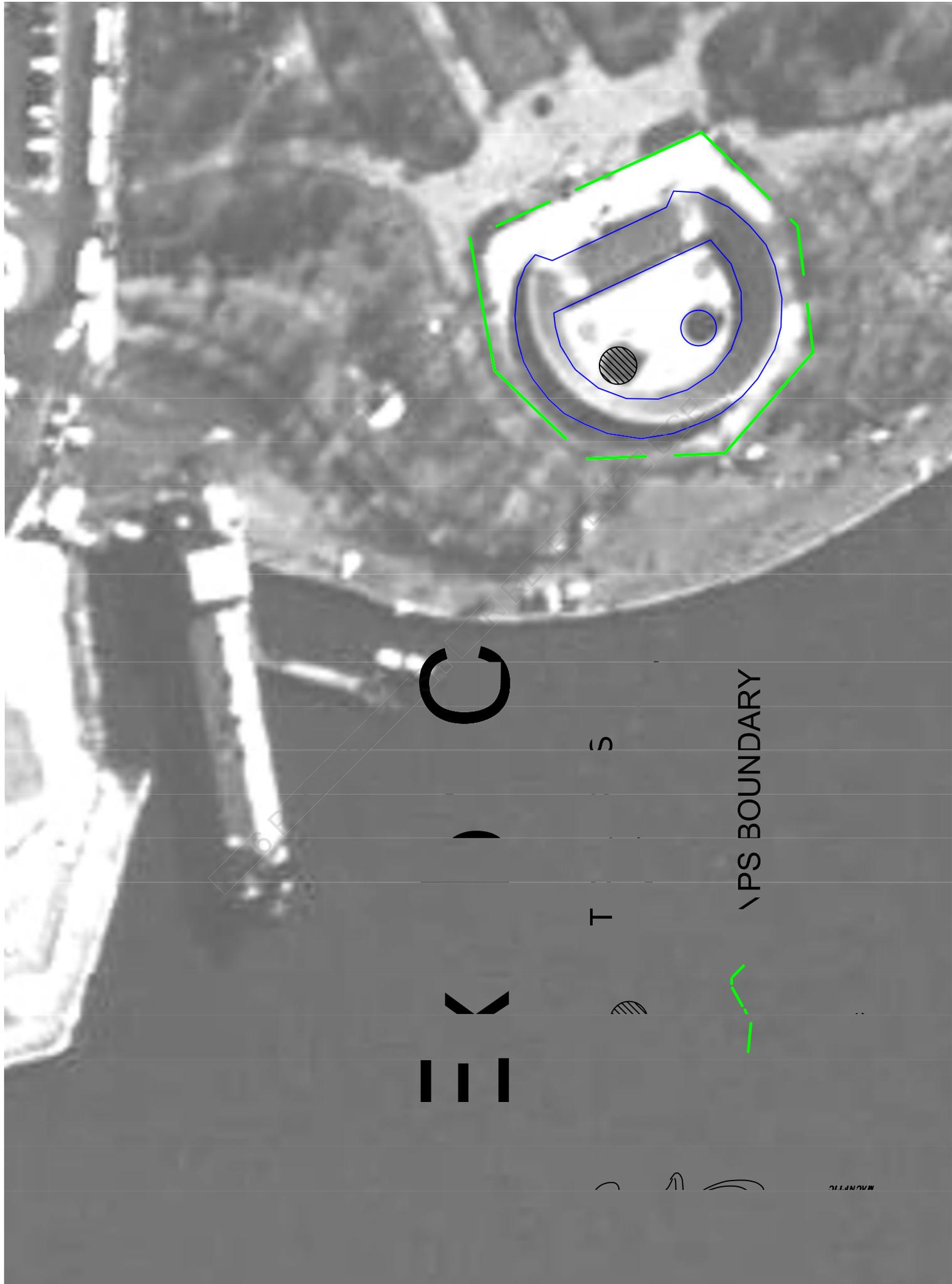
<b>FMSS #</b>	<b>Building Description</b>	<b>S.F.</b>	<b>Date built</b>	<b>Historic</b>
93810	Ticket Kiosk at Castle Clinton	570	M	N
59927	Arrival Dock at Liberty Island	15,750	Rehab. 2002-04	N
93808	Bulkhead and Pier For Docking At Ellis Island (fender system and slips)	393	Bulkhead 1913-14	N

This exhibit will be revised as appropriate during the term of the Contract.

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

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

Regional Director, Northeast Region



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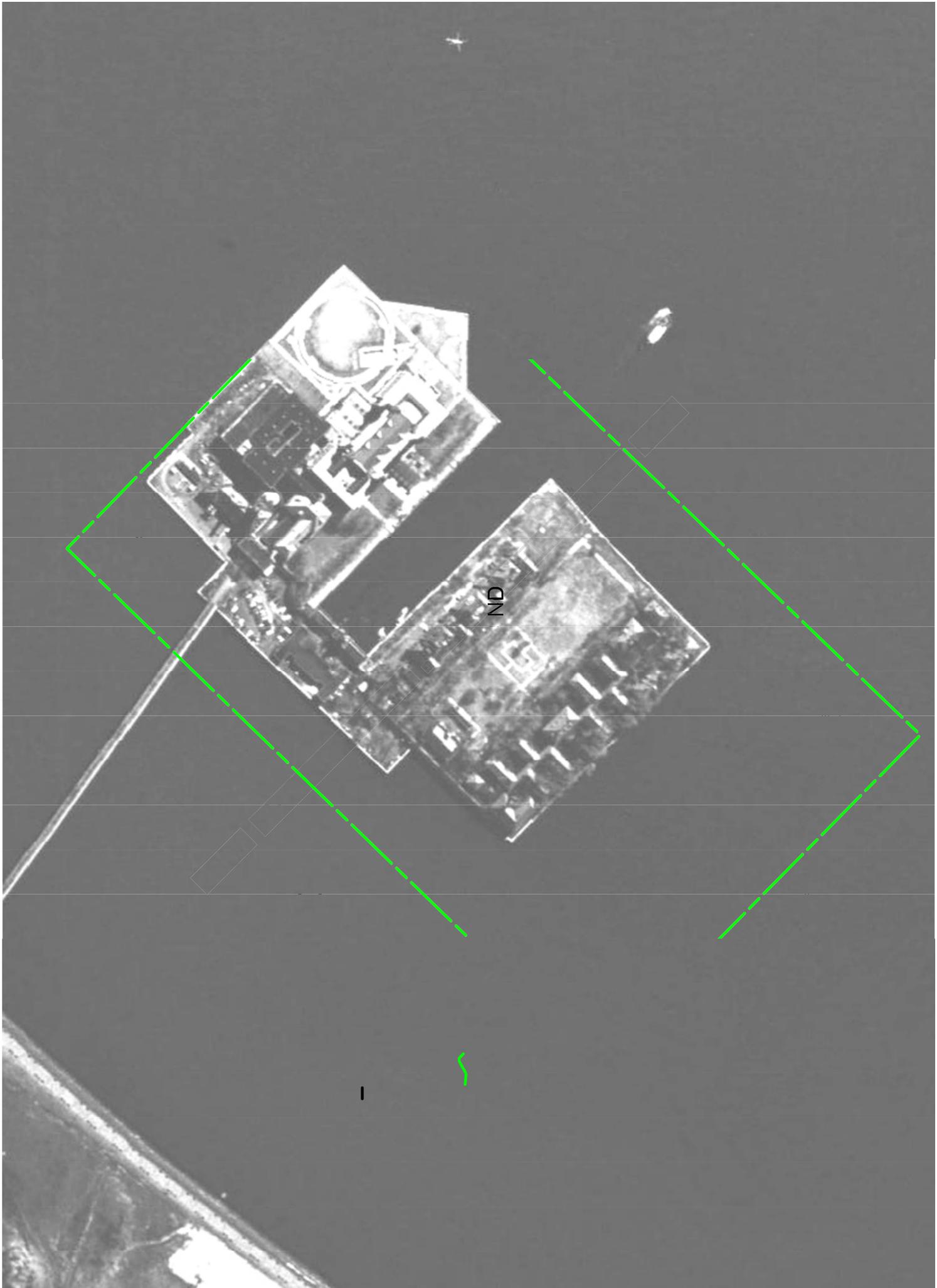
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**EXHIBIT D****ASSIGNED GOVERNMENT PERSONAL PROPERTY**

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

**Marine personal property:**

<b>Item</b>	<b>Manufacturer</b>	<b>Description</b>
Six (6) wheelhouse air conditioners	Coleman	Recreational vehicle rooftop units
Seven (7) Automatic Identification Systems		

**Non-marine personal property:**

<b>Item</b>	<b>Manufacturer</b>	<b>Description</b>
Ticketing system	Gateway & Boca	Including 10 nodes with related Boca equipment & computer equipment, concentrator server, virtual private network (VPN), Gateway software, microwave transmitters, wireless network, misc. hardware and satellite dish and system (a backup system redundant to the current microwave system)
Color surveillance system at Liberty State Park ticket office	Dedicated Micros	Six-camera system
Black and white surveillance system at Liberty State Park ticket office	Videology	Three-camera system
Color surveillance system at Castle Clinton Kiosk	Dedicated Micros	Ten-camera system
Dock shack	PortaKing	Approximately 6'3" x 4'1"; Model No. 7648051-8993; manufactured September 1994

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

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

Director, Northeast Region

**EXHIBIT E**  
**MAINTENANCE PLAN**  
**STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND**

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2006 PROSPECTUS - FOR REFERENCE USE

## INTRODUCTION

This Maintenance Plan between \_\_\_\_\_ (hereinafter referred to as the “Concessioner”) and the National Park Service (hereinafter referred to as the “NPS”) shall serve as a supplement to Concession Contract CC-STLI001-07 (hereinafter referred to as the “CONTRACT”). It sets forth the maintenance responsibilities of the Concessioner and the NPS with regard to all Concession Facilities, related support facilities, and personal property utilized by the Concessioner to carry out the requirements of the CONTRACT.

In the event of any 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 Statue of Liberty National Monument and Ellis Island. 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.

## 1. DEFINITIONS

- **Cyclic Maintenance** refers to work activities that recur on a cycle of less than or equal to seven years. Typical projects may include painting buildings, overhauling engines, and refinishing hardwood floors.
- **Deferred Maintenance** refers to Facility Maintenance that was not performed when it should have been or was scheduled to be and which, therefore, is put off or delayed. Continued deferment of Facility Maintenance will result in deficiencies.
- **Environmentally Preferable** refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.
- **Exterior** (with regard to structures) refers to the foundations, supports and joists under the lowest sub-floor, exterior walls and surfaces, interior load-bearing structure, roofs, and load-bearing structure of all porches, stairways, and other structural attachments.
- **Facility Maintenance** refers to the day-to-day activities as well as the planned work required to preserve Concession Facilities in such a condition that they may be used for their designated purpose over an intended service life. Facility Maintenance includes Preventive Maintenance, Cyclic Maintenance, and Repair. Facility Maintenance does not include Facility Operations, Component Renewal/Replacement or Capital Improvements. Facility Maintenance includes “routine, operational” maintenance.
- **Hazardous Substance** refers to any hazardous waste, hazardous chemical, or hazardous material as both terms are defined by Applicable Law including without limitation, 40 CFR 261, 29 CFR 1910.1200, 49 USC 5103.
- **Hazardous Waste** refers to the definition of hazardous waste as regulated by the US Environmental Protection Agency.

- **Interior** (with regard to structures) refers to the area above the lowest sub-floor inside the external walls that is not a part of the load-bearing structure including door and window frames, and those areas inside the roof which are not structurally load-bearing.
- **Maintenance** refers to the day-to-day activities as well as the planned work required to preserve Concession Facilities and personal property including vessels in such a condition that they may be used for their designated purpose over an intended service life. The objective of maintenance is to preserve structures, facilities, personal property including vessels in a stable condition to avoid deterioration, or correct unacceptable conditions, and to provide general housekeeping.
- **Operations** refers to all aspects of activity by the Concessioner authorized under the CONTRACT. Operations include all services provided to the public and all non-public actions necessary to support those authorized services as defined in the CONTRACT.
- **Personal property** includes without limitation removable equipment, vessels, furniture and goods utilized and provided by The Concessioner to carry out the requirements of the CONTRACT. This will include assigned government personal property (Exhibit D).
- **Preventive Maintenance (PM)** refers to regularly scheduled periodic maintenance activities (within a year) on selected equipment, typically includes inspection, lubrication and minor adjustment.
- **Repair** refers to the act of correcting an unsatisfactory physical condition. Repair is an aspect of maintenance, and the objective of repair is the same as the objective of the general act of maintenance as defined above in this section.
- **Replacement** refers to exchange or substitution of one asset for another that has the capacity to perform the same function.
- **Universal Waste** refers to the definition of universal waste as regulated by Applicable Law including without limitation 40 CFR 261.

## 2. CONCESSIONER RESPONSIBILITIES

The Concessioner shall maintain Concession Facilities, related support facilities, and personal property (vessels) except as noted under Section 3, "National Park Service Responsibilities." The Concessioner shall not be responsible for or make any repairs that would involve replacement of facilities or component parts thereof that would constitute a capital improvement as determined by the NPS. The Concessioner shall make any emergency repairs required for public safety immediately, following notification and approval by the Superintendent, and submit to the Superintendent a written justification for and comprehensive description of all such emergency repairs within 30 days of beginning the work.

### A) Vessel Maintenance

- 1) The Concessioner shall maintain complete, accurate and timely records of all maintenance activities, and make them available to the NPS upon request in an electronic format approved by the Superintendent. At a minimum, records shall include:
  - a) A weekly log of the hour meters of all vessel engines.
  - b) Daily logs of all maintenance actions, with appropriate backup documentation.
  - c) Vessel engine fluid disposal logs.
- 2) The Concessioner shall be responsible to maintain all vessels in good operating condition in compliance with Applicable Laws, without limitation, Coast Guard regulations, policies, Navigation and Vessel Inspection Circulars (NVIC), licenses, and certifications. The Concessioner will comply with an industry preventative maintenance standard, such as the Passenger Vessel Association (PVA) preventative maintenance specification and check-off sheets, in developing a maintenance protocol. All major mechanical, electrical, and electronic components shall be maintained in accordance with manufacturers' recommendations. Mooring and docking fittings shall be maintained operating, equipped, repaired and restructured in accordance with good marine practices and within the requirements of the marine inspector. All mooring and anchoring chains and lines shall be maintained and replaced in accordance with good marine practice and standards. Commonly expected standards include without limitation 46 CFR Subchapters T, K, and H, the standards of the American Boat and Yacht Council, the standards of the American Bureau of Shipping, and other appropriate generally accepted standards as sources of reference.
- 3) The Concessioner shall provide the Superintendent a calendar of timeframes that each vessel is expected to be "out of service" for preventive maintenance and repair required for US Coast Guard Certification. The calendar is to be submitted by December 15 each year in conjunction with the annual vessel departure schedules. This advance plan of "down time" expected for each vessel will enable the Concessioner in consultation with the Superintendent to preplan vessel availability for Peak and Off-Peak period determinations.

## **B) Maintenance of Surfaces, Decks, Moorings, and Sanitation Systems**

- 1) Interior and exterior surfaces of all vessels shall be free of rust, or chipped or peeling paint. Floor surfaces shall be cleaned daily and shall be free of dirt, grease and oil. Floor and deck coverings shall be free of rents, tears, breaks, ripples or bubbles, holes and dents or protruding metal to eliminate danger of insecure footing, tripping or falling hazards in passenger and employee thru ways, including stairways. Non-skid paint shall be applied on stairways and exterior metal painted decks.
- 2) Stairways, railings and benches must be in good structural condition and tightly secured and/or welded, with smooth surfaces to prevent harmful cuts, scratches, splinters, tripping, loss of balance, or other bodily injury. Non-skid paint must be applied on all stairways and exterior metal painted decks.
- 3) All points of entry, stairways, walkways, ramps, etc. shall be kept free of water, ice, and snow as best as possible during inclement weather conditions to protect passengers and employees against possible safety hazards on the vessels.
- 4) Vessel "no entry" areas required by US Coast Guard and NPS regulations must be clearly visible and well-marked in numbers, letters, and/or symbols for all passengers and employees to identify. "No Entry" areas must be sufficiently barricaded or posted to prevent passengers from stepping over the chain or rope to enter the unauthorized area. Defective equipment or missing signage must be immediately repaired or replaced.
- 5) Sanitation equipment, such as wastewater and sewage holding tanks, shall be of sufficient capacity and in good working order. The Concessioner will not discharge sewage, greywater, or blackwater, to the environment. All sewage must be discharged to a publicly-owned or federally-owned treatment work (POTW or FOTW) from whom the Concessioner has received prior written permission to discharge its sewage. A copy of the inspection, license, or permit document issued by the governing agency responsibility for compliance shall be submitted to the Superintendent upon issue.
- 6) Concessioner vessels will be equipped with a system that prevents the discharge of oil or oily water except in the event of an emergency and will maintain these systems to ensure proper working order.

## **C) Hull Maintenance**

Vessels will be drydocked and the underwater portions of the hulls, including shafts, rudders, propellers, and all other appendages will be cleaned and recoated prior to the USCG inspections, at 18 month intervals for vessels under 100 gross registered tons, and no less than twice every three years for vessels larger than 100 gross registered tons. Zinc anodes will be replaced at 40% wastage to preserve steel plating.

**D) Required Daily Vessel Housekeeping and Cleaning Tasks**

- 1) Snack Bars: All equipment used in food service operations on board the Concessioner's vessels will be maintained in compliance with all Applicable Laws, including without limitation, the Federal Public Health Service Standards, the most current FDA Food Code, and State and Local requirements associated with food service activities. Floors, grills, coffee urns, soda dispenser drip racks/nozzle/funnels, serving utensils, shelves, ice cream machines, condiment containers, refrigerators, cup and/or cone holders, plastic or glass surfaces of sneeze guards, menu boards, counter enclosures, etc, must be cleaned daily.
- 2) Utility sinks and employee hand-washing sinks must be provided with soap and towels at all times.
- 3) Counters shall be wiped clean as often as necessary and be free of food and beverage drips at all times.
- 4) Refrigerator contents shall be stored off the floor. Refrigerator thermometers shall read 45 degrees Fahrenheit or less.
- 5) Public Restrooms: floors, toilet bowls, urinals, and sinks shall be clean, reasonably free of stains, free of litter and graffiti, in proper operating condition, and provided with toilet tissue, soap, towels or air drying devices.
- 6) Toilet areas shall be odorless, well-illuminated, ventilated, and provided with waste receptacles. Walls, floors, ceilings, mirrors, chairs and other furnishings shall be clean and well maintained and shall be free of breaks, cracks or loose fittings.
- 7) Each sink where water is unfit for drinking shall be appropriately signed to be legible or comprehensible to English and non-English speaking public. Signage must be large enough and suitably located so that warning of unfit drinking water cannot possibly be overlooked or misunderstood by public restroom users.
- 8) Public drinking fountains must be clean and maintained.
- 9) Windows, doors, overhead light fixtures, signs and benches shall be cleaned biweekly, or more often as necessary.

**E) Engine Maintenance**

- 1) Engines shall be maintained for maximum efficiency and performance at all operational times.
- 2) Engine emissions must comply with all Applicable Laws, including without limitation the Clean Air Act Title II, "Emission Standards for Moving Sources."
- 3) Major engine maintenance including top and center section overhauls shall be at intervals at least 15% more frequent than manufacturers' recommendations.
- 4) Waste oil, lubricants, other engine fluids and filters will be disposed of in the most environmentally sensitive manner available, at a minimum in adherence to all Applicable Laws.
- 5) The Concessioner must maintain a Waste Oil Disposal Manifest indicating the date, quantity, mode of transportation and disposal site for each disposal of engineering waste.

## **F) Pier Maintenance and Repairs**

The Concessioner will inspect and maintain all Concession Facilities and related support facilities, including but not limited to pilings, fender systems, anchor systems, winches, cables and blocks, decking, walkways, railing, shelters, visitor seating, crowd control barriers, gangways and loading docks, granite facing blocks on affected portions of seawalls, etc. Above-water inspections shall be conducted on a quarterly basis, and underwater inspections shall be conducted annually, or as necessary to assure that piers, docks and landing facilities are intact and are free of deterioration that would affect the structural qualities of said facilities.

## **G) Buildings and Appurtenances: Exterior Maintenance**

- 1) *Roof.* The Concessioner will inspect and maintain roofs on a quarterly basis or as necessary to assure that roofing material(s) are intact and are free of deterioration that would affect the structural qualities or are not jeopardized by adjacent vegetation.
- 2) *Gutters, downspouts, and roof drains.* The Concessioner will inspect and clean gutters, downspouts, and roof drains at a minimum on an annual basis or more frequently if necessary to maintain the system free of obstructions and to assure all openings are clear and operational. Surfaces shall be maintained to prevent deterioration of the material or structural damage to the building.
- 3) *Doors and windows.* The Concessioner will inspect doors and windows on an annual basis or more frequently if necessary and maintain them to prevent water or moisture from entering the building and causing deterioration of materials or structural damage to the building.
- 4) *Siding.* Siding will be inspected by the Concessioner on an annual basis or more frequently if necessary and maintained to prevent water and moisture from entering the building or causing deterioration of the siding material, paint, structural damage or building appearance.
  - a) Siding and other exterior surfaces shall be painted on a regular basis of not less than every five years or more frequently if necessary to comply with this item.
  - b) Siding shall be free of encroaching vegetative growth
  - c) Structural ventilation shall be inspected on an annual basis or more frequently if necessary and maintained to permit air circulation as designed. Wire screen, metal or wooden louvers shall be intact to prevent the entering of birds, bees, rodents and other wildlife.

## **H) Buildings and Appurtenances: Interior Maintenance**

- 1) *Painting.* Painted surfaces shall be maintained in an acceptable manner free of peeling, blistering, and excessive wear.
- 2) Paintable/painted surfaces shall be painted on a regular cycle not to exceed five years or when necessary as identified by the Superintendent.
- 3) Paint products shall be of a "best quality", lead-free, low VOC, and water-based, from a major manufacturer and a type and color that is readily available on the open

- market. Any changes to paint colors from the color range provided by the NPS must be approved by the NPS.
- 4) *Heating, ventilating, and air conditioning units.* Shall be inspected on an annual basis and be cleaned, maintained and operated in strict accordance with manufacturer's instructions. Areas adjacent to heating, ventilating, and air conditioning units shall be free of litter, dirt accumulation and storage.
  - 5) *Electrical systems.* Shall be maintained in operable condition in accordance with Applicable Laws.
  - 6) *Fire protection systems.* Fire suppression sprinklers, intrusion and fire alarm systems shall be maintained by the Concessioner in good working order at all times, in accordance with Applicable Laws.
    - a) Testing and servicing of alarms and sprinkler systems shall be performed by licensed alarm or sprinkler contractors at intervals specified in fire codes. For any Concession Facilities, contractors shall notify the NPS Communication Center at (212) 363-3260 in advance of performing testing or servicing of detectors, alarms, or sprinklers.
    - b) All Concession Facilities are subject to inspection by Fire inspectors to ensure compliance with Applicable Laws.

#### **D) Annual Facility Maintenance Plan**

The Concessioner must provide the Service with an updated Annual Facility Maintenance Plan within thirty (30) days of the effective date of the Contract and annually thereafter, no later than January 15 of each year that covers all Concession Facilities assigned within this contract and related support facilities including without limitation piers and landing facilities. This document will present the planned Facility Maintenance activities for the next calendar year for approval by the Superintendent. This program will specify the maintenance responsibilities during the following year and shall include, at a minimum, proposed repair priorities and digital photo documentation and baseline scale drawings, as appropriate. Maintenance and repair recommendations shall optimize repair while continuing normal operations and shall be consistent with the Secretary's Standards for Historic Preservation. The NPS will determine which maintenance and repairs are the responsibility of the government and which are the responsibility of the Concessioner. The Superintendent will provide a written response within 90 days after receipt. This plan must include the following elements:

- 1) Inspection procedures and schedules: The Concessioner must include an inspection plan that describes how and when it will inspect each facility.
- 2) Preventive Maintenance (PM) Procedures and Schedules. The Concessioner must develop PM procedures and schedules that ensure proper maintenance of all Concession Facilities and related support facilities. At a minimum, PM procedures and schedules must include detailed PM activities for each building system (including, but not limited to, roofs, building envelopes, and mechanical equipment), piers and landing facilities. At a minimum, the PM procedures and schedules will adhere to manufacturer recommendations. The PM procedures must describe the

- tasks to be performed during the next calendar year and those performed in the previous calendar year (for comparative purposes).
- 3) Cyclic Maintenance Schedules. The Concessioner must include programmed Cyclic Maintenance items in the report. Typical items in this category include activities required at a frequency less than seven years, such as carpet and paint. The Service may provide additional guidance as to what items should be included.
  - 4) Repair Items
    - a) Scheduled Repair Items. The Concessioner must develop a plan to schedule known repair requirements during the year, including those that may have been deferred.
    - b) Unscheduled Repair Items. The plan must include a service call procedure and method to prioritize service calls for unscheduled maintenance items. Note: The Concessioner may perform emergency repairs without prior Service approval.
  - 5) Projected Expenditures. The Service and the Concessioner will mutually agree upon the required level of detail for reporting projected expenditures.
  - 6) Reported Expenditures. In addition to the above information, the plan must include data from the previous year for each Concession Facility and related support facility. The Concessioner must clearly document the PM, Cyclic Maintenance, and Scheduled and Unscheduled Repair activities that the Concessioner accomplished during the prior year and allow the Service to review these in conjunction with those activities that the Concessioner plans for the coming year.
  - 7) Pier and landing areas Structural Integrity Plan. The Concessioner must include a plan for maintaining the structural integrity of the piers and landing areas at Liberty and Ellis Islands.

#### **J) Personal Property Plan (Including Vessels)**

The Concessioner must provide the Service with a planned personal property replacement, rehabilitation and repair schedule for the next calendar year by November 15 of each year of the contract for review and approval. The plan must include the specifications, description of the item, estimated date of replacement, estimated replacement cost, expected life of replacement property, and expected salvage value of replaced personal property at time of replacement. Following approval of the plan, the Concessioner will coordinate with the Service as appropriate. The Superintendent will provide a written response within 90 days after receipt.

#### **K) Grounds Maintenance and Snow Removal**

The concessioner is responsible for sweeping, trash collection and disposal, and snow and ice removal in all assigned areas.

## L) Signs

The Concessioner will maintain signs in accordance with NPS guidelines. The Concessioner will be responsible for the maintenance and replacement of all interior and exterior signs relating to its operations and services within Concession Facilities, related support facilities and personal property utilized by the Concessioner to carry out the requirements of the CONTRACT.

## M) Environmental Management

### 1) Energy and Water Conservation

- a) General. The Concessioner will maximize implementation of energy and water conservation strategies where economically and technically feasible and appropriate for operations and maintenance activities under this CONTRACT.
- b) Lighting. The Concessioner will use energy-conserving lights – such as compact fluorescent lamps – where economically and technically feasible.

### 2) Environmental Purchasing

- a) General. The Concessioner will purchase and use Environmentally Preferable products and services where economically and technically feasible and appropriate in operations and maintenance activities under this CONTRACT.
- b) Disposable Products. The Concessioner will purchase and use reusable and recyclable products where economically and technically feasible and appropriate. If disposable products are needed, the most environmentally preferable products that are economically and technically feasible will be selected.
- c) Polystyrene. The use of polystyrene packaging and products – such as foam polystyrene which is commonly referred to as Styrofoam®, or “#6 plastics” – are prohibited.
- d) Halogenated Solvents. The use of halogenated solvents is prohibited.
- e) Specific Environmentally Preferable Products. The Concessioner will purchase and use the following if economically and technically feasible and appropriate:
  - i) Refined oil as an alternative to virgin oil;
  - ii) Biobased lubricants as an alternative to petroleum-based lubricants;
  - iii) Propylene glycol-based antifreeze as an alternative to ethylene glycol-based antifreeze for vehicle coolants;
  - iv) The Concessioner will, at a minimum, purchase and use the following exclusively unless it is documented and confirmed with the Park that they are not economically or technically feasible:
    - a) Office paper with 30 percent post-consumer material content;
    - b) Toilet tissue with 20 percent post-consumer material content;
    - c) Paper towels with 40 percent post-consumer material content;
    - d) Facial tissue with 10 percent post-consumer material content;

- e) Environmentally preferable cleaning products;
- f) Products in bulk

### 3) Hazardous Substance Management

- a) General. The Concessioner will minimize the use of hazardous chemicals in operations and maintenance activities under this CONTRACT. Hazardous substances will be stored and handled in accordance with Applicable Laws, including without limitation: Occupational Safety and Health Administration (OSHA) requirements, 29 CFR 1910 and 1926; and NFPA 30, 30A, and 302. The Concessioner will maintain all storage areas in a neat and orderly manner so that adequate access is maintained at all times.
- b) Hazardous Substance Containers. The Concessioner will store all hazardous substances in approved, labeled containers that are in good condition and closed when not in use.
- c) Incompatible Hazardous Substances. The Concessioner will separate the storage of hazardous substances that may react with one another.
- d) Flammable and Combustible Materials Storage. The Concessioner will store no more than 10 gallons of flammable or combustible materials inside a building unless the materials are stored in a flammable-storage cabinet, inside storage room, or applicable building as defined in Applicable Laws, including without limitation, NFPA 30.
- e) Secondary Containment. The Concessioner will provide secondary containment for hazardous substances where there is a reasonable potential for discharge to the environment. At a minimum, the Concessioner will provide secondary containment for hazardous substances located in: outside storage areas, interior storage areas in the proximity of doorways or floor drains, and on vessels.

### 4) Hazardous, Universal, and Miscellaneous Maintenance Waste Management

- a) General. The Concessioner will minimize the generation of hazardous, universal, and miscellaneous maintenance wastes, which include, but are not limited to used oil, used solvents, used antifreeze, leftover paints, leftover stains, bilge waste, and used batteries. All wastes generated will be managed in accordance with Applicable Laws.
- b) Storage Locations. The Concessioner will obtain approval from the Park for hazardous, universal, and miscellaneous maintenance waste storage areas within Concession Facilities.
- c) Hazardous Waste Management. The Concessioner will track and record the amount of hazardous waste generated and stored onsite for each calendar month to determine its hazardous waste generator status. At a minimum, the Concessioner will follow federal requirements for small quantity generators (“SQG”) – even if it is a conditionally exempt small quantity generator (“CESQG”) as defined in federal regulations – unless more stringent federal, state, local, or other requirements apply. Specifically, if the Concessioner is a CESQG, it will follow SQG regulations related to container labeling, storage,

accumulation times, manifesting, use of designated disposal facilities, contingency planning, training, and recordkeeping.

- d) Universal Waste Management. The Concessioner will recycle all universal wastes – including but not limited to used fluorescent lamps, nickel-cadmium batteries, sealed lead acid batteries, and mercury-containing thermostats – in accordance with all Applicable Laws including without limitation 40 CFR 273.
  - e) Miscellaneous Maintenance Waste Management. Maintenance wastes generated from Concessioner Facilities or services under this Contract must be recycled. This includes, but is not limited to oil (in accordance with all Applicable Laws, including without limitation, 40 CFR 279), oil filters, lead acid batteries (in accordance with all Applicable Laws including without limitation, 40 CFR 266 Subpart G or 40 CFR 273), solvents, paints, antifreeze, and alkaline batteries.
- 5) Integrated Pest Management
- a) General. The Concessioner will follow all prescribed integrated pest management procedures required by Applicable Laws, including without limitation, NPS Guidelines for Integrated Pest Management, NPS 77.
  - b) Pesticide Use Requests. The Concessioner will request permission from the Park for all proposed uses of pesticides for each calendar year, even if the same pesticides had received Park approval in previous calendar years. This includes pesticides proposed to be used by contracted pest control operators.
  - c) Usage. The Concessioner will only use pesticides for which it has received prior written approval from the Park for the appropriate calendar year and are used in accordance with the pesticide label and Park directions.
- 6) Solid Waste Management
- a) General. The Concessioner will manage solid waste in accordance with Applicable Laws, which includes without limitation 40 CFR 243 and 36 CFR 6. The Concessioner will maximize solid waste reduction activities including, but not limited to, reuse, recycling, and/or composting.
  - b) Solid Waste Collection and Disposal.
    - i) The Concessioner will collect all solid waste generated within Concession Facilities and dispose of solid waste outside of the Park in accordance with Applicable Laws.
    - ii) The Concessioner will provide adequate numbers of Park-approved solid waste containers that will be conveniently located in Park-approved locations and able to accommodate the quantities of solid waste generated within Concession Facilities. The solid waste containers, at a minimum, will be waterproof, vermin-proof, covered with working lids, and labeled with multilingual text and graphics, in accordance with NPS Graphic Standards, that clearly identify materials that can and/or cannot be deposited in the container(s).
    - iii) The Concessioner will routinely monitor solid waste containers and empty before the containers reach full capacity and at least once daily. If insects and

wildlife problems occur because of solid waste, the frequency of emptying containers will be adjusted accordingly.

- iv) The Concessioner will keep Concession Facilities free and clear at all times of litter, debris, broken glass, sharp objects, abandoned equipment, and other solid waste.
- c) Recycling.
  - i) The Concessioner will develop and implement a recycling program that, at a minimum, has visitors and employees recycling the same materials recycled by the Park and as required by Applicable Laws. These materials currently include, at a minimum: white and colored paper, newsprint, corrugated cardboard, bimetals, plastic, aluminum, and glass.
  - ii) The Concessioner will collect all materials included in its recycling program generated within Concession Facilities and recycle the materials outside of the Park in accordance with Applicable Laws.
  - iii) The Concessioner will provide adequate numbers of Park-approved recycling containers that will be conveniently located in Park-approved locations and accommodate the quantities of materials to be recycled from the Concession Facilities. The recycling containers, at a minimum, will be waterproof, vermin-proof, covered with working lids, and labeled with multilingual text and graphics to indicate what should and/or should not be deposited in the container.
  - iv) The Concessioner will routinely monitor recycling containers and empty before the containers reach full capacity and at least once daily. If insects and wildlife problems occur because of recyclables, the frequency of emptying containers will be adjusted accordingly.
- d) Other Equipment
  - i) The Concessioner will drain equipment containing hazardous substances – such as oil and fuel – prior to disposal, and manage the equipment and hazardous substances in accordance with Applicable Laws.

### **3. NATIONAL PARK SERVICE RESPONSIBILITIES**

The NPS neither admits nor assumes responsibility for the execution of physical maintenance on Concession Facilities, related support facilities and personal property utilized by the Concessioner to carry out the requirements of the CONTRACT except as stated below:

#### **A) Utilities**

Maintenance, repair and replacement of electrical, water and sewer systems at Liberty and Ellis Island.

#### **B) Exterior Fire Equipment**

The NPS will be responsible for assisting in the maintenance and testing of all fire hydrants on water mains within proximity of the Concession Facilities.

#### **C) Signs**

The NPS is responsible, within the Area, for all regulatory, control, or information signs that serve the interests of the Government but are not related to the Concessioner's operation; examples include information signs along roadways, directional signs along NPS trails, and interpretive signing. The NPS will install, maintain, and replace all such exterior signing.

#### **D) Grounds and Landscaping**

The NPS is responsible for the identification, monitoring, and removal of hazardous trees.

## **4. EVALUATIONS**

### **A) Joint Periodic Reviews**

There shall be joint periodic reviews by the NPS and the Concessioner, in accordance with the Concessioner Review Program, of Concession Facilities, related support facilities, and personal property (vessels) to determine what maintenance work is necessary and if those facilities and personal property are compliant with all Applicable Laws.

### **B) Periodic NPS Evaluations**

The NPS shall conduct periodic evaluations of the Concessioner's Facilities and Vessels. An evaluation report will be provided to the Concessioner in a timely manner. In the event that issues are identified during the evaluations, the Concessioner will take corrective action in accordance with current NPS Guidelines.

### **C) U.S. Coast Guard Inspections**

The Concessioner will comply with all vessel inspection requirements of the United States Coast Guard (USCG). Duplicates of all documents required by the USCG will be submitted simultaneously to the NPS. A copy of any written response from the USCG will be provided to the NPS within two days of receipt by the Concessioner. In all cases, the Concessioner will provide to the NPS a written summary of the USCG inspection within five calendar days of completion, including a copy of the inspection certificate(s).

### **D) Operational Evaluations**

The Concessioner must develop a timeline to cure noted deficiencies identified during the Service's operational evaluations.

Dated at Statue of Liberty National Monument this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NATIONAL PARK SERVICE

\_\_\_\_\_

Superintendent  
Statue of Liberty National Monument

2006 PROSPECTUS - FOR REFERENCE USE

## **EXHIBIT F**

### **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, and all such insurance shall include coverage for terrorism both certified and uncertified.

With the exception of statutory Workers' Compensation insurance protection, the National Park Service (Service) shall be named as an additional insured under all insurance policies issued or arranged in support of this agreement. All insurance coverage provided for the benefit of, or evidenced to the Service is not to be impaired by any act of the Concessioner, its agents, servants or employees. The Concessioner will ensure that its insurance carriers provide that the Service shall, solely for its benefit, be provided an unconditional 30 day advance notice of cancellation, non-renewal or material change in coverage or policy terms for all coverage issues. The term National Park Service shall by definition and where appropriate and legally permissible, also include the term United States Government/United States of America.

The amounts of insurance and coverage terms indicated are not intended as a limitation of the Concessioner's responsibility or liability under the CONTRACT, but rather an indication as to the minimum type(s), amount(s) and scope of insurance that the Service considers necessary to allow the operation of the concession facilities at its park. Nevertheless, if the concessioner purchases insurance in addition to the limits illustrated herein, the Service will receive the benefits of the additional amounts of insurance without additional cost to the Service.

#### **II. LIABILITY INSURANCE**

The following Liability Coverages are to be maintained at a minimum, all of which, unless noted herein, are to be written on an occurrence form of coverage by an insurance company licensed to do business within the State of the operations and having an A.M. Best's rating of no less than A-, and a financial category rating of no less than VII. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or "Umbrella" Liability. (See item #3 excess or umbrella liability insurance policy).

**A) Commercial General Liability Insurance**

- 1) Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (including contractual liability arising out of personal injury and advertising injury liability) and products/completed operations liability insurance protection. The following minimum limits of liability \* are to be provided:

**Bodily Injury and Property Damage Limit**

General Aggregate	\$25,000,000
(1) Products & Completed Operations Aggregate	\$10,000,000
(2) Per Occurrence	\$10,000,000
(3) Personal Injury & Advertising Injury Liability	\$10,000,000
(4) Medical Payments	\$ 50,000
(5) Fire Damage Legal Liability "per fire"	\$ 50,000

\*or those minimum limits required by the Umbrella/excess liability insurer

- 2) The liability coverages may not contain the following exclusions/limitations:
- (a) Athletic or Sports Participation
  - (b) Products/Completed Operations
  - (c) Personal Injury or Advertising Injury
  - (d) Contractual Liability
  - (e) Explosion , Collapse and Underground Property Damage
  - (f) Total Pollution exclusion
  - (g) Watercraft limitations affecting the use of watercraft in the course of the concessioner's operations (unless separate Watercraft coverage is maintained)
- 3) For all lodging facilities and other indoor facilities where there may be large concentrations 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 Insurance, including Garage Operations**

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

Bodily Injury and Property Damage (combined) \$10,000,000 per occurrence\*.

\*or those minimum limits required by the Umbrella/excess liability insurer

**C) Protection and Indemnity**

Coverage for bodily injury and property damage to include loss of life or personal illness to any person, liability for hospital, medical and other expenses in connection with personal injury or loss of life or illness of any person, liability for damage to other vessels or property on board caused by collision, property damage not caused by collision, liability for damage to docks, piers, cables, beacons, buoys, breakwaters or to any fixed immovable property.

Each Vessel will be covered to a limit of \$10,000,000 and evidence of insurance will designate each vessel by name, indicate the applicable limit of insurance, and the navigational limits of the coverage.

**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.

Note: An excess or "umbrella" liability policy may be used to achieve the commercial general liability and automobile liability limits outlined above. However, if a lower limit of liability is used for a subordinate policy, then the limit of liability under the umbrella policy must be that limit necessary to achieve the full limit of liability required for the subject policy. For instance, assume the General Liability policy requires a \$2M limit of liability. If the limit of liability provided under the General Liability policy is \$1M, then the umbrella policy must provide a limit of at least \$1M to provide the total requirement of \$2M. Since the Umbrella/Excess policy applies over both the automobile and the commercial general liability policy, a single limit under the excess policy is all that will be required.

The umbrella liability policy 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. If the coverage afforded by the excess or umbrella policy results in limits greater than the limits required hereunder, then the greater limit shall be available to the NPS in the event of a loss.

**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 off site).

Each Occurrence or Each Claim Limit	\$3,000,000
Aggregate Limit	\$5,000,000

**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. The General Aggregate under the Commercial General Liability policy must apply on a "per location" basis. The Certificate of Insurance required herein will note compliance with this aggregate provision.

**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 \$10,000 without prior approval of the Director.

**H) Workers Compensation & Employers' Liability**

Coverage will comply with the statutory requirements of the State(s) in which the Concessioner operates. The State(s) of concession operations must be specifically included for coverage under the policy. The Employers Liability limit will not be less than \$1,000,000. Coverage will expressly include insurance under the Longshore and Harbor Workers' Compensation Act (USL&H).

### 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 (without deduction for physical depreciation).
- 4) The amount of insurance, except for the inventory, should represent no less than 100% of the Replacement Cost value of the sum total of all insured property. Inventory shall be insured at 100% of the selling price of the products held for sale.
- 5) The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
- 6) Coverage is to be provided on a blanket basis, real and personal property.
- 7) The Vacancy and unoccupancy restriction, if any, must be eliminated for property that will be vacant or unoccupied beyond any time period specified in the policy.
- 8) Ordinance or Law, demolition and increased cost of construction Coverage shall be maintained with a limit of not less than the building replacement value (without deduction for physical depreciation).

#### B) Boiler & Machinery Coverage

- 1) Insurance shall apply on the “comprehensive” basis of coverage including all objects within the Concession Facilities.
- 2) The policy shall provide for loss recovery on a Replacement Cost Basis (without deduction for physical depreciation).
- 3) The amount of insurance should represent no less than 90% of the Replacement Cost value of the sum total of all 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, demolition and increased cost of construction Coverage shall be maintained with a limit of not less than the replacement value (without deduction for physical depreciation).

### C) Hull and Machinery Insurance

Insurance shall cover all property including hulls, launches, lifeboats, rafts, furniture, bunkers, stores, supplies, tackle, fittings, equipment, apparatus, machinery, boilers, refrigerating machinery, insulation, motor generators, and other electrical machinery to include navigation aids and communications equipment. The policy shall provide automatic coverage for all newly acquired vessels.

The limit of coverage for each vessel will be the Replacement Cost, new for old, without deduction for depreciation.

Evidence of insurance will designate each vessel, the amount of insurance applicable to each, and the Navigational Limits of coverage.

### D) 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 must also apply to temporary structures such as scaffolding and construction forms.
- 2) Coverage shall apply on an "All Risk of loss" or "Special Coverage" basis.
- 3) The policy shall provide for loss recovery on a Replacement Cost Basis (without deduction for physical depreciation).
- 4) The amount of insurance should represent no less than 90% of the Replacement value (without deduction for physical depreciation) 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.

**E) Business Interruption and/or Expense**

Business Interruption insurance and extra expense insurance must cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities, including, without limitation and with respect to the interests of the Service, the loss (or reduction) of franchise fee payments to the Service by the Concessioner. 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. The coverage to be provided shall be at least that calculated as follows:

Anticipated annual Gross revenue from operations:	\$ _____
Less non-continuing expenses:	(\$ _____)
Total:	\$ _____
Prorated by ratio of days of operation over 365 =	x <u>percentage</u>
Business Interruption limit:	\$ _____

**F) Deductibles**

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

- 1) Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000 (except Flood & Earthquake coverage may be subject to deductibles not exceeding \$50,000).
- 2) Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

**G) Required Clauses**

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. CC-STLI001-07 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.”

#### **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, which construction, renovation or addition affects facilities within the park or such facilities outside the park that are critical to the concessioner's operations under this contract, 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). Except for the workers' compensation insurance coverage, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

#### **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 coverages must be rated no lower than A- by the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty edition).
- 2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of A.M. Best's Key Rating Guide (Property-Casualty edition).
- 3) All insurers must be admitted (licensed) or approved in the state in which the concession operation(s) is (are) located.

#### **VI. CERTIFICATES OF INSURANCE**

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

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

In addition to 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.

The Certificate of Insurance shall contain a notation that the insurance coverage represented therein complies with the provisions of this agreement as outlined in Exhibit F.

The notice of cancellation provision of the certificate shall have any and all qualifying language such as: "We will endeavor to provide" or "failure to provide said notice will not place any liability upon the company or its representative" deleted from its terms.

## **VII. STATUTORY LIMITS**

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit is to be considered the minimum to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein shall control.

2006 PROSPECTUS - FOR REFERENCE USE

## EXHIBIT G

### TRANSITION TO A NEW CONCESSIONER

#### Section 1. In General

The Director and the Concessioner hereby agree that, in the event of the expiration or termination of this CONTRACT for any reason (hereinafter "Termination" for purposes of this Exhibit) and the Concessioner is not to continue the operations authorized under this CONTRACT after the Termination Date, the Director and the Concessioner in good faith will fully cooperate with one another and with the new concessioner or concessioners selected by the Director to continue such operations ("New Concessioner" for purposes of this Exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to park area visitors and minimize transition expenses.

#### Section 2. Cooperation Prior to the Termination Date

At such time as the Director may notify the Concessioner that it will not continue its operations upon the Termination of this CONTRACT, the Concessioner shall, notwithstanding such notification:

**(a) Continue Operations.** Continue to provide visitor services and otherwise comply with the terms of the CONTRACT in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously, and with a view to maintaining customer satisfaction.

**(b) Continue Bookings.** Continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken; not divert any bookings to other facilities managed or owned by the Concessioner or any affiliate of the Concessioner; and notify all guests with bookings for any period after the Termination Date that the facilities and services are to be operated by the New Concessioner. Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner, and thereafter the Concessioner shall update such log on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's (1) address, (2) contact information, (3) dates of stay, (4) rate quoted, (5) amount of advance deposit received and (6) confirmation number, if applicable.

**(c) Designating a Point of Contact and Other Actions.** Cooperate with the Director and the New Concessioner to ensure the smooth transition of operations by: (1) designating one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner; (2) providing the Director and the New Concessioner with access to

any assigned Real Property Improvements, including “back-of-house areas” and including copies of the keys to assigned Real Property Improvements; (3) providing the Director and the New Concessioner with full access to the books and records, licenses and all other materials pertaining to any assigned Real Property Improvements and the Concessioner’s operations in general; (4) providing the Director and the New Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio) service contracts and supply contracts, including contracts for on-order merchandise (collectively, “Contracts”), and copies of all liquor licenses and other licenses and permits (collectively, “Licenses”); (5) allowing the New Concessioner to solicit and interview for employment all of the concessioner’s salaried and hourly employees, including seasonal employees through a coordinated process implemented by the Concessioner; and (6) not entering into any contracts or agreements that would be binding on any assigned Real Property Improvements or operations in general after the Termination Date without the prior written agreement of the New Concessioner.

**(d) Financial Reports.** Within 30 days after receipt of the notification of the selection of the New Concessioner, provide the New Concessioner with a financial report with respect to the operation of any assigned Real Property Improvements and the Concessioner’s operations in general as of the last day of the month prior to receipt of such notification. Thereafter, the Concessioner shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum, (1) a balance sheet for the Concessioner’s assigned Real Property Improvements, if any; (2) a schedule of pending accounts payable; and (3) a schedule of pending accounts receivable.

**(e) Other Information and Reports.** Provide the New Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner’s operations for the period of one year prior to notification of the selection of the New Concessioner, and complete information with respect to: (1) utilities, including gas and electric; (2) telephone service; (3) water service; and, (4) specific opening and closing procedures. Such information shall be provided within thirty (30) days after receipt of notification of the selection of the New Concessioner, and shall be updated periodically (but no less frequently than thirty (30) days) until the Termination Date.

**(f) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.

### **Section 3. Cooperation Upon the Termination Date**

Upon the Termination Date, the Concessioner shall:

**(a) Transfer of Contracts and Licenses.** Cooperate with the transfer or assignment of all Contracts and Licenses entered into by the Concessioner that the New Concessioner elects to assume.

**(b) Reservation Systems.** (1) Provide the New Concessioner with an update of the reservation log through the Termination Date; (2), disconnect its operations from the Concessioner’s

centralized reservation system, if any; and (3) cooperate with the New Concessioner in transitioning to the New Concessioner's reservation system.

**(c) Fees and Payments.** Within ten (10) days after the Termination Date, the Concessioner shall provide the Director with an itemized statement of all fees and payments due to the Director under the terms of the CONTRACT as of the Termination Date, including, without limitation, all deferred, accrued and unpaid fees and charges. The Concessioner shall, within ten (10) days of its delivery to the Director of this itemized statement, pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of information that was not available at the time of the statement.

**(d) Access to Records.** Notwithstanding any other provision of this CONTRACT to the contrary, upon the Termination Date, the Concessioner shall make available to the Director for the Director's collection, retention and use, copies of all books, records, licenses, permits and other information in the Concessioner's possession or control that in the opinion of the Director, are related to or necessary for orderly and continued operations of the related facilities and services.

**(e) Removal of Marks.** Concessioner shall within thirty (30) days after Termination, remove (with no compensation to Concessioner) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessioner.

**(f) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.

2006 PROSPECTUS - FOR REFERENCE ONLY

**STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND  
CC-STLI001-07**

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**APPENDIX A**  
**EXISTING CONTRACT**

2006 PROSPECTUS - FOR REFERENCE USE

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE

--oo0oo--

CIRCLE LINE - STATUE OF LIBERTY FERRY, INC.

STATUE OF LIBERTY NATIONAL MONUMENT

--oo0oo--

CONTRACT NO. CC-STLI0001-89 EXECUTED August 15, 1989

COVERING THE PERIOD

April 1, 1989 THROUGH March 31, 2004

0984j

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2.	Operating Plan

CONCESSION CONTRACT

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service and the Regional Director, North Atlantic Region, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the state of New York, doing business as Circle Line-Statue of Liberty Ferry, Inc., hereinafter referred to as the "Concessioner":

The term "Superintendent" shall mean the Superintendent, Statue of Liberty National Monument.

W I T N E S S E T H

THAT WHEREAS Statue of Liberty National Monument is administered by the Secretary 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 the accomplishment of these purposes requires that facilities and services be provided for the public visiting the area and that all private interest shall be excluded except so far as may be necessary for the accomplishment of said purposes, including accommodation of the public; and

WHEREAS the United States has not itself provided all such necessary facilities and services and desires the Concessioner to establish and operate a passenger ferry service at reasonable rates under the supervision and regulation of the Secretary; and

WHEREAS the establishment and maintenance of such facilities and services involves a substantial investment of capital and the assumption of the risk of operating loss, it is therefore proper, in consideration of the

obligations assumed hereunder and as an inducement to capital, that the Concessioner be given assurance of security of such investment and of a reasonable opportunity to make a profit; and

WHEREAS pursuant to law the Secretary is required to exercise his authority hereunder in a manner consistent with a reasonable opportunity by the Concessioner to realize a profit on the operations conducted hereunder as a whole commensurate with the capital invested and the obligations assumed:

NOW, THEREFORE, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 USC 1, 2-4), and October 9, 1965 (79 Stat. 969; 16 USC 20), and other laws supplemental thereto and amendatory thereof, the said parties agree as follows:

SEC. 1. TERM OF CONTRACT. (a) This contract shall supersede and cancel Concession Contract No. CC-1665-0-0003 effective upon the close of business March 31, 1989, and shall be for the term of FIFTEEN (15) years from April 1, 1989.

(b) The Concessioner shall undertake and complete an improvement and building program costing not less than \$2,000,000, as adjusted per project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review."

It is agreed that such investment is consistent with Section 3(a) hereof. Such improvement and building program shall include:

(1) The construction/purchase of two new passenger ferry boats, each with a passenger capacity of not more than 1,100. Such boats will not exceed 152 feet in length and 32 feet in beam, and will draft no more than 13 feet when fully loaded.

(2) Using a competent marine architect and marine engineer and shipyard, Concessioner will prepare plans and specifications to construct two vessels as described herein. Restrooms for staff and visitor use must be provided. Vessels must be equipped for operation and must be accessible to the handicapped on the first floor.

(c) The Concessioner shall start the improvement and building program on or before October 1, 1989, in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying said program forward reasonably under the circumstances. After approval in writing by the Secretary of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation as may be satisfactory to the Secretary, to demonstrate that such program is being carried forward, and shall complete and have it available for public use on or before May 1, 1990.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the improvement program for such stated periods as the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

SEC. 2. ACCOMMODATIONS, FACILITIES AND SERVICES. (a) The Secretary hereby requires and/or authorizes the Concessioner, during the term of this contract, to provide accommodations, facilities, and services for the public within Statue of Liberty National Monument as follows:

AUTHORIZED AND REQUIRED SERVICES:

1. Year-round, scheduled, passenger transportation by boat for park visitors to Liberty Island and to public areas of Ellis Island within Statue of Liberty National Monument. Service to be provided from Castle Clinton National Monument within Battery Park, New York, and from Liberty State Park, New Jersey, and return.

AUTHORIZED SERVICES:

1. Sale, on the ferry boats, of snack foods and refreshments.
2. Sale, on the ferry boats, of souvenirs and postcards specifically commemorative of or informative about the Statue of Liberty, Ellis Island, or providing information about other areas of the National Park System.
3. Sale, on the ferry boats and for consumption on the ferry boats, of beer subject to the Concessioner securing necessary alcoholic beverage licenses required by City and State regulations.

The Concessioner may provide services incidental to the operations authorized hereunder at the written request of the Secretary.

(b) In conducting the operations herein AUTHORIZED AND REQUIRED and as otherwise noted, the following additional minimum requirements are established:

(1) Vessel Requirements.

a At least four boats will be owned by the Concessioner, and two additional boats will be owned or leased to meet the requirements for service.

b All vessels or boats used in all operations conducted under the authority of this contract must be equipped and otherwise conform to the regulations of the US Coast Guard (a copy of certificate of inspection to be filed with the Superintendent) and/or other Governmental agencies having jurisdiction over this type of operation in the area. All vessels or boats used by the Concessioner carrying out the services herein authorized shall be satisfactory to the Secretary.

c All vessels will have a maximum passenger capacity of 1,100, will not exceed 152 feet in length, will not exceed 32 feet in beam, and will draft no more than 13 feet when fully loaded.

d For each vessel owned or leased, the Concessioner shall provide the Secretary with a comprehensive report on same prior to its being used in the operation, including identifying data and descriptive material, US Coast Guard certificates, and related safety inspections, as well as other information as may, in the Secretary's opinion, be necessary or desirable. The Secretary may in his discretion disapprove the use of any vessel or any leasing arrangements which may appear to him not to be in the public interest.

e In emergencies, the Concessioner may substitute temporarily for its regular vessels, boats or other vessels approved by the Superintendent. Such emergency periods shall be limited to ten (10) days unless further extended in writing by the Secretary.

f Vessels will be equipped with covered areas sufficient to provide all passengers protection from the weather. All cabin areas must be heated. This area will be accessible to mobility-impaired visitors.

g All vessels will have an operable restroom for each sex available for use at all times the boat is underway.

(2) Operating Requirements.

a Service will be year-round, seven days a week, closing on Christmas day only.

b Trips shall be on a specific schedule to be approved by the Superintendent.

c In no event will trips be on a less frequent basis than hourly, unless specifically approved in advance by the Superintendent.

d Out of park landing points and the services to be conducted at them are to be in accordance with agreements approved by the Secretary. The Secretary may require that the Service be a signatory party to all such agreements.

e PEAK VISITOR PERIOD service will normally include service every thirty minutes from both Liberty State Park and Battery Park to Liberty Island or Ellis Island as demand dictates and shuttle service between Liberty Island and Ellis Island every thirty minutes. PEAK VISITOR PERIOD will be defined by the Superintendent, and service may be modified by instructions from the Superintendent to respond appropriately to changing conditions of demand and carrying capacity of the islands.

f During other than the PEAK VISITOR PERIOD, the minimum standard of service shall be as required by the Superintendent but not less than loop trips from Battery Park, to Liberty Island, to Ellis Island, to Battery Park. Year-round ferry service from Liberty State Park is a goal that awaits certain improvements in the ferry facilities at Liberty State Park. With those improvements in place to the sole satisfaction of the Superintendent, and upon the written direction of the Superintendent, off-season service from Liberty State Park to both Liberty and Ellis Islands will be provided as part of the Battery Park loop trip or by separate loop service originating at Liberty State Park and shall be considered thereafter to be part of the minimum operating standard.

g The passenger fare will be the same for both New York and New Jersey departures. The ability to shuttle at least one way between Liberty and Ellis Islands will be maintained year-round. There will be no additional fee for the shuttle service beyond the initial ferry charge at the land based departure points.

n If the Concessioner fails to operate on the approved schedule of trips, it shall pay to the Secretary, as liquidated damages, the sum of Three Hundred Fifty Dollars (\$350) for each and every round trip which it fails to make. Such liquidated damages shall not be imposed for such failure because of: (1) accident, or circumstances beyond the control of the Concessioner as determined by the Secretary, provided a substitute vessel or boat is placed in service within a reasonable time; or (2) exceptionally severe weather conditions, when, in the judgment of the Master of the vessel or boat, navigation would be unduly hazardous.

i The Master or Captain of each vessel or boat used in providing service shall keep a "log book" of the daily trips made, showing for each trip the time of departure and arrival, the number of passengers carried, and any incident that may have occurred. The log book shall also show any scheduled trip missed and the reason therefor. The log book shall be available for inspection by the Secretary or his designated representative.

j The Concessioner shall equip each regular vessel or boat used in providing the services authorized and required with a public address system meeting the approval of the Secretary. The public address system will be so designated that the Secretary may affix thereto a tape deck, or similar device, to provide the public with such interpretive lecture service as he may deem appropriate. The Concessioner shall, upon request of the Secretary, operate the recording device during trips to and from Statue of Liberty National Monument. In the event that the Secretary prefers to provide such interpretive lecture service, the public address system shall be available to him to provide said service to the extent considered by him to be appropriate or desirable. If such interpretive lecture service is provided by the Secretary, the Concessioner shall also make available reasonable storage space for literature and supplies in connection therewith.

l The Concessioner shall furnish on regularly scheduled vessels transportation for Government materials and supplies without charge or compensation, provided that such freight or cargo shall not exceed the size and weight limitations established from time to time by mutual agreement between the Concessioner and the Superintendent. However, the right to make the final determination as to type, weight, and quantity limitations is reserved to the Secretary. Freight which exceeds such weight or size limitations shall be transported by the Concessioner at rates to be approved by the Secretary.

m The Concessioner shall furnish transportation to the employees of other concessioners and to the contractors of such concessioners and for materials and supplies used by such concessioners in the area; however, those other concessioners of Statue of Liberty National Monument are under no contract obligation to use this ferry service. Employee transportation shall be on regularly scheduled trips and at rates no more than the approved rate for government employees. Materials, supplies and freight shall be at rates and on schedules approved by the Secretary.

n The Concessioner shall furnish transportation to the employees of the National Park Service and for their dependents resident on Liberty and Ellis Islands and for their materials and supplies. The Concessioner shall furnish transportation for individuals on official National Park Service business, such as vendors, volunteers in the park, and artists in the park. Rates and the conditions of such service will be in accordance with Service policy and as further discussed in this contract.

o The regular vessels or boats owned or leased by the Concessioner that are used in providing the services authorized hereunder may be chartered by the Concessioner for other purposes than those provided for by this contract only if that use does not interfere or conflict with services being provided under the contract.

p All literature given to the public, including service and rate schedules and promotional material, must be approved in writing by the Secretary in advance. All such material will identify the service as, "an authorized concessioner of Statue of Liberty National Monument, National Park Service, Department of the Interior". The Concessioner shall cooperate with Statue of Liberty National Monument to provide timely information to its patrons regarding park programs and regulations concerning visitor use and resource protection.

q Texts prepared for advertisements of the ferry service and hand-out material concerning facilities and services provided under this contract will be submitted to the Superintendent by the Concessioner for approval prior to publication or use in order to assure consistency and compatibility with the purposes of Statue of Liberty national Monument and the National Park Service.

r If food and/or beverage service is provided on the vessel, Concessioner shall possess all necessary licensing and inspection certificates and insurance to operate food service facilities on board vessel. Concessioner will provide copies of these documents to the Park.

s If the National Park Service determines it to be necessary to require an advance ticketing service for visits to Statue of Liberty National Monument, the Concession shall implement such a system.

(3) Health and Safety Requirements. The Concessioner shall develop, with assistance from the National Park Service, a comprehensive written safety and occupational health program for its concession operation in accordance with National Park Service "Concessioner Loss Control Program" Guidelines.

(c) The Secretary reserves the right to determine and control the nature, type, and quality of the merchandise and services described herein as authorized and required to be sold or furnished by the Concessioner within the area. Operations under this contract and the administration thereof by the Secretary shall be subject to the laws of Congress governing the area and the rules, regulations, and policies promulgated thereunder, whether now in force or hereafter enacted or promulgated, including but not limited to the United States Public Health Service requirements. Concessioners must also comply with current applicable criteria promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions outlined in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health.

(d) During the term hereof and subject to satisfactory performance hereunder, the Concessioner is granted a right of first refusal to provide such additional concession accommodations, facilities and services of the same character as authorized and required hereunder as the Secretary may designate as necessary or desirable for accommodation and convenience of the public in that portion of the park in which a right of first refusal is granted, as delineated on Exhibit "C". If the Concessioner doubts the necessity, desirability, timeliness, reasonableness, or practicability of such new or additional facilities, accommodations or services and/or declines or fails within a reasonable time to comply with the designation of the Secretary, then the Secretary, in his discretion, may authorize others under substantially the same terms and conditions to provide such designated accommodations, facilities, or services. This right of first refusal does not apply to concession operations in connection with lands hereafter acquired which expand the existing boundary of the area. Nothing contained in this section or elsewhere in this contract shall be construed as prohibiting or curtailing operations conducted in the area by other concessioners now authorized by the Secretary to provide accommodations therein for the public, including the successors or assigns of such concessioners, when approved by the Secretary.

SEC. 3. PLANT, PERSONNEL, AND RATES. (a) (1) The Concessioner shall maintain and operate the said accommodations, facilities, and services to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations hereunder commensurate with the capital invested and the obligations assumed.

(2) All rates and prices charged to the public by the Concessioner for accommodations, services, or goods furnished or sold hereunder shall be subject to regulation and approval by the Secretary. The Secretary shall exercise his decision making authority with respect to the Concessioner's rates and prices in a manner consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations hereunder as a whole commensurate with the capital invested and the obligations assumed. Reasonableness of rates and prices will be judged primarily by comparison with those currently charged for comparable accommodations, services, or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide federal employees and others conducting official National Park Service business a reduced rate for essential transportation, not to exceed fifty cents (50¢) per round trip, accordance with procedures established by the Secretary.

(b) (1) The Concessioner shall require its employees who come in direct contact with the public to wear a uniform and a name badge, approved by the Superintendent, by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary 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 fully correct the situation.

(3) The Concessioner shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, P.L. 93-112 as amended in 1978, (c) 41 CFR, Part 60-2, which prescribes affirmative action requirements for contractors and subcontractors, (d) the Age Discrimination in Employment Act of December 15, 1967 (P.L. 90-202), as amended by P.L. 95-256 of April 6, 1978, and (e) the Architectural Barriers Act of 1968 (P.L. 90-480), which requires government Contractors and Subcontractors to take affirmative action to employ and to advance in employment qualified handicapped individuals and to make facilities accessible to or usable by handicapped persons so that they will not 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 under any program or activity conducted by an Executive agency or by the United States Postal Service. The concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public and shall do nothing in advertising for employees which will prevent those covered by

these laws from qualifying for such employment and use of their facilities. Regulations heretofore promulgated are set forth in Exhibit "B" attached hereto and made a part hereof.

SEC. 4. GOVERNMENT LAND AND IMPROVEMENTS. (a) The Secretary hereby assigns for use by the Concessioner during the term of this contract, certain parcels of land and GOVERNMENT IMPROVEMENTS, if any, (as described in Exhibit "A" hereto) necessary to conduct the operations authorized hereunder. The Secretary reserves the right to withdraw such assignments or parts thereof at any time during the term of this contract if, in his judgment, (1) such withdrawal is necessary for the purpose of protecting visitors or area resources, or (2) the operations utilizing such assigned lands are terminated pursuant to Section 11 hereof. Any permanent withdrawal of assigned lands or improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination pursuant to Section 11 hereof. The Secretary shall compensate the Concessioner for any possessory interest in such withdrawn properties at book value as described in Section 12 hereof, or in the event that CONCESSIONER IMPROVEMENTS in which the Concessioner has a possessory interest are to be replaced by the Concessioner within the area, in accordance with fair value compensation for possessory interest described in subsection 12(b) hereof.

(b) "GOVERNMENT IMPROVEMENTS" as used herein means the buildings, structures, utility systems, fixtures, equipment, and other improvements upon the lands assigned hereunder, if any, constructed or acquired by the government and provided by the government for the purpose of this contract. The Concessioner shall have a possessory interest in improvements it makes to GOVERNMENT IMPROVEMENTS. In the event that such possessory interest is acquired by the government or a successor concessioner at any time, the Concessioner will be compensated for such possessory interest pursuant to Section 12 hereof. It is agreed that improvements to GOVERNMENT IMPROVEMENTS made by the Concessioner under the terms of this contract shall, for the purpose of determining possessory interest, be

depreciated by the Concessioner over the contract term remaining at the time that the improvements are made so that all improvements made to GOVERNMENT IMPROVEMENTS over the term of this contract will have a book value of zero (-0-) dollars at the expiration of the contract term.

(c) The Secretary shall have the right at any time to enter upon the lands and improvements utilized by the Concessioner hereunder for any purpose he may deem reasonably necessary for the administration of the area and the government services therein.

(d) The Concessioner may construct or install upon the assigned lands such buildings, structures, and other improvements as are necessary for the operations required hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project, as well as the location, plans, and specifications thereof, will be reviewed in accordance with the provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966.

(e) If during the term hereof a GOVERNMENT IMPROVEMENT requires repairs and/or improvements that serve to prolong the life of the GOVERNMENT IMPROVEMENT to an extent requiring capital investment for major repair, such capital investment shall be borne by the Concessioner. Such expenditures shall be consistent with a reasonable opportunity for the Concessioner to realize a profit on its operations. Where capital improvements to government acquired or constructed facilities supporting the concession operation, including roads, parking, and utility systems, are determined by the Secretary to be necessary and economically feasible for the accommodation of park visitors they shall be made by the Concessioner. If the Secretary determines that the required improvements are necessary but economically infeasible for the Concessioner, such improvements may be made by the National Park Service subject to the availability of appropriated funds.

SEC. 5. MAINTENANCE. Subject to Section 4(e) hereof, the Concessioner will physically maintain and repair all facilities (both GOVERNMENT and CONCESSIONER IMPROVEMENTS, and including the Ellis Island bulkhead and Liberty Island pier and bulkhead) used in the operation hereunder, including maintenance of assigned lands and all necessary housekeeping activities associated with the operation to the satisfaction of the Secretary. In order that a high standard of physical appearance, operations, repair and maintenance be maintained, appropriate inspections will be carried out jointly by the Secretary and the Concessioner.

SEC. 6. CONCESSIONER'S IMPROVEMENTS. (a) "CONCESSIONER IMPROVEMENTS," as used herein, means buildings, structures, fixtures, equipment, and other improvements affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this contract (excluding improvements made to GOVERNMENT IMPROVEMENTS by the Concessioner), as follows: (1) such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and (2) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary. CONCESSIONER IMPROVEMENTS do not include any interest in the land upon which the described structures are located.

(b) The Concessioner shall have a possessory interest in all CONCESSIONER IMPROVEMENTS recognized by this contract. Possessory Interest shall consist of all incidents of ownership except legal title, which shall be vested in the United States. However, such possessory interest shall not be construed to include or imply any authority, privilege or right to operate or engage in any business or other activity and the use or enjoyment of any structure, fixture, or improvement in which the Concessioner has a possessory interest shall be wholly subject to the applicable provisions of this contract and to the laws and regulations relating to the area. The said possessory interest shall not be extinguished by the expiration or other termination of this contract, and may not be terminated or

taken for public use without just compensation as determined in accordance with Section 12. Wherever used in this contract, "possessory interest" shall mean the interest described in this paragraph. Performance of the obligations assumed by the Secretary under Section 12 hereof shall constitute just compensation with respect to the taking of a possessory interest in the circumstances therein described.

(c) Any salvage resulting from the authorized removal, severance, or demolition of a CONCESSIONER IMPROVEMENT, or any part thereof, shall be the property of the Concessioner.

(d) In the event that a CONCESSIONER IMPROVEMENT is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner shall promptly, upon the request of the Secretary, restore the site as nearly as practicable to a natural condition.

SEC. 7. UTILITIES. (a) The Secretary shall furnish utilities to the Concessioner for use in connection with the operations authorized hereunder, when available, at reasonable rates to be fixed by the Secretary in his discretion and which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should any such service not be available or sufficient, the Concessioner may, with the written approval of the Secretary and under such requirements as shall be prescribed by him, secure the same at its own expense from sources outside the area or may install the same within the area subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on federal lands shall be acquired at its expense in accordance with any applicable state procedures and state law.

Such water rights, upon expiration or termination of this contract for any reason, shall be assigned to and become the property of the United States without compensation.

(2) Any service provided by the Concessioner under this section shall, if requested by the Secretary, be furnished to the government to such an extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the government for such service shall be approximately the average cost per unit of providing such service.

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

SEC. 8. ACCOUNTING RECORDS AND REPORTS. (a) The Concessioner shall maintain an accounting system whereby the accounts can be readily identified with the System of Account Classification prescribed by the Secretary. The Concessioner shall submit annually, as soon as possible but not later than sixty (60) days after the 31st day of March, a financial statement for the preceding year or portion of a year as prescribed by the Secretary, and such other reports and data as may be required by the Secretary. If annual gross receipts are in excess of \$1 million, the financial statements shall be audited by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are between \$250,000 and \$1 million, the financial statements shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970, in accordance with the

auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. Financial statements accompanied by remarks such as "prepared from client records without audit" are unacceptable.

The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial reports are consistent to those included in the federal and state tax returns. If they are not, then a statement showing differences shall be included. The Secretary shall have the right to verify and copy for his own use all such reports from the books, correspondence, memoranda, and other records of the Concessioner and subconcessioners, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the period of the contract, and for such time thereafter as may be necessary to accomplish such verification.

(b) Within ninety (90) days of the execution of this contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary a schedule that identifies and provides details for assets in which the Concessioner claims a possessory interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of five (5) calendar years after the close of business year of the Concessioner and any subconcessioner, have access to and the right to examine any of the pertinent books, documents, papers, and records related to this contract, including federal and state income tax returns.

SEC. 9. FRANCHISE FEE. (a) For the term of this contract, the Concessioner shall pay to the Secretary for the privileges granted herein as follows:

(1) An annual fee for the use of any GOVERNMENT IMPROVEMENTS utilized by the Concessioner hereunder, if any. Such fee and assigned government buildings to be as set forth in Exhibit "A" hereto, but in no event shall the fee exceed the fair annual value of such GOVERNMENT IMPROVEMENTS as determined by the Secretary.

(2) In addition to the foregoing, a further sum equal to TEN PERCENT (10%) of the Concessioner's gross receipts, as herein defined, for the preceding year.

(b) The franchise fee shall be due on a monthly basis in such a manner that payment shall be received by the Secretary within 15 days after the last day of each month that the Concessioner operates. Such monthly payment shall include the annual use fee for assigned GOVERNMENT IMPROVEMENTS, as set forth in Exhibit "A" hereto, divided by the expected number of operating months, as well as the specified percentage-of-gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the annual financial report. Overpayments shall be offset against the following year's franchise fees due. All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(d) (1) The term "gross receipts," as used herein, shall be construed to mean:

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 in this contract;

including gross receipts of subconcessioners as hereinafter defined; and including commissions earned on contracts or agreements with other persons or companies operating in the area;

But, excluding gross receipts from the sale of genuine United States Indian and native handicraft; intracompany earnings on account of charges to other departments of the operation, such as laundry; charges for employees' meals, lodgings, and transportation; cash discounts on purchases; cash discounts on sales; returned sales and allowances; interest on money loaned or in bank accounts; income from investments; income from subsidiary companies outside of the area; sale of property other than that purchased in the regular course of business for the purpose of resale; and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid governmental agencies; and amounts received as a result of an add-on to recover utility costs above comparable utility charges.

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.

(2) The term "gross receipts of subconcessioners" as used in subsection (d)(1) of this section shall be construed to mean 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 subconcession contracts hereunder without allowances, exclusions, or deductions of any kind or nature whatsoever, and the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after the 31st day of March. The subconcessioner shall maintain an accurate and complete record of all items listed in subsection (d)(1) of this section as exclusions from the Concessioner's gross receipts and shall report the same

to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in subsection (a) hereof.

(e) Within ONE HUNDRED TWENTY (120) days after the end of the second and the fifth and of each five year period of this contract, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section may be reconsidered. Such request shall be made in writing within 120 days after the end of the applicable contract year but cannot be made before the end of such year.

In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fees within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the Secretary for a determination of appropriate fees consistent with the fair value of any assigned GOVERNMENT IMPROVEMENTS and the probable value to the Concessioner of the privileges granted by this contract based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested.

If desired by the Concessioner, an advisory arbitration panel will be established (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary appropriate franchise fees. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees shall be final and conclusive upon the parties hereto.

Any new fees established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract, unless subsequent negotiations establish yet a different franchise rate.

If new rates are greater than existing rates, the Concessioner will pay all back fees due with the next regular payment. If new rates are less than the existing rate, the Concessioner may withhold the difference between the two rates from future payments until he has recouped the overpayment.

Any new franchise fees will be evidenced by an amendment to the contract, unless based upon the written determination of the Secretary, in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein.

SEC. 10. BOND AND LIEN. The Secretary may, in his discretion, require the Concessioner to furnish a surety bond acceptable to the Secretary conditioned upon the faithful performance of this contract, in such form and in such amount as the Secretary may deem adequate.

As additional security for the faithful performance by the Concessioner of all 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 such obligations, the government shall have at all times the first lien on all assets of the Concessioner within the area.

SEC. 11. TERMINATION. (a) The Secretary may terminate this contract in whole or part for default at any time and may terminate this contract in whole or part when necessary for the protection of visitors or area resources.

The operations authorized hereunder may be suspended in whole or in part at the discretion of the Secretary when necessary to protect the health and safety of visitors and employees or to protect area resources.

Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies.

Termination for default shall be utilized in circumstances where the Concessioner has breached any requirements of this contract, including failure to maintain and operate the required accommodations, facilities, and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination of this contract when necessary for the protection of visitors or area resources for default, the compensation to the Concessioner for such termination shall be as described in Section 12, "Compensation."

(c) In the event it is deemed necessary to suspend operations hereunder in whole or in part to protect the visitors or resources of the area, the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of service to the public upon the expiration or termination of this contract for any reason, the Concessioner, upon the request of the Secretary, will (1) continue to conduct the operations authorized hereunder for a reasonable time to allow the Secretary to select a successor, or (2) consent to the use by a temporary operator, designated by the Secretary, of the CONCESSIONER IMPROVEMENTS and personal property, if any, not including current or intangible assets, used in the operations authorized hereunder upon fair terms and conditions, provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, prorated for the period of use, in the amount of the annual depreciation on such improvement and personal property plus a return on the book value of such improvements and personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In this instance the method of depreciation used shall be either straight line depreciation or depreciation shown on federal tax returns.

SEC. 12. COMPENSATION. (a) Just Compensation: The compensation described herein shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) Contract expiration or termination where operations are to be continued: If for any reason, including contract expiration or termination as described herein, and subject to the limitation on compensation for possessory interest contained in subsection (d) hereof, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the government, (i) the Concessioner will sell and transfer to the successor designated by the Secretary its possessory interest in CONCESSIONER and GOVERNMENT IMPROVEMENTS, if any, as defined under this contract, and all other property of the Concessioner used or held for use in connection with such operations; and (ii) the Secretary will require such successor, as a condition to the granting of a contract to operate, to purchase from the Concessioner such possessory interests, if any, and such other property, and to pay the Concessioner the fair value thereof.

The fair value of any possessory interest in GOVERNMENT IMPROVEMENTS shall be book value, as described in Section 12(c) hereof. In the event that such possessory interest in GOVERNMENT IMPROVEMENTS is acquired by a successor, the successor will not be permitted to revalue such possessory interest.

The fair value of possessory interest in CONCESSIONER IMPROVEMENTS shall be deemed to be the sound value of the improvement to which it relates at the time of transfer of such possessory interest, without regard to the term or other benefits of the contract. The sound value of any structure, fixture, or improvement shall be determined upon the basis of reconstruction cost

less depreciation evidenced by its condition and prospective serviceability in comparison with a new unit of like kind, but not to exceed fair market value. The fair value of merchandise and supplies shall be replacement cost, including transportation. The fair value of equipment shall be replacement cost less depreciation and obsolescence.

If the Concessioner and the successor, excepting government agencies, cannot agree upon the fair value of any item or items, either party may serve a request for arbitration upon the other party, and the fair value of the item or items in question shall be determined by the majority vote of a board of three arbitrators, selected as follows: Each party shall name one member of such board and the two members so named shall select the third member. If either party fails to appoint an arbitrator within 15 days after the other shall have appointed an arbitrator and served written notice, including the name and address of the arbitrator appointed, upon the other party, then the American Arbitration Association shall be requested by the Secretary to appoint an arbitrator to represent the party failing to make the appointment. The costs and expenses of the arbitrator appointed by the American Arbitration Association to represent the party failing to make the appointment shall be paid for by that party. The two arbitrators so named shall select the third member. If the third member is not selected within 15 days after the appointment of the latter of the other two arbitrators, the American Arbitration Association shall be requested by the Secretary to appoint the third arbitrator. In requesting that the American Arbitration Association appoint an arbitrator in the situations discussed above, the Secretary shall request that the person or persons appointed shall be impartial and specially qualified in commercial and real estate appraisal. The fair value determined by the Board of Arbitrators shall be binding on the parties. The compensation and expenses of the third member shall be paid by the Concessioner and one-half of the amount so paid shall be added to the purchase price. Before reaching its decision, the board shall give each of the parties a fair and full opportunity to be heard on the matters in dispute.

If the successor is a government agency and there is a dispute as to the fair value of any possessory interest, or other items, an advisory arbitration panel will be established at the request of the Concessioner (one member to be selected by the Secretary, one by the concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary an appropriate fair value. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written decision of the Secretary as to such fair value will be final and binding upon all parties.

(c) Contract expiration or termination where operations are to be discontinued: If for any reasons, including contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct the operations authorized hereunder, or substantial part thereof, and the Secretary at the time chooses to discontinue such operations, or substantial part thereof within the area, and/or to abandon, remove or demolish any of the CONCESSIONER IMPROVEMENTS, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of compensation for (i) its possessory interest in CONCESSIONER IMPROVEMENTS, and GOVERNMENT IMPROVEMENTS, if any, in the amount of their book value (unrecovered cost as shown in federal income tax returns); (ii) the cost to the Concessioner of restoring any assigned land to a natural condition, including removal and demolition (less salvage), if required by the Secretary; and (iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without compensation therefor.

(d) Contract termination for default for unsatisfactory performance where operations are to be continued: Notwithstanding any provision of this contract to the contrary, in the event of termination of this contract for default for failure to maintain and operate the "REQUIRED"

and/or "AUTHORIZED" accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder, compensation for the Concessioner's possessory interest in CONCESSIONER IMPROVEMENTS, if any, shall be at book value as described in Subsection 12(c) herein.

(e) Other Compensation. In the event of termination of this contract or portions thereof for the purpose of protecting visitors or area resources, the Concessioner may be compensated (in addition to the applicable compensation described in subsections (b) or (c) above) for such other costs as the Secretary, in his discretion, considers necessary to compensate the Concessioner for actual losses occasioned by such termination, including, but not limited to, and as the needs appear, cost of relocating from one building to another building, reasonable severance pay to employees that may be affected, penalties for early loan repayments, and reasonable overhead expenses required by such termination, but not for lost profit or other anticipated gain from the operations authorized hereunder or anticipated sale or assignment of the Concessioner's assets, including this contract or any of its benefits.

SEC. 13. ASSIGNMENT OR SALE OF INTERESTS. (a) (1) The Concessioner and/or any person or entity which owns a controlling interest (as herein defined) in a Concessioner's ownership (collectively defined as the "Concessioner" for the purposes of this section) shall not assign or otherwise sell or transfer responsibilities under this contract or the concession operations authorized hereunder, nor sell or otherwise assign or transfer (including, without limitation, mergers, consolidations, reorganizations, or other business combinations) a controlling interest in such operations, this contract, or a controlling interest in the Concessioner's ownership, as defined herein, without the prior written approval of the Secretary. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this contract for which this contract may be terminated immediately by the Secretary without regard to the procedures for termination for default described in Section 11 hereof, and

the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this contract or to own or operate the operations authorized hereunder acquired in violation hereof.

(2) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction described in Subsection (a)(1) above that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request in writing the Secretary's approval of the proposed transaction and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction.

(b) (1) The Secretary, in exercising the discretionary authority set forth herein, shall, among other matters, take into consideration the management qualifications of individuals or entities which would thereby obtain an interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the concession operations authorized hereunder in the public interest under the regulation of the Secretary.

(2) For purposes of this section, the term "controlling interest" in a Concessioner's ownership shall mean, in the instance of a corporate concessioner, an interest beneficial or otherwise of sufficient outstanding voting securities or capital of the Concessioner so as to permit exercise of substantial managerial influence over the operations of the Concessioner, and, in the instance of a partnership, limited partnership, joint venture, or individual entrepreneurship, any beneficial ownership of the capital assets of the Concessioner sufficient to permit substantial managerial influence over the operations of the Concessioner. The Secretary will determine, at the request of interested parties, whether or not an interest in a Concessioner constitutes a controlling interest within the meaning hereof.

(c) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without written approval of the Secretary at least 30 days in advance of such transaction.

(d) No mortgage shall be executed and no bonds, shares of stock, or other evidence of interest in or indebtedness upon the assets of the Concessioner, including this contract, in the area shall be issued, except for the purposes of installing, enlarging, or improving plant equipment and facilities, provided that such assets, including possessory interests or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment, and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment transfer or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Concessioner in such assets but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

SEC. 14. APPROVAL OF SUBCONCESSION CONTRACTS. All contracts and agreements (other than those subject to approval pursuant to Section 13 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this contract in whole or part shall be considered as subconcession contracts and shall be submitted to the Secretary for his approval and shall be effective only if approved. However, agreements with others to provide vending or other coin operated machines shall not be considered as subconcession contracts. In the event any such subconcession contract or agreement is approved, the Concessioner shall pay to the Secretary within sixty (60) days after the 31st day of March each year or portion of a year a sum equal to FIFTY PERCENT (50%) of any and all fees, commissions, or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subconcessioners as provided for in Section 9 of this contract.

SEC. 15. INSURANCE AND INDEMNITY. (a) General. The Concessioner shall save, hold harmless, defend, and indemnify the United States of America, its agents and employees for losses, damages, or judgments and expenses 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, arising out of the activities of the Concessioner, his employees, subcontractors, or agents under the contract. The types and amounts of insurance coverage purchased by the Concessioner shall be approved by the Secretary.

At the request of the Secretary, the Concessioner shall, annually or at the time insurance is purchased, provide the Secretary with a Statement of Concessioner Insurance and Certificate of Insurance as evidence of compliance with this section and shall provide the Secretary thirty (30) days' advance written notice of any material change in the Concessioner's insurance program hereunder.

The Secretary 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.

(b) Property Insurance. The Concessioner will, in the event of damage or destruction, repair or replace those buildings, structures, equipment, furnishings, betterments and improvements, and merchandise determined by the Secretary to be necessary to satisfactorily discharge the Concessioner's obligations under this contract and for this purpose shall provide fire and extended coverage on both CONCESSIONER IMPROVEMENTS and assigned GOVERNMENT IMPROVEMENTS in such amounts as the Secretary may require during the term of this contract.

Those values currently in effect are set forth in Exhibit "E" to this contract. The exhibit will be revised at least every three years, or sooner if there is a substantial increase in values.

Such insurance shall provide for the Concessioner and the United States of America to be named insureds as their interest may appear. In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore, or replace CONCESSIONER and GOVERNMENT IMPROVEMENTS, equipment, furnishings, and other personal property hereunder, as directed by the Secretary. The lien provision of Section 10 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverages in the amounts set forth in Exhibit "E":

#### Hull Insurance

(c) Additional Property Damage--GOVERNMENT IMPROVEMENTS, Property and Equipment. The following additional requirements shall apply to structures, all or any part of which are "GOVERNMENT IMPROVEMENTS" as defined in Section 4(b).

(1) The insurance policy shall contain a loss payable clause approved by the Secretary which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States.

(2) The use of insurance proceeds for repair or replacement of government structures will not alter their character as government structures and the Concessioner shall gain no possessory interest therein.

(d) Public Liability. The Concessioner shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operations authorized hereunder. Such insurance shall be in an amount commensurate with the degree of risk and the scope and size of such

activities authorized herein, but in any event, the limits of liability shall not be less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate and property damage of at least \$25,000 per occurrence and \$50,000 annual aggregate. If claims reduce available insurance below the required per occurrence limits, the Concessioner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.

From time to time, as conditions in the insurance industry warrant, the Secretary reserves the right to revise the minimum required limits.

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

The Concessioner shall also obtain the following additional coverages at the same limits as required for the Concessioner's comprehensive general liability insurance unless other limits are specified below:

- (1) Product Liability.
- (2) Liquor Legal Liability.
- (3) Protection and Indemnity.
- (4) Automobile Liability.
- (5) Workers Compensation.

SEC. 16. PROCUREMENT OF GOODS, EQUIPMENT, AND SERVICES. In computing net profits for any purposes of this contract, the Concessioner agrees that its accounts will be kept in such a manner that there will be no diversion or concealment of profits in the operations authorized hereunder 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.

SEC. 17. DISPUTES. (a) Except as otherwise provided in this contract, any dispute or claim concerning this contract which is not disposed of by agreement shall be decided by the Director, National Park Service, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Concessioner.

The decision of the Director shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Concessioner mails or otherwise furnishes to the Director a written notification of appeal addressed to the Secretary. In accordance with the rules of the Board of Contract Appeals, the decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

In connection with any appeal proceeding under this clause, the Concessioner shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute or claim hereunder, the Concessioner shall proceed diligently with the performance of the contract or as otherwise required in accordance with the Director's decision.

Claims shall be considered hereunder only if a notice is filed in writing with the Director within 30 days after the Concessioner knew or should have known of the facts or circumstances giving rise to the claim.

(b) This section does not preclude consideration of legal questions in connection with decisions provided for in paragraph (a) above; provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) The provisions of this clause shall not apply to any claim of a precontractual nature nor of a noncontractual nature such as tort claims, nor with respect to discretionary acts or refusals to act by the

United States, including but not limited to the establishment of utility rates and rates to the public hereunder and terminations or suspensions of the contract for protection of visitors or area resources, nor to any other discretionary relief or action, nor in relation to action or inaction by the United States in its sovereign capacity. Decisions of the Director, National Park Service, concerning the matters mentioned in this subsection shall be final administrative determinations.

SEC. 18. GENERAL PROVISIONS. (a) Reference in this contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

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

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other nonconcession agreements with nonprofit organizations any accommodations, facilities, or services to area visitors which are part of and appropriate to the park interpretive program.

(d) Any and all taxes which 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.

(e) 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 herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(f) This contract may not be extended, renewed, or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Boston, Massachusetts, this 15th day of August, 1989.

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA  
INC.

By Frank P. Clair  
Frank P. Clair  
Vice President  
Circle Line-Statue of Liberty  
Ferry, Inc.

By Steven N. Lewis  
for Gerald D. Patten  
Regional Director  
North Atlantic Region  
National Park Service

ATTEST:

By Joseph A. Moran  
JOSEPH A. Moran  
Printed Name  
SECRETARY  
Title

LAND AND "GOVERNMENT IMPROVEMENTS" ASSIGNED

\* \* \* \* \*

Improvement Group One

"GOVERNMENT IMPROVEMENTS" in Which The Government Holds 100% Of The Possessory Interest and which are assigned in accordance with Section 4:

Building No.	Description	Assigned from the effective date of the contract to the date or time period indicated	Monthly Fee
None	Ticket kiosk, within Castle Clinton NM	Term of contract	\$275
None	Liberty Island Main Dock, as shown on map for scheduled use for boat loading and unloading only. Not exclusive use. Not for overnight docking.	Term of Contract	None
None	Liberty Island Work Dock, as shown on map for scheduled use for boat loading and unloading only. Not exclusive use. Not for overnight docking.	Term of Contract	None
None	Ellis Island Dock Bulkhead as shown on map for scheduled use for boat loading and unloading only. Not exclusive use. Not for overnight docking.	Term of Contract	None

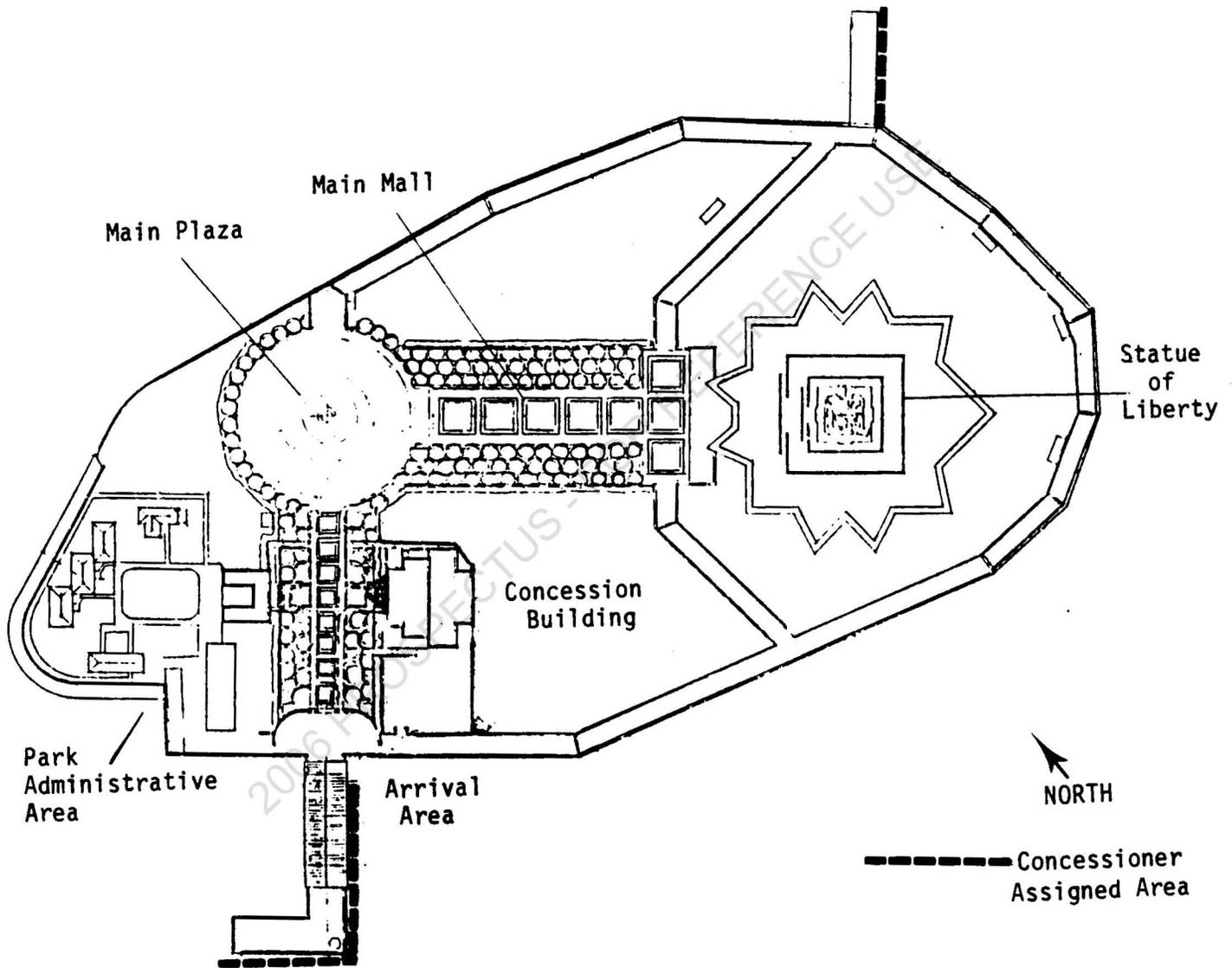
LAST ITEM

Total amount due pursuant to Contract Section 9:

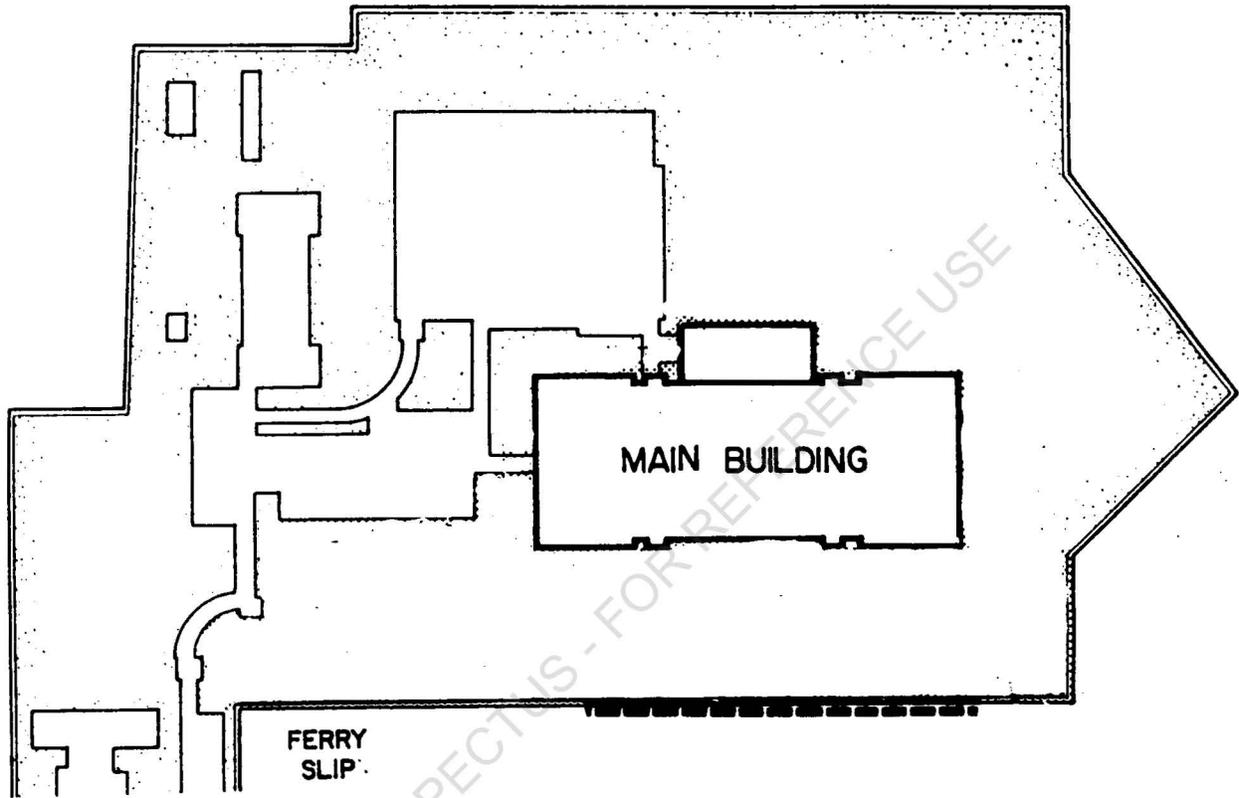
\$275 per month

Land is assigned in accordance with Section 4(a) and as described on the following map(s):

MAP NUMBER ONE  
LIBERTY ISLAND



MAP NUMBER TWO  
ELLIS ISLAND

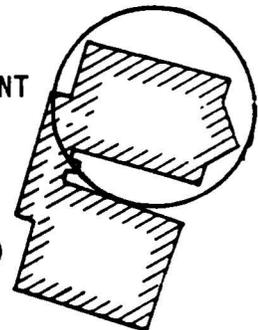


Concessioner  
Assigned Area

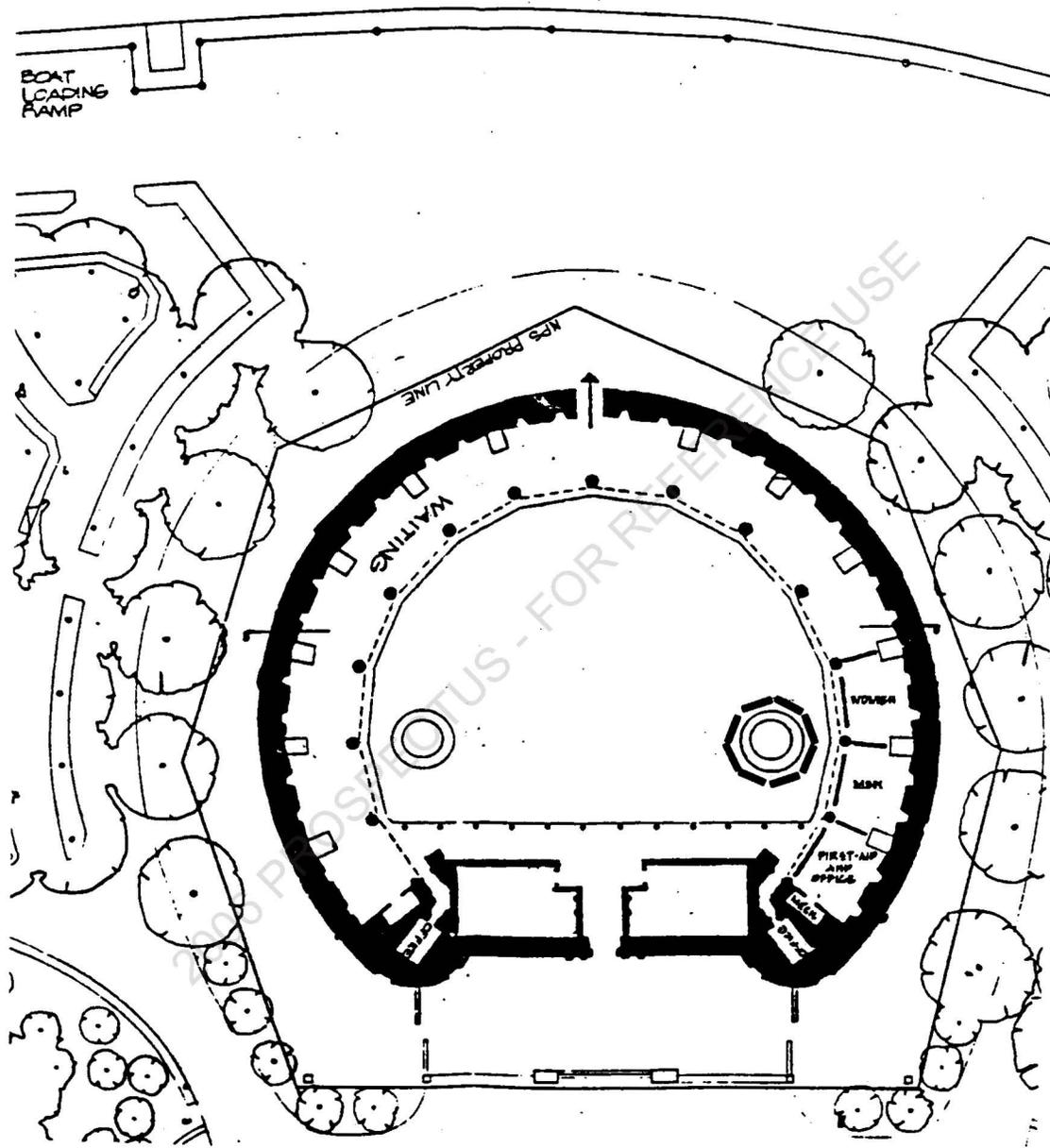


AREA OF  
ENLARGEMENT  
ABOVE

ELLIS  
ISLAND



MAP NUMBER THREE  
CASTLE CLINTON NATIONAL MONUMENT



NORTH  
↑

----- Concessioner  
Assigned Area

\*\*\*\* STATUE OF LIBERTY NATIONAL MONUMENT \*\*\*\*  
\*\*\* NATIONAL PARK SERVICE - NORTH ATLANTIC REGION \*\*\*

MAP NUMBER FOUR  
LIBERTY STATE PARK

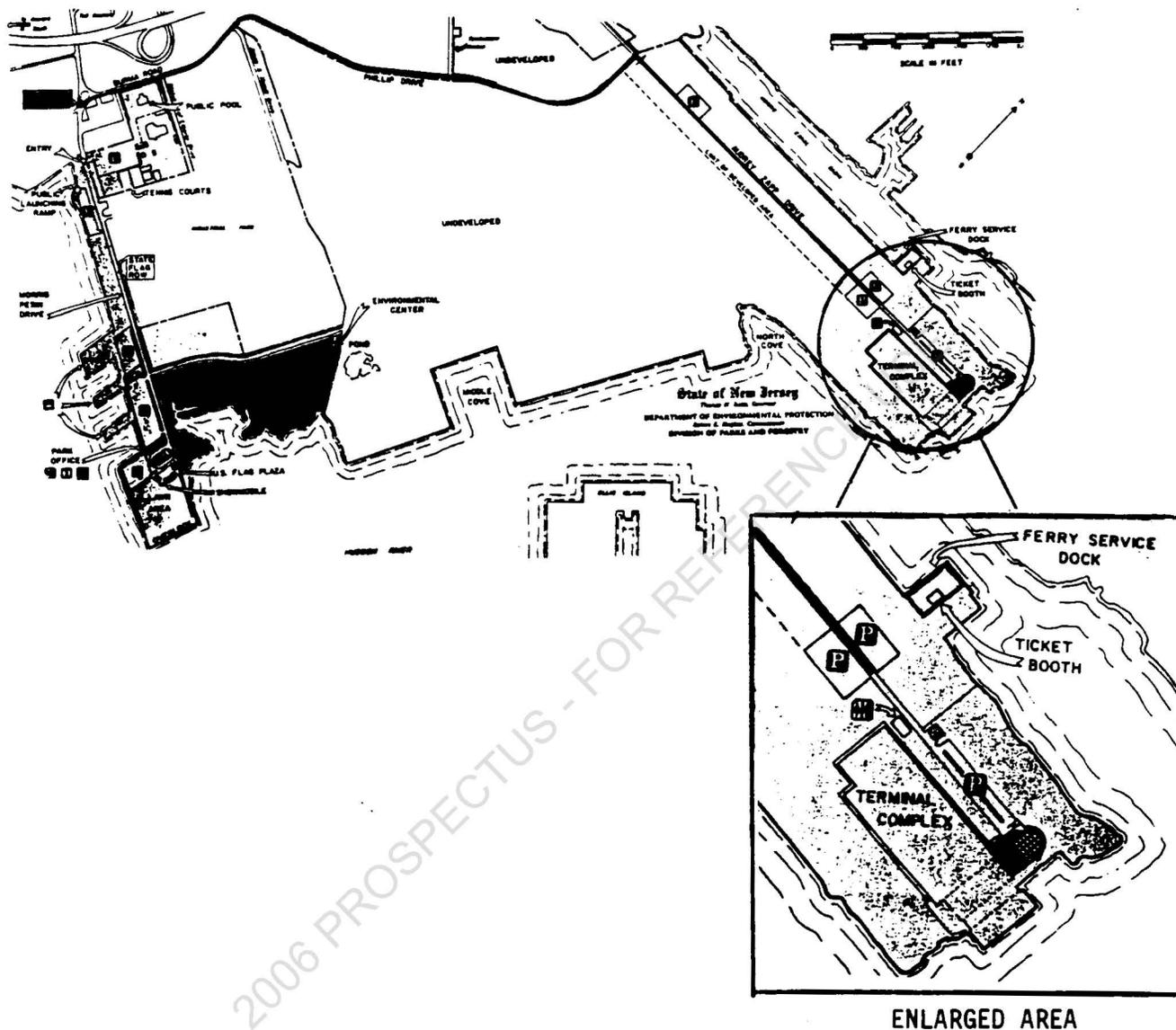


Exhibit "A" Approved, effective August 15, 1989

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA  
INC.

By Frank P. Clair  
Frank P. Clair  
Vice President  
Circle Line-Statue of Liberty  
Ferry, Inc.

By Stuart H. Lewis  
for Gerald D. Patten  
Regional Director  
North Atlantic Region  
National Park Service

NONDISCRIMINATION

\* \* \* \* \*

SECTION I  
REQUIREMENTS RELATING TO EMPLOYMENT AND SERVICE TO THE PUBLIC

A. EMPLOYMENT: During the performance of this concession 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.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or 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 11246 of September 24, 1965, as amended by Executive Order 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 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

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

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of

the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this concession contract or with any of such rules, regulations, or orders, this concession contract may be cancelled, 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 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 (8) governing performance of work under this contract, as set out in Section 202 of Executive Order No. 11246, dated 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: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and 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 because of race, color, religion, sex, age, national origin, or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this agreement.

## 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.

## PART A DISCRIMINATION PROHIBITED

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

(1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

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

PART B  
EXISTING FACILITIES

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

PREFERENTIAL RIGHTS TO ADDITIONAL SERVICES

(a right of first refusal)

\*\*\*\*\*

In accordance with subsection 2(c) of this contract, the concessioner is granted a preferential right to provide additional services in the areas described below.

DESCRIPTION:

These rights are to ferry transportation to Liberty Island and to the public areas of Ellis Island within Statue of Liberty National Monument from Castle Clinton National Monument within Battery Park, New York, and from Liberty State Park in New Jersey, and return.

This preferential right to additional services does not extend to providing services to contractors, employees, guests, or patrons of any persons or entities occupying portions of Ellis Island under separate authorization from the Secretary; such persons or entities may be authorized to establish their own services, including transportation, for their contractors, employees, guests or patrons.

Exhibit "C" Approved, effective August 15, 1989

*Steven H Lewis*  
\_\_\_\_\_  
for Gerald D. Patten  
Regional Director  
North Atlantic Region  
National Park Service

"CONCESSIONER IMPROVEMENTS" Utilized  
pursuant to  
Section 6

\* \* \* \* \*

Improvements as Described at Section 6(a) of this contract and Located within Statue of Liberty National Monument and Used for the Purposes of this Contract and in Which the Concessioner Holds 100% Of The Possessory Interest as Described in Section 6(b):

Improvement Number	Description
--------------------	-------------

NONE

2006 PROSPECTUS - FOR REFERENCE USE

Exhibit "D" Approved, effective August 15, 1989

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA  
INC.

By Frank P. Clair  
Frank P. Clair  
Vice President  
Circle Line-Statue of Liberty  
Ferry, Inc.

By Gerald D. Patten  
for Gerald D. Patten  
Regional Director  
North Atlantic Region  
National Park Service

BUILDING REPLACEMENT COST FOR INSURANCE PURPOSES

FOR THE OPERATING YEAR: STARTING April 1, 1989  
 AND ENDING Until Superseded

\* \* \* \* \*

The replacement costs set forth herein are established for the sole purpose of ensuring adequate property insurance coverage and shall not be construed as having application for any other purpose.

GOVERNMENT BUILDINGS  
 Both full and partial possessory interest

Building Number	Percent of Govt Interest	Description	Insurance Replacement Value
NA	100%	Ticket Kiosk at Castle Clinton NM	\$155,000
NA	100%	Main Pier for docking at Liberty Island	Full coverage within Protection and Indemnity policy
NA	100%	Work Pier for docking at Liberty Island	Full coverage within Protection and Indemnity policy
NA	100%	Bulkhead and pier for docking at Ellis Island	Full coverage within Protection and Indemnity policy

CONCESSIONER BUILDINGS AND MAJOR PERSONAL PROPERTY  
 Both full and partial possessory interest

Item or Building Number	For Buildings: Percent of Conc Interest	Description	Insurance Replacement Value
NONE	NA	First Vessel as Described at Contract Section 2(b)(1) <u>a</u> .	\$ unknown
NONE	NA	Second Vessel as Described at Contract Section 2(b)(1) <u>a</u> .	\$ unknown
NONE	NA	Third Vessel as Described at Contract Section 2(b)(1) <u>a</u> .	\$ unknown
NONE	NA	Fourth Vessel as Described at Contract Section 2(b)(1) <u>a</u> .	\$ unknown
NONE	NA	Fifth Vessel as Described at Contract Section 2(b)(1) <u>a</u> .	\$ unknown
NONE	NA	Sixth Vessel as Described at Contract Section 2(b)(1) <u>a</u> .	\$ unknown

(With six adequate vessels available to the concessioner to provide this service, Hull Insurance will not be required until the National Park Service feels that loss of a vessel would make the concessioner unable to provide the required level of service or endanger the financial stability of the Concessioner.)

Exhibit "E" Approved, effective August 15, 1989

CIRCLE LINE-STATUE OF LIBERTY FERRY, UNITED STATES OF AMERICA  
 INC.

By Frank P. Clair  
 Frank P. Clair  
 Vice President  
 Circle Line-Statue of Liberty  
 Ferry, Inc.

By Gerald D. Patten  
 for Gerald D. Patten  
 Regional Director  
 North Atlantic Region  
 National Park Service

Bill

AMENDMENT NO. 1  
CONCESSION CONTRACT NO. CC-STLI0001-89  
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.  
STATUE OF LIBERTY NATIONAL MONUMENT

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the state of New York, hereinafter referred to as the "Concessioner":

W I T N E S S E T H:

WHEREAS, subsection 9(e) of said contract provides that within one hundred twenty (120) days after the end of the second and the fifth and of each five year period of this contract, at the instance of either party, the amount and character of the franchise fees may be reconsidered; and

WHEREAS, the Secretary has determined that as partial consideration for the privileges granted by this contract for the period beginning April 1, 1991 and ending March 31, 1994, the Concessioner shall make lump sum payments totaling \$1,425,000 to establish a "Capital Account"; and

WHEREAS, the Secretary has determined that the insurance replacement values of the facilities assigned be updated to reflect current value;

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. CC-STLI0001-89 is hereby amended as follows:

1. Amend Section 4(b) by adding the following parenthetical phrase after the words "GOVERNMENT IMPROVEMENTS" in line 6:

"(excluding improvements made from funds from any Section 10 accounts.)"

2. Amend the parenthetical phrase in Section 6(a), lines 5 and 6, to read as follows:

"(excluding improvements made to GOVERNMENT IMPROVEMENTS

and improvements made from funds in any Section 10 accounts)"

3. Amend Section 9(e) to read as follows:

"(e) Within one hundred twenty (120) days after the end of the second and the fifth and of each five year period of this contract, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) may be reconsidered. Such request shall be made in writing within 120 days after the end of the applicable contract year but cannot be made before the end of such year.

In the event that the Secretary and the Concessioner cannot agree upon an adjustment of the franchise fee and/or Section 10 contributions within 120 days from the date of the request for renegotiation as made by either party, the position of the Concessioner must be reduced to writing within 30 days therefrom and submitted to the Secretary for a determination of appropriate fees and/or Section 10 contributions consistent with the fair value of any assigned Government Improvements and the probable value to the Concessioner of the privileges granted by this contract based upon a reasonable opportunity for a profit in relation to both gross receipts and capital invested.

If desired by the Concessioner, an advisory arbitration panel will be established (one member to be selected by the Secretary, one by the Concessioner, and the third by agreement of the original two) for the purpose of recommending to the Secretary appropriate franchise fees and/or Section 10 contributions. The Secretary and the Concessioner shall share equally the expenses of such advisory arbitration. The written determination of the Secretary as to franchise fees and/or Section 10 contributions shall be final and conclusive upon the parties hereto.

Any new fees and/or Section 10 contributions established will be retroactive to the commencement of the applicable period for which notice of reconsideration is given and be effective for the remaining term of the contract, unless subsequent negotiations establish yet a different franchise rate and/or Section 10 contribution.

If new rates and/or contributions are greater than existing rates and/or contributions, the Concessioner will pay all back fees and/or contributions with the next regular payment. If the new rates and/or contributions are less than the existing rates

and/or contributions, the Concessioner may withhold the difference between the two rates from future payments until he has recouped the overpayment.

Any new franchise fees and/or Section 10 contributions will be evidenced by an amendment to the contract, unless based upon the written determination of the Secretary, in which event a copy of the determination will be attached hereto and become a part hereof, as fully as if originally incorporated herein."

4. Add a new Section 10 as follows:

"SEC. 10. ACCOUNTS. (a) Government Improvement Account. No Government Improvement Account is included in this contract.

(b) Capital Account. (1) As partial consideration for the privileges granted by this CONTRACT, the Concessioner shall establish a "Capital Account" by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations hereunder. Funds in the Capital Account, including interest earned thereon, belong to the Concessioner but shall be used by the Concessioner only for construction of qualified improvements approved by the Superintendent in accordance with priorities established by the National Park Service Regional Director. Projects estimated to cost over \$1,000,000 must be approved by the Director.

(b)(2) Improvements paid for with funds from the Capital Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by Sections 4 and 5 of this CONTRACT, or otherwise, from Concessioner funds exclusive of those funds contained in the Capital Account. Funds in the Capital Account shall not be used for purposes for which those Sections would apply. The Concessioner shall have no ownership, Possessory Interest or other interest in improvements made from Capital Account funds.

(b)(3) The Concessioner shall deposit In the Capital Account established pursuant to sub-section 10(b)(1) hereof, within fifteen (15) days after the date this amendment is executed, a lump sum payment of seven hundred and twenty-five thousand dollars (\$725,000) and, within forty-five (45) days, a further lump sum of seven hundred thousand dollars (\$700,000).

The funds in the said Capital Account shall be deposited into an interest bearing account(s) at a Federally insured financial institution(s): Provided, however, that funds in excess of the maximum federally insured amount(s) at said institution(s) shall be invested in the Concessioner's name, in short term, readily negotiable U.S. Treasury Bills. The account(s), U.S. Treasury Bills and their discounts, shall be maintained separately from all other Concessioner funds and copies of monthly Capital Account statements shall be provided to the Secretary. An interest charge will be assessed on overdue deposits for each thirty (30) day period, or portion thereof, that the deposit is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual.

(b) (4) The Concessioner shall submit annually, no later than forty-five days, of the year following the Concessioner's accounting year a statement reflecting total activity in the Capital Account for the preceding accounting year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

(b) (5) Advances or credits to the Capital Account by the Concessioner are not permitted. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. For all expenditures made for each project from Capital Account funds, the Concessioner shall maintain adaptable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(b) (6) Upon the expiration or termination of this CONTRACT, or upon assignment or sale of interests related to this CONTRACT, the unexpended balance remaining in the Capital Account shall be expended by the Concessioner for approved Projects, or, shall be remitted by the Concessioner to the Secretary in such a manner that payment shall be received by the Secretary within fifteen (15) days after the last day of the Concessioner's operation. Any payment consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. 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 herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the

Treasury Fiscal Requirements Manual."

5. Existing Sections 10 through 18 of this contract shall be consecutively renumbered as Sections 11 through 19. Any references to these renumbered sections within the contract or any exhibits thereto shall be revised to reflect this renumbering.

6. Amend to update Exhibit "E", as attached.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at Washington, D.C., this 21<sup>st</sup> day of December, 1993.

CONCESSIONER:

UNITED STATES OF AMERICA:

By Joseph A. Moran  
Joseph A. Moran  
President  
Circle Line-Statue of Liberty  
Ferry, Inc.

By Roger G. Kennedy  
for Roger G. Kennedy  
Director  
National Park Service

ATTEST:

By \_\_\_\_\_  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title



CONCESSIONER BUILDINGS AND MAJOR PERSONAL PROPERTY  
Both full and partial possessory interest

Item or Building Number	Percent of Concessioner Interest (bldg)	Description	Insurance Replacement Value
1	N/A	Miss Liberty	\$ unknown
2	N/A	Miss Circle Line	\$ unknown
3	N/A	Miss Freedom	\$ unknown
4	N/A	Miss Gateway	\$ unknown
5	N/A	Miss Ellis Island	\$ unknown
6	N/A	Miss New York	\$ unknown
7	N/A	Miss New Jersey	\$ unknown

With seven adequate vessels available to the concessioner to provide this service, Hull Insurance will not be required until the National Park Service feels that loss of a vessel would make the concessioner unable to provide the required level of service or endanger the financial stability of the concessioner.

This exhibit, supersedes Exhibit "E" approved, August 15, 1989.

Approved effective December 21, 1993

CIRCLE LINE - STATUE OF LIBERTY  
FERRY, INC.

UNITED STATES OF AMERICA

By Joseph A. Moran  
Joseph A. Moran  
President  
Circle Line Statue of  
Liberty Ferry, Inc.

By Roger G. Kennedy  
for Roger G. Kennedy  
Director  
National Park Service

\*\*\*\*STATUE OF LIBERTY NATIONAL MONUMENT\*\*\*\*  
\*\*\*NATIONAL PARK SERVICE - NORTH ATLANTIC REGION\*\*\*

AMENDMENT NO. TWO  
CONCESSION CONTRACT NO. CC-STLI0001-89  
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.  
STATUE OF LIBERTY NATIONAL MONUMENT

THIS AGREEMENT made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as the "Concessioner:"

W I T N E S S E T H:

WHEREAS, subsection 9(e) of said Contract provides that within one hundred twenty (120) days after the end of the second and the fifth and of each five year period of this Contract, at the instance of either party, the amount and character of the franchise fees may be reconsidered; and

WHEREAS, the Secretary has determined that as partial consideration for the privileges granted by this Contract for the period beginning April 1, 1994 and ending at the close of business, November 30, 1994, the Concessioner shall make, in addition to its contractually scheduled payments, a lump sum payment totaling \$325,000 to the Capital Account established by Amendment No. One to this Contract; and

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. CC-STLI0001-89 is hereby amended as follows:

2. The first paragraph of SEC. 10.(b)(3) shall be deleted and the following shall be substituted therefor:

(b)(3) The Concessioner shall deposit in the Capital Account established pursuant to sub-section 10(b)(1) hereof, within fifteen (15) days after the date this Amendment is executed, an additional lump sum payment of THREE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$325,000); and effective December 1, 1994, shall deposit in said account, on a monthly basis, as such monies accrue, five percent (5%) of the Concessioner's gross receipts from fares and freight until the sum of such deposits shall equal \$2,500,000. Upon attaining the \$2,500,000 total, the five percent of gross fares and freight fee shall be either rejustified for accrual towards a new multi-year facility improvement plan with approval by the Regional Director or, shall be paid to the United States as are the percentage fees under Sec. 9. In the latter case, Sec. 9. will be amended so that the total percentage fee applied to fares and freight shall be fifteen percent (15%).

In all other respects the said Contract, as amended, is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to hereunder subscribe their names and affix their seals.

Dated at Washington, DC, this 17<sup>th</sup> day of May, 1995.

CONCESSIONER:

UNITED STATES OF AMERICA:

By Joseph A. Moran  
Joseph A. Moran  
President  
Circle Line-Statue of Liberty  
Ferry, Inc.  
4-26-95

By Roger G. Kennedy  
Roger G. Kennedy  
Director  
National Park Service

*As his  
for*

ATTEST:

By William R. Moran  
William R. Moran  
Printed Name  
Secretary  
Title

AMENDMENT NO. THREE  
CONCESSION CONTRACT NO. CC-STLI0001-89  
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.  
STATUE OF LIBERTY NATIONAL MONUMENT

THIS AGREEMENT, made and entered into by and between the United States of America, acting in this behalf by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and Circle Line-Statue of Liberty Ferry, Inc., a corporation organized and existing under the laws of the State of New York, hereinafter referred to as the "Concessioner":

WITNESSETH:

THAT WHEREAS, the Secretary and the Concessioner entered into Concession Contract No. CC-STLI0001-89 on August 15, 1989, whereby the Concessioner was authorized to provide accommodations, facilities and services for the public within Statue of Liberty National Monument during the period April 1, 1989, through March 31, 2004; and

WHEREAS, the Secretary has coordinated maintenance of deep water access and egress routes for Liberty and Ellis Islands, along which, the Secretary has directed the Concessioner to navigate its vessels to provide transportation activities required by the said Contract; and

WHEREAS, said Concession Contract has been amended by Amendment No. 1 dated December 21, 1993, and Amendment No. 2 dated May 17, 1995; and

WHEREAS, by Amendments No. 1 and No. 2, the Secretary and the Concessioner have reconsidered and agreed upon the amount and character of the franchise fees pursuant to Section 9(e) and within the meaning of the Concessions Policy Act (79 Stat. 969; 16 U.S.C. 20) Section 3(d); and

WHEREAS, Amendment No. 1 established a Capital Account and Amendment No. 2 increased the amount the Concessioner paid into said Capital Account; and

WHEREAS, the primary purpose of the Capital Account is to fund dredging and spoil disposal therefrom for deep water docking of Concessioner ships; and

\*\*\* STATUE OF LIBERTY NATIONAL MONUMENT \*\*\*  
\*\*\*\* NATIONAL PARK SERVICE - NORTHEAST REGION \*\*\*\*

WHEREAS, the accumulated funds in the Capital Account are inadequate to fund dredging and spoil disposal projects which must be undertaken to avoid closure of water access to the said Islands, water access being the sole means of park visitor access to and egress from the Islands; and

WHEREAS, in order to cope with these emergency conditions, the Secretary desires to reconsider the fees and account contributions provided for in the said Contract as amended; and

WHEREAS, the Concessioner is agreeable to the said reconsideration on the terms and conditions hereinafter set forth:

NOW THEREFORE, in consideration of the foregoing, the parties hereto covenant and agree to and with each other that Concession Contract No. CC-STLI0001-89 is hereby further amended effective upon the last date of execution as follows:

1. Section 1, Term of Contract, is further amended by renumbering existing subsection (d) as subsection (e), and adding a new subsection (d), as follows:

(d) The Concessioner shall undertake a project to dredge access and egress routes to Liberty and Ellis Islands beginning on or about April 1997, including disposal of dredge spoil. Expenditures for the project shall be limited to funds accumulated in the capital account established under Section 10 (added by Amendment No.1 to this Contract). Undertaking this dredging project shall not obligate the Concessioner to be responsible for future dredging projects, unless agreed to in a subsequent contract or amendment to this Contract.

2. Amend Section 9(a)(2) by deleting the first paragraph of said subsection and replacing said paragraph in its entirety with the following:

"(a)(2) In addition to the foregoing, a further sum equal to TEN PERCENT (10%) of the Concessioner's gross receipts, excluding fare and freight receipts from the execution date of this Amendment, and, in addition, beginning May 1, 1999, TEN PERCENT (10%) of said passenger fare and freight gross receipts.

3. Amend Section 9(b) to include the following proviso at the end of the first sentence thereof:

Provided, that such monthly payments shall not be applicable to required flat lump sum

payments.

4. Amend the first paragraph of Section 9(e), as previously amended by Amendment No. 1 to this Contract) by adding the following new sentence at its end:

Notwithstanding the foregoing, execution of Amendment No. 3 to this Contract concluded reconsideration of the amount and character of franchise fees provided for in this section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) for the five-year period, May 1, 1997, through April 30, 2002; within one-hundred twenty (120) days after five years from the date of final execution of said Amendment No. 3, at the instance of either party hereto, the amount and character of the franchise fees provided for in this section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) may be reconsidered pursuant to this Section 9(e).

5. Amend Section 10(b)(1) by deleting said subsection in its entirety and replacing it with the following:

(b) Capital Account. (1) As partial consideration for the privileges granted by this Contract, the Concessioner shall establish a "Capital Account" by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations hereunder. Funds in the Capital Account, including interest earned thereon, belong to the Concessioner subject to the restrictions set forth herein. The Concessioner shall withdraw funds from said "Capital Account" for the purpose of payment of dredging expenses incurred under Section 1(d) as amended herein. Funds in the Capital Account shall be used by the Concessioner only for said dredging expenses as approved by the Superintendent, except that funds accrued that exceed the cost of the dredging project shall be used to construct qualified improvements that directly support the Concession operation. All expenditures from said Capital Account shall be approved by the Superintendent in accordance with priorities established by the National Park Service Regional Director. Projects estimated to cost over \$1,000,000 must be approved by the Director. Funds contained in the Capital Account prior to the effective date of Amendment No. 3 to this Contract shall be included in the Capital Account described herein.

6. Amend Section 10(b)(3) , as previously amended, by deleting the first paragraph and replacing it with the following:

\*\*\* STATUE OF LIBERTY NATIONAL MONUMENT \*\*\*  
\*\*\*\* NATIONAL PARK SERVICE - NORTHEAST REGION \*\*\*\*

(b)(3) The Concessioner shall make the following payments into the Capital Account:

(A) (i) From the execution date of Amendment No. 3 to this Contract through March 31, 1997, deposit (within fifteen days after the end of the preceding month) into the Capital Account FIFTEEN PERCENT (15%) of its passenger fare and freight gross receipts for the preceding month;

(ii) For the period 4/1/97 through 3/31/99, deposit into the Capital Account the following:

(a) On 4/1/97, the sum of FIVE MILLION DOLLARS (\$5,000,000)

(b) Within 45 days after 3/31/98, FIFTEEN PERCENT (15%) of its gross receipts from fares and freight (gross receipts) for the year prior to 3/31/98 in excess of Eighteen and One-half Million Dollars (\$18,500,000).

(c) Within 45 days after 3/31/99, FIFTEEN PERCENT (15%) of its gross receipts for the year prior to 3/31/99 in excess of Eighteen and One-half Million Dollars (\$18,500,000).

(d) Provided, however, if the gross receipts in either or both of the years defined in (b) and (c) above are less than Eighteen and One-half Million Dollars (\$18,500,000), the deposits for the months succeeding 3/31/99 shall be offset until the amount of gross receipts on which such deposits are calculated shall equal the amount by which the gross receipts were less than Eighteen and One-Half Million Dollars (\$18,500,000) in either or both of said years.

(iii) Beginning May 1, 1999 the Concessioner shall deposit in said Capital Account on a monthly basis, five percent (5%) of the Concessioner's gross receipts from fares and freight for the previous month.

(B) If for any reason beyond the Concessioner's control its operations are interrupted for three (3) or more consecutive days during the period May 1, 1997,

through April 30, 1999, the effective day for the beginning of the additional consideration provided for in subsection (A) (iii) hereof and subsection 9(a)(2) relating to passenger fare and freight receipts shall be delayed for a period of time equal to the periods of interruption(s) in operations.

In all other respects the said Contract, as amended, is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at BOSTON, MA 18th day of MARCH, 1997  
Philadelphia, PA.

CONCESSIONER

UNITED STATES OF AMERICA

By Joseph A. Moran  
Joseph A. Moran  
President  
Circle Line-Statue of Liberty

By Marie Rust  
Marie Rust  
Regional Director, Northeast Region  
National Park Service

ATTEST:

By Robert F. Barry  
Robert F. Barry  
Printed Name

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX B**  
**EXISTING CONTRACT EXTENSIONS**

2006 PROSPECTUS - FOR REFERENCE USE

[Federal Register: October 1, 2003 (Volume 68, Number 190)]  
[Notices]  
[Page 56648]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr01oc03-93]

-----  
DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Contracts and Permits

AGENCY: National Park Service, Interior.

ACTION: Public notice.

-----  
SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of 3 years.

EFFECTIVE DATE: April 1, 2004.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on March 31, 2004. The National Park Service has determined that the proposed extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for a new long-term concession contract covering this operation.

Concessioner ID No.	Concessioner name	Park
<b>STLI001-89</b> .....	Circle Line-Statue of Liberty Ferry Inc.	Statue of Liberty National Monument/ Ellis Island.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513-7156.

Dated: August 29, 2003.  
Richard G. Ring,  
Associate Director, Administration, Business Practices and Workforce Development.  
[FR Doc. 03-24877 Filed 9-30-03; 8:45 am]  
BILLING CODE 4312-53-M

**APPENDIX C**

**SAMPLE ANNUAL FINANCIAL REPORT**

2006 PROSPECTUS - FOR REFERENCE USE

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2006 PROSPECTUS - FOR REFERENCE USE

## ANNUAL FINANCIAL REPORT GENERAL INSTRUCTIONS

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The Annual Financial Report (AFR) instruction booklet was prepared by the National Park Service, Concessions Division, to help the preparers complete the enclosed forms. Each form will have a corresponding page which will explain each line item in further detail.

### **Who Must File**

All concessioners with gross receipts of \$250,000 or greater shall file Form Number 10-356, Concessioners Annual Financial Report. Concessioners with gross receipts less than \$250,000 shall file Form No.10-356A. Concessioners operating in more than one park under the same contract shall prepare a separate report for each park where the operations are located.

### **When and Where to File**

Concessioners must file an annual financial report within the time period specified in the authorizing document (contract or permit). Concessioners shall submit one signed original and one copy to the Superintendent administering the area. The Concessioner shall also submit one additional signed original directly to the Concessions Program Center which is located at:

#### US Postal Mailing Address

National Park Service  
Concessions Program Center - Finance  
PO Box 25287  
Denver, Colorado 80225-0287

#### Non US Postal Mailings

National Park Service  
Concessions Program Center-Finance  
12795 W. Alameda Pkwy  
Lakewood, Colorado 80228

### **Where to Get Forms**

Concessioners may obtain the Concessioner Annual Financial Report forms from the Superintendent or copy the forms directly from the instruction booklet.

### **Rounding**

All amounts should be rounded to the nearest dollar.

### **Requirement for Audit and Review**

If annual gross receipts equal or exceed \$250,000, the Primary Schedules (Schedules A through F and M) must be *reviewed* by an independent certified public accountant (CPA) in accordance with the Statements on Auditing Standards as issued by the Auditing Standards Board which is governed by the American Institute of Certified Public Accountants (AICPA). If annual gross receipts equal or exceed \$1,000,000, the Primary Schedules must be *audited* by an independent CPA in accordance with the same statements and standards mentioned above. In both circumstances mentioned above, the supplemental schedules must also be fully completed.

If you have any questions, you may call the Concessions Program Center at 303-987-6900.



**SCHEDULE A - STATEMENT OF INCOME**

- Line 1. Enter the amount shown on Schedule H, Column A, Line 2.  
Line 2. Enter the amount shown on Schedule H, Column A, Line 3.  
Line 3. Subtract Line 2 from Line 1 and enter the amount. This amount should equal the amount shown on Schedule H, Column A, Line 4.  
Line 4. Enter the amount shown on Schedule H, Column A, Line 8.  
Line 5. Subtract Line 4 from Line 3 and enter the amount. This amount should equal the amount shown on Schedule H, Column A, Line 9.  
Line 6. Enter the amount shown on Schedule H, Column A, Line 34.  
Line 7. Subtract Line 6 from Line 5 and enter the amount. This amount should equal the amount shown on Schedule H, Column A, Line 35.  
Line 8. Enter the amount shown on Schedule I, Line 29.  
Line 9. Enter the amount shown on Schedule B, Line 34.  
Line 10. Add Lines 8 and 9 and enter the amount.  
Line 11. Subtract Line 10 from Line 7 and enter the amount.  
Line 12. Enter the amount paid or accrued for the rental of facilities except for any amount included in Schedule B. This category will include mostly rental of facilities outside the park boundary.  
Line 13. Self-Explanatory.  
Line 14. Self-Explanatory.  
Line 15. Self-Explanatory.  
Line 16. Enter the amount shown on Schedule D, Column H, Line 6.  
Line 17. Enter the total year's amortization charge for all classes of intangible assets.  
Line 18. Enter the description of other fixed expenses and amounts for these fixed expenses not shown elsewhere.  
Line 19. Enter the description of other fixed expenses and amounts for these fixed expenses not shown elsewhere.  
Line 20. Add Lines 12 through 19 and enter the amount.  
Line 21. Subtract Line 20 from Line 11 and enter the amount.  
Line 22. Enter the total amount of all interest and dividend revenue accrued and earned during the year.  
Line 23. Enter the total amount of all gains/losses resulting from the sale of assets.  
Line 24. Enter the total amount of all compensation received from subconcessioners. This amount should equal the amount shown on Schedule B, Line 30.  
Line 25. Enter income from sources not shown elsewhere.  
Line 26. Add Lines 22 through 25 and enter the amount.  
Line 27. Subtract Line 26 from Line 21 and enter the amount.  
Line 28. Self-Explanatory.  
Line 29. Self-Explanatory.  
Line 30. Add Lines 28 and 29 and enter the amount.  
Line 31. Subtract Line 30 from Line 27 and enter the amount.

**STATEMENT OF INCOME**

CONCESSIONER:

YEAR ENDING:

This Year                      Last Year  
20\_\_\_\_                              20\_\_\_\_

**DEPARTMENTAL INCOME**

1. GROSS RECEIPTS (Schedule H., Column A., Line 2) . . . . .	_____	_____
2. RETURNS AND ALLOWANCES (Schedule H., Column A., Line 3)	_____	_____
3. NET SALES (Schedule H., Column A., Line 4) . . . . .	_____	_____
4. COST OF SALES (Schedule H., Column A., Line 8) . . . . .	_____	_____
5. GROSS PROFIT (Schedule H., Column A., Line 9) . . . . .	_____	_____
6. TOTAL DIRECT EXPENSES (Schedule H., Column A., Line 34) .	_____	_____
7. DEPARTMENTAL INCOME (LOSS) (Schedule H., Column A.,	_____	_____

**INDIRECT OPERATING EXPENSES**

8. General and Administrative Expenses (Schedule I., Line 29) . . . . .	_____	_____
9. Government Benefits (Schedule B., Line 34) . . . . .	_____	_____
10. TOTAL INDIRECT OPERATING EXPENSES . . . . .	_____	_____
11. TOTAL INCOME (LOSS) FROM OPERATIONS BEFORE FIXED EXPENSES . . . . .	_____	_____

**FIXED EXPENSES**

12. Rent . . . . .	_____	_____
13. Property Taxes . . . . .	_____	_____
14. Business/Liability/Property Insurance . . . . .	_____	_____
15. Interest Expense . . . . .	_____	_____
16. Depreciation (Schedule D., Column H., Line 6) . . . . .	_____	_____
17. Amortization . . . . .	_____	_____
Other:		
18. _____ . . . . .	_____	_____
19. _____ . . . . .	_____	_____
20. TOTAL FIXED EXPENSES . . . . .	_____	_____
21. INCOME (LOSS) BEFORE INCOME TAXES AND OTHER INCOME AND/OR (EXPENSES) . . . . .	_____	_____

**OTHER INCOME (EXPENSES)**

22. Interest and Dividend Income . . . . .	_____	_____
23. Gain (Loss) on Sale of Property . . . . .	_____	_____
24. Commissions/Fees/Compensation from Subconcessioners (Sch. B., Line 30) . . . . .	_____	_____
25. Other: _____ . . . . .	_____	_____
26. TOTAL OTHER INCOME (EXPENSES) . . . . .	_____	_____
27. INCOME (LOSS) BEFORE INCOME TAXES . . . . .	_____	_____

**INCOME TAXES**

28. Federal . . . . .	_____	_____
29. State and Local . . . . .	_____	_____
30. TOTAL INCOME TAXES . . . . .	_____	_____
31. NET INCOME (LOSS) . . . . .	=====	=====

**SCHEDULE B - COMPUTATION OF GOVERNMENT BENEFITS**

- Line 1. Enter the amount of the flat fee specified in the contract/permit.
- Line 2. Enter the fees for the use of Government Improvements per the contract/permit.
- Line 3. Enter the amount from Schedule A, Line 1.
- Lines 4-6. Enter the name and amount of gross receipts from all subconcessioners that provide services authorized in the contract/permit.
- Line 7. Add Lines 4 through 6 and enter the amount.
- Line 8. Enter the amounts applicable to authentic United States Indian, Alaskan Native, Native Samoan and Native Hawaiian handicraft.
- Line 9. Enter only the amount applicable to the categories provided.
- Line 10. Enter only the amount applicable to the categories provided.
- Line 11. Enter only the amount applicable to the categories provided.
- Line 12. Enter only the amount applicable to the categories provided.
- Line 13. Enter only the amount applicable to the categories provided.
- Line 14. Enter only the amount applicable to the categories provided.
- Line 15. Enter only the amount applicable to the categories provided.
- Line 16. Enter only the amount applicable to the categories provided.
- Line 17. Enter only the amount applicable to the categories provided.
- Line 18. Enter only the amount applicable to the categories provided.
- Line 19. Enter only the amount applicable to the categories provided.
- Line 20. Enter the description and amount for other authorized deductions not shown elsewhere.
- Line 21. Add Lines 8 through 20 and enter the amount.
- Line 22. Subtract Line 21 from the sum of Lines 3 and 7 and enter the amount.
- Lines 23-25. Enter the percentage rate(s) as stated in the contract/permit. Calculate and enter the appropriate amount.
- Line 26. Add Lines 23 through 25 and enter the amount.
- Lines 27-29. Enter the subconcessionaire's names and the amount of commissions, fees or compensation received from the subconcessioners shown on Line 4 through 6.
- Line 30. Add Lines 27 through 29 and enter the amount.
- Line 31. Enter one half (50%) of the amount shown on Line 30.
- Line 32. Add Lines 1, 2, 26, and 31 and enter the amount.
- Line 33. Enter the amount shown on Schedule M, Line 10.
- Line 34. Add Lines 32 and 33 and enter the amount. This amount should equal the amount shown on Schedule A, Line 9.

**COMPUTATION OF GOVERNMENT BENEFITS**

CONCESSIONER: \_\_\_\_\_

YEAR ENDING: \_\_\_\_\_

1. FLAT FEE ..... \_\_\_\_\_

2. FEE FOR USE OF GOVERNMENT-OWNED IMPROVEMENTS (Building Use Fee) .. \_\_\_\_\_

**PERCENTAGE FEE**

3. Gross Receipts (Schedule A., Line 1) ..... \_\_\_\_\_  
 PLUS: Gross Receipts of Subconcessioners

Name of Subconcessioner	Amount
4. _____	_____
5. _____	_____
6. _____	_____
7. Total Gross Receipts of Subconcessioners .....	_____

**LESS: Authorized Deductions (If Included in Gross Receipts)**

8. Native Handicraft ..... \_\_\_\_\_

9. Intracompany Earnings ..... \_\_\_\_\_

10. Optional Services ..... \_\_\_\_\_

11. Charges for Employees' Meals, Lodging,  
and Transportation ..... \_\_\_\_\_

12. Cash Discounts on Purchases ..... \_\_\_\_\_

13. Cash Discounts on Sales ..... \_\_\_\_\_

14. Returned Sales and Allowances ..... \_\_\_\_\_

15. Excise Taxes Added to Sales Price ..... \_\_\_\_\_

16. Gasoline Taxes ..... \_\_\_\_\_

17. Cost of Fishing Licenses Fees Sold ..... \_\_\_\_\_

18. Cost of Postage Stamps Sold ..... \_\_\_\_\_

19. Outside of Park Sales (Included in Gross Receipts) \_\_\_\_\_

**Other Authorized Deductions**

20. \_\_\_\_\_

21. Total Authorized Deductions .....

22. Total Gross Receipts Subject to Percentage Fee .....

23. Fee Structure \_\_\_\_\_ % of \_\_\_\_\_ = .....

24. \_\_\_\_\_ % of \_\_\_\_\_ = .....

25. \_\_\_\_\_ % of \_\_\_\_\_ = .....

26. TOTAL PERCENTAGE FEE .....

**FIFTY PERCENT OF COMMISSIONS/FEES/COMPENSATION FROM SUBCONCESSIONERS**

Name of Subconcessioner	Amount
27. _____	_____
28. _____	_____
29. _____	_____
30. Total Commissions/Fees/Compensation From Subconcessioners (Schedule A., Line 24) .....	_____

31. FIFTY PERCENT OF COMMISSIONS/FEES/COMPENSATION FROM SUBCONCESSIONER .....

32. TOTAL FLAT FEE, PERCENTAGE FEE & SUBCONCESSIONER FEE .....

33. TOTAL SPECIAL ACCOUNT EXPENSE FOR CURRENT PERIOD (Schedule M., Line \_\_\_\_\_)

34. TOTAL FRANCHISE FEE AND SPECIAL ACCOUNT EXPENSE (Schedule A., Line 9) .....

**SCHEDULE C - BALANCE SHEET**

- Line 1. Self-Explanatory.  
Line 2. Self-Explanatory.  
Line 3. Self-Explanatory.  
Line 4. Self-Explanatory.  
Line 5. Enter the amounts receivable from shareholders, officers and related entities. This amount must be fully explained in Schedule F, Notes to the Financial Statements.  
Line 6. Self-Explanatory.  
Line 7. Self-Explanatory.  
Line 8. Enter the total amount of other current assets not shown elsewhere.  
Line 9. Add Lines 1 through 8 and enter the amount.  
Line 10. Enter the amount shown on Schedule D, Column H, Line 4.  
Line 11. Enter the amount shown on Schedule D, Column H, Line 8.  
Line 12. Subtract Line 11 from Line 10 and enter the amount. This amount should equal the amount shown on Schedule D, Column H, Line 9.  
Line 13. Self-Explanatory.  
Line 14. Self-Explanatory.  
Line 15. Add Lines 12 through 14 and enter the amount.  
Lines 16-17. Enter the description and amount of other assets not shown elsewhere.  
Line 18. Add Lines 16 and 17 and enter the amount.  
Line 19. Add Lines 9, 15 and 18 and enter the amount.  
Line 20. Enter the amounts payable from shareholders, officers, and related entities. This amount must be fully explained in Schedule F, Notes to the Financial Statements.  
Lines 21-25. Self-Explanatory.  
Line 26. Enter amounts such as advance deposits for future services not yet rendered (e.g., river trips and lodging).  
Line 27. Enter other current liabilities not shown elsewhere.  
Line 28. Add Lines 20 through 27 and enter the amount.  
Line 29. Self-Explanatory.  
Line 30. Enter all other long-term liabilities not shown elsewhere.  
Line 31. Add Lines 29 and 30 and enter the amount.  
Line 32. Add Lines 28 and 31 and enter the amount.  
Line 33. To be filled out by Sole Proprietorship or Partnerships but **NOT** Corporations.  
Lines 34-37. To be filled out by Corporations but **NOT** Sole Proprietorship or Partnerships.  
Line 38. Sole Proprietorship and Partnerships enter the amount from Line 33. Corporations enter the total of Lines 34, 36 and 37 less Line 35.  
Line 39. Add Lines 32 and 38 and enter amount.

**NOTE: LINE 19 MUST EQUAL LINE 39. IF THE ASSETS REPORTED BY THE CONCESSIONER ARE USED FOR BOTH IN- PARK AND OUT-OF-PARK REVENUE THE ASSETS REPORTED ON THE BALANCE SHEET SHOULD BE PROPORTIONAL TO THE AMOUNT OF SALES GENERATED IN THE PARK IN MOST CASES.**

**BALANCE SHEET**

CONCESSIONER:

YEAR ENDING:

	This Year	Last Year
	20__	20__
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
1. Cash .....	_____	_____
2. Marketable Securities .....	_____	_____
3. Inventories - Merchandise .....	_____	_____
4. Accounts Receivable .....	_____	_____
5. Notes Receivable - Related Party .....	_____	_____
6. Notes Receivable - Other .....	_____	_____
7. Prepaid Expenses .....	_____	_____
8. Other: _____ .....	_____	_____
9. TOTAL CURRENT ASSETS .....	_____	_____
<b>FIXED ASSETS</b>		
10. Depreciable Fixed Assets (Schedule D., Column H., Line 4) .....	_____	_____
11. Less: Accumulated Depreciation (Schedule D., Column H., Line 8) ..	_____	_____
12. Net Depreciable Fixed Assets (Schedule D., Column H., Line 9) .....	_____	_____
13. Construction in Progress .....	_____	_____
14. Land .....	_____	_____
15. TOTAL FIXED ASSETS .....	_____	_____
Other Assets (Identify)		
16. _____ .....	_____	_____
17. _____ .....	_____	_____
18. TOTAL OTHER ASSETS .....	_____	_____
19. TOTAL ASSETS .....	=====	=====
<b>LIABILITIES</b>		
<b>CURRENT LIABILITIES</b>		
20. Notes Payable - Related Party .....	_____	_____
21. Notes Payable - Other .....	_____	_____
22. Accounts Payable .....	_____	_____
23. Current Maturities on Long - Term Debt .....	_____	_____
24. Government Franchise Fee Payable .....	_____	_____
25. Accrued Liabilities .....	_____	_____
26. Advance Deposits .....	_____	_____
27. Other: _____ .....	_____	_____
28. TOTAL CURRENT LIABILITIES .....	_____	_____
<b>LONG TERM LIABILITIES</b>		
29. Long - Term Debt, Less Current Maturities .....	_____	_____
30. Other: _____ .....	_____	_____
31. TOTAL LONG - TERM LIABILITIES .....	_____	_____
32. TOTAL LIABILITIES .....	_____	_____
<b>EQUITY</b>		
33. Partner's or Proprietor's Capital .....	_____	_____
34. Common and Preferred Stock .....	_____	_____
35. Less: Treasury Stock .....	_____	_____
36. Additional Paid - In Capital .....	_____	_____
37. Retained Earnings .....	_____	_____
38. TOTAL EQUITY .....	_____	_____
39. TOTAL LIABILITIES AND EQUITY .....	=====	=====

---

**SCHEDULE D - DEPRECIABLE FIXED ASSETS**

---

**General**

Columns A and B are to be used only for assets in which the concessioner claims a Leasehold Surrender Interest (Possessory Interest), pursuant to the terms of the concessions contract.

Cost of Concessioner improvements in which a Leasehold Surrender Interest is claimed are to be entered in Column A. Concessioner improvements are defined as buildings, structures, fixtures, equipment, and other improvements that are **affixed to or resting upon the lands assigned in such manner as to be part of the realty**. The cost of Government Improvements in which a Leasehold Surrender Interest is claimed are to be entered under Column B. Government Improvements are defined as any building, structures, fixtures equipment and other improvements which are assigned, by the NPS, within the contract provisions.

If the concessioner has waived any Leasehold Surrender Interest (Possessory Interest) in Concessioner and/or Government improvements, pursuant to the contract, the concessioner's costs of any alterations, additions, etc., to such improvements should be entered in Column C or D. If the concessioner has made any additions which do not qualify as Leasehold Surrender Interest, per contract terms, these additions should also be entered in these two columns.

Columns E, F and G - These columns relate to assets such as transportation, furniture, fixtures, equipment, and other assets for which the concessioner may not claim a Leasehold Surrender Interest (Possessory Interest).

Concessioners showing amounts on lines 2, 3, and 7 **must** complete Schedule K, "Additions to and Disposals of Fixed Assets," giving details of assets disposed of or acquired.

- Line 1. Enter in the appropriate columns the fixed asset balances at the beginning of the year. The amounts entered must agree with the amounts on Line 4, ending balance on the previous year's report. If the amounts do not agree, attach an explanation.
- Line 2. Enter in the appropriate columns additions to fixed assets during the current year.
- Line 3. Enter in the appropriate columns disposals of fixed assets during the current year.
- Line 4. Subtract Line 3 from the sum of Lines 1 and 2 and enter the amount.
- Line 5. Enter in the appropriate columns the accumulated depreciation balances at the beginning of the year. The amounts entered must agree with the amounts on Line 8, ending balance on the previous year's report. If the amounts do not agree, attach an explanation.
- Line 6. Enter in the appropriate columns the depreciation of fixed assets during the current year.
- Line 7. Enter in the appropriate columns the accumulated depreciation on fixed assets disposed of during the current year.
- Line 8. Subtract Line 7 from the sum of Lines 5 and 6 and enter the amount.
- Line 9. Subtract Line 8 from Line 4 and enter the amount.

**DEPRECIABLE FIXED ASSETS**

CONCESSIONER:

YEAR ENDING:

	ASSETS IN WHICH LEASEHOLD SURRENDER INTEREST IS CLAIMED		ASSETS IN WHICH NO LEASEHOLD SURRENDER INTEREST IS CLAIMED			NON LEASEHOLD SURRENDER INTEREST ASSETS			Total	
	A	B	C	D	E	F	G	H		
										Concessioner Improvements
1										
2.*										
3.*										
4.										
<b>B. ACCUMULATED DEPRECIATION</b>										
5.										
6.										
7.*										
8.										
9.										

\* IF ANY ENTRIES ARE MADE ON LINES 2, 3 OR 7, COMPLETE SCHEDULE K.

Schedule D

**SCHEDULE E - STATEMENT OF CASH FLOWS**

- Line 1. Enter the amount of cash received from customers.
- Line 2. Enter the amount of cash paid for merchandise.
- Line 3. Enter the amount of cash paid for wages and other operating expenses.
- Line 4. Enter the amount of cash paid for interest.
- Line 5. Enter the amount of cash paid for taxes.
- Line 6. Enter the amount of cash paid to the National Park Service.
- Line 7. Add Lines 1 through 6.
- Line 8. Enter the amount paid to acquire fixed assets.
- Line 9. Enter the amount of money received from the sale of assets.
- Line 10. Enter the amount of money received from the sale of land.
- Line 11. Enter the description and amounts for other investing activities not shown elsewhere.
- Line 12. Add Lines 8 through 11.
- Line 13. Enter the amount of the increase or decrease in intercompany receivables.
- Line 14. Enter the amount of cash received from the issuance of stock.
- Line 15. Enter to amount of cash paid to retire outstanding bonds.
- Line 16. Enter the amount of the dividends paid to the shareholders.
- Line 17. Enter the description and amounts for other financing activities not shown elsewhere.
- Line 18. Add Lines 13 through 17.
- Line 19. Add Line 7, 12, and 18.
- Line 20. Enter the amount shown on Schedule C, 2nd Column, Line 1.
- Line 21. Add Lines 19 and 20. The sum should equal the amount shown on Schedule C, 1st Column, Line 1.
- Line 22. Enter the amount shown on Schedule A, Line 31.
- Line 23. Enter the amount shown on Schedule D, Column I, Line 6.
- Line 24. Enter the amount shown on Schedule A, Line 17.
- Line 25. Enter the amount of provision for losses on accounts receivable.
- Line 26. Enter the amount shown on Schedule A, Line 23.
- Line 27. Enter the amount of the increase or decrease in the inventory.
- Line 28. Enter the amount of the increase or decrease in the accounts receivable.
- Line 29. Enter the amount of the increase or decrease in the other assets.
- Line 30. Enter the amount of the increase or decrease in the prepaid expenses.
- Line 31. Enter the amount of the increase or decrease in the accounts payable.
- Line 32. Enter the amount of the increase or decrease in the franchise fee payable.
- Line 33. Enter the amount of the increase or decrease in the accrued liabilities.
- Line 34. Enter the amount of the increase or decrease in the advance deposits.
- Line 35. Enter the amount of the increase or decrease in the other liabilities.
- Line 36. Enter the amount of the increase or decrease in the division equity.
- Line 37. Sum lines 23 through 36 and add or subtract the difference from Line 22.

**STATEMENT OF CASH FLOWS**

CONCESSIONER:

YEAR ENDING:

**CASH FLOWS FROM OPERATING ACTIVITIES**

1	Cash received from customers .....	_____
2	Cash paid for merchandise .....	_____
3	Cash paid for wages and other operating expenses .....	_____
4	Cash paid for interest .....	_____
5	Cash paid for taxes .....	_____
6	Cash paid to National Park Service .....	_____
7	Net Cash Flows Provided (Used) by Operating Activities .....	_____

**CASH FLOWS FROM INVESTING ACTIVITIES**

8	Purchase of fixed assets .....	_____
9	Purchase from sale of equipment .....	_____
10	Purchase from sale of land .....	_____
11	Other .....	_____
12	Net Cash Flows Provided (Used) by Investing Activities .....	_____

**CASH FLOWS FROM FINANCING ACTIVITIES**

13	Net increase/decrease in intercompany receivable account .....	_____
14	Cash received from issuing stock .....	_____
15	Cash paid to retire bonds .....	_____
16	Cash paid for dividends .....	_____
17	Other .....	_____
18	Net Cash Flows Provided (Used) by Financing Activities .....	_____
19	NET INCREASE (DECREASE) IN CASH .....	=====
20	CASH AT BEGINNING OF YEAR (Schedule C., 2nd Column, Line 1) .....	_____
21	CASH AT END OF YEAR (Schedule. C., 1st Column, Line 1) .....	_____

**RECONCILIATION OF NET INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES:**

22	Net income (Schedule A, line 31) .....	_____
	Adjustments to reconcile net income to net cash provided by operating activities	
23	Depreciation expense (Schedule D, column G, line 6) .....	_____
24	Amortization expense (Schedule A, line 17) .....	_____
25	Provision for losses on accounts receivable .....	_____
26	Gain or loss on sale of fixed assets .....	_____
27	(Increase) decrease in inventories .....	_____
28	(Increase) decrease in accounts receivable .....	_____
29	(Increase) decrease in other assets .....	_____
30	(Increase) decrease in prepaid expenses .....	_____
31	Increase (decrease) in accounts payable .....	_____
32	Increase (decrease) in franchise fee payable .....	_____
33	Increase (decrease) in accrued liabilities .....	_____
34	Increase (decrease) in advance deposits .....	_____
35	Increase (decrease) in other liabilities .....	_____
36	Increase (decrease) in Division Equity .....	_____
37	Net cash provided by operating activities .....	_____

Notes to Statement of Cash Flows should appear on Schedule F (Notes to the Financial Statements)

---

**SCHEDULE F - NOTES TO THE FINANCIAL STATEMENTS**

---

There should be included in the notes a description of all significant accounting policies followed by the reporting entity. Commonly required disclosures include, but are not limited to, policies relating to:

- a. Accounting Method
- b. Depreciation Method(s)
- c. Amortization of Intangibles
- d. Inventory Pricing
- e. Pension, Profit Sharing, and Stock Option Plans
- f. Computation of Net Income per Share
- g. Amortization of the Cost in Excess of Net Assets of Business Acquired
- h. Accounting for Income Taxes
- I. Allocation Method(s)

This section should be followed by such additional notes as are necessary to provide full disclosure of all significant events or conditions reflected in the financial statements, or as otherwise required by the rules of professional accounting or regulatory organizations.

The following are typical items with respect to which all significant facts should be disclosed through such notes:

- a. Long-Term Debt Agreements
- b. Leases
- c. Contingent Liabilities
- d. Pending Lawsuits
- e. Pension and Profit Sharing Plans
- f. Income Taxes
- g. Changes in Accounting Methods
- h. Long-Term Contracts
- I. Extraordinary Items of Income or Expenses
- j. Related Party Transactions, including Inter-company Charges

2006 PROSPECTUS - FOR REFERENCE USE

NOTES TO THE FINANCIAL STATEMENTS

CONCESSIONER:

YEAR ENDING:

2006 PROSPECTUS - FOR REFERENCE USE

---

**SCHEDULE G - DETAIL OF GROSS RECEIPTS**

Enter on the appropriate lines the gross receipts from each of the services listed. Enter subtotal by department, as indicated. Amounts entered in the "This Year Departmental Total" column must be forwarded to Schedule H. Total gross receipt amounts reported on Schedules A, G, and H must be the same.

If the operation consists of gross receipts that are earned both in and outside the park boundary, the gross receipts and expenses reported on the Annual Financial Report (AFR) shall be proportional to the percentage of time spent inside the park boundary. An example would be a guide service which enters the park two days as part of a five-day trip. If the revenue per day is \$100 then the total revenue generated by the trip would be \$500. The portion reported on the AFR would be \$200 which is calculated by dividing 2 days (days in the park) by 5 days (total days for the trip) which calculates a percentage of 40 percent. The total revenue is then multiplied by the percentage which generates the revenue earned within the park boundaries or \$200 ( $\$500 \times 40\%$ ).

2006 PROSPECTUS - FOR REFERENCE USE

**DETAIL OF GROSS RECEIPTS**

CONCESSIONER:

YEAR ENDING:

	Amount	This Year Departmental Total 20____	Last Year Departmental Total 20____
<b>LODGING</b>			
1. Hotel and Motel .....	_____	_____	_____
2. Cabins and Cottages .....	_____	_____	_____
3. Tent .....	_____	_____	_____
<b>FOOD</b>			
4. Restaurant (Full Service) .....	_____	_____	_____
5. Cafeteria .....	_____	_____	_____
6. Snack Bar and Fast Food .....	_____	_____	_____
7. Alcoholic Beverage Bar .....	_____	_____	_____
<b>SOUVENIRS</b>			
8. Gifts, Curios .....	_____	_____	_____
9. Genuine Authorized Native Handicraft .....	_____	_____	_____
<b>GENERAL MERCHANDISE</b>			
10. Grocery .....	_____	_____	_____
11. Package Liquor .....	_____	_____	_____
12. Photographic .....	_____	_____	_____
13. Other .....	_____	_____	_____
<b>AUTO SERVICE</b>			
14. Fuel and Oil .....	_____	_____	_____
15. Parts, Service and Other .....	_____	_____	_____
<b>MARINA</b>			
16. Slips and Mooring .....	_____	_____	_____
17. Houseboat Rental .....	_____	_____	_____
18. Boat and Motor Rental .....	_____	_____	_____
19. Fuel and Oil .....	_____	_____	_____
20. Boat and Motor Sales .....	_____	_____	_____
21. Boat Repair .....	_____	_____	_____
22. Dry Storage .....	_____	_____	_____
23. Other .....	_____	_____	_____
<b>TRANSPORTATION</b>			
24. Boat .....	_____	_____	_____
25. Cruise Ship .....	_____	_____	_____
26. Vehicle .....	_____	_____	_____
27. Other (Identify) _____ .....	_____	_____	_____
28. Saddle Horse and Livery .....	_____	_____	_____
29. Float Trip and River Runners .....	_____	_____	_____
<b>OTHER</b>			
30. Skiing Fees (Cross Country Fees and Lift Tickets) .....	_____	_____	_____
31. Trailer Village .....	_____	_____	_____
32. Vending Machine .....	_____	_____	_____
33. Bathhouse .....	_____	_____	_____
34. Canoe and Tube Rental .....	_____	_____	_____
35. Rentals (Auto, Equipment, Other) .....	_____	_____	_____
36. Hunting Guides .....	_____	_____	_____
37. Guide and Instructional Service .....	_____	_____	_____
38. Health Service .....	_____	_____	_____
39. Golf Sales .....	_____	_____	_____
40. Employee Housing and Meals .....	_____	_____	_____
41. Brochure Sales .....	_____	_____	_____
42. Other (Identify) _____ .....	_____	_____	_____
43. Other (Identify) _____ .....	_____	_____	_____
44. Other (Identify) _____ .....	_____	_____	_____
45. <b>TOTAL GROSS RECEIPTS (Schedule H, Column A, Line 2)</b> .....	_____	_____	_____

**SCHEDULE H - DEPARTMENTAL INCOME AND EXPENSES****General**

The schedule of Departmental Income provides for the identification and presentation of financial data in a form that isolates and defines the operations of each revenue and cost center and provides a basis for internal and external comparisons.

Concessioners providing services at several locations within a park may consolidate the results of the operations by department.

This schedule provides columns for a breakdown of departmental income. The departmental breakdown required is described on Schedule G.

If additional columns are needed, use Schedule H-1 (Continuation Sheet). Please number the continuation sheets and continue to identify Departmental columns in alphabetical order, e.g., E, F, G, etc.

Column A must reflect the total of all entries on all other columns including those on the continuation sheets.

- Line 1. Enter the name of the department as identified on Schedule G.
- Line 2. Enter, by department, the total gross receipts realized or accruing to the concession from all sales. Amounts entered should be exclusive of sales, excise, or other taxes collected for any taxing authority. If any taxes are included, please indicate.
- Line 3. Self-Explanatory.
- Line 4. Subtract Line 3 from 2 and enter the amount by department.
- Line 5. Enter, by department, the beginning inventory. The amount entered must agree with amounts on Line 7, ending inventory of the previous year's report. If the amounts do not agree, attach an explanation.
- Line 6. Enter, by department, the cost of all purchases at gross invoice price less discounts plus transportation, storage and delivery charges.
- Line 7. Enter, by department, the amount of the ending inventory.
- Line 8. Subtract Line 7 from the sum of Lines 5 and 6 and enter the amount by department.
- Line 9. Subtract Line 8 from Line 4 and enter the difference by department.
- Line 10. Enter, by department, the amount of direct salary and wage expense applicable to each category.
- Line 11. Enter, by department, the allocated portion of payroll taxes, health and life insurance, pension expenses and other related expenses.
- Line 12. Enter, by department, the sum of Lines 10 and 11.

(Continued on Page 19)

**SCHEDULE OF DEPARTMENTAL INCOME AND EXPENSES**

CONCESSIONER:

YEAR ENDING:

	A	B	C	D	E
1. <b>DEPARTMENT</b> .....	Total All				
2. <b>GROSS RECEIPTS</b> (Schedule A., Line 1) .....	Columns				
3. <b>RETURNS AND ALLOWANCE</b> (Schedule A., Line 2) .....					
4. <b>NET SALES</b> (Schedule A., Line 3) .....					
<b>COST OF SALES</b>					
5. Inventory, Beginning .....					
6. Plus Purchases .....					
7. Less - Ending Inventory .....					
8. <b>TOTAL COST OF SALES</b> (Schedule A., Line 4) .....					
9. <b>GROSS PROFIT</b> (Schedule A., Line 5) .....					
<b>DIRECT EXPENSE</b>					
<b>DIRECT LABOR</b>					
10. Salaries and Wages .....					
11. Payroll Taxes and Benefits .....					
12. <b>TOTAL DIRECT LABOR</b> .....					
<b>OTHER DIRECT</b>					
13. Laundry .....					
14. Uniforms .....					
15. China, Silver and Glass .....					
16. Commissions .....					
17. Music and Entertainment .....					
18. Operating Supplies .....					
19. Equipment Rental .....					
20. Contract Services .....					
21. Utilities Expense .....					
22. Licenses and Fees .....					
23. Repair and Maintenance Government Improvements .....					
24. Repair and Maintenance Concessioner Improvements .....					
25. Repair and Maintenance Personal Property .....					
26. Transportation Expense .....					
27. Spoilage .....					
28. Reservation Expense .....					
29. Travel and Trip Expense .....					
Other (Identify) .....					
30. _____ .....					
31. _____ .....					
32. _____ .....					
33. <b>TOTAL OTHER DIRECT</b> .....					
34. <b>TOTAL DIRECT</b> (Schedule A., Line 6) .....					
35. <b>DEPARTMENTAL INCOME/(LOSS)</b> (Schedule A., Line 7) .....					

## SCHEDULE H - DEPARTMENTAL INCOME AND EXPENSES

(Continued from Page 17)

- Line 13. Self-Explanatory.
- Line 14. Self-Explanatory.
- Line 15. Self-Explanatory.
- Line 16. Enter, by department, the remuneration paid to authorized agents for business secured including travel agents' commissions.
- Line 17. Enter, by department, the costs incurred for music and entertainment, including films, musicians, piano rental, and professional entertainers.
- Line 18. Enter, by department, the cost of direct operating supplies.
- Line 19. Self-Explanatory.
- Line 20. Enter, by department, the cost of contracted services with outside concerns, such as the cost of cleaning dining rooms, washing windows, exterminating and disinfecting, and trash removal.
- Line 21. Enter, by department, the cost of utilities, such as coal, oil, gas and other fuels, electricity, water and sewage.
- Line 22. Enter, by department, the cost of all Federal, State and Local licenses, permits and fees other than franchise fees payable on Schedule B.
- Line 23. Enter, by department, the cost incurred in connection with the repair and maintenance of Government-Owned Improvements. "Government-Owned Improvements" are defined in the instructions for Schedule D (Page 9.) This figure shall exclude concessioner employee salaries, wages and benefits.
- Line 24. Enter, by department, the cost incurred in connection with the repair and maintenance of Concessioner-Owned Improvements and facilities as defined in the instructions for Schedule D (Page 9). This figure shall exclude concessioner employee salaries, wages and benefits.
- Line 25. Enter, by department, the cost incurred in connection with the repair and maintenance of Concessioner-Owned Personal Property. This figure shall exclude concessioner employee salaries, wages and benefits.
- Line 26. Enter, by department, the cost of fuel and oil, which includes both vehicles, boats, etc.
- Line 27. Self-Explanatory.
- Line 28. Enter, by department, the cost of a reservation system.
- Line 29. Enter, by department, the cost associated with transporting and lodging customers.
- Line 30. Enter, by department, the description and cost incurred for direct expenses not shown elsewhere.
- Line 31. Enter, by department, the description and cost incurred for direct expenses not shown elsewhere.
- Line 32. Enter, by department, the description and cost incurred for direct expenses not shown elsewhere.
- Line 33. Add Lines 13 through 32 and enter the amount, by department.
- Line 34. Add Lines 12 and 33 and enter the amount, by department.
- Line 35. Subtract Line 34 from Line 9 and enter the amount, by department.

**SCHEDULE OF DEPARTMENTAL INCOME AND EXPENSES**

CONCESSIONER:

YEAR ENDING:

	F	G	H	I	J
1. <b>DEPARTMENT</b> .....					
2. <b>GROSS RECEIPTS</b> (Schedule A., Line 1) .....					
3. <b>RETURNS AND ALLOWANCE</b> (Schedule A., Line 2) .....					
4. <b>NET SALES</b> (Schedule A., Line 3) .....					
<b>COST OF SALES</b>					
5. Inventory, Beginning .....					
6. Plus Purchases .....					
7. Less - Ending Inventory .....					
8. <b>TOTAL COST OF SALES</b> (Schedule A., Line 4) .....					
9. <b>GROSS PROFIT</b> (Schedule A., Line 5) .....					
<b>DIRECT EXPENSE</b>					
<b>    DIRECT LABOR</b>					
10. Salaries and Wages .....					
11. Payroll Taxes and Benefits .....					
12. <b>TOTAL DIRECT LABOR</b> .....					
<b>    OTHER DIRECT</b>					
13. Laundry .....					
14. Uniforms .....					
15. China, Silver and Glass .....					
16. Commissions .....					
17. Music and Entertainment .....					
18. Operating Supplies .....					
19. Equipment Rental .....					
20. Contract Services .....					
21. Utilities Expense .....					
22. Licenses and Fees .....					
23. Repair and Maintenance Government Improvements .....					
24. Repair and Maintenance Concessioner Improvements .....					
25. Repair and Maintenance Personal Property .....					
26. Transportation Expense .....					
27. Spoilage .....					
28. Reservation Expense .....					
29. Travel and Trip Expense .....					
Other (Identify) .....					
30. _____ .....					
31. _____ .....					
32. _____ .....					
33. <b>TOTAL OTHER DIRECT</b> .....					
34. <b>TOTAL DIRECT</b> (Schedule A., Line 6) .....					
35. <b>DEPARTMENTAL INCOME/(LOSS)</b> (Schedule A., Line 7) .....					

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**SCHEDULES I - GENERAL AND ADMINISTRATIVE EXPENSES**

- Line 1. Enter the amount from Schedule J, Line 9, plus the related payroll taxes.
- Line 2. Enter the amount incurred for administrative and general salaries, other than officers' salaries and amounts shown on Schedule H, Departmental Income and include related payroll taxes.
- Line 3. Enter the amount of related expenses such as health and life insurance, pension expenses, and other related expenses applicable to officers' and other salaries.
- Line 4. Self-Explanatory.
- Line 5. Enter cash overages and the shortages which are not recovered.
- Line 6. Enter the fees paid to credit card companies and the costs of collection services.
- Line 7. Enter the amount for monthly bank charges, non-sufficient funds charges, etc.
- Line 8. Enter the amount of uncollectible accounts or the allowance for doubtful accounts.
- Line 9. Self-Explanatory.
- Line 10. Self-Explanatory.
- Line 11. Self-Explanatory.
- Line 12. Self-Explanatory.
- Line 13. Self-Explanatory.
- Line 14. Enter the amount for telephone and other communication devices.
- Line 15. Self-Explanatory.
- Line 16. Self-Explanatory.
- Line 17. Enter the fees charged by a management organization for management services.
- Line 18. Enter the amount charged to the concessioner by a parent company.
- Line 19. Self-Explanatory.
- Line 20. Self-Explanatory.
- Line 21. Self-Explanatory.
- Line 22. Self-Explanatory.
- Line 23. Self-Explanatory.
- Line 24. Self-Explanatory.
- Line 25. Enter the cost of hiring personnel such as drug-testing.
- Line 26. Enter the cost incurred for general and administrative costs not shown elsewhere.
- Line 27. Enter the cost incurred for general and administrative costs not shown elsewhere.
- Line 28. Enter the cost incurred for general and administrative costs not shown elsewhere.
- Line 29. Add Lines 1 through 28 and enter the amount.

2006 PROSPECTUS - FOR REFERENCE USE

**GENERAL AND ADMINISTRATIVE COST**

CONCESSIONER:

YEAR ENDING:

- 1. Officers' Salaries, Payroll Taxes and Benefits . . . . . \_\_\_\_\_
- 2. Other Salaries, Payroll Taxes and Benefits
  - Office/Manager's Office . . . . . \_\_\_\_\_
  - Accounting/Finance . . . . . \_\_\_\_\_
  - Human Resources/Personnel . . . . . \_\_\_\_\_
  - Information System/Data Processing . . . . . \_\_\_\_\_
  - Marketing/Promotion . . . . . \_\_\_\_\_
  - Other . . . . . \_\_\_\_\_
  - Total Other Salaries, Payroll Taxes and Benefits . . . . . \_\_\_\_\_
- 3. Employee Recruitment . . . . . \_\_\_\_\_
- 4. Over and Short . . . . . \_\_\_\_\_
- 5. Credit Card Charges . . . . . \_\_\_\_\_
- 6. Bank Charges . . . . . \_\_\_\_\_
- 7. Bad Debts . . . . . \_\_\_\_\_
- 8. Office Expense . . . . . \_\_\_\_\_
- 9. Data Processing . . . . . \_\_\_\_\_
- 10. Postage and Freight . . . . . \_\_\_\_\_
- 11. Dues and Subscriptions . . . . . \_\_\_\_\_
- 12. Travel Expense . . . . . \_\_\_\_\_
- 13. Telecommunications Expense . . . . . \_\_\_\_\_
- 14. Contributions . . . . . \_\_\_\_\_
- 15. Complimentary . . . . . \_\_\_\_\_
- 16. Management Fees . . . . . \_\_\_\_\_
- 17. Corporate Overhead . . . . . \_\_\_\_\_
- 18. Legal Fees . . . . . \_\_\_\_\_
- 19. Accounting and Audit Fees . . . . . \_\_\_\_\_
- 20. Advertising and Promotional Expense . . . . . \_\_\_\_\_
- 21. Security Expense . . . . . \_\_\_\_\_
- 22. Consulting Agreements . . . . . \_\_\_\_\_
- 23. Training Cost . . . . . \_\_\_\_\_
- 24. Personnel Expense . . . . . \_\_\_\_\_
- 25. Other (Identify) \* \_\_\_\_\_
- 26. Other (Identify) \* \_\_\_\_\_
- 27. Other (Identify) \* \_\_\_\_\_
- 28. TOTAL (Schedule A., Line 8) . . . . . \_\_\_\_\_

\* All "Other" items that are over \$10,000 should be identified on Schedule L (Supporting Schedule).

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SCHEDULE J - INFORMATION ON CORPORATE OWNERS AND OFFICERS

Self-Explanatory.

2006 PROSPECTUS - FOR REFERENCE USE

INFORMATION ON CORPORATE OWNERS, OFFICERS AND PARTNERS

CONCESSIONER.

YEAR ENDING:

	Name	Title	% of Time Devoted to Business	% Ownership *			Total Wages	Total Benefits	Total Amount of Compensation
				Partnership Interest	Common Stock	Preferred Stock			
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									
18.									
19.									
20.									
21.	Total (Schedule I, Line 1) .....								

\* List all Officers. In addition, list all Owners and Partners owning a 10 percent or more direct or indirect interest. If the Concessioner has more Officers, Owners and Partners than can be specified in the space above, please complete an additional schedule. Sole Proprietors should not complete this form.

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**SCHEDULE K - ADDITIONS TO AND DISPOSALS OF FIXED ASSETS**

---

For each asset acquired or disposed of during the current year, enter the information required in each column by category. The items entered on the schedule must be marked with the appropriate letter as discussed on the bottom of the schedule. Additions and disposals must be totaled by category. The categories are the same as those enumerated on Schedule D and are defined in the instructions to Schedule D.

The totals entered on Schedule K, which are marked with the letters "B", "C" and "G" must correspond to the amounts entered on Schedule D, Line 2 in the appropriate column. Any asset not marked with either "B", "C" or "G" will be considered to be concessioner personal property and should appear on Schedule D under columns C, D, E, F & G. Amounts shown on Schedule D under columns A, B, C & D should not be shown on Schedule N, Special Account Project Expenditures.

Items purchased from the contractually required Maintenance Reserve Account should be marked with the letter "M".

2006 PROSPECTUS - FOR REFERENCE USE



**INSTRUCTIONS**  
**SCHEDULE L - SUPPORTING SCHEDULES**

This schedule should included a comprehensive listing of all the expenses that are grouped together under one heading within the label of "Other Expenses" that exceed a combined line total of \$10,000. This includes:

- Schedule A - Lines 18, 19, and 25
- Schedule E - Lines 13-16, 22-24, 30-32
- Schedule H - Lines 30-32
- Schedule H-1 - Lines 30-32
- Schedule I - Lines 26-28

2006 PROSPECTUS - FOR REFERENCE USE

SUPPORTING SCHEDULES

CONCESSIONER:

YEAR ENDING:

2006 PROSPECTUS - FOR REFERENCE USE

**INSTRUCTIONS**  
**SCHEDULE M - OPERATIONAL STATISTICS**

**Supplemental Schedules**

- Line 1. Show the occupancy percentage for the lodging accommodations for the entire operating season.
- Line 2. Show the occupancy percentage for the principal season and specify the dates.
- Line 3. Show the occupancy percentage for the other dates open.
- Line 4. Show the number of guests provided accommodations during the year.
- Line 5. Show the number of nights available for the lodging accommodations.
- Line 6. Show the number of nights the lodging accommodations were used.
- Line 7. Specify the number of rooms available in the lodging accommodations.
- Line 8. Show the rooms turnover for the lodging accommodations.
- Line 9. Specify the average room rate for the lodging accommodations.
- Line 10. Specify the number of employees associated with the lodging operation.
  
- Line 11. Specify the average check per person.
- Line 12. Show the number of guests who were provided meals during the year.
- Line 13. Show the number of seats available.
- Line 14. Specify the number of employees associated with the food operation.
- Line 15. Specify the number of square feet used in the food operation.
  
- Line 16. Specify the selling square feet (Display Area) used in the gifts and merchandise operations.
- Line 17. Specify the total retail square feet used in the gifts and merchandise operations including storage area.
- Line 18. Specify the number of sales employees associated with the gifts and merchandise operations.
- Line 19. Specify the number of employees associated with the gifts and merchandise operations.
  
- Line 20. Specify the total number of uncovered slips available for lease within the marina.
- Line 21. Specify the total number of covered slips available for lease within the marina.
- Line 22. Specify the total number of mooring buoys available for lease within the marina.
- Line 23. Specify the slip turnover rate.
- Line 24. Specify the number of employees associated with the marina operation.
- Line 25. Show the occupancy percentage for the marina operation for the entire operating season.
- Line 26. Specify the number of dry storage units.

2006 PROSPECTUS - FOR REFERENCE USE

**OPERATIONAL STATISTICS**

CONCESSIONER: \_\_\_\_\_ YEAR ENDING: \_\_\_\_\_

This Year                      Last Year  
20\_\_\_\_                      20\_\_\_\_

**LODGING**

1. Occupancy Percentage .....	_____	_____
2. Principal Season (Dates) _____ .....	_____	_____
3. Other Dates Open (Dates) _____ .....	_____	_____
4. Number of Guests .....	_____	_____
5. Number of Nights Available .....	_____	_____
6. Number of Nights Used .....	_____	_____
7. Number of Rooms .....	_____	_____
8. Rooms Turnover .....	_____	_____
9. Average Room Rate .....	_____	_____
10. Number of Lodging Employees (High / Low Season) .....	/	/

**FOOD (FULL SERVICE RESTAURANT)**

11. Average Check per Person .....	_____	_____
12. Number of Customers .....	_____	_____
13. Number of Seats .....	_____	_____
14. Number of Restaurant Employees (High / Low Season) .....	/	/
15. Total Square Feet .....	_____	_____

**GIFTS AND MERCHANDISE**

16. Square Feet of Selling Space .....	_____	_____
17. Total Retail Square Feet .....	_____	_____
18. Number of Sales Employees .....	_____	_____
19. Total Number of Retail Employees (High / Low Season) .....	/	/

**MARINAS**

20. Number of Slips Available for Lease (Uncovered) .....	_____	_____
21. Number of Slips Available for Lease (Covered) .....	_____	_____
22. Number of Mooring Buoys Available for Lease .....	_____	_____
23. Slip Turnover .....	_____	_____
24. Number of Marina Employees (High / Low Season) .....	/	/
25. Occupancy Percentage .....	_____	_____
26. Number of Dry Storage Units .....	_____	_____

2006 PROSPECTUS - FOR REFERENCE USE

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**SCHEDULE M - SPECIAL ACCOUNT YEARLY RECONCILIATION**

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- Line 1. Specify the type of special account authorized within the contract or permit.  
Line 2. Enter the amount of the Flat Fee stated in the contract or permit.  
Line 3. No information needed.  
Line 4. Enter the amount from Schedule A, Line 1.  
Line 5. Enter amounts authorized in the contract or permit. In most circumstances this will be the amount shown on Schedule B, Line 21.  
Line 6. Subtract Line 5 from Line 4 and enter the amount.  
Line 7. Show the percentage amount stated in the contract or contract amendment.  
Line 8. Multiply Line 6 by Line 7 and enter the amount.  
Line 9. Specify other calculations used in determining special account fee.  
Line 10. Add Lines 2, 8, and 9 and enter the amount.  
Line 11. Expenditures written out of the account for the current year.  
Line 12. Insert the ending balance from Schedule M, Line 17, from the preceding year. If the special account is new for this year, a zero (0) balance should be used.  
Line 13. Show the actual deposits made in the current accounting year.  
Line 14. Show the actual expenditures made in the current accounting year.  
Line 15. Show the interest income reported for this account in the current accounting year.  
Line 16. Show the bank charges reported for this account in the current accounting year.  
Line 17. Add Lines 12, 13, and 15 and subtract Lines 14 and 16, and enter the amount.  
Line 18. If Line 18 has a positive balance and these funds are already obligated to another project, list the projects, along with the amount of money obligated to each project.  
Line 19. Show the amount of money that is not obligated for projects.  
Line 20. Add Lines 18 and 19 and enter the amount.  
Line 21. List the deposits made in the current accounting year that were accruals due in the past calendar or fiscal year.  
Line 22. List amounts which include only deposits made in the current accounting year that are for payments of current year special account liabilities.  
Line 23. Add Lines 21 and 22 and enter the amount.  
Line 24. List the accrued liability the concessioner has on the current year deposits.  
Line 25. Add Lines 22 and 24 and enter the amount.  
Line 26. List the amount of the expenditures made in the current year that were accrued and due in the past calendar or fiscal year.  
Line 27. List the expenditures made for the current year.  
Line 28. Add Lines 26 and 27 and enter the amount.

**SPECIAL ACCOUNT YEARLY RECONCILIATION**

CONCESSIONER: \_\_\_\_\_

YEAR ENDING: \_\_\_\_\_

1. Type of Special Account (Please Specify)  
 \_\_\_\_\_ Government Improvement Account  
 \_\_\_\_\_ Capital Account

NOTE: IF THE CONCESSIONER HAS MORE THAN ONE SPECIAL ACCOUNT PLEASE FILL OUT A SEPARATE SCHEDULE M FOR EACH ACCOUNT. THE COMBINED AMOUNT FROM ALL LINE 10

SCHEDULE M's SHOULD BE SHOWN AS A SUMMARY AMOUNT ON LINE 33, SCHEDULE B.

**SPECIAL ACCOUNT YEARLY RECONCILIATION**

Calculation Method (Check One)

2. \_\_\_\_\_ Flat Fee ..... \_\_\_\_\_  
 3. \_\_\_\_\_ Percentage of Gross Receipts ..... \_\_\_\_\_  
 4. \_\_\_\_\_ Gross Receipts ..... \_\_\_\_\_  
 5. \_\_\_\_\_ Less - Adjustments to Gross Receipts ..... \_\_\_\_\_  
 6. \_\_\_\_\_ Gross Receipts Subject to Fee Calculation ..... \_\_\_\_\_  
 7. \_\_\_\_\_ Special Account Percentage Rate ..... \_\_\_\_\_ %  
 8. \_\_\_\_\_ Amount Due to Special Account ..... \_\_\_\_\_  
 9. \_\_\_\_\_ Other Method (Specify Calculations) ..... \_\_\_\_\_

10. Accrued Amount Due to Special Account for Current Year (Schedule B., Line 33) ..... \_\_\_\_\_  
 11. Expenditures from Special Account in Current Year (Must also complete Schedule N) ..... \_\_\_\_\_

**SPECIAL ACCOUNT COMBINED RECONCILIATION**

12. Balance in Special Account from Prior Year ..... \_\_\_\_\_  
 13. Plus: Current Year Deposits ..... \_\_\_\_\_  
 14. Less: Current Year Expenditures ..... \_\_\_\_\_  
 15. Plus: Current Year Interest ..... \_\_\_\_\_  
 16. Less: Current Year Bank Charges ..... \_\_\_\_\_  
 17. Balance in Special Account at Year End ..... \_\_\_\_\_

*Allocation of Line 17*

18. Encumbered Balance (List Projects and Amounts) ..... \_\_\_\_\_  
 \_\_\_\_\_ ..... \_\_\_\_\_  
 \_\_\_\_\_ ..... \_\_\_\_\_  
 \_\_\_\_\_ ..... \_\_\_\_\_  
 \_\_\_\_\_ ..... \_\_\_\_\_  
 19. Unencumbered Balance ..... \_\_\_\_\_  
 20. Total - Add Lines 18 and Line 19 (Should Equal Line 17 Above) ..... \_\_\_\_\_

**DEPOSIT RECONCILIATION**

21. Deposits for Prior Year Liabilities ..... \_\_\_\_\_  
 22. Deposits for Current Year Liabilities ..... \_\_\_\_\_  
 23. Total - Add Lines 21 and Line 22 (Should Equal Line 13 Above) ..... \_\_\_\_\_  
 24. Accrued Liability not yet Deposited for Current Year ..... \_\_\_\_\_  
 25. Total - Add Lines 22 and Line 24 (Should Equal Line 10 Above) ..... \_\_\_\_\_

**EXPENDITURES RECONCILIATION**

26. Expenditures for Prior Year ..... \_\_\_\_\_  
 27. Expenditures for Current Year ..... \_\_\_\_\_  
 28. Total - Add Lines 26 and Line 27 (Should Equal Line 14 Above) ..... \_\_\_\_\_

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**SCHEDULE O - SPECIAL ACCOUNT PROJECT EXPENDITURES**

- Line 1. List the project number of each special account expenditure/project.  
List expenditures from special account by locations or site in date order.  
List amount spent on each specific project.  
Show the percentage amount of completion for the overall project.

NOTE: The listing of expenditures is to be specific for each individual item. Expenditures are not to be lumped together. Terms that will not be acceptable will include Building Improvements and Leasehold Improvements. If these terms are used, additional material should be sent to verify the amounts.

2006 PROSPECTUS - FOR REFERENCE USE



## DEFINITIONS

<b>Accounting</b>	The language of business which is used to measure, record, report, and interpret the financial aspects of business.
<b>Accounts payable</b>	Money your company owes to business creditors for the purchase of outside services and goods.
<b>Account receivable</b>	Money owed to your company by other customers.
<b>Amortization</b>	The process of gradually paying off a liability over a specified number of years.
<b>Assets</b>	In accounting, something of monetary value. May be physical (building and inventory), object (stock certificate), or a right (patent).
<b>Balance Sheet</b>	Statement showing the company's financial position at any given point in time. This statement consists of assets, liabilities, and owner's equity.
<b>Capital</b>	Wealth in the form of money invested in the business by its owners.
<b>Cash</b>	Money the business has in its possession.
<b>Cash Flow</b>	The inflow and outflow of money in the business in a specified time. Cash flows differ from profits because of non-cash expenditure and accrual basis accounting.
<b>Contingent liability</b>	A liability that is not shown on the company's financial statements but should be explained in the accountant's notes to the financial statements. This liability is probably because of a law suit and could be a contingent liability if the company was to lose the suit.
<b>Corporation</b>	An organization that has been chartered by the state in which the individual(s) or company is based.
<b>Current assets</b>	Cash and other assets that can be converted into cash in a short period of time. Usually within 1 year. Current assets include cash, marketable securities, accounts receivable, inventory, and prepaid expenses.
<b>Current liabilities</b>	Money that is owed by a company that will be paid within a short period of time, usually within 1 year.
<b>Depreciation</b>	A systematic approach to reduce the value of a fixed asset to account for wear and tear, obsolescence, passage of time during the fixed asset's lifetime.
<b>Direct expense</b>	Expenses that are directly related to the volume of gross sales.
<b>Expenses</b>	Cost of doing business other than that associated with the cost of goods sold. These items will effect the income statement immediately upon purchase.

<b>Fiscal year</b>	An annual accounting period that does not end on December 31.
<b>Fixed assets</b>	Items that are not usually intended for sale, and are used in the production of other items for resale. Also, if the asset were sold, it would probably interfere with the business operations. Examples are buildings, furniture and fixtures, land, and other long-term investments.
<b>Fixed costs</b>	Operating costs that remain relatively constant regardless of fluctuations in the gross sales.
<b>G&amp;A costs</b>	General and administrative costs are expenses that are not designated to a specific business area.
<b>Goodwill</b>	The difference between the purchase price of a business and the assets bought.
<b>Gross profit</b>	Gross sales minus the costs of goods sold.
<b>Income statement</b>	See statement of income.
<b>Intangible assets</b>	Items that are important to one's business that are not physical objects. Examples of these would be goodwill, patents, trademarks, and copyrights.
<b>Inventory</b>	Raw materials, partially finished products, and finished products that have not yet been sold.
<b>Liabilities</b>	Debts a company owes to others.
<b>Long-term liabilities</b>	Money that is owed a company that will not be paid within 1 year.
<b>Net income</b>	Profit at the end of the year after paying all expenses. Also known as "the bottom line."
<b>Partnership</b>	A business in which two or more individuals, partnership corporations pool their resources and share the profit or loss of the joint venture.
<b>Prepaid expense</b>	Payment of expenses before the company has received the benefit.
<b>Retained earnings</b>	The total cumulative net profit that a business has earned over its lifetime that has not yet been distributed.
<b>Statement of income</b>	Summarizes the financial activity for a specified time period by looking at the gross revenue and the expenses generated by the company. This statement is also called the profit and loss (P&G) statement.



**APPENDIX D**

**36 CFR Part 51  
NPS CONCESSION CONTRACTS**

2006 PROSPECTUS - FOR REFERENCE USE



# Federal Register

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**Monday,  
April 17, 2000**

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**Part III**

**Department of the  
Interior**

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**National Park Service**

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**36 CFR Part 51  
Concession Contracts; Final Rule**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 51****RIN 1024-AC72****Concession Contracts****AGENCY:** National Park Service, Interior.**ACTION:** Final rule.

**SUMMARY:** This rule amends 36 CFR Part 51, the National Park Service (NPS) regulations concerning NPS concession contracts, to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998 (the 1998 Act). The 1998 Act provides new legislative authorities, policies and procedures for the solicitation, award and administration of concession contracts by NPS. This rule was published as proposed for public comment in the **Federal Register** as a matter of policy on June 30, 1999. NPS provided a 60-day public comment period on the proposed rule. This was extended by 45 days upon public request. NPS has fully considered all public comments received and considers this final rule to be lawful, consistent with the policies of Congress as expressed in the 1998 Act, and as accommodating to the concerns of commenters as possible in light of the legal and administrative responsibilities of NPS under the 1998 Act and other applicable authorities.

**EFFECTIVE DATE:** May 17, 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 1998 Act has established a new statutory framework for the solicitation, award and administration of NPS concession contracts. Concession contracts are the form of governmental authorization used to permit persons (concessioners) to provide accommodations, facilities, and services to visitors to areas of the national park system. These services include, for example, lodging, food, merchandising, transportation, outfitting and guiding, and similar activities.

NPS has been awarding and administering concession contracts for this purpose in various forms since 1916 under the terms of 16 USC 1 *et seq.*, the NPS "Organic Act." In 1965, Congress formally established by the Concession Policies Act of 1965, 16 USC 20 *et seq.* (the 1965 Act), a number of policies and procedures regarding concession

contracts. NPS regulations contained in 36 CFR Part 51 implemented the 1965 law. On November 13, 1998, the Congress substantially revised these policies and procedures by passage of the 1998 Act. Many of the policies and procedures adopted by NPS in 36 CFR Part 51, as amended, and standard NPS concession contracts developed under the 1965 Act are reflected in the terms of the 1998 Act.

The Congress had two primary objectives in revising the 1965 Act: making the NPS concession management program more efficient and enhancing competition in NPS concession contracting.

The first objective is reflected in provisions of the 1998 Act that call, among other matters, for contracting to private businesses certain aspects of NPS concessions management and the establishment of an NPS Concessions Management Advisory Board to advise NPS on the conduct of its concessions management program. These provisions, although very important, will be implemented administratively by NPS rather than through program regulations.

The second objective, enhancement of competition in NPS concession contracting, is reflected in the 1998 Act in a number of ways. Primarily, however, the 1998 Act achieves greater competition in two ways.

First, to achieve greater competition, the 1998 Act repealed, except for smaller and outfitter and guide concession contracts, the "preference in renewal" provision of the 1965 Act. The 1965 Act's preference in renewal provision required NPS to give existing satisfactory concessioners a preference in the renewal of their concession contracts, if the contract was to be continued after its expiration. This preference required NPS to permit existing satisfactory concessioners to meet the better terms and conditions of the best competing proposal for the renewal of its concession contract. Because of this preference, NPS estimated in 1993 that since 1965 over 99.9% of the renewals of NPS concession contracts had been awarded to the existing concessioner. In fact, from 1965 to 1993, only seven NPS concession contracts out of approximately 1900 awarded were not awarded to the incumbent concessioner (where the incumbent sought the contract). True competition simply did not exist.

The legislative history of the 1998 Act states as follows in connection with the repeal of the preference in renewal:

Under the 1965 Act, all satisfactory concessioners are entitled to preference in

renewal of their concession contracts or permits. However, in light of the current circumstances of units of the National Park System and in recognition of present business conditions, the Committee considers that generally there is now no need to continue to provide a preferential right of renewal to concessioners in order to obtain qualified operators. Accordingly, to foster appropriate competition in the award of National Park Service concession contracts, the preferential right of renewal provided as a statutory right to existing satisfactory concessioners is repealed by the S. 1693 [the bill that became the 1998 Act], S. Rep. No. 105-202, at p.31 (1998).

The 1998 Act's other primary means to enhance competition in concession contracting was its reform of the 1965 Act's "possessory interest" concept. Under the 1965 Act, a concessioner that constructed real property improvements on park area lands under the terms of a concession contract obtained a compensable interest in the improvements in the form of a "possessory interest." The value of the possessory interest as of the date of the expiration or other termination of the concession contract was the "sound value" of the improvements to which the possessory interest related, but, not to exceed the "fair market value of the improvements," unless NPS and the concessioner agreed to an alternative value.

The Congress in considering S. 1693 noted that possessory interest under the 1965 Act was frequently criticized as "anti-competitive" because "the value of an existing concessioner's possessory interest was difficult to establish, thereby discouraging submittal of competitive offers for renewal of concession contracts." S. Rep. No. 105-202, at p. 35 (1998).

The 1998 Act reformed the possessory interest provisions of the 1965 Act through the leasehold surrender interest concept. Instead of obtaining a possessory interest in real property improvements as provided by the 1965 Act, the 1998 Act provides a "leasehold surrender interest" in "capital improvements" a concessioner constructs on park area lands "under the terms of a concession contract." The legislative history states as follows about the purposes of leasehold surrender interest:

The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investment in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical

condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary [of the Interior] can accurately calculate the amount for purposes of competitive solicitation of concession contracts. *Id.*

This final rule has three major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by NPS under the 1998 Act. With certain exceptions, the 1998 Act requires competitive award of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a better competing proposal for a new concession contract. In fact, although the preference in renewal was the most mentioned issue in the comments received, more than 75% of the some 630 current NPS concessioners will continue to benefit from a preference in the renewal of their concession contracts. This is because the 1998 Act extends a preference in renewal to concessioners with contracts that have gross receipts of less than \$500,000 or are outfitter and guide concessioners (more than 75% of the total).

Second, unlike the existing 36 CFR Part 51, the final rule sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This leasehold surrender interest is defined in general terms in the 1998 Act. This rule establishes appropriate specific terms and conditions for leasehold surrender interests under the authority of the 1998 Act. Clarity as to the scope of leasehold surrender interest is important to both NPS and concessioners. Accordingly, the leasehold surrender interest subpart of this rule is lengthy. However, concession contracts will be proportionately shorter as for the most part they will refer to this rule with respect to leasehold surrender interest terms and conditions.

Finally, the rule describes a number of provisions that concession contracts will contain in implementation of the 1998 Act.

The final rule reflects NPS's interpretation of the various provisions of the 1998 Act to appropriately administer the Act's requirements and purposes that are suitable for regulatory

implementation. Section 417 of the 1998 Act requires NPS to promulgate regulations "appropriate for its implementation."

#### A. Response to Public Comments

NPS responds to public comments as follows. The symbol "\*\*\*\*" under a section heading indicates that no (non-duplicative) comments requiring a response expressly addressed the section.

#### Scope of Comments

NPS received 125 public comments on the proposed rule. Of these, the vast majority were from existing concessioners, attorneys representing existing concessioners, or existing concessioner organizations. Several organizations with members that are existing NPS concessioners commented on the proposed regulations. Most of these organizations are generally interested in "outfitter and guide" concession contracts. One organization, referred to in the discussion below as the "general concessioner organization," is an organization with more than 150 existing concessioner members (according to its comment). Several of the members of this organization submitted separate comments that endorsed the comments of the general concessioner organization. Where NPS states below that the general concessioner organization or other organizations made comments, this refers collectively to the comments of the organization and comments separately submitted in support of the organization's views.

Only a handful of "non-incumbent concessioner" individuals and groups commented on the proposed regulations. The vast majority of comments received were from existing concessioners or concessioner organizations. Nonetheless, NPS has taken into account in developing the final rule the interests of the general public and non-incumbent concessioners, *i.e.*, persons that may now seek to become concessioners under the more competitive terms of the 1998 Act. NPS has an obligation to consider these interests under the mandates of the 1998 Act and 16 U.S.C. 1 *et seq.*, the NPS Organic Act, which requires NPS to preserve the resources of the national park system and to provide for their enjoyment by visitors by such means as will leave them unimpaired for the enjoyment of future generations.

#### 1. General Comments

##### Repeal of the 1965 Act's Preference in Renewal

The major concern of existing concessioners was the 1998 Act's repeal of the 1965 Act's preference in renewal. Some existing concessioners consider it unfair (and illegal) to deprive them of a preference in the renewal of their existing contracts or permits (1965 Act concession contracts). Many commenters criticized NPS in this regard, although the repeal of the preference in renewal was by statute. The basis for this criticism is the perception that NPS has discretion to determine that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to the renewal of 1965 Act concession contracts. This is not the case.

Section 415(a) of the 1998 Act expressly repealed the 1965 Act, including its Section 5 (16 U.S.C. 20d) which required NPS to give existing satisfactory concessioners a preference in renewal of their contracts. In addition, Section 403(7) of the 1998 Act states that, except as provided in the express circumstances set forth in the 1998 Act, NPS "shall not grant a concessioner a preferential right to renew a concession contract, or any form of preference to a concession contract."

NPS has fully reviewed the legal arguments made by existing concessioners and their attorneys. NPS considers, however, that nothing contained in these arguments provides it with a reasonable basis to conclude that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to NPS 1965 Act concession contracts or permits. NPS also points out that a contrary interpretation would be in direct conflict with the 1998 Act's purpose of enhancing competition in concession contracting.

In this connection, one commenter on the proposed regulations, a major existing concessioner (that looks forward to the opportunity to compete freely for additional NPS concession contracts) submitted an opinion of counsel along with its comments on the regulations. The opinion of counsel supports the views of NPS on this issue.

The NPS position is based on the express terms of the 1998 Act and the fact that standard 1965 Act concession contracts do not refer to a preference in renewal.

In this connection, Section 415(a) of the 1998 Act states that the Act is applicable to 1965 Act concession contracts, as follows:

(a) Repeal.—Public Law 89–249 (commonly known as the National Park Service Concession 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.

Accordingly, unless the provisions of the 1998 Act are “inconsistent with the terms and conditions” of a 1965 Act concession contract, the 1998 Act applies in full to 1965 Act concession contracts.

NPS points out that standard 1965 Act concession contracts make no reference to a preference in renewal. The reason for this is that the preference in renewal provision contained in the 1965 Act did not establish the preference in renewal as a contract right. Section 5 of the 1965 Act states as follows in pertinent part:

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary.

This provision does not state that an existing satisfactory concessioner has a right to a preference in renewal of an existing concession contract as a contract right or otherwise. It also does not authorize NPS to grant such a contract right. Rather, it imposes a statutory obligation on NPS (acting for the Secretary of the Interior) to give preference in the renewal of concession contracts to existing satisfactory concessioners.

In contrast, other provisions of the 1965 Act state that they authorize NPS to grant contract rights. Section 3(a) of the 1965 Act states that the Secretary “may include in [concession] contracts \* \* \* such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment \* \* \* resulting from the discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective. \* \* \*” (Emphasis added.)

In addition, Section 4 of the 1965 Act states that the Secretary “may grant to such concessioners a preferential right to provide such new or additional accommodations, facilities or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public.” (Emphasis

added.) Prior to 1979, standard NPS concession contracts contained an express provision that provided a preferential right to additional services.

The 1965 Act, accordingly, clearly distinguished among its provisions that were intended to authorize the establishment of contract rights and provisions that were intended to impose a statutory obligation on the Secretary without establishing a contract right. In furtherance of these authorities and this distinction, existing 1965 Act concession contracts contain a number of contractual provisions authorized by Section 3(a) and Section 4 of the 1965 Act, but make no reference to a preference in contract renewal.

In this connection, NPS notes that, although not required by law to do so, NPS published for public comment in both 1979 and 1992 revisions to its standard concession contract, and, published the final new standard concession contracts in the **Federal Register**. Neither of these standard concession contracts includes a term or condition regarding preference in renewal or even refers to a preference in renewal. Prior standard concession contracts, going back to the passage of the 1965 Act, also do not refer to a preference in renewal.

Accordingly, the 1998 Act’s repeal of the 1965 Act’s preference in renewal is not “inconsistent with the terms and conditions” of NPS standard concession contracts. Rather, the 1998 Act repeals a statutory requirement obliging the government to give concessioners a preference in renewal.

There is also the matter of congressional understanding of the application of Section 415(a) of the 1998 Act to the 1965 Act’s preference in renewal. The legislative history of the 1998 Act set forth above (from both the Senate and House of Representatives) expressly describes the 1965 Act’s preference in renewal as a “statutory right” and states that it is repealed by S. 1693. There is no suggestion in the 1998 Act’s legislative history that the repeal does not apply to existing concession contracts.

In this connection, Congress must be presumed to know that the 1965 Act described the preference in renewal as a statutory obligation for the Secretary to perform and that 1965 Act concession contracts, formally published in the **Federal Register** in 1979 and 1993, do not provide or refer to a preference in renewal.

The fundamental argument of incumbent concessioners as to why they retain a preference in renewal of their existing contracts is that the contracts contain an implied term granting a

preference in renewal. NPS has duly taken this position. NPS considers this position wrong for three basic reasons.

First, it is firmly established that a “promise” contained in a statute is not binding on the government (or analogous to a contractual promise), since it is presumed that laws are always susceptible to change by future legislatures. As the Supreme Court has put it, the presumption is that a “law is not intended to create private contractual vested rights, but merely declares a policy to be pursued until the legislature shall ordain otherwise.” *National R.R. Passenger Corp. v. Atchinson Topeka and Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (quoting *Dodge v. Board of Education*, 302 U.S. 74, 79 (1937)).

This well-established presumption is grounded in the elementary proposition that the principal function of the legislature is not to make contracts, but to make laws that establish the policy of the state. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of the legislative body. *National RR Passenger Corp.*, 470 U.S. 451, 465 (internal citations omitted).

The Supreme Court has consistently rejected the argument that the statutory or regulatory regime existing at the time of contract formation is implicitly written into the contract by force of law. To the contrary, the Court has always insisted that, regardless of the state of the law at the time of the contract, the contract itself must affirmatively promise future regulatory treatment in order to create an enforceable obligation against the government to provide such future treatment. As stated in *Bowen v. Public Agencies Opposed to Social Sec. Entrapment*, 477 U.S. 41, 52–53 (1986), with respect to commercial contracts, absent an “unmistakable” contract provision, “contractual arrangements, including those to which a sovereign itself is a party, ‘remain subject to subsequent legislation’ by the sovereign.” *Id.* at 52 (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 147 (1982)).

NPS also notes that the 1965 Act’s preference in renewal imposed a statutory obligation on the Secretary to give existing concessioners a preference in renewal. Section 5, however, unlike Sections 3(a) and (4) of the 1965 Act, makes no mention of any authority to grant concessioners a preference in renewal as a contract right. Authority for a government official to turn a statutory obligation of the official into a contractual right must be provided by

the legislative branch in clear and unmistakable terms. *Home Telegraph & Telephone Co. v. Los Angeles*, 211 U.S. 265, 277 (1908). Section 5 of the 1965 Act by no means meets this test.

Finally, even if these considerations are not controlling law, the argument that an implied provision of NPS concession contracts gives the concessioner a contractual right to a preference in renewal is inconsistent with the express terms of almost all current NPS concession contracts and permits with annual gross receipts in excess of \$500,000. Almost all of such contracts expressly state (or state in analogous terms) that:

This Contract [or permit] and the administration of it by the Secretary shall be subject to the laws of Congress governing the Area and rules, regulations and policies whether now in force or hereafter enacted or promulgated. (Emphasis added.)

Accordingly, almost all NPS concession contracts and permits with annual gross receipts in excess of \$500,000 expressly state that they are subject to changes in law. The existing concessioners' implied contractual right argument, even if it were otherwise of legal merit, fails under these express terms of NPS concession contracts and permits.

NPS notes that the comments of the general concessioner organization point out that the version of Section 415 of S. 1693 (the bill that became the 1998 Act) that initially passed the Senate referred to "express" terms and conditions of 1965 Act concession contracts while the bill as reported out of the House of Representatives and ultimately enacted did not contain the word "express." The comments suggest that this means that Congress intended Section 415 of the 1998 Act to apply to implied, as well as express, terms of 1965 Act concession contracts.

NPS notes, however, that the legislative history of the 1998 Act provides no guidance as to the intentions of the Congress in deleting the word "express" from S. 1693. In fact, Senator Thomas, the principal author of S. 1693, in commenting on the competitive results of the bill after the unexplained deletion of the word "express," stated as follows:

We have eliminated the preferential right of renewal so that there is competition for those services as they are renewed. Cong. Rec., S. 12540, Daily Ed., October 14, 1998. (Emphasis added.)

Clearly, Senator Thomas considered that S. 1693's repeal of the preference in renewal was of immediate and comprehensive effect.

NPS also notes Section 419 of the 1998 Act (described in the 1998 Act as a "savings provision"). Section 419 was included in S. 1693 at the same time the word "express" was deleted from Section 415. Section 419(a) "grandfathered" certain existing prospectuses for cruise ship concession permits for Glacier Bay National Park, requiring their award "under provisions of existing law." Section 419(b) then requires that:

Notwithstanding any provision of this title, the Secretary, in awarding future Glacier Bay cruise ship concession permits 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). (Emphasis added.)

This "savings" provision clearly indicates that the 1965 Act's preference in renewal no longer existed as of the passage of the 1998 Act. Moreover, if 1965 Act concession contracts had an implied contractual right of preference in renewal, as argued by existing concessioners, there would have been no need for the Congress to include Section 419(b) in the 1998 Act, that is, to provide a further preference in renewal after the effective date of the 1998 Act for concession contracts that were to be awarded "under provisions of existing law." The general concessioner organization's argument as to the intention of Congress in deleting the word "express" from S. 1693 is contradicted by the terms of Section 419.

For these reasons, NPS concludes that it is not authorized under the 1998 Act to promulgate concession regulations that implement a preference in renewal except as expressly authorized by Sections 403(7) and (8) of the 1998 Act. However, the final rule, generally tracking a similar provision in the proposed rule, permits any existing concessioner holding a 1965 Act concession contract that makes express reference to a preference in renewal to request the Director to determine whether such express reference may result in a continuing preference in renewal by operation of law. This right of appeal is discussed further under Section 51.116.

#### Evaluation of Proposals

Another general concern of commenters was the method contained in the proposed regulations for evaluating concession contract proposals and selecting the best proposal. The commenters objected to the lack of a numerical evaluation method and to the fact that

environmental considerations and the amount of franchise fee offered were "tie-breakers" in the evaluation system. The commenters argued that these provisions were in conflict with the intent of Congress that consideration of revenue to the United States is subordinate to protection of resources and providing quality visitor services.

NPS does not agree with these perceptions of the consequences of the proposed rule. NPS, however, in the final rule, has accommodated these concerns through several incremental changes, including incorporation of a numerical scoring system into the narrative evaluation methodology contemplated by the proposed rule and by changing the "tie-breaker" provision to track the terms of the 1998 Act. The modifications are discussed below in the section-by-section analysis.

#### Leasehold Surrender Interest

A further general concern was the terms and conditions of leasehold surrender interest. Commenters considered several of the provisions of the proposed regulations to be inconsistent with the 1998 Act and to give NPS too much authority to determine the scope of a concessioner's leasehold surrender interest. NPS, in the final rule, has made a number of incremental changes to the leasehold surrender interest provisions of the regulations to accommodate the commenters' concerns. These are also discussed in the section-by-section analysis. The general concessioner organization and others also made the point that it is not clear which provisions of the regulations regarding leasehold surrender interest will be incorporated as terms and conditions of concession contracts and not be subject to modification by amended regulations or changes in law. The new NPS standard concession contract will make this clear.

### 2. Section by Section Analysis of Public Comments and Description of Changes in the Final Rule

#### Subpart A—Authority and Purpose

##### Section 51.1 What Does This Part Cover?

(a) This subsection has been modified to more closely track the language of the 1998 Act with regard to the purpose of concession contracts and, in response to comments, to reference Section 415(c) of the 1998 Act which states that the 1998 Act does not supersede the requirements of 16 USC 3101 in regard to revenue producing visitor services in Alaska park areas.

(b) A number of comments mentioned commercial use authorizations as described by Section 418 of the 1998 Act and stated that the regulations should have encompassed them. However, the proposed regulations referenced the separate authority of NPS to issue commercial use authorizations. NPS is in the process of drafting regulations for commercial use authorizations and intends to publish proposed regulations for public comment as a matter of policy. These regulations will also address the scope of the statutory exemption granted non-profit organizations by Section 418 of the 1998 Act, an issue mentioned in several comments.

A comment also stated that the term "incidental visitor services" should be defined. NPS considers incidental visitor services to be supporting services that must be provided to program participants in order to conduct a related interpretive program.

An individual expressed concern that NPS should not allow non-profit organizations to compete with concessioners. However, some competition of this nature does exist and the 1998 Act does not preclude non-profit organizations from being concessioners. In fact, several existing NPS concessioners are non-profit organizations.

An individual commented on the sentence in this section that states that the Director may not authorize the conduct of visitor services by any means other than a concession contract except as may otherwise be authorized by law. The individual interprets this to mean that under this section visitor services may not be authorized under an historic lease entered into pursuant to Section 111 of the National Historic Preservation Act, as amended. The individual objects to this result. However, the sentence to which the individual objects reflects an express statutory requirement contained in Section 403 of the Act. NPS points out that many historic buildings in areas of the national park system are utilized for visitor service purposes by concessioners. NPS also notes that it is in the process of drafting regulations for the leasing of property under Section 802 of the 1998 Act. These regulations, which NPS intends, as a matter of policy, to publish for public comment, will address the scope of activities that may be authorized under NPS leases as opposed to concession contracts.

This subsection also has been modified to more closely track the language of the 1998 Act with respect to the fact that, unless otherwise authorized by law, concession contracts

are to be utilized to authorize the provision of necessary and appropriate accommodations, facilities and services to park area visitors ("visitor services").

#### *Section 51.2 What Is the Policy Underlying Concession Contracts?*

A comment stated that the policies for permitting visitor services in park areas should require a "balanced and diverse mix" of prices for services. NPS supports the concept that visitor services should encompass a mix of services (e.g., moderate and low cost accommodations in addition to more expensive facilities). However, Section 51.2 as written paraphrases the statutory policies on visitor services set forth in Section 402 of the Act. NPS considers that decisions as to the scope of services to be authorized under concession contracts should be developed on a case-by-case basis through planning under the general guidance of Section 402 of the Act.

Another comment stated that Section 51.2 should require consideration of the factors specific to the park area to be affected. NPS considers that this thought is implicit in Section 51.2, as the findings required by Section 402 of the Act necessarily must be made on a park-by-park basis.

An individual commented that removal of concession facilities from a park area might damage the park more than leaving the facility there. Again, NPS considers that determinations as to what are necessary and appropriate visitor services, including the possible removal of existing facilities, must be made on a case-by-case basis.

A comment stated that there is no clear definition of visitor services contained in the regulations. However, NPS considers that the visitor services definition (as modified) contained in Section 51.3 in the final rule provides a clear definition of visitor services. The comment also states that a United States Post Office should be considered as providing visitor services and therefore, apparently must be awarded a concession contract. NPS, however, does not consider Post Offices as concession operations within the meaning of the 1998 Act. Finally, the comment states that non-profit cooperating associations that provide visitor services should be subject to the requirements of Section 51.2. NPS notes that all visitor services provided in park areas under the authority of the 1998 Act are subject to the requirements of Section 51.2.

#### Subpart B—General Definitions

##### *Section 51.3 How Are Terms Defined in This Part?*

A number of comments were made concerning the definition of terms used in the regulations. Some of these comments, however, in fact were directed at underlying substantive issues, particularly the repeal of the 1965 Act's preference in renewal (discussed under General Comments) and the scope of a preference in renewal under the 1998 Act (discussed under Subpart E). The comments that specifically concerned the wording of the definitions *per se* are as follows.

##### The "1965 Act"

A comment stated that the words "as amended" should be added. However, the 1965 Act, although repealed by the 1998 Act, was never amended.

##### "Concession Contract (or Contract)"

The general concessioner organization requested clarification of this definition with respect to when a concession contract can be something other than a written agreement. NPS has deleted the phrase "unless otherwise indicated in this part" in response to this comment.

The general concessioner organization also asked NPS to clarify its position regarding circumstances where an existing concessioner may continue to operate after the expiration of a concession contract. Particularly, the comment requested NPS to make clear that (i) an incumbent concessioner is not required to continue to operate after the expiration of its contract; (ii) that if the concessioner does not choose to continue to operate, NPS must honor the obligations of the expired contract; (iii) that if the concessioner does continue to operate the continuation is to be on the same terms and conditions as the expired contract unless otherwise agreed by the parties; and (iv) the concessioner, if it continues to operate, "shall not be placed in any worse economic position upon the commencement of the new contract than the concessioner would have been had the new contract commenced upon the original expiration date of the prior contract."

NPS considers that the first three statements must be examined in the context of particular contracts and need no amplification in the regulations. The last point seems to suggest that a concessioner that continues to operate after the expiration or other termination of a concession contract may be harmed economically by this action. However, as a concessioner is not obliged to continue operations upon the expiration

or other termination of a concession contract (unless the terms of a concession contract otherwise provide), a concessioner's decision to continue operations would seem to obviate any concerns about possible "economic harm" resulting from the continued operations. In any event, NPS does not consider that changes to the definition of "concession contract (or contract)" are warranted on the basis of these comments. (NPS points out that it uses the phrase "expiration or other termination" of a concession contract in this paragraph as the 1965 Act utilizes this terminology. Under the 1965 Act, the "expiration" of a concession contract is considered a form of contract termination.)

Several comments also objected to the statement in this definition that concession contracts are not contracts within the meaning of 41 USC 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.

NPS has fully considered these views and disagrees with their conclusions. The Contract Disputes Act, by its terms, applies to procurement contracts. A procurement contract is a contract under which the government bargains for, pays for, and receives goods or services. *YRT Services Corporation v. United States*, 28 Fed. Cl. 366, 392, n.23 (1993).

The court in *YRT Services* concluded that an NPS concession contract for lodging facilities "did not constitute a procurement" as NPS is not paying for the [concessioner's] services but is "collecting fees in exchange for granting a permit to operate a concession business." *Id.*

Several comments on this issue discussed a series of Interior Department Board of Contract Appeals (IBCA) decisions that held that NPS concession contracts are subject to the Contract Disputes Act as procurement contracts. However, several General Accounting Office decisions take a contrary view. NPS has reviewed the IBCA decisions and notes that all but one preceded the decision of the Court of Claims in *YRT Services*, and all concern 1965 Act concession contracts, not 1998 Act concession contracts. (This final rule, issued under the terms of the 1998 Act, supercedes these IBCA decisions.)

NPS points out that the 1998 Act, unlike the 1965 Act, contains an express statement as to the purposes of NPS concession 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 concession contracts to authorize a person, corporation or other entity to provide accommodations, facilities and services to visitors to units of the national park system. (Section 403 of the 1998 Act. Emphasis added.)

This statutory provision tracks the reasoning in *YRT Services* as to why 1965 Act concession contracts are not procurement contracts. The purpose of concession contracts is not to procure goods or services for the government. Furthermore, NPS notes that the existing 36 CFR Part 51, the NPS regulations that implemented the 1965 Act, expressly state that concession contracts "are not Federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to Federal procurement actions." (36 CFR 51.1.) The Congress, in passing the 1998 Act, must be presumed to have been aware of this regulatory interpretation and the decision of the court in *YRT Services*. In fact, it appears that the inclusion of the sentence in Section 403 of the 1998 Act to the effect that concession contracts are contracts that "authorize a person to provide accommodations, facilities and services" to park area visitors is a direct confirmation of the position of the court in *YRT Services* and the NPS interpretation of the 1965 Act contained in the existing 36 CFR Part 51.1. NPS concession contracts do not procure services for the government; rather, they authorize third parties to provide services to park area visitors.

The NPS Organic Act, 16 USC 1 *et seq.*, also expressly recognizes this distinction. 16 USC 17b provides that the Secretary of the Interior is authorized to contract with persons that provide services or other accommodations to the public in national parks to furnish such services or accommodations to the Government without compliance with the 41 USC 5. 41 USC 5 is the title of the United States Code that establishes procurement contract requirements. Accordingly 16 USC 17b makes clear that if the government contracts with a concessioner to provide services and accommodations to the Government (that the concessioner is authorized to provide to the public), the contract is a procurement of services to the government otherwise subject to 41 USC 5. In addition, by implication, this authority also makes clear that a concessioner's authorization to provide goods and services to park visitors is not a procurement contract as the goods and

services are not provided to the Government.

NPS, in reviewing this issue, did consider the fact that concession contracts in one sense could be argued to result in "services" to the government, *i.e.*, that concession contracts may require the concessioner to repair and maintain government property assigned to a concessioner under the terms of a concession contract. However, these services (repair and maintenance of government property) flow from the assignment (the equivalent of a lease of government property) of property to a concessioner for use in concession operations.

In this connection, the 1998 Act expressly exempts NPS concession contracts from the application of Section 321 of the Act of June 30, 1932 (40 USC 303b), "relating to the leasing of buildings and properties of the United States," thereby permitting NPS to accept the repair, maintenance and improvement of government property from a concessioner instead of collecting cash rent for the use of the property. The legislative history of the 1965 Act (and a related 1962 law) indicates that this provision was included in the 1965 Act (and a related 1962 law) in response to a Comptroller General Opinion that concession contracts are leases. Accordingly, to the extent that the repair and maintenance of assigned property may be considered as "services" to the government, these services are recognized by the 1998 Act as an authorized function of the assignment of government property under concession contracts, not as a procurement of services for the government.

For these reasons, NPS does not consider that NPS concession contracts are subject to the Contract Disputes Act or to other statutes that apply only to federal procurement contracts. Accordingly, it has left this statement in the final rule. NPS also points out that it does not consider the solicitation of NPS concession contracts to be subject to the Competition in Contracting Act ("CICA") as it applies to procurement contracts. *YRT Services* at p. 392. In any event, even if it were determined that NPS concession contracts are subject to CICA, the express provisions of the 1998 Act describing mandatory NPS concession contracting procedures make CICA inapplicable to NPS concession contract under its own terms. 41 USC 253(a)(1)(1988).

A comment asked whether the term "concession contract" refers to "concession permits" awarded under the 1965 Act. It does, as indicated in the definition of "concession contract."

A sentence has been added to this definition in the final rule to clarify that concession contracts must include terms and conditions as are required by law, this part, or are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

#### “Concessioner”

The definition of concessioner has been modified in the final rule to track the terms of the 1998 Act.

A comment submitted by a municipality that holds a concession contract suggested that this definition be modified to make clear that municipalities may be concessioners. This is clear under the definition in the final rule. The municipality also offered to pay a higher than minimum franchise fee in consideration of not being required to compete for the award of concession contracts. NPS has not accepted this suggestion, as it is impermissible under the terms of the 1998 Act.

#### “Director”

The term “Director” has been modified in the final rule in response to comments that expressed concern that the “Director” would be the decision-maker on an appeal from a decision of the “Director.” The term Director as used in the regulations applies to the Director personally and duly delegated subordinates of the Director. In circumstances where the rule calls for an appeal to the Director, the appeal must be to a higher authority than the initial deciding official.

#### “Franchise Fee”

Several comments requested that the term “and rights” be included in this definition after the word “privilege.” NPS has not made this change as the definition of franchise fee contained in the final rule tracks the terms of the 1998 Act.

#### “Offeror”

The definition of the term “offeror” has been modified in order to make clear that an organization does not have to be formally in existence as of the time of submission of a proposal for a concession contract in order for the proposal to be considered by NPS.

#### “Possessory Interest”

A comment took issue with the sentence of this definition that states that possessory interest does not include any interest in personal property even though a prior concession contract may have provided a compensable interest in personal property described as “possessory interest.” The comment

makes the point that “this is true only to the extent that such property does not come within the definition of possessory interest” as set forth in the 1965 Act. NPS agrees with this latter statement and has modified the definition accordingly. The comment also suggests that the regulations address the circumstances of the disposition of personal property when a new concessioner is selected for award of an existing concession contract. NPS has done this in Section 51.68 of the final rule.

Other comments objected to the fact that NPS generally does not intend to include in new concession contracts provisions that require a new concessioner to purchase the personal property of a prior concessioner. NPS considers that such provisions in concession contracts are a barrier to competition as a new concessioner is required to buy equipment that it may not need and that may not be in good condition. NPS considers that the marketplace should control in this situation. A prior concessioner may sell its personal property to a new concessioner on a mutually agreeable basis. If agreement cannot be reached, the prior concessioner is free to sell its personal property on the open market. A commenter stated in this connection that the 1965 Act required that new concessioners purchase the personal property of prior concessioners. This was not the case.

#### “Preferred Offeror”

The general concessioner organization stated that the words “the Director has determined” should be stricken from this definition. The basis of the comment is that the existence of a concessioner’s status as a preferred offeror is not always subject to the Director’s discretion. However, NPS considers that the definition is accurate. The main body of the regulations describes the circumstances under which the Director may determine an existing concessioner to be a preferred offeror. A comment asked whether there ever may be more than one preferred offeror for a qualified concession contract. The answer is no as only one entity can be a concessioner under the terms of a concession contract as of its termination or expiration.

#### “Prior Concession Contract” and “Prior Concessioner”

Several comments suggested changes to these definitions. However, in consideration of these comments, NPS has determined that these definitions are not needed to understand the final

rule. The definitions have been deleted in the final rule.

#### “Qualified Concession Contract”

NPS has included in the general definitions section of the final rule for the sake of clarity the definition of a “qualified concession contract” as set forth in the text of the regulation.

#### “Qualified Person”

One comment suggested adding the word “conserve” to the phrase “protect and preserve” as used in this definition. The request is based on the statement that the word “conserve” reflects language of the 1998 Act and also points out that hunting and fishing, authorized uses in certain park areas, are not considered by some to be consistent with the concept of “preservation.” NPS has not made this change as this definition tracks the statutory description of a qualified person contained in Section 403(4)(B) of the 1998 Act. In any event, NPS considers that the statutory language was not intended to alter park area uses such as hunting and fishing where such uses are otherwise permissible.

The definition of “qualified person” in the final rule has been modified in accordance with the changes to the definition of the term “concessioner” and shortened without changing its meaning.

#### “Right of Preference”

NPS has modified the definition of “right of preference” to more closely track Section 403(7)(C) of the 1998 Act in response to comments concerning the right of preference as described in the proposed regulations.

A comment suggested deletion of the last sentence of this definition, stating that it suggests that NPS can “defeat” a right of preference by changing contract terms and conditions. NPS has not made the requested change. The questioned sentence only states that a right of preference does not give a preferred offeror the right to establish or negotiate the terms of a new concession contract. See the discussion under Section 51.33 with respect to the right of NPS to establish the terms and conditions of new concession contracts.

#### “Visitor Services”

A comment asked NPS to explain why this definition is limited to accommodations, facilities and services that are provided for a fee or charge as this limitation suggests that services provided free to guests are not permissible. This was not the intention of the definition and it has been clarified accordingly. The definition

also has been clarified to state that activities that are “necessary and appropriate” are to be determined by the Director under the guidance of Section 402 of the Act. The definition has been further modified to more closely track the terms of the 1998 Act and to clarify that NPS itself may provide “visitor services,” e.g., operate campgrounds for visitors, as indicated in this section in the proposed regulations.

Another comment suggested that the regulations should contain language that advises NPS managers as to how the courts have interpreted the term “necessary and appropriate” as used in this definition in litigation concerning the 1965 Act. NPS has not accepted this suggestion. Decisions as to what visitor services are “necessary and appropriate” for a particular area are necessarily made on a case-by-case basis by NPS with public participation in planning processes as appropriate. NPS takes into account relevant judicial decisions in its planning decisions. However, planning decisions are fact driven. Every park area is different with respect to resources and the types of visitors and visitor needs and desires.

#### “Responsive Proposal”

NPS has moved the definition of “responsive proposal” from Section 51.15 of the proposed regulations to the general definitions section of the final rule for the sake of clarity. It has also modified the definition of “responsive proposal” to make clear that the determination is made by the Director.

#### Subpart C—Solicitation, Selection and Award Procedures

##### *Section 51.4 How Will the Director Invite the Public To Apply for the Award of a Concession Contract?*

One comment suggested that the regulations should include procedures and guidelines regarding the contents and scope of a prospectus. NPS considers that the regulations, in accordance with the requirements of the 1998 Act, adequately describe the contents of prospectuses.

This section, in response to a comment from an attorney who argued that rights of an existing concessioner may be impacted by the issuance of a prospectus, has been modified by NPS to clarify that the determinations contained in prospectuses and/or in proposed concession contracts published with prospectuses do not become final NPS administrative decisions until such time as a concession contract is awarded in accordance with this part. NPS also

notes that Section 51.47 in the final rule provides an appeal right for concessioners regarding preferred offeror status. Finally, the final rule precludes issuance of a prospectus for a new concession contract earlier than eighteen months prior to the expiration of an existing concession contract that the new contract is to replace, thereby assuring that an existing concessioner does not have to compete for a new contract in circumstances where assessment of the feasibility of the terms and conditions of the new contract would be unduly speculative.

##### *Section 51.5 What Information Will the Prospectus Include?*

The general concessioner organization requested that the words “and enhancement” be deleted from this section for the reasons discussed in the commenter’s statements under sections 51.20 and 51.21. In those sections, the commenter generally objected to the use of environmental enhancement measures as a factor in the selection of concession contract proposals. For the reasons discussed by NPS under those sections, NPS does not agree with the position of the commenter. However, NPS has modified this section to delete references to environmental “enhancement.”

The general concessioner organization objected to the use of the term “minimum” as to the capital investment required by an offeror as referred to in Subsection (a)(5) on the grounds that the 1998 Act does not contain this modifier and its use suggests that NPS is providing itself discretion, “contrary to the law,” to accept proposals that offer a higher capital investment than the “minimum.”

The comment is correct in stating that the 1998 Act does not contain the word “minimum.” Rather, the Act states as follows in pertinent part: “any facilities, services, or capital investment required to be provided by the concessioner.” NPS does not consider that this section of the Act, referring to capital investment required to be provided by the concessioner, may reasonably be interpreted as forbidding NPS from taking into account in the selection of proposals for a concession contract the relative amount of capital investment an offeror may be willing to provide. Moreover, the amount of capital an offeror is prepared to invest in the park is demonstrably an appropriate proposal selection concern. The level of concessioner investment in many cases may directly relate to the quality of the visitor facilities to be provided or measures to be taken with respect to the protection, conservation and

preservation of the resources of the park area.

NPS has included the phrase “if any” in the final rule in response to a comment that stated that many NPS concession contracts do not require capital investment by the concessioner.

A comment suggested that the term “fixed” be included with respect to “minimum” franchise fees. NPS has not made this change. A franchise fee can be in the form of a fixed fee, a percentage of gross receipts, or other measures as may be described in a concession contract. The regulation does not need to amplify this further.

A comment suggested that the word “ensure” be changed to “assure” in Section 51.5(a)(4). NPS has not made this change as the word “ensure” comes from Section 403 of the 1998 Act.

A comment stated that subsection (e) should make clear that any subfactor set forth in a prospectus must be a subset of the principal selection factor to which it relates. NPS agrees with this comment but considers the regulation is clear in this regard.

A comment suggested that subsection (f) be clarified to acknowledge that some information provided to the Director by concessioners is not subject to public release as confidential. NPS has not accepted this suggestion for the reasons discussed under section 51.113. However, NPS has amended this subsection to fully track Section 403(3)(G) of the 1998 Act that requires NPS to include in concession contract prospectuses:

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

In addition, NPS has moved to this subsection from Section 51.113 (which has been deleted in the final rule), certain information that NPS considers is necessary (where applicable) to allow for the submission of competitive proposals.

A comment suggested that the “estimate” of leasehold surrender interest value to be contained in a prospectus should be provided by the existing concessioner. NPS has not accepted this suggestion. It would be an obvious conflict of interest for an existing concessioner to estimate the value of its own leasehold surrender interest for competitive selection purposes.

A comment suggested that prospectuses should set forth all of the fees a concessioner may be required to pay, not just franchise fees. NPS

considers that this section, which refers to franchise fees and other forms of consideration to be paid to NPS under the new contract, meets the concerns of this comment.

NPS has modified this section in the final rule to make clear that concession contracts may contain terms, where appropriate, incorporating measurable performance standards as suggested in general terms by commenters.

*Section 51.6 Will a Concession Contract be Developed for a Particular Potential Offeror?*

A law firm suggested a change to this section. However, as the comment refers to the "last paragraph" of this section and the section only contains one sentence, it appears that the reference to Section 51.6 was in error. NPS was not able to identify the section to which the comment was intended to apply.

A comment suggested that this section be amended to make clear that it does not preclude consultation with an existing concessioner as to the proposed content of a prospectus. NPS has amended this section to indicate that consultations with an existing concessioner may occur but that the concessioner may not be provided any information as to the content of a proposed or issued prospectus that is not available to the general public.

A comment suggested that the phrase "as they relate to the visitor services to be provided" be added after "requirements of the Director" in this section. NPS has not made this change. The term "requirements" as used in this section is not limited to visitor services requirements.

*Section 51.7 How Will Information Be Provided to a Potential Offeror After the Prospectus Is Issued?*

A comment suggested that NPS should hold meetings with potential offerors as a means to ensure that information is equally shared. NPS, in fact, routinely does hold offeror information meetings after the issuance of concession contract prospectuses, particularly with respect to larger contracts. This practice will continue under the final rule, subject to applicable administrative guidelines.

*Section 51.8 Where Will the Director Publish the Notice of Availability of the Prospectus?*

A comment suggested that NPS should also provide notice "directly to the existing concessioner, both because such concessioner is a logical bidder and because a smooth bidding process requires the incumbent to be apprised of

the timing and particulars of the offering."

NPS is unaware of any occasion where an existing concessioner was not aware of the issuance of a prospectus concerning the continuation of the concessioner's operations. NPS, therefore, does not see a need to make this change even if it was otherwise considered appropriate.

A comment suggested that the word "may" in this section be changed to "shall" in order to ensure even-handed solicitation practices. NPS has not made this change as the decision is discretionary.

A comment suggested that notice of the concession opportunity also be included in the **Federal Register**. NPS has not accepted this suggestion. Federal Register publication is expensive and may not significantly increase public awareness of the concession offering. The costs of publication outweigh the limited benefits of publication.

A comment suggested that NPS should maintain a list and notify persons who have expressed interest in concession opportunities. NPS does this now and intends to continue to do so as a matter of administrative practice.

*Section 51.9 How Do I Get a Copy of the Prospectus?*

A comment suggested that the word "may" in this section be changed to "shall." NPS has not accepted this suggestion as it generally intends to impose a fee for prospectuses only when it anticipates that a large number of requests for copies of a prospectus will be received.

*Section 51.10 How Long Will I Have To Submit My Proposal?*

A comment suggested that this section should contain guidance as to what constitutes circumstances that would make a shorter than normal response time appropriate. As circumstances may vary greatly, NPS has not made this change. However, in general, a shorter time period is appropriate for smaller concession contracts where potential offerors are likely to be local to the park area and familiar with the circumstances of the concession opportunity.

A comment also suggested that the sixty-day usual response time for submission of proposals be changed to ninety days. Another comment recommended one hundred and twenty days. NPS has not accepted these suggestions as it considers that sixty days is a reasonable response time for routine NPS concession contracting

opportunities and does not wish to unduly expand the length of the concession contracting process. In addition, NPS may, under the terms of this section, increase the time if determined appropriate.

*Section 51.11 May the Director Amend, Extend, or Terminate a Prospectus or Solicitation?*

Several comments addressed this section. They criticize the fact that the Director's right to cancel a concession contract solicitation at any time prior to award of the contract contains no guidelines as to when such a cancellation may occur and that an explanation of a cancellation is not required. One suggested that a cancellation should be only "for cause." The comments also requested an "appeal right" in the event of a cancellation. In response to these comments, NPS has included in this section a sentence describing the circumstances under which a concession contract solicitation may be cancelled. NPS has not accepted the suggestion of an "appeal right." NPS does not consider that any person has an entitlement to the issuance of a concession contract solicitation and that, therefore, the cancellation of a solicitation in and of itself, a discretionary decision by NPS as indicated in the final rule, does not affect the rights of any person. (NPS has changed the term "termination" of a solicitation to "cancellation" in the final rule as "cancellation" is the usual terminology.)

*Section 51.12 Do I Have Any Rights If the Director Amends, Extends or Terminates a Prospectus or Solicitation?*

Several comments addressed this section. One suggested that an amendment to a concession contract solicitation should only be for "cause." This, of course, is the case. An amendment would be made by NPS only if circumstances called for an amendment. Another comment suggested that the phrase "except for any existing rights" be included at the beginning of this section. However, NPS does not consider that this section as written could be construed as affecting the existing legal rights of any person, as discussed under the previous section.

The final rule has combined Section 51.12 with Section 51.11 for the sake of clarity. Section 51.12 has been deleted in the final rule.

*Section 51.13 (Section 51.12 in the final rule) Are There Any Other Procedures That I Must Follow or That Apply to the Solicitation or to the Selection of the Best Proposal?*

Several comments expressed concern that NPS, by referencing a lottery system in this section, intended to generally select concessioners by lottery. This is not the case. The use of a lottery was intended to apply only in very limited circumstances. However, in light of other changes made in the regulations with respect to selection procedures (discussed in the next several paragraphs), NPS does not consider that mention of a lottery system is appropriate in the final rule. Reference to it has been deleted from the regulations.

A number of comments criticized NPS for not including in the proposed regulations "simplified procedures for small, individually-owned, concession contracts" as called for by Section 403(1) of the 1998 Act. This section of the proposed regulations, however, did incorporate such simplified procedures, stating that the Director will include simplified solicitation and/or information requirements in prospectuses for concession contracts that are likely to be awarded to a sole proprietorship. NPS notes that, because of the express statutory requirements of the 1998 Act prescribing concession contract solicitation procedures, it is not possible to establish in general a greatly simplified regulatory solicitation procedure for smaller concession contracts. NPS does not consider that Section 403(1) was intended to repeal by implication the numerous statutory requirements regarding the selection process set forth in the 1998 Act. Rather, NPS considers that the simplified procedures referred to in the 1998 Act relate to administrative practices utilized by NPS and any regulatory procedures NPS may adopt in furtherance of the 1998 Act. In any event, NPS considers that the basic elements of the 1998 Act with respect to solicitation procedures, *i.e.*, issuance of a prospectus, evaluation of proposals under specified criteria, and selection of the best proposal, necessarily have to be contained in any selection process, whether or not legally required. Accordingly, the greatest opportunity for simplified procedures is with respect to the information requirements of prospectuses.

NPS, in the development of prospectuses for smaller concession contracts, intends to limit as appropriate the information that needs to be submitted by offerors and the number of

subfactors and related information requirements applicable to the principal selection factors. In this way, although the solicitation process will follow the statutory requirements for concession contracting, the paperwork burden will be significantly reduced for smaller concession opportunities.

In addition, NPS has provided for the possible elimination with respect to smaller concession contracts of the secondary selection factor (quality of environmental program) contained in Section 51.17(b)(1) of the final rule, thereby simplifying the selection procedures for smaller concession contracts. NPS has made corresponding changes to Section 51.12 in the final rule to make clear its intentions with respect to simplified procedures for smaller concession contracts.

A municipality that holds a concession contract suggested that the term sole proprietorship be amended to include local governments. NPS does not consider this lawful under the Act as the term "individually owned" clearly refers to a business, not a governmental unit.

*Section 51.14 (Section 51.13 in the final rule) When Will the Director Determine If Proposals Are Responsive?*

A comment suggested that a time limit be adopted as to when NPS must determine a proposal to be non-responsive. NPS has not accepted this suggestion in light of the varying complexity of concession contract proposals. This section has been changed in the final rule to make clear that a determination of responsiveness must be made prior to or as of the selection of the best proposal.

*Section 51.15 (Deleted in the final rule) What Is A "Responsive Proposal?"*

A comment suggested that the definition of a responsive proposal needs to be more clearly articulated. NPS has made a change to the definition (discussed under Section 51.3). The commenter's real concern, however, appears to be that the commenter considers that the requirement for submission of a responsive proposal deprives offerors of the ability to object to any of the terms of the solicitation or to submit a conditional proposal. The commenter objected to this as it wishes to have the right to disagree with the terms of the solicitation or the new concession contract, in other words, to disagree with the minimum requirements of the prospectus. NPS does not agree with this point of view. NPS determines the nature and scope of proposed new concession opportunities. They are not a matter of negotiation

with prospective offerors. This is made clear by Section 403(3)(A) of the 1998 Act that states that a prospectus shall include the "minimum requirements" of the solicited contract. The 1998 Act also describes certain of these "minimum requirements" in Section 403(3).

However, NPS, in response to this comment, has added a sentence to Section 51.15 in the final rule that makes clear that offerors are permitted to suggest changes to the terms and conditions of a concession contract so long as they agree to be bound by the terms and conditions of the solicitation.

NPS has moved the definition of "responsive proposal" in the final rule to the general "definitions" section, Section 51.3, and deleted this section in the final rule.

*Section 51.16 (Section 51.14 in the final rule) What Happens If No Responsive Proposals Are Submitted?*

\* \* \* \* \*

*Section 51.17 (Section 51.15 in the final rule) May I Clarify, Amend or Supplement my Responsive Proposal After It Is Submitted?*

A comment suggested that this section be amended to delete the word "responsive." The word has been eliminated from the first sentence. NPS considers, in agreement with the comment, that the Director should have the discretion (but not the obligation) to allow an offeror to clarify a non-responsive proposal. NPS has added a sentence to this section explaining that "clarification" of a proposal refers to making clear any ambiguities that may have been contained in a proposal, not a right to substantively amend or supplement the terms of a proposal.

A comment suggested that permitting amendment of proposals after the submission date may lead to an auction of concession contracts. NPS has not changed the regulation in response to this comment as the overall terms of the regulations preclude an "auction" of concession contracts. However, in response to this comment, NPS has added a sentence to clarify that permitted amendments of proposals are limited to correcting aspects of proposals resulting from a general failure of offerors to understand requirements of the prospectus or to generally fail to submit required information. Amendments are not permitted for the purpose of allowing a particular offeror or offerors to correct proposal deficiencies that were not generally common to all proposals received.

*Section 51.18 (Deleted in the final rule)  
How Will the Director Select an Offeror  
for Award of the Concession Contract?*

As discussed in the response to "General Comments," a number of comments were received that criticized the evaluation and selection process that was contained in the proposed regulations. The comments generally focused on three concerns. The first was that the evaluation was not based on a numerical rating system. The second was that the "tie-breaker" concept was inappropriate and inconsistent with the intentions of the 1998 Act with respect to franchise fees. The third was that the proposed regulations gave environmental aspects of proposals undue weight in the selection process. NPS has modified the regulations to accommodate all of these concerns as discussed below.

In this connection, Section 51.18 has been deleted in the final rule. The method under which the Director will select the best proposal in response to a prospectus is contained in Section 51.16 in the final rule (as discussed further under Section 51.21).

A comment suggested that NPS should not permit members of evaluation panels to be NPS officials that are acquainted with the incumbent concessioner. NPS has not accepted this suggestion. NPS evaluation panels usually include officials from the applicable park area in order to ensure that the circumstances of the park area are understood in the evaluation process. The fact that an official may be acquainted with the existing concessioner is not considered inappropriate by NPS. The contract is awarded to the offeror that submits the best overall proposal.

*Section 51.19 (Deleted in the final rule)  
How Will the Director Select the Best  
Proposal?*

This section also has been deleted in the final rule. Section 51.16 of the final rule describes the method for selecting the best proposal.

*Section 51.20 (Section 51.17 in the final  
rule) What Are the Five Principal  
Selection Factors?*

Several comments objected to the fact that this section and other sections refer to five principal selection factors instead of four as mentioned in the 1998 Act.

The regulations encompass five principal selection factors because one of the statutory factors, Section 403(5)(i), is, in fact, a double factor. This selection factor in the 1998 Act refers to "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." (Emphasis added). There are unmistakably two distinct factors here, resource preservation and appropriate visitor services. For the sake of clarity, the regulations separate them. To the extent that the commenters may consider that this clarification somehow results in a change to the relative weight of the selection factors, NPS notes that the 1998 Act gives NPS discretion to weight the principal selection factors. NPS could have achieved the same result as splitting selection factor (1) into two factors by doubling the weight given to principal selection factor one so that both of its distinct elements would be of equal weight to the other selection factors. NPS considers, however, that better clarity is achieved by separating principal selection factor (1) into two factors. NPS has changed this section to refer to selection factors in general to conform to changes made to the secondary factor section of the proposed rule in response to public comments.

This section has also been changed in the final rule to delete reference to environmental enhancement as an element of principal selection factor (1) as requested by several comments. As discussed below, the matter of the "environmental enhancement" content of proposals is an element of a secondary factor in the final rule, also as requested by several commenters. See Section 51.17(b)(1). NPS has also made a change to this secondary factor by permitting it to be excluded from prospectuses in certain circumstances. See the discussion under Section 51.13. It has also rephrased the term "environmental enhancement" programs for clarification purposes. NPS considers that a secondary selection factor that is concerned with the conservation of resources in general is appropriate. Park areas are not immune from general environmental impacts. Progressive environmental management practices such as energy conservation and recycling ultimately assist in the preservation of park resources as well as in general environmental enhancement.

This section has also been changed in the final rule to delete the word "quality" in selection factor two as suggested by a commenter as the word "quality" is not contained in the related statutory provision. NPS, however, does not consider that this change results in any change in the meaning of the selection factor.

NPS, in response to a comment, included the phrase "if any," after the

term franchise fee in the text of principal selection factor (5) to reflect the fact that it is possible that a concession contract will not call for a franchise fee in special circumstances. NPS did not add the phrase "and/or other forms of financial consideration" to the last two sentences of this selection factor as requested by a commenter as this would be inconsistent with the statutory provision concerning franchise fees.

A comment requested that the word "facilities" be included in the selection factor concerning past experience. NPS has not made this change as the term used in the regulation, "visitor services," is defined in Section 51.3 as including "facilities."

NPS has modified Section 51.20(a)(5) (Section 51.17(a)(5) in the final rule) to delete its last two sentences as unnecessary in light of the terms of principal selection factor (5) (which repeat the statutory mandate of Section 403(5)(iv) of the 1998 Act regarding consideration of franchise fees in awarding concession contracts).

A comment suggested that the term "park area" is ambiguous as used in this section, i.e., that it is not clear whether it refers to areas outside of park boundaries. NPS has not made a change in response to this comment. The term is generally intended to apply to property within park boundaries.

A commenter suggested that an offeror should be rated on its commitment to further the goals of the park area and to operate in a manner that is supportive of the ideals of the park. NPS considers that these interests are implicit in the established selection criteria.

Finally, several comments requested changes in the wording of the principal selection factors to reflect particular interests such as historic preservation, environmental enhancement and the circumstances of particular park areas. NPS, however, has retained the terms used by the statute as appropriate for the general regulations. Particular prospectuses can address special concerns and the circumstances of the applicable park area through subfactors or secondary factors.

*Section 51.21 (Section 51.16 in the final  
rule) How Will the Director Apply the  
Five Selection Factors and Select the  
Best Proposal?*

This section has been modified by NPS to incorporate a numerical scoring system while retaining the basic approach of evaluating on the basis of narrative analysis. A numerical scoring system was recommended by a number of commenters (discussed under

“General Comments”). Under the numerical scoring system, the first four principal selection factors may score as high as five points each. The fifth principal selection factor, the franchise fee offered, may only receive up to four points, reflecting that, pursuant to the 1998 Act, revenue to the United States is 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 secondary factor concerning “environmental enhancement” activities (rephrased for clarification in the final rule) may receive up to three points. Any additional secondary factors contained in a prospectus may not have an aggregate score of more than three total points.

One comment suggested that the basis of a numerical point score system should be 100 points. However, NPS considers that evaluation of proposals on the basis of such a large scale results in scores that are difficult to explain, e.g., why did this proposal get rated as 74 while this one received a score of 76? NPS believes that scoring proposals on a lower scale such as contained in the final rule, based on the required narrative explanation of the basis for the score, leads to more credible, objective evaluations. However, the point score system described in the final rule does permit an evaluation panel to award whole number or fractional points, e.g., 2 points, 2.5 points, etc., as appropriate in the circumstances of a particular evaluation. A comment suggested that the same member of an evaluation panel evaluate all proposals with respect to particular selection factors. NPS has not accepted this suggestion. To the contrary, it may be better to have several persons evaluate varying elements of a proposal.

Another comment suggested that the franchise fee offered not be considered in an evaluation of proposals unless two or more proposals were determined as substantially equal. This suggestion has not been accepted as contrary to the intentions of the 1998 Act.

*Section 51.22 (Deleted in the final rule) When Will the Director Apply Secondary Factors?*

This section has been deleted from the final regulations as unnecessary in light of the changes made to sections 51.20 and 51.21. However, the last sentence of this section has been included in Section 51.17(b)(2) in the final rule. In addition, NPS has included reference to minority and women-owned businesses in this section in the

final rule consistent with NPS policy and in response to a suggestion to this effect from a commenter. In connection with this section, NPS recognizes that minority, women and Native American-owned businesses are severely under-represented in the concessioner community. To remedy this, NPS strongly encourages minority, women and Native American-owned businesses to apply for concession contracts. In order to encourage this, NPS will provide interested persons and firms maximum allowable information and assistance by:

(1) Making reasonable efforts to include on all source lists of potential concessioners, minority, women and Native American-owned firms that have expressed interest in becoming a concessioner;

(2) Seeking the advice and assistance of the Minority Business Development Agency in locating and counseling these firms, as well as providing public information on concession opportunities to these firms; and

(3) Providing advice and counseling to these firms on how to participate in concession contract opportunities.

*Section 51.23 (Deleted in the final rule) How Will the Director Select the Best Proposal If Two or More Proposals Are Assessed as Substantially Equal after the Director Has Applied the Principal and Secondary Factors?*

This section has been deleted from the final regulations in light of the changes made to Sections 51.20 and 51.21. Section 51.16(c) of the final rule describes how the Director will select the best proposal in the event that two or more proposals receive the same highest score after evaluation under Section 51.16(a) and (b).

NPS notes, as discussed in “General Comments,” that a number of comments objected to the “tie-breaker” concept contained in this and other sections of the proposed regulations. A concern in this connection was that the tiebreaker concept might lead to franchise fee bidding. The tiebreaker concept has been deleted from the final rule, both with respect to environmental enhancement and franchise fee considerations. In the event that two or more proposals receive the same highest numerical score after evaluation by NPS, the final rule provides that the Director will select as the best proposal the proposal (among those with the same highest score) that the Director considers will, on an overall basis, best achieve the purposes of the 1998 Act. This change is consistent with Section 403(5) of the 1998 Act that calls for NPS to select the best proposal after

considering the statutory principal selection factors and any secondary factors that may be included in a prospectus.

*Section 51.24 (Section 51.18 in the final rule and retitled) What Happens If a Proposal Is Rated as “Unacceptable” Under Any of the First Four Principal Selection Factors or If the Offeror Is Not a Qualified Person?*

A comment suggested that this section should expound upon or give examples as to when a proposal may be considered unacceptable.

NPS, in response to this and other criticisms, has modified this section in the final rule to delete its first sentence and to add to it the balance of the provisions of Section 403(4)(B) of the 1998 Act, i.e., that a proposal must be rejected if it is not responsive to the general objectives of resource protection and proper visitor service. The modified provision, in addition to inclusion of the responsive proposal requirement, contains only the requirements of Section 403(4)(B) of the 1998 Act. NPS does not consider that further amplification of this statutory provision is necessary.

*Section 51.25 (Section 51.19 in the final rule) Must the Director Award the Concession Contract That Is Set Forth in the Prospectus?*

A comment made the point that the 1998 Act does not permit material amendments to the terms and conditions of a concession contract as set forth in the prospectus. NPS has amended this section in the final rule to reflect this comment.

*Section 51.26 (Section 51.20 in the final rule) Does This Part Limit the Authority of the Director?*

Several comments expressed concern about this section, asserting that the Director should not have unconditional authority to determine when to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms. NPS, however, considers that the provision is a proper statement of its authority and responsibility for the administration of concession contracts under the terms of the 1998 Act. Section 404(10) of the 1998 Act states that “nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.”

*Section 51.27 (Section 51.21 in the final rule.) When Must the Selected Offeror Execute the Concession Contract?*

A comment suggested that the time frame for execution of the concession contract by the concessioner should be specified as thirty days in all cases. NPS does not agree with this, as, given the varying type and scope of concession contracts, it needs to retain flexibility as to the time for execution by the selected offeror.

A comment suggested that if the selected concessioner does not receive a concession contract from NPS within ninety days from the date of the selection of the best proposal, or within ten days of the commencement of the contract period, whichever is later, it should have the right to withdraw its proposal. NPS has not included the ninety-day suggestion in the final rule because there may be circumstances in which NPS would not be able to issue a final contract in the specified time.

*Section 51.28 (Section 51.22 in the final rule and retitled.) After the Selected Offeror Executes the Concession Contract, When May the Director Execute the Concession Contract?*

A comment asked whether the gross receipts referred to in this section are the gross receipts of the concessioner or the franchise fees received by NPS from concessioners. The gross receipts referred to in this section are the gross receipts of the concessioner.

A sentence has been added to this section in the final rule stating that the NPS may execute a concession contract that is not required to be submitted to the Congress at any time after selection of the best proposal and execution by the concessioner.

**Subpart D—Non-Competitive Award of Concession Contracts**

*Section 51.29 (Section 51.23 in the final rule) May the Director Extend an Existing Concession Contract Without a Public Solicitation?*

A comment stated that this section should not be used to delay competitive bidding for existing contracts that have already been extended. NPS notes, however, that it does not intend to unduly delay competitive solicitations of concession contract proposals for a concession contract and that the extension authority provided by this section is limited as to when it may be exercised, *i.e.*, that the extension is necessary to avoid interruption of visitor services. NPS, however, has added a sentence to this section making clear that extensions under the 1998 Act in excess of an aggregate of three years

are not permissible. It has also added a sentence requiring that notice of an extension be must published in the **Federal Register** thirty days in advance of the award of the extension (except in emergency situations).

Another comment suggested that this section be amended to provide the public with an opportunity to comment on the proposed extension of any concession contract. NPS notes that the 1998 Act does not require public notice in these circumstances. Moreover, NPS considers that public comment is not appropriate in light of the limited term of extensions and the limited circumstances in which a concession contract may be extended non-competitively.

*Section 51.30 (Section 51.24 in the final rule) May the Director Award a Temporary Concession Contract Without a Public Solicitation?*

A comment made the same point discussed above regarding public notice of an intention to extend concession contracts. NPS has also accepted the suggestion of requiring public notice of an intention to award a temporary concession contract. A sentence to this effect has been included in the final rule.

NPS has also clarified this section to make clear that that temporary concession contracts cannot be extended and may be issued for only a three year term in the aggregate with no ability to issue further temporary contracts for the continuation of the related visitor services. In addition, this section has been clarified to make clear that temporary concession contracts may not be awarded to continue to authorize the continuation of visitor services provided under an extended concession contract.

However, Subsection (b) of this section in the final rule makes a special exception to this latter requirement. It permits the Director to award a temporary concession contract to continue the visitor services provided by an extended concession contract if the concession contract was in effect as of November 13, 1998, and had been extended by that date or was due to expire by its terms by December 31, 1998, and was subsequently extended. This special rule is needed because more than 280 NPS concession contracts in effect as of November 13, 1998, were already extended or were due to expire by December 31, 1998. Due to limited resources, it may not be possible for NPS to award new concession contracts to replace all of these extended contracts within the three year extension period permitted by the 1998

Act. The Director, however, may not award a temporary concession contract in these circumstances unless the Director personally determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary contract have been considered and found infeasible. The section in the final rule also requires the Director to follow the notice procedures set forth in 51.29 in the final regulations before awarding a temporary concession contract in these circumstances.

The general concessioner organization objected to the last sentence of this section that concerns the status of the holder of a temporary concession contract with respect to a preference in renewal. The comment stated that this section should be amended to state that if a "permanent" concessioner is extended on a temporary basis by a temporary concession contract that its right of preference, if any, will be recognized when the temporary contract expires. NPS concurs with this suggestion (except for its anomalous reference to a "permanent" concessioner) and has amended this section accordingly.

*Section 51.31 (Section 51.25 in the final rule) Are There Any Circumstances in Which the Director May Award a Concession Contract Without Public Solicitation?*

A comment stated that NPS should include a substantive discussion as to how it intends to interpret and administer this section. NPS notes in this connection that the language of the section tracks a related statutory provision, Section 403(11)(C) of the 1998 Act. Given that it is impossible to describe prospectively what "extraordinary circumstances" may exist under which "compelling and equitable considerations" require the award of a concession contract to a particular person in the public interest, thereby permitting the non-competitive award of a full term concession contract, NPS does not believe that further regulatory guidance is generally practicable. However, NPS notes that the legislative history of the related statutory provision makes clear that the occasions when NPS determines that compelling equitable circumstance warrant award of a concession contract to a particular party should be extremely rare. The legislative history further states that "indisputable equitable concerns are to be the determinant of such circumstances." S. Rep. No.105-202, at p. 33 (1998).

NPS has included this last sentence in the final rule. It has also made a change

to clarify that the required notice must identify the person to whom the contract is to be awarded. In addition, it has changed the notice period in the final rule to sixty days. Finally, the final rule requires that the Secretary of the Interior approve any such contract award in addition to the Director.

A local government that is a concessioner (along with numerous comments from individuals in support of the position of the local government) suggested that this section be amended to permit non-competitive awards of concession contracts to governmental entities. NPS does not consider this to be within its legal authority under the Act even if otherwise appropriate.

Another comment requested that this section be clarified to make clear what official initiates a determination to award a concession contract under this authority. Under current internal delegations, the initiating official generally would be the Superintendent of the park area in question. However, no amendment is needed in this regard, as the regulations make clear that the term "Director" applies to subordinates of the Director with appropriate delegated authority.

One commenter requested that a clear direction be given as to whom it should contact in order to obtain the award of a concession contract under this section. The comment implies that a person has a right to a non-competitive award of a concession contract. This is not the case. The award of a contract under this section is in the discretion of NPS under the limited circumstances described in this section.

#### Subpart E—Right of Preference

As discussed above, a number of comments were received concerning this subpart to the effect that it fails to recognize that existing concessioners have a contractual right to a preference in renewal under 1965 Act concession contracts. The following discussion of comments relates only to the substance of procedures relating to a right of preference under the 1998 Act, not as to whether existing satisfactory concessioners under 1965 Act concession contracts have a contractual right of preference in renewal (discussed under "General Comments").

NPS has added in the final rule for clarity a new section (Section 51.27) explaining what a right of preference is under the 1998 Act (in accordance with the definitions in Section 51.3). NPS has also split Subpart E of the proposed regulations into two subparts in the final rule, Subpart E concerning the operation of a right of preference and Subpart F describing how a

concessioner obtains a right of preference. NPS has also rearranged the order of the sections as contained in the proposed regulations to conform to the content of the new subparts as contained in the final rule. These changes are editorial, not substantive.

#### *Section 51.32 (Section 51.50 in the final rule and retitled) Does the Existence of a Preferred Offeror and a Possible Right of Preference Limit the Authority of the Director to Establish the Terms of a Concession Contract?*

A comment stated that this section gives NPS unilateral authority to modify the terms of existing concession contracts. NPS considers this an obvious misreading of this section but has added the word "new" to this section to resolve any ambiguity in this connection.

#### *Section 51.33 (Section 51.36 in the final rule) What Three Conditions Must Be Met Before the Director Determines That a Prior Concessioner is a Preferred Offeror?*

Several comments expressed concerns about this section to the effect that it provides NPS the ability to deprive a concessioner of a right of preference by amending the facilities and services authorized by a new concession contract to materially differ from those authorized by the prior concession contract. Although this was not the intention of NPS, the concern has been addressed in the final rule.

To understand the issue, the relevant provisions of the 1998 Act must be examined. The 1998 Act states as follows in pertinent part about the right of preference:

As used in this title, the term preferential right of renewal ["right of preference" as defined in the proposed regulations and final rule] means that the Secretary of the Interior, subject to a determination by the Secretary that the facilities or services authorized by a prior concession 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 concession contract which authorizes the continuation of the facilities and services provided by the concessioner under its prior contract. Section 403(7)(c) of the 1998 Act. (Emphasis added).

In addition, Section 403(10) of the 1998 Act states:

(10) Nothing in this section shall be construed as limiting the authority of the Secretary of the Interior to determine whether to issue a concession contract or to establish its terms and conditions in

furtherance of the policies expressed in this title.

Accordingly, a right of preference under the 1998 Act only exists if the new concession contract "continues" the facilities and services provided under a prior concession contract. In this connection, NPS clearly has the authority under Section 403(10) of the 1998 Act to establish the terms and conditions of new concession contracts in furtherance of the purposes of the 1998 Act, even if any changes made may mean that the facilities and services authorized under a prior concession contract are not continued under a new concession contract. The concern of the commenters is that NPS will abuse this authority in order to deprive incumbent concessioners of a right of preference.

The proposed regulations state in Section 51.33(a) that in order for an otherwise eligible prior concessioner to obtain a right of preference to a new concession contract, the new concession contract must provide only for the continuation of the visitor services authorized under the prior concession contract. In addition in this connection, the proposed regulations state that the visitor services to be continued under the new contract may be expanded or diminished in scope but may not materially differ in nature and type from those authorized under the prior concession contract. NPS considers that this section properly reflects the intentions of the 1998 Act and properly reflects the discretion vested in NPS under the 1998 Act in this connection.

However, in response to the comments of existing concessioners, NPS has deleted the word "only" from Section 51.33(a) in conformance with Section 403(7)(C) of the 1998 Act.

This change appears in Section 51.37 in the final rule. NPS, for editorial purposes, has moved the right of preference condition regarding continuation of visitor services in a new concession contract from this section to Section 51.37. This is because the nature of the new concession contract (*i.e.*, whether it "continues" the previous visitor services) is more logically an element of determining what contracts are qualified new concession contracts. Moving this requirement to Section 51.37 in the final rule did not alter its meaning with respect to the circumstances in which an existing concessioner is entitled to a right of preference.

As a conforming amendment, Section 51.36 in the final rule has been clarified to state affirmatively that to be a preferred offeror the applicable new concession contract must be a qualified

concession contract. NPS has also modified this section in the final rule to clarify that a qualified prior concession contract for purposes of this section refers only to whether the prior concession contract was an outfitter and guide concession contract in accordance with the terms of the 1998 Act, not to the level of its gross receipts. It is possible that a prior concession contract with annual gross receipts in excess of \$500,000 may be estimated to have less than \$500,000 in annual gross receipts under the new concession contract, thereby providing a right of preference to the holder of the prior contract if otherwise qualified.

The general concessioner organization requested that a 50% test be incorporated into the regulations, *i.e.*, that if the new contract authorized the continuation of no less than 50% of the facilities and services of the prior concession contract, that the right of preference would obtain. NPS does not consider this suggestion to be within its authority under the 1998 Act as the 1998 Act states that there must be a continuation of the facilities and services, not a continuation of half of the facilities and services. Even if this change were within its authority under the 1998 Act, however, NPS considers that it would be inappropriate in light of the policies of the 1998 Act regarding competitive award of concession contracts.

NPS considers that the changes made to Section 51.33(a) in the final rule duly accommodate the concerns of the commenters.

*Section 51.34 (Section 51.37 in the final rule) How Will the Director Determine That a Concession Contract Is a Qualified Concession Contract?*

One comment suggested that the \$500,000 figure contained in this section be subject to upward adjustment based on inflation as measured by the Consumer Price Index. However, the 1998 Act states the \$500,000 figure with no reference to inflation while elsewhere the Act specifies that inflation is to be taken into account in the calculation of certain figures. NPS considers that adding an inflation adjuster to the \$500,000 figure is not authorized by the 1998 Act. If it were authorized, NPS considers that such a change would be inappropriate in light of the competitive award objectives of the 1998 Act.

Another comment stated that the term "first calendar year" as used in this section is ambiguous, *e.g.*, if a contract is awarded mid-year, one may construe the period for calculating the gross annual receipts to be less than one full

year. The comment suggested that the term the "first twelve months" be used instead of the "first calendar year." NPS has made this change.

Two comments were concerned about the fact that the period for which the \$500,000 figure will be determined is the first year of the new contract rather than the entirety of the term of the new contract. The 1998 Act provides no express guidance in this connection. NPS has considered this comment but continues to believe that, in light of the difficulty in accurately projecting future revenues, limiting the determination of gross receipts to the first year of the new contract is reasonable.

The comments also suggest that if a concession contract that is to be continued under a new concession contract had gross revenues in excess of \$500,000 in its last year, that it automatically should be considered that the new concession contract will have revenues in excess of \$500,000 in the first year of a new contract. NPS considers that, although the revenues of a prior contract must be taken into account in determining the projected revenues of the new contract, the 1998 Act clearly indicates that the \$500,000 figure relates to the revenues of the new concession contract, not to the revenues of the prior concession contract.

Another comment suggested that the \$500,000 figure is arbitrary. NPS notes that the figure was set by the 1998 Act. The same comment objected to the fact that NPS is to determine whether prospective concession contract will have gross receipts in excess of \$500,000, suggesting that the decision should be based on submittals to NPS under the prior concession contract. Further, the comment suggested that an existing concessioner should be consulted by NPS and provided an appeal if the concessioner disagrees with the decision of NPS. NPS has not accepted these suggestions in general, although it notes that a concessioner has an appeal right under Section 51.47 in the final rule as to a determination, among other matters, that a new contract will have gross receipts in excess of \$500,000. In addition, a major basis of determining the gross receipts of a new concession contract will be the annual financial reports submitted under the previous concession contract. NPS considers that the procedures set forth in the final rule are appropriate and that further procedures regarding the determination of the gross receipts of a new concession contract are unnecessary.

*Section 51.35 (Section 51.38 in the final rule) How Will the Director Determine That a Concession Contract Is an "Outfitter and Guide" Concession Contract?*

Several comments expressed a concern about this section. One asked why outfitters and guides have a preference in renewal. Outfitters and guides have a preference in renewal under Section 403(8) of the 1998 Act.

Other comments focused on the phrase "solely authorizes" in this section. The comments suggest in general that minor or incidental services additional to outfitter and guide services should be permitted by NPS without loss of a right of preference by an outfitter and guide concessioner. However, NPS notes that Section 403(8) of the 1998 Act contains the "solely authorizes" phrase which is merely repeated in the regulations. NPS, accordingly, has not made the suggested changes. However, a further discussion of a related issue is contained under Section 51.37.

*Section 51.36 (Section 51.39 in the final rule) What Are Some Examples of Outfitter and Guide Concession Contracts?*

A comment suggested that these examples include educational activities conducted by non-profit organizations. NPS has not accepted this suggestion as the examples given are of activities that are applicable whether or not the concessioner is a profit or non-profit organization.

Other comments suggested that guided mountain biking, float trips and other activities be added to the list of examples of outfitter and guide concession contracts. NPS has not done this, as the listed activities are only examples and not meant to be exclusive. Inclusion or exclusion of an activity as an example does not necessarily indicate that a particular related concession contract will be determined to be an outfitter and guide contract.

*Section 51.37 (Deleted in the final rule) What Facts and Circumstances Will the Director Take Into Account When Determining if a Concession Contract Is an Outfitter and Guide Concession Contract?*

A number of comments criticized this section with respect to its third and fourth sentences. Rather than modify these two sentences, NPS has deleted this section in light of the description of outfitter and guide concession contracts contained elsewhere in this subpart.

A concern was also expressed that activities of an outfitter and guide

concessioner outside of a park area should not be relevant in determining whether the concession contract is an outfitter and guide concession contract. NPS notes, however, that the relevant test is not whether activities take place outside of park area boundaries but whether activities are authorized by a concession contract. In any event, this issue is academic in light of the deletion of this section in the final rule.

*Section 51.38 (Section 51.40 in the final rule and retitled) What Are Some Circumstances That Will Indicate That Outfitter and Guide Operations Are Conducted in the Backcountry?*

A commenter was concerned that ferry boat service to an island in an urban setting might be considered as a "backcountry activity" within the meaning of this section as the service occurs in an area "remote from roads." The comment requested clarification in the regulations in this respect. NPS does not consider that this section needs clarification as it is meant to be applied on a case-by-case basis.

Another comment suggested that this section be changed to state that if an activity met any one of the factors stated in this section that it should be considered as a backcountry activity. NPS has not accepted this suggestion. The determination of whether outfitter and guide operations are conducted in the backcountry of a park area must be made on a case-by-case basis. There are no precise definitions of backcountry. Accordingly, while the regulations provide some factors that generally indicate that outfitter and guide operations are conducted in the backcountry of a park area, none of these factors can be considered as individually determinative of the issue. This section also has been modified to make clear that the determination of "backcountry" is to be made on a park-by-park basis taking into account the particular geographical circumstances of the relevant park area and the general factors identified.

The same comment suggested that the phrase that operations occur "in areas remote from roads and developed areas" be changed to "in areas not readily accessible to the public." NPS did not accept this suggestion as it considers that the term backcountry as used in the 1998 Act relates to more remote areas of a park rather than areas "not generally accessible to the public."

The same comment also suggested that a sentence be added to this section to the effect that a concession contract's operations may be determined to be conducted in the backcountry even if none of the circumstances specified in

this section were met. NPS considers that the section makes this clear, particularly as amended in the final rule.

A comment stated that the term "backcountry" might describe an experience rather than actual physical setting, suggesting that rock climbing in a front country location should be considered as a backcountry activity. NPS has not made this change as NPS considers that the 1998 Act's reference to backcountry relates to physical location, not the nature of an experience.

Another comment suggested three revisions to this section:

1. The phrase regarding search and rescue should be deleted on the basis that search and rescue could be necessary even in park areas next to a parking lot;

2. The section should state that the health and safety of park visitors is more readily ensured by the supervision of experienced outfitter and guide services, regardless of the proximity to developed areas of a park; and

3. The role of outfitters and guides in protecting park resources by supervising visitation and reducing impacts should be recognized by adding the statement "the operations assist in dispersing visitors away from signature resources, features and other areas of intense visitation."

NPS has not accepted these suggestions. With respect to the first, although it is true that in certain cases search and rescue may be necessary even in close proximity to a parking lot, this is not relevant to the meaning of backcountry in this part.

NPS considers the second two suggestions to be policy positions that are not relevant to the determination of what is backcountry within the meaning of the 1998 Act.

*Section 51.39 (Section 51.41 in the final rule) 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?*

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*Section 51.40 (Section 51.42 in the final rule) Are There Exceptions to This Compensable Interest Prohibition?*

\* \* \* \* \*

*Section 51.41 (Section 51.43 in the final rule) Who Will Make the Determination That a Concession Contract Is an Outfitter and Guide Contract?*

A comment objected to the fact that only the Director personally, or a

Deputy or Associate Director, may make the determination as to what concession contracts are outfitter and guide concession contracts. The commenter suggests that these decisions should be made at the field level under appropriate guidance. NPS, however, has not accepted this change. Given the varied nature of each park area and the judgmental factors that must be considered in making these determinations, NPS considers that making them on a national level is necessary for the sake of consistency. The term "Director" has been deleted from this section in the final rule to make clear that the Director is able to consider appeals under this section.

*Section 51.42 (Section 51.44 in the final rule) How Will the Director Determine If a Prior Concessioner Was Satisfactory for the Purposes of This Part?*

A number of comments were received in response to this section. The majority of the comments, including several from existing concessioners, supported the general intention of this section to the effect that a track record of satisfactory operations by an incumbent concessioner is a necessary precondition to entitlement to a right of preference. This intention reflects the requirements of Sections 403(8)(B)(ii) and 403(8)(C)(i) of the 1998 Act which states that an incumbent concessioner, if otherwise qualified, is entitled to a right of preference only if "the Secretary of the Interior has determined that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." Several comments stated that NPS has no authority under the 1998 Act to condition a right of preference on satisfactory performance. This view is clearly in conflict with the terms of the 1998 Act.

A comment objected to the phrase "and other relevant facts and circumstances" in subsection (a) and "among other considerations" in subsection (b) as being too vague. NPS has deleted the second phrase in the final rule in response to this comment but has left the first phrase. This is because there may be occasions when NPS becomes aware of actions of a concessioner that may result in a determination of less than satisfactory performance that were not revealed in a annual evaluations.

The general concessioner organization objected to subsection (b) on the grounds that a concessioner can be found to be less than satisfactory for any two years of the term of the contract and therefore lose its potential right of preference without an opportunity to

recapture the opportunity. To the contrary, another concessioner organization stated that this provision is "reasonable and promotes diligence to achieve acceptable performance standards." Another concessioner organization stated that the provision is "fair and appropriate to both the goals of performance-based renewal and provision of quality services."

Several comments suggested that two years of less than satisfactory performance should not automatically mean that a concessioner is determined as not satisfactory for purposes of a right of preference, *i.e.*, that the concessioner should be given an opportunity to correct less than satisfactory performance. NPS has not made this change as less than satisfactory annual evaluations are not a surprise to concessioners. There is ample opportunity to correct deficiencies that may result in less than satisfactory performance.

NPS, however, in this section in the final rule, also has made clear that the determination of unsatisfactory operation that automatically results from two or more less than satisfactory annual evaluations is not to be applied retroactively. This does not necessarily mean that a concessioner that had less than satisfactory evaluations prior to the effective date of the final rule may not be determined to have operated unsatisfactorily over the term of its contract. Rather, it only means that such a result is not required.

One comment suggested that "unsatisfactory" performance be defined as an unsatisfactory rating that is not corrected and, that, during the term of the prior concession contract, the overall rating as satisfactory or unsatisfactory be determined by averaging each year's performance rating. NPS considers these suggestions inappropriate, as they would encourage marginal or unsatisfactory performance by concessioners.

For these reasons, NPS has not changed the two-year track record requirement of this section in the final rule.

However, a number of comments particularly objected to the requirement of subsection (b) to the effect that less than satisfactory performance in either of the last two years of the term of a concession contract results in the loss of a right of preference. The comments considered this unfair. NPS has deleted the final sentence of this section in the final regulations. It agrees that the two-year less than satisfactory performance requirement should be the same with respect to all years of a contract.

A comment from a concessioner organization stated that, "overall, the Park Service has done an admirable and dedicated job" with respect to its annual performance evaluations. However, the comment, and others, suggested that the regulations should provide guidance as to the standards to be applied in annual concessioner evaluations. NPS has not accepted this suggestion. It would not be practical to include in the regulations generic standards for annual evaluations beyond the statutory standard of satisfactory performance under the terms of the applicable concession contract. NPS does point out, however, that its annual evaluation program permits a concessioner that receives a less than satisfactory rating to appeal this determination to the applicable NPS Regional Director.

NPS also notes that it is the process of considering revisions to its existing evaluation program in light of the 1998 Act and in light of NPS's intention to implement further "performance-based" contracting with respect to concession contracts.

*Section 51.43 (Section 51.45 in the final rule) Will a Prior Concessioner That Has Operated for Less Than the Entire Term of a Concession Contract Be Considered a Satisfactory Operator?*

A number of comments objected to this section and several questioned its legal basis.

The legal basis for this section is found in Sections 403(8)(B)(ii) and 403(8)(C)(i) of the Act which require as a condition to a right of preference that the Secretary determine that "the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." The intention of these sections is clear. A right of preference, which amounts to a statutory right to have greater rights to the award of a government contract than the general public, must be earned through satisfactory performance. If NPS adopted the position espoused by several of the commenters, a business could purchase a concession contract on the very last day of the term of a concession contract and thereby obtain the statutory right of preference with no demonstration whatsoever of satisfactory performance. NPS does not consider this to be the intention of the 1998 Act or sound public policy.

NPS, however, in response to these comments, has made changes to this section in the final rule. Particularly, instead of requiring that a new concessioner operate satisfactorily for two years under a contract with a term of ten years or less or four years under a contract with a term of more than ten

years, NPS has reduced these "track record" periods to one year for concession contracts with a term of five years or less and two years for concession contracts with a term of more than five years. NPS notes that the final rule in this respect is less restrictive than the comparable rule contained in 36 CFR 51.5(a) in effect prior to this final rule.

NPS considers that these changes will alleviate concerns about the ability to sell concession contracts toward the end of a contract term (in accordance with Section 408 of the 1988 Act) while providing a sufficient demonstration of satisfactory performance upon which to base a determination of a right of preference.

One comment suggested that the "track record" period of satisfactory performance under this section should not apply to contract extensions. However, the sections of the 1998 Act quoted above clearly reference extensions in this connection. In addition, the existing 36 CFR 51.5 contains these same types of "track record" requirements regarding the granting of a preference in renewal to existing concessioners. Congress must be presumed to have been aware of these existing requirements while considering the legislation that became the 1998 Act.

The same comment suggested that this section be amended to state that the first day of operation for purposes of the section be changed from the date of approval of the assignment of the concession contract until the first day of actual operations by the new concessioner. NPS has not made this change as a new concessioner lawfully cannot begin to operate prior to the approval of a contract assignment by NPS and, once the assignment is approved, the new concessioner automatically is the lawful operator of the concessioner. The final rule has also been clarified by expressly stating that the two-year track record requirement applies to new concessioners that result from assignments, including assignments of controlling interests in concessioners, as defined in this part.

*Section 51.44 (Section 51.46 in the final rule) May the Director Determine That a Prior Concessioner Has Not Operated Satisfactorily After a Prospectus Is Issued?*

A comment suggested that NPS delete this section, and, if NPS determines that performance has substantially degenerated after a prospectus is issued, that NPS terminate the contract and bring in an operator on a temporary basis. NPS, however, considers that this

section is necessary for the reasons stated in the next several paragraphs, and, with respect to the latter suggestion, considers it impracticable in light of the time it takes to terminate a contract for unsatisfactory performance. Other comments repeated the position that any requirement regarding satisfactory performance in order to obtain a right of preference is unlawful. NPS disagrees for the reasons discussed in the previous several paragraphs.

The intention of this section is to permit a determination that a concessioner has not operated satisfactorily after the date a prospectus is issued and prior to the award of a contract. It was intended to apply to situations where, after a prospectus is issued, a second less than satisfactory annual evaluation is made that precludes a preference in renewal, or, previously unknown information becomes available which causes NPS to withdraw a previous determination of satisfactory performance. The provision is necessary to avoid a less than satisfactory concessioner from exercising a right of preference by virtue of fortuitous timing of performance evaluations or by lack of knowledge by NPS of relevant information.

However, NPS has changed this section in response to the comments received to make clear the limited circumstances in which it is meant to apply.

As part of this change, NPS has included a provision that permits a performance evaluation for right of preference purposes after issuance of a prospectus on the basis of a shortened operating year if necessary to make a last evaluation of satisfactory performance for right of preference purposes prior to the selection of the best proposal submitted in response to a prospectus.

*Section 51.45 (Section 51.48 in the final rule) What Happens to a Right of Preference in Case of Termination of a Concession Contract for Unsatisfactory Performance or Other Breach?*

One commenter provided combined comments directed to this section and Section 51.44 but it appears that the comments were in fact directed to Sections 51.42 and 51.43. They have been responded to under those sections.

A comment requested that the last sentence of this section be "conformed in accordance with our comments on Section 51.44." NPS reviewed those comments but considers that the last sentence of Section 51.45 is necessary to make clear that termination of a concession contract is normally a "last resort" remedy for NPS and that,

therefore, the fact that NPS may not have terminated a concession contract for unsatisfactory performance does not limit the authority of NPS to determine that a concessioner nonetheless operated less than satisfactorily.

*Section 51.46 (Section 51.49 in the final rule) May the Director Grant a Right of Preference Except in Accordance With This Part?*

The last two sentences of this section have been deleted as unnecessary.

*Section 51.47 (Section 51.29 in the final rule) How Will I Know If a Preferred Offeror Exists?*

The final regulation contains a new section 51.28 that describes when NPS will determine that a preferred offeror exists.

*Section 51.48 (Section 51.26 in the final rule) What Solicitation, Selection and Award Procedures Described in This Part Will Apply to the Solicitation?*

One comment was directed to this section but it clearly pertained to Section 51.84, not 51.48.

*Section 51.49 (Section 51.30 in the final rule) What Must a Preferred Offeror Do Before He or She May Exercise a Right of Preference?*

The general concessioner organization took the position that an existing concessioner under a 1965 Act concession contract not only has a "continuing contractual right of preference" but also has a contractual right to exercise the right of preference even if the concessioner chooses not to submit a responsive proposal in response to a prospectus. The organization makes this argument despite the fact that Sections 403(8)(B)(iii) and 403(8)(C)(ii) of the 1998 Act expressly state that in order for an incumbent concessioner to exercise a right of preference it must have "submitted a responsive proposal for a proposed new concession contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4)." The commenter does not explain the basis of its position, other than to say that the requirement for submission of a responsive proposal was not included in the 1965 Act.

NPS considers this position baseless for several reasons in addition to the fact that it is in direct contradiction of the express terms of the 1998 Act.

The first reason is that the responsive proposal requirement of the 1998 Act reflects the terms of 36 CFR part 51 in effect prior to the passage of the 1998 Act. 36 CFR part 51 required, prior to

this amendment, the submission of a responsive proposal by an existing satisfactory concessioner in order to be given a preference in renewal by NPS under the 1965 Act. In fact, the 1998 Act codifies the prior 36 CFR Part 51 in this respect.

In 1995, an incumbent concessioner challenged the validity of the responsive proposal requirement of 36 CFR part 51 after refusing to meet the minimum investment requirements of a prospectus for a new concession contract. *Hotcaveg v. Kennedy*, 883 F. Supp. 428, (E.D. Mo. 1995), *aff'd*, 72 F. 3rd 133 (8th Cir. 1995). The district court in *Hotcaveg* held that the responsive proposal requirement was not a violation of the 1965 Act, stating that:

Requiring concessioners to meet minimum standards to improve the quality of facilities in national parks is a reasonable interpretation of the role of the National Park Service. The Secretary is carrying out his duty mandated by statute. *Id.* at 429.

Congress must be presumed to have been aware of the NPS regulatory requirement regarding submission of responsive proposals when it was considering the 1998 Act and also aware of the fact that the 8th Circuit had upheld this requirement in 1995 as an appropriate implementation of the 1965 Act. NPS points out that the general concessioner organization filed an *amicus* brief in *Hotcaveg* on behalf of the plaintiff and also objected to, as unlawful, the responsive proposal requirement of 36 CFR part 51 at the time it was proposed by NPS.

Secondly, 1965 Act concession contracts, of course, make no reference to a contractual right to not be obliged to submit a responsive proposal as a condition to being given a preference in renewal. Accordingly, NPS has rejected the commenter's position that the responsive proposal requirements of the 1998 Act do not apply to 1965 Act contracts because of Section 415 of the 1998 Act.

Further, such an interpretation would clearly frustrate the 1998 Act's goal of enhancing competition in concession contracting. If existing concessioners with a preference in renewal are not required to submit responsive proposals, prospective competitors will rightly conclude that submission of a competing proposal is a waste of time as the incumbent concessioner has a "lock" on the award of the new contract, evidenced by the fact that the incumbent, unlike the competitor, is not even required to submit a responsive proposal in order to compete for the contract.

*Section 51.50 (Section 51.31 in the final rule) What Happens If a Preferred Offeror Does Not Submit a Responsive Proposal?*

A comment repeated the argument regarding submission of a responsive proposal. This issue is responded to under Section 51.49.

*Section 51.51 (Section 51.32 in the final rule) What Is the Process If the Director Determines That the Best Responsive Proposal Was Not Submitted by a Preferred Offeror?*

One comment suggested that this section should make clear that NPS must advise the preferred offeror as to the specific areas in which it must amend its proposal to meet the better terms and conditions of the best proposal. NPS considers that this requirement is implicit in this section. However, NPS has made the requested change.

*Section 51.52 (Section 51.33 in the final rule) What If the Preferred Offeror Does Not Timely Amend Its Proposal To Meet the Terms and Conditions of the Best Proposal or Is Not a Qualified Person To Carry Out the Terms of the Amended Proposal?*

A comment was directed to Section 51.51 but NPS considers based on its content that it was intended to be directed to Section 51.52. The comment suggests that it is unlawful for the NPS to require "requalification" of a preferred offeror if it exercises a right of preference by matching the terms and conditions of a better proposal. NPS disagrees with this as Section 403(4)(B) of the 1998 Act states:

(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.

NPS considers that this section of law requires that an award of a concession contract, whether or not through the exercise of a preference in renewal, must be to a qualified person within the meaning of the statute. Congress could not possibly have intended the right of preference to require award of a concession contract to an unqualified entity.

However, NPS has modified this section in the final rule to delete express reference to the qualified offeror requirement of the 1998 Act as it would at best rarely occur that an amended

proposal from a preferred offeror would need to be rejected by NPS on the basis of the qualified offeror requirement of the 1998 Act.

*Section 51.53 (Section 51.34 in the final rule) What Will the Director Do If a Selected Preferred Offeror Does Not Timely Execute the New Concession Contract?*

A comment appears to have been made in reference to this section. It suggests that it is not proper to require a preferred offeror to execute a concession contract within the period specified by the Director. The comment suggests that the language of the contract may differ from the prospectus or the proposal (an event not permissible under the statute and the regulations). NPS disagrees and notes that the requirement is equally applicable to all selected offerors, whether or not a preferred offeror.

*Section 51.54 (Section 51.35 in the final rule.) What Happens to a Possible Right of Preference If the Director Receives No Responsive Proposals?*

The general concessioner organization agreed with the intentions of this section but suggested that the word "different" be substituted for "more favorable" as it may be difficult to establish whether it is more or less favorable than the prior prospectus. NPS has not made the requested change to this section. This is because the new prospectus would necessarily be different from the old prospectus, e.g., at the least, the commencement date of the new contract would very likely change in a new prospectus because of the passage of time.

*Section 51.55 (Section 51.47 in the final rule and retitled.) How Do I Appeal a Decision That a Prior Concessioner Is Not a Preferred Offeror?*

Several comments stated that thirty days is not sufficient time to prepare an appeal. (One comment suggested a sixty-day period.) In response to these comments, NPS has provided in the final rule that NPS may extend this period upon request by the concessioner if NPS determines that the concessioner demonstrates good cause for an extension. NPS has also included a requirement in the final rule that an appeal must specify the grounds for the appeal. In addition, in response to comments encouraging competition in concession contracting, NPS has expanded the administrative appeal right contained in the proposed regulations to permit a person an administrative appeal with respect to a determination by the Director that a

concessioner is a preferred offeror. NPS considers, in light of the anti-competitive consequences of preferred offeror status, that potential competitors should have a right of administrative appeal with respect to such determinations.

A comment suggested that the appeal should not be considered by the Director personally (or a Deputy or Associate Director) as called for by this section. The concern is that these individuals may be too busy to timely consider an appeal. However, NPS considers that these officials will be able to make timely appeal decisions. Moreover, the fact that an appeal must be considered by the highest levels of NPS is for the benefit of concessioners as it ensures national consistency on the important issue of right of preference.

Another comment suggested, without amplification, that the appeal process contained in this section is "illusory." NPS disagrees. The Director (or a Deputy or Associate Director) will be fully accountable for their appeal decisions.

The general concessioner organization submitted extensive comments on this section. NPS responds below. However, NPS first notes that the underlying premise of the comments is that it is illegal for NPS to require concessioners that, allegedly, have a contractual right of preference under 1965 Act concession contracts, to submit a responsive proposal in order to exercise this right. As a consequence of this argument, the commenter describes a number of hypothetical consequential inequities resulting from this section. The issue of whether a concessioner with a "contractual right of preference" has to submit a responsive proposal as required by the statute is addressed under Section 51.49. NPS responds here only to other aspects of the comment's criticisms of this section.

The general concessioner organization's first specific point is that NPS must make the internal decision as to whether the existing concessioner is a "preferred offeror" before issuing a prospectus. This is not the case. NPS notes that in most cases an existing concessioner will know that it is a satisfactory concessioner for purposes of a preference in renewal in advance of the issuance of a prospectus. However, NPS will not necessarily make final decisions affecting the existence of a preferred offeror regarding the terms of the new concession contract (i.e., will it have gross receipts of less than \$500,000, will it be an outfitter and guide contract, will it continue the previous visitor services), prior to the issuance of the prospectus.

The comment goes on to argue that submitting a responsive proposal is a heavy burden that a concessioner should not have to bear prior to a decision as to whether it is a preferred offeror. This argument is posited on the notion that a concessioner with an asserted "contractual right of preference" is not legally required to submit a responsive proposal in response to a prospectus in order to exercise a right of preference. As discussed under Section 51.49, this is not the law. The statutory requirement to submit a responsive proposal is not a burden imposed by this section. It is imposed by the 1998 Act.

Several commenters suggested in effect that the regulations should make clear that a right of appeal is to be provided not only with respect to a concessioner's status as a preferred offeror but also with respect to whether a new concession contract is a qualified concession contract for purposes of a right of preference. NPS agrees with this suggestion and has clarified this section and other sections in the final rule to make clear that an appeal regarding whether a concessioner is a preferred offeror includes appeal as to whether a new concession contract is a qualified concession contract. NPS has made several other conforming amendments to sections of the final rule to reflect an appeal right for a determination that a new concession contract is not a qualified concession contract.

NPS notes, however, that although the final rule expressly provides an appeal from a determination that a new concession contract is not a qualified concession contract, this does not establish an appeal with respect to the content of prospectuses or the terms and conditions of new concession contracts. The content of prospectuses and the terms and conditions of new concession contracts, except to the extent mandated by this part or the 1998 Act, are determined in the discretion of NPS. (See Section 403(10) of the 1998 Act: "Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.")

In addition to these general comments, the general concessioner organization made a number of more specific arguments concerning this section, asserting for a variety of reasons that it is illegal. NPS responds to them as appropriate as follows.

In its first specific comment, the general concessioner organization misreads Section 51.32 of the proposed regulations to interpret it to mean that

NPS may unilaterally modify the terms and conditions of existing concession contracts. Section 51.32, of course, does not give NPS the authority to do this. NPS has amended Section 51.32 in the final regulations to eliminate any ambiguity it may have contained in this regard.

The commenter states that although the NPS now attempts to justify these additional procedural burdens in order to ensure that a right of preference cannot "block policy," the commenter is "not aware of any significant bidding scenario in the history of the NPS concession program in which a right of preference was successfully used to promote such interference."

NPS notes that the quoted words do not appear in the proposed regulations or in their preamble.

The comments suggest that it is the intention of the proposed regulations that an appeal under this section is to be made to the initial decision-maker. This, of course, is not the case. The apparent confusion of the commenter is based on the fact that the regulations as a matter of form always refer to the "Director" as the responsible official. This is customary practice in NPS regulations and in many regulations of other federal agencies. In fact, it tracks the 1998 Act that always refers to the Secretary of the Interior as the responsible official even though, of course, the Secretary's responsibilities under the Act are delegated to subordinate officials. The proposed regulations were not intended to suggest that appeals from a deciding official would be directed to the deciding official. The proposed regulations state that the term "Director" means the Director of the National Park Service or an authorized representative of the Director, except where a particular official is specifically identified in this part.

The comments suggest that this section is illegal in violation of the Administrative Procedures Act on the premise that adjudicatory proceedings must be utilized in such an appeal. However, the Administrative Procedures Act does not require adjudicative procedures in the type of determination at issue in this section. The procedures provided meet all legal requirements.

The comments repeat the concern about an appeal to the deciding official and suggests that the appeal provided by this section fails to provide meaningful, timely relief. The basic argument is that it is improper for a solicitation to proceed while an appeal is ongoing. This argument, in turn, is premised on the notion that an

incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal (contrary to the express terms of the 1998 Act). The argument is that the existing concessioner in these circumstances, if the appeal is not determined prior to the release of a prospectus, will be required to take an action (submission of a responsive proposal), that it is not otherwise legally required to do. NPS has not made this change as the 1998 Act requires submission of a responsive proposal.

The comments assert that the fact that in this section the appellant only receives a "possible" right of preference if it wins an appeal does not "guarantee" that the concessioner will have a right of preference. But the term "possible" with respect to a right of preference only refers to the fact that a concessioner with a "possible" right of preference must submit a responsive proposal, as expressly required by the 1998 Act, in order to have an unconditional right of preference. However, to avoid confusion, NPS has deleted reference to a "possible" right of preference in the final rule except in circumstances where clarity requires use of the word.

The comments summarily allege that the appeal procedure contained in this section is illegal. NPS disagrees with this position. For the reasons discussed above, the administrative appeal provided by this section conforms with standard administrative practice, deprives no one of any constitutional rights, and is consistent with the purposes of the 1998 Act.

The last specific comment of the general concessioner organization under this section is a restatement of its prior arguments, particularly the argument that an incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal to a concession contract prospectus in order to exercise the right of preference. The general concessioner organization's argument is baseless as discussed under Section 51.49.

Subpart F—Leasehold Surrender Interest (Subpart G in the final rule.)

*Section 51.56 (Section 51.51 in the final rule.) What Special Terms Must I know To Understand This Part?*

"Arbitration"

For the purposes of clarity, NPS has added a definition of "arbitration" and a description of arbitration procedures to this section in the final rule. This replaces the description of arbitration proceedings contained in Section 51.78 in the proposed regulations. See the

discussion under Section 51.78 as to how the final rule is changed with respect to arbitration procedures. Other references to arbitration in the final rule also refer to Section 51.51 of the final rule.

#### “Capital Improvement”

The general concessioner organization objected to this definition because it differed from the definition of “capital improvement” contained in the 1998 Act. The comment states that “NPS has no authority to use a different definition.” This statement is incorrect. NPS, in drafting regulations to implement the 1998 Act, has clear authority to interpret the 1998 Act through appropriate definitions to set forth understandable and workable regulations consistent with the terms of the statute.

NPS, however, in order to accommodate the concerns of the organization in this connection, has amended this definition in the final regulations to track the 1998 Act’s definition. This amendment does not result in a substantive change to the meaning of “capital improvement.”

Several commenters suggested that this definition be clarified to make clear that it encompasses floating docks. NPS, because of the special circumstances of floating docks, has amended the definition of “fixtures” in this connection and has also added the term “barges” to the capital improvement definition to make clear that barges are not floating docks. Floating docks are considered to be non-removable equipment under this part for leasehold surrender interest purposes only. This change should not be construed as indicating that NPS necessarily considers that possessory interest may be obtained in floating docks.

#### “Construction Cost”

The general concessioner organization objected to the definition of “construction cost,” stating that it does not cover all elements of construction cost. This comment is discussed below under “Eligible Direct and Indirect Costs.”

The commenter also requested deletion of the reference to a concessioner’s income tax returns with respect to construction cost. NPS has done this in the final rule. In addition, as suggested by the general concessioner organization, the final rule states that construction costs must be capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP).

NPS did not remove the reference in this definition to “approval by the

Director” as requested by a commenter. However, the approval process in the text of the final rule has been amended to reflect the commenter’s concerns in this respect.

#### “Depreciation”

The general concessioner organization objected to the inclusion of certain terms in the definition of “depreciation” as contained in the proposed regulations, arguing that obsolescence should not be an element of depreciation with respect to leasehold surrender interest capital improvements. However, the common definition of depreciation as used in the appraisal industry states that it is the loss of value in property from “any cause” and further states, in regard to improvements, that depreciation encompasses both “deterioration and obsolescence.” See the definition of “depreciation” in *The Dictionary of Real Estate Appraisal*, 3rd Edition (1993), published by the Appraisal Institute (hereinafter referred to as the “3rd Edition”). NPS does not consider that there are significant differences, if any, between the depreciation terms of the 1998 Act and the definition of depreciation contained in the 3rd Edition. In this connection, the commenter elsewhere refers to the Appraisal Institute as an appropriate source of definitions regarding leasehold surrender interest terms. In any event, NPS, in the final rule, has deleted the terms to which the commenter objected as unnecessary.

NPS notes that the House and Senate Committee Reports that accompanied S. 1693, in their general description of the bill, mention “wear and tear” depreciation but in their section-by-section analyses discuss depreciation in terms of deterioration and prospective serviceability. NPS considers that the reference to “wear and tear” depreciation was off-hand and not meant to modify the statutory description of depreciation.

Another commenter asked whether “depreciation” refers to depreciation for federal income tax purposes. It does not. It refers to the type of depreciation discussed above.

#### “Eligible Direct and Indirect Costs”

NPS was surprised that several comments objected to the scope of construction costs (direct and indirect) contained in the proposed regulations. This is because the proposed regulations, to the benefit of concessioners, utilized a significantly more expansive definition of “construction cost” than its usual meaning. Particularly, NPS included in

the definition a number of indirect costs of a concessioner related to construction, e.g., architect’s fees, environmental study costs, and on-site inspection expenses, even though the developer’s costs related to construction are not generally considered to be “construction costs.”

For example, *The Dictionary of Architecture & Construction*, Second Edition (1993), defines “construction cost” as:

The cost of all the construction portions of a project, generally based upon the sum of the construction contract(s) and other direct construction costs; does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.

For another example, the 3rd Edition defines “construction cost” as:

The cost to build, particularly an improvement; includes the direct costs of labor and materials plus the contractor’s indirect costs. (Emphasis added.)

The comment from the general concessioner organization took the position that the definition of “construction cost” should be that which is utilized in Chapter 16 (page 346) of the Eleventh Edition of *The Appraisal of Real Estate* published by the Appraisal Institute (hereinafter referred to as the “11th Edition”).

NPS has reviewed the elements of construction cost that are contained in the 11th Edition. However, NPS notes that the context of the term “construction cost” as used in Chapter 16 of the 11th Edition is for purposes of appraising the fair market value of real estate by the reproduction or replacement cost method. For this reason, several costs of the owner (such as marketing expenses and post-construction carrying costs) may be included as indirect costs for the purposes of a fair market value appraisal. The fact that “construction cost” has this broader meaning in Chapter 16 is apparent from the fact that the 3rd Edition, referenced above, the American Appraisal Institute’s dictionary of appraisal terms, defines “construction cost” as the cost to build, including indirect costs of the contractor. No reference to the costs of the owner is made. The 3rd Edition is cited as a reference in the 11th Edition.

Accordingly, NPS does not consider that the 11th Edition’s description of “construction cost” for fair market value purposes is reflective of the meaning of the term as used in the 1998 Act. The following provision of the legislative history of the 1998 Act makes clear that

a "fair market value" definition of construction cost was not intended by the Congress:

The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investments in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in any undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary can accurately calculate the amount for purposes of competitive solicitation of concession contracts. S. Rep. No. 105-202, at p. 35 (1998).

NPS also notes that "fair market value" was an express element of the value of possessory interest under the 1965 Act. If Congress had intended the term construction cost to be construed in a fair market value context, it would have so stated consistent with the terms of the 1965 Act. NPS considers that the definition of construction cost and of the terms "eligible direct and indirect construction costs" as set forth in the proposed regulations are appropriate interpretations of the term "construction cost" as used in the 1998 Act.

However, in an effort to accommodate the reasonable concerns of the general concessioner organization, NPS in the final rule has included all the direct construction costs set forth in the 11th Edition. In addition, NPS has included in the final rule as many of the specific indirect costs mentioned in the 11th Edition as it considers reasonable in light of its understanding of the term "construction cost" as used in the 1998 Act.

NPS has not included in the final rule the following indirect costs mentioned in the 11th Edition: marketing expenses; sales commissions; leasing commissions; legal fees; title transfers; the cost of carrying the investment after completion of construction; and tenant improvements (tenant improvements may be eligible direct costs).

NPS also has not included as an indirect cost the cost of carrying the investment in land as mentioned in the 11th Edition, as a concessioner makes no investment in land.

NPS particularly would like to comment on a concessioner's

administrative expenses related to construction. The 11th Edition mentions the "administrative expenses of the developer" as possible indirect costs for fair market value appraisal purposes. NPS has not included this very broad item of indirect costs in the final rule, but, consistent with the proposed rule, has included administrative expenses of the concessioner related to direct, on-site construction inspection. NPS notes that, unlike the administrative expenses of a "developer" as contemplated by the 11th Edition, a concessioner's administrative expenses flow from all of its business activities. In any event, NPS does not consider that additional administrative expenses of a concessioner are appropriate to include as eligible indirect construction costs for the reasons discussed in the preceding paragraphs.

The general concessioner organization also requested that "entrepreneurial profit" be treated as a construction cost. However, the 11th Edition describes "entrepreneurial profit" as the difference between the "cost of development" and the "value of the property" after completion." 11th Edition, p. 346. Accordingly, entrepreneurial profit is not a direct or indirect construction cost even as described by the 11th Edition for fair market value appraisal purposes.

NPS also has not accepted the commenter's suggestion that construction costs include "extra costs" associated with dealing with the NPS. The costs of the construction are what they are. Any "extra" construction costs that may exist (NPS does not agree that there are such "extra" costs) with respect to the fact that a concessioner's construction activities are subject to oversight by NPS are necessarily included within the actual construction cost.

The general concessioner organization questioned the portion of this definition that limits construction costs to "amounts no higher than those prevailing in the locality of the project." NPS considers this limitation necessary and has retained it in the final rule. This limitation is important in circumstances where construction work is performed directly by the concessioner, i.e., force account work, or performed by an affiliate of a concessioner. In this connection, a comment suggested that construction costs should include the costs of the concessioner when the concessioner acts as a contractor, e.g., constructs or installs a capital improvement with its own labor force. The definition of construction costs in the final rule makes this clear. NPS notes, however, that only actual

expenses of the concessioner capitalized in accordance with Generally Accepted Accounting Principles are construction costs for leasehold surrender interest purposes.

Another commenter, in addition to making generally the same suggestions as discussed above, requested that the cost definitions be amended to make clear that a current concessioner is not required to pay for environmental studies that are to be used by NPS to develop a prospectus. NPS has not made any changes in this connection as it considers that the regulations cannot be read to require a concessioner to pay for environmental studies in these circumstances.

This commenter also suggested that costs of concessioner initiated studies that facilitate the work and enhance the environment should be eligible costs. NPS considers that the cost definitions in the final regulations achieve this objective to the extent consistent with the term "construction cost" as used in the 1998 Act.

"Fixtures and Non-Removable Equipment"

The general concessioner organization objected to the second sentence of this definition as being too restrictive as to the meaning of these terms. It also suggested an alternative test. NPS has adopted as appropriate the alternative test in the final regulations and has deleted the examples to avoid possible confusion. To avoid unnecessary discussion, NPS deleted the examples of fixtures and non-removable equipment as several commenters objected to one or more of them as being incorrect. Their deletion, however, should not be considered as indicating that NPS necessarily considers any of the examples to be incorrect.

"Ineligible Costs"

NPS has deleted this definition in the final rule as unnecessary. The deletion obviates concerns expressed about this definition.

"Leasehold Surrender Interest"

One commenter asked whether "related capital improvements" as used in this definition may refer to improvements a concessioner makes that are not related to its operations. The definition contained in the proposed regulations relates only to capital improvements built on park lands under the terms and conditions of a concession contract. If a concessioner makes capital improvements to park lands under some other form of authorization, no leasehold surrender interest would be obtained.

A comment (that attached a letter from a bank) suggested that banks will not lend money on the basis of a leasehold surrender interest under the limitations of the 1998 Act. NPS disagrees. The leasehold surrender interest concept will permit concessioners to obtain loans using leasehold surrender interest as collateral. NPS notes that the objections of the bank to leasehold surrender interest apply equally to possessory interest under the 1965 Act. Many lending institutions made loans to concessioners secured by possessory interest.

“Leasehold surrender interest value”

NPS has added to the definition of leasehold surrender interest value in the final rule reference to Section 405(a)(4) of the 1998 Act that permits a different valuation of leasehold surrender interest in certain circumstances effective nine years after the effective date of the 1998 Act. It has also clarified the proposed rule in the final rule to indicate that, in the event a concessioner ceases to utilize a related capital improvement under the terms of a concession contract prior to the termination or expiration of a contract (e.g., where the Director takes a capital improvement out of service for resource protection purposes), the applicable depreciation and entitlement to payment of leasehold surrender interest value is established as of the date the concessioner ceases to utilize the related capital improvement.

“Major rehabilitation”

NPS has modified the definition of “major rehabilitation” in the final rule to adopt a 50% test rather than a 100% test as discussed under Section 51.75.

“Related Capital Improvement or Fixture”

\* \* \* \* \*

“Structure”

A comment suggested that the term “structure” be amended to include landscaping and plantings that are installed as integral to the construction of a capital improvement. NPS has adopted this suggestion in the final rule to the extent that landscaping is an integral component of the construction of a structure. Landscaping includes necessary initial plantings but does not include “re-landscaping” (except as part of a major rehabilitation), landscape maintenance or subsequent plantings.

“Substantial Completion”

For the purpose of clarity, NPS has added a definition of “substantial completion” in the final rule. The

definition tracks the definition of the term in the 3rd Edition. A commenter questioned the use of the term in the proposed regulations. The term is needed in order to establish the completion date of a capital improvement.

*Section 51.57 (Renumbered as Section 51.52 in the final rule.) How Do I Obtain a Leasehold Surrender Interest?*

The general concessioner organization objected to the second sentence of this section, stating that “NPS cannot qualify the right to leasehold surrender interest by contract, and to do so is inconsistent with the 1998 Act.”

This position cannot be reconciled with the express language of Section 405 of the 1998 Act:

(a) Leasehold Surrender Interests Under New Concession Contracts.—On or after the date of 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 concession contract shall have a leasehold surrender interest in such capital improvement subject to the following conditions. \* \* \* (Emphasis added).

Under this authority, the terms and conditions of a concession contract may detail leasehold surrender interest requirements so long as the provisions are consistent with the 1998 Act. In this connection, Section 403(10) of the 1998 Act states that “Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this Title.” (Emphasis added.) Further, Section 417 of the 1998 Act requires the Secretary to promulgate regulations appropriate for implementation of the 1998 Act. There is nothing in the 1998 Act that suggests that such regulations may not place appropriate conditions on leasehold surrender interest.

*Section 51.58 (Deleted in the final rule) If a Concessioner Does Not Comply with the Requirements of This Part or the Terms and Conditions of a Concession Contract, What Happens?*

The general concessioner organization objected to this section because “a concessioner is entitled to a leasehold surrender interest in all capital improvements it constructs on park lands.” This statement, however, leaves out the phrase of the 1998 Act discussed under the previous section that grants a leasehold surrender interest for capital improvements that are constructed “pursuant to a concession contract.” The commenter also argues that this

section is vague in referring to the requirements of this part and the terms and conditions of the concession contract without further guidance. NPS does not consider that these regulations or its concession contracts are vague as to leasehold surrender interest requirements or otherwise. However, in consideration of comments in this connection, NPS has deleted this section in the final rule as unnecessary in light of the leasehold surrender interest terms of the 1998 Act, this part, and concession contract terms and conditions.

Another commenter suggested that this section improperly gives NPS the ability to deprive a concessioner of leasehold surrender interest by determining that the concessioner had failed to meet the requirements of its concession contract. NPS considers that the commenter misconstrued the meaning of this section. In any event, the section has been deleted in the final rule.

*Section 51.59 (Section 51.53 in the final rule and retitled) Why May the Director Authorize the Construction or Installation of a Capital Improvement?*

The general concessioner organization suggested in a comment on this section that the phrase “under the terms of a concession contract” be added after the first use of the word “concessioner” in this section. NPS has been made this change.

*Section 51.60 (Section 51.54 in the final rule) What Must a Concessioner Do Before Beginning To Construct or Install Capital Improvements in Which The Concessioner Seeks a Leasehold Surrender Interest?*

Several comments were received objecting to the ability of NPS to determine that construction costs are “unreasonable.” In response to these comments, NPS has amended this section in the final rule to delete reference to disapproval of the construction of a capital improvement if NPS considers the costs unreasonable.

Another commenter suggested that approvals under this section should be delegable to the park area superintendent. See the changes to the definition of Director in Section 51.3.

*Section 51.61 (Section 51.55 in the final rule) What Must a Concessioner Do After Substantial Completion of The Capital Improvement?*

The general concessioner organization made several comments on this section.

The first sentence of its comment on this section appears to be incomplete. NPS thinks the comment meant to say

that, although construction invoices should be available and a certification by certified public accountant is appropriate, the invoices should not be submitted to NPS but only be made available to NPS for inspection for a period of three years after project completion. This suggestion, if NPS has accurately interpreted it, is not acceptable to NPS. Other commenters made similar suggestions. The existence of a leasehold surrender interest in effect places on the government a burden to pay a concessioner, or require a third party to pay a concessioner, the construction cost of a building perhaps twenty or more years after the building is completed. This obligation, in the view of NPS, requires submission to NPS of the information required by this section in order to properly fulfill NPS's administrative responsibilities for this financial obligation.

The comment also requested that the costs of obtaining the certified public accountant certification be a construction cost element for leasehold surrender interest purposes. NPS has not accepted this suggestion in light of the definition of "construction cost" set forth in Section 51.56.

NPS has modified this section in the final rule to clarify that the construction cost of a project incurred after substantial completion of a project are included as construction cost for leasehold surrender interest purposes.

*Section 51.62 (Section 51.56 in the final rule) How Will the Director Determine the Construction Cost for Purposes of Leasehold Surrender Interest Value?*

Several comments suggested in effect that this section provides NPS with undue latitude to define eligible construction costs for which a leasehold surrender interest will be obtained after construction is complete, thereby placing an undue risk on the concessioner. NPS has amended this section in the final rule to make clear that the review of construction costs by NPS after project completion is limited to a determination that the construction costs claimed are eligible costs within the meaning of these regulations. NPS considers that this change will satisfy the concerns of the commenters in this connection. NPS feels strongly, however, that NPS review of submitted construction costs is an absolute requirement in light of the financial obligation leasehold surrender interest creates for the government or a successor concessioner.

A comment objected to the fact that this section imposes no time constraints on the Director with respect to approval of leasehold surrender interest

construction costs. NPS has not changed this section in response to this comment as it is impossible to state a standard time period for the review of construction costs in light of the fact that some projects may be for as little as \$10,000 and others in excess of \$10 million. This is likewise true with respect to a time limit for appeals under Section 51.63.

*Section 51.63 (Section 51.57 in the final rule and retitled) May the Concessioner Appeal the Director's Determination of Construction Cost?*

Several comments objected to the appeal process provided by this section on the general grounds that it does not provide sufficient rights to the concessioner. NPS has changed this section in the final rule to make a dispute over construction cost subject to binding arbitration at the request of a concessioner.

*Section 51.64 (Section 51.58 in the final rule) What Actions May or Must the Concessioner Take With Respect to a Leasehold Surrender Interest?*

The general concessioner organization objected to subsection (c) of this section with respect to its statement that a concessioner may agree to an alternative value for leasehold surrender interest. While not necessarily agreeing with this comment, NPS has deleted the phrase regarding alternative values in the final rule. Other comments suggested that this section should state that NPS cannot require waiver of a leasehold surrender interest. NPS has not changed this section in this respect as it merely repeats an express term of the 1998 Act.

*Section 51.65 (Section 51.59 in the final rule) Will Leasehold Surrender Interest Be Extinguished by Expiration or Termination of a Concession Contract or May It Be Taken for Public Use?*

The general concessioner organization made a comment on this section that "only payment pursuant to the 1998 Act constitutes just compensation for any purpose." NPS considers that the payment terms of the final rule are consistent with the 1998 Act regarding leasehold surrender interest. The commenter also made an argument under this section as to when payment for leasehold surrender interest must be made. This argument is addressed under Section 51.67.

*Section 51.66 (Section 51.60 in the final rule) How Will a New Concession Contract Awarded to a Prior Concessioner Treat a Leasehold Surrender Interest Obtained Under a Prior Concession Contract?*

The general concessioner organization objected to this section on the same grounds as it objected to Section 51.65. NPS has modified this section (and Section 51.65) in the final regulations to delete as unnecessary the phrase "the new concession contract" and to replace it with "this part."

*Section 51.67 (Section 51.61 in the final rule) How Is a Prior Concessioner That Is Not Awarded a New Concession Contract To Be Paid for a Leasehold Surrender Interest?*

Several comments objected to this section with respect to the timing of payment for leasehold surrender interest, particularly to the fact that the section does not necessarily require payment for a concessioner's leasehold surrender interest immediately upon expiration or termination of the concession contract. Rather, the proposed section permits payment within one year of contract expiration or termination if a successor concessioner is to acquire the leasehold surrender interest and two years if the payment is to be made by NPS.

The comments of the general concessioner organization take the position that a concessioner has a right under the 1998 Act "to continue to operate the facilities under the terms of the concession contract until it is paid for its leasehold surrender interest, as required by the 1998 Act." This position suggests that a concessioner that is providing unsatisfactory service to the public, is not maintaining its buildings, or, that is engaged in environmentally damaging activity, among other possibilities, has a right, paramount to the preservation and protection of the park area and its visitors, to continue to operate until leasehold surrender interest payment is received.

This position is manifestly contrary to the purposes of the 1998 Act.

The position is also without legal merit. NPS points out that Section 405(a)(1) of the 1998 Act states that a concessioner has a leasehold surrender interest in capital improvements under a concession 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." (Emphasis added.) This provision makes no mention of a right to continue operations until the date of

payment as asserted by the general concessioner organization. NPS considers that such a right, that would be in stark conflict with the purposes of the 1998 Act as discussed further, cannot be read by implication into the 1998 Act as argued by the general concessioner organization.

In addition, Section 405(a)(2)(C) of the 1998 Act states that a leasehold surrender interest "shall not be extinguished by the expiration or other termination of a concession contract," a provision that is in direct conflict with the view that leasehold surrender interest value must be paid on the date of contract expiration or termination. (Emphasis added.) Finally, Section 405(c) of the 1998 Act states that, upon expiration of or termination of a 1998 Act concession contract, a concessioner shall be "entitled" under the terms of a concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest. This value is to be calculated as of the date of expiration or termination. However, the statute does not state that the value must be paid on the date of termination or expiration of the contract. The statute also states that the entitlement is "under the terms of the concession contract."

The regulations expressly establish in the concessioner, as of the date of contract expiration or termination, an unconditional entitlement under the terms of the concession contract to be paid its leasehold surrender interest value. The regulations also call for the leasehold surrender interest depreciation deduction to be calculated as of the date of contract expiration or termination (or, if applicable, as of a prior relinquishment date). These provisions appropriately implement the requirements of the 1998 Act.

The general concessioner organization apparently reads the 1998 Act to mean that there is an absolute entitlement to payment of the leasehold surrender interest value on the date of expiration or termination, and, if payment is not received on that date, an entitlement to continue operations until payment is received. NPS disagrees with this interpretation on the basis of the text of the statute as discussed above. Further, such an interpretation of the 1998 Act flies in the face of the overwhelming thrust of the 1998 Act that preservation of park area resources and protection of park area visitors is the paramount mandate with respect to visitor services in areas of the national park system.

It is the primary responsibility of NPS to preserve and protect areas of the national park system and their visitors under both the NPS Organic Act (16

USC *et seq.*) and the 1998 Act. The 1998 Act and the Organic Act state that the "preservation and conservation of park resources and values require that such public accommodations facilities and services as have to be provided within [park areas] should be provided only under carefully controlled safeguards against unregulated and indiscriminate use." (Emphasis added.) Section 402(b)(2) of the 1998 Act also states that:

(b) Policy.—It is the policy of the Congress that 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 are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.

It is indisputable that there may be circumstances in which NPS must immediately terminate the operations of a concessioner in order to fulfill its statutory responsibilities to park areas and visitors. For example, an area of a park may be found to be endangered species habitat, requiring immediate cessation of human activity, or, the threat of natural disaster such as a threatened volcanic eruption may require that a concession operation be immediately terminated in the interest of public safety. In addition, there may be circumstances where NPS is forced to immediately close a concession operation because of environmental damage such as sewage leakage into a threatened cave system. Finally, there may be circumstances where the performance of a concessioner in breach of contract is so bad (e.g., life/health/safety violations) that the concession operations and the concession contract must be immediately terminated in the interest of public health or safety.

The amount of money due the existing concessioner under a concession contract for a leasehold surrender interest could exceed available funds appropriated to NPS in any given fiscal year. It would not always be possible for NPS to obtain a new concessioner or make immediately available appropriated funds in these circumstances in order to pay leasehold surrender interest as a pre-condition to termination of the concession contract. NPS must have the ability to terminate concession contracts in order to carry out its statutory responsibilities to park areas and visitors.

NPS, however, is aware of the business needs of concessioners to obtain timely payment for leasehold

surrender interests. This is why NPS, through the proposed regulations, placed limitations on the time for payment, one year with respect to payment by a new concessioner (it takes approximately a year to prepare for, solicit and award a new concession contract) and two years for payment by the government (the two year period reflecting the federal budget cycle).

Several other comments submitted by concessioners expressed concern about the timing of payment under this section but also made a practical suggestion. These comments suggested that the section be amended to provide interest during any period in which payment was delayed after the expiration or termination of a concession contract. NPS considers these suggestions as appropriate and has included an interest provision in this section in the final rule. NPS considers that the payment of interest (in addition to the CPI adjustment that continues until the date of payment) is fair and will be more than sufficient to encourage lenders to make loans against leasehold surrender interest, a concern raised by other comments in this connection. NPS notes that one commenter suggested that the timing of payments for leasehold surrender interest could result in a \$100 million effect on the economy. NPS believes this assertion to be unfounded, but, in any event, considers that the changes in the final rule eliminate any concerns in this respect.

In addition, in order to further accommodate the concerns of commenters, NPS has modified this section in the final rule to state that the date of payment for a leasehold surrender interest, except in extraordinary circumstances beyond the control of NPS, is to be the date of expiration or termination of the concession contract. In addition, NPS has modified the final rule to require payment within one year of the expiration or termination of a concession contract.

*Section 51.68 (Section 51.63 in the final rule) 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 the Purposes of a New Concession Contract?*

A new sentence has been added to this section in the final rule to expressly require a new concessioner to pay the previous concessioner for any leasehold surrender interest value that is due.

*Section 51.69 (Renumbered as Section 51.62 in the final rule) What Is the Process To Determine the Leasehold Surrender Interest Value When a New Concessioner Is To Pay a Prior Concessioner for a Leasehold Surrender Interest?*

Several comments objected to elements of this section. The primary concern was that the arbitration to determine the leasehold surrender interest value when a new concessioner is to pay a prior concessioner for leasehold surrender interest was to be undertaken by the new concessioner and the prior concessioner. The commenters recommend that the arbitration be between the prior concessioner and NPS. NPS has concurred in this view. This section has been amended accordingly in the final regulations.

Another comment objected to the fact that the arbitration is limited to establishing the depreciation deduction for purposes of leasehold surrender interest value and does not permit arbitration of the prior determination of construction cost required by this part. NPS has limited the arbitration issues in this manner because the final rule calls for arbitration of the construction cost after construction is completed. However, NPS, in response to this comment, has changed this section to include the calculation of the CPI as an additional subject of arbitration in the event of disagreement by the concessioner and NPS. This issue, as well as depreciation, will be current as of the time of the arbitration proceedings.

Comments also stated that the arbitration should take place in advance of the expiration of the prior concession contract. NPS generally concurs in this suggestion but notes that it may not always be possible to conclude an arbitration prior to the expiration of a concession contract, and, of course, it is unlikely that an arbitration could be concluded prior to a termination of a concession contract for default (which could be immediate in certain circumstances). NPS has changed this section in the final regulations to provide for arbitration in advance of contract expiration or termination where possible.

Several comments objected to this section with respect to the type of arbitration procedures it calls for. This issue is addressed under Section 51.78.

*Section 51.70 (Section 51.64 in the final rule and retitled) May the Concessioner Gain Additional Leasehold Surrender Interest by Adding to a Structure in Which the Concessioner Has a Leasehold Surrender Interest?*

The general concessioner organization objected to this section by referencing related objections to other sections. Those objections are discussed under the relevant sections.

NPS has modified this section in the final rule to include "major rehabilitations" within its scope. This permits deletion of Section 51.72 of the proposed regulations in the final rule.

*Section 51.71 (Section 51.65 in the final rule) May the Concessioner Gain Additional Leasehold Surrender Interest by Replacing a Fixture in Which the Concessioner Has a Leasehold Surrender Interest?*

The general concessioner organization objected to this section and stated that it is not supported by law on the grounds that when an existing fixture is replaced by the concessioner there can be no reduction of leasehold surrender interest based on the removal of the existing fixture.

The flaw in this argument is apparent. Suppose a concessioner at the beginning of a concession contract with a twenty year term installs a furnace at a cost of \$1,000. In ten years, the concessioner replaces the furnace with a new furnace, costing \$1,200. At the expiration of the contract, the concessioner is entitled under this section and the 1998 Act to be paid for the value of its leasehold surrender interest. However, the replaced furnace is gone. The 1998 Act does not contemplate that a new concessioner will pay a prior concessioner for a fixture that no longer exists. Under Section 405(a)(3) of the 1998 Act, the leasehold surrender interest value in a capital improvement is the initial construction cost of the capital improvement, in this case the cost of purchasing and installing the furnace, plus a CPI adjustment up to the time of payment for the leasehold surrender interest, less depreciation of the capital improvement as evidenced by its condition and prospective serviceability in comparison with a new unit of like kind. Under any real property appraisal practice, the depreciation of a furnace that was replaced ten years ago is 100%. There is no value to be paid.

NPS has drafted this section carefully in order to fairly deal with the

complicated circumstances of fixtures and non-removable equipment under the leasehold surrender interest concept. Under this section in the proposed regulations, if a concessioner replaces a fixture with a new fixture of like kind, there is no adjustment to the leasehold surrender interest in the fixture. Under the proposed regulations, the new fixture replaces the old one and the concessioner's leasehold surrender interest continues unchanged. However, if the new fixture is a substantial upgrade from the replaced fixture, and if the construction cost of the new fixture exceeds the construction cost of the fixture to be replaced, the increase is added to the concessioner's leasehold surrender interest.

This has been changed in the final rule in order to accommodate to the extent reasonable the concerns of commenters. In the final rule, the entire construction cost of a new fixture is added to the leasehold surrender interest and the construction cost of the replaced fixture is subtracted.

*Section 51.72 (Deleted in the final rule) Will a Concessioner That Undertakes a Major Rehabilitation of an Existing Structure in Which the Concessioner Has a Leasehold Surrender Interest Increase Its Leasehold Surrender Interest?*

Several comments objected to this section on the general grounds that additional leasehold surrender interest should be obtained for any additional construction work undertaken by a concessioner. NPS disagrees. This issue is discussed under Section 51.75.

One comment requested additional guidance as to what constitutes a major rehabilitation. For example, the commenter asked, does adding an additional bathroom to a cabin constitute a major rehabilitation? A major rehabilitation is defined in Section 51.51 of the final rule. The construction of a second bathroom under this definition could be a major rehabilitation if its cost exceeds fifty percent of the pre-rehabilitation value of the cabin. NPS considers that the definition of "major rehabilitation" is clear. NPS, however, deleted as unnecessary in the final rule the second sentence in paragraph (2) of the definition of major rehabilitation.

This section has been deleted in the final rule as its content is included in Section 51.64 of the final rule.

*Section 51.73 (Section 51.66 in the final rule) In What Circumstances Will the Director Authorize a Concessioner To Obtain a Leasehold Surrender Interest in an Existing Capital Improvement in Which no Leasehold Surrender Interest Exists?*

Several comments objected to this section on the same general grounds, that all additional construction should obtain additional leasehold surrender interest. This issue is discussed under Section 51.75.

The general concessioner organization also objected to the last sentence of this section which stated that when an existing building in which a concessioner has no leasehold surrender interest undergoes a major rehabilitation, depreciation for the purposes of the leasehold surrender interest value will apply to the entire building. NPS has amended this sentence in response to the comment. It states in the final rule that depreciation will only apply to the elements of the major rehabilitation.

Finally, for the sake of clarity, this section has been rephrased and split into two subsections in the final rule without a change in its meaning except as noted in the prior paragraphs.

*Section 51.74 (Deleted in the final rule) Will a Concessioner Receive New or Additional Leasehold Surrender Interest as a Result of a Rehabilitation That Does Not Qualify as a Major Rehabilitation?*

Several comments objected to this section because "all capital improvements qualify for leasehold surrender interest." This issue is discussed under Section 51.75. Section 51.74 has been deleted in the final rule as redundant in light of Section 51.64 in the final rule.

*Section 51.75 (Section 51.67 in the final rule) Is a Concessioner Required To Repair and Maintain Capital Improvements, and, If So, Will the Concessioner Obtain Leasehold Surrender Interest as a Result?*

Several comments objected to this and other sections of the proposed regulations because, allegedly, "all capital improvements qualify for leasehold surrender interest." In this connection, the general concessioner organization equates the construction of capital improvements with "any repairs and maintenance" of a building that are "capitalized under GAAP."

In essence, the commenters seek leasehold surrender interest for the capitalized costs of repair and maintenance of an existing structure in

addition to leasehold surrender interest resulting from the construction of the structure.

Before discussing the fact that this position is inconsistent with the terms of the 1998 Act, NPS points out the administrative nightmare for both NPS and concessioners that would result if the commenters' position was adopted by NPS. Under the commenters' position, for example, every time a concessioner might replace a section of damaged drywall, or, replace missing shingles on a roof, a new leasehold surrender interest, including a new CPI calculation, would be established. For larger concession operations (one current operation utilizes almost 800 buildings), the number of these additional leasehold surrender interests could well be in the tens of thousands over the term of a twenty year concession contract. NPS does not consider that such a result, even if otherwise lawful, would be in the best interests of concessioners, NPS, or efficient management of the NPS concessions program.

NPS also notes that the expenditures that a concessioner may make for repair and maintenance of existing structures are not lost to the concessioner. To the contrary, repair and maintenance expenditures will necessarily be reflected in a lower depreciation deduction when the final leasehold surrender interest value for the structure is calculated. The concessioner, accordingly, will be compensated for its expenditures for repair and maintenance of existing structures even though the 1998 Act does not permit recognition of leasehold surrender interest as a result of repair and maintenance.

In any event, the view that additional leasehold surrender interest results from expenditures for repair and maintenance of existing structures is inconsistent with the express terms of the 1998 Act. Section 405(a) of the 1998 Act provides a leasehold surrender interest when a concessioner "constructs" a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract. The statute makes no mention of leasehold surrender interest resulting from the repair and maintenance of an existing capital improvement. "Construction" means "the process or manner of building an improvement." 3rd Edition, page 73. "Repairs" are "current expenditures for general upkeep of a property's condition and efficiency." 3rd Edition, p. 303. "Maintenance" means "keeping a

property in condition to perform its function." 3rd Edition, p. 217.

In addition, Section 405(a)(1) of the 1998 Act states that a concessioner shall have a leasehold surrender interest in "each capital improvement" it constructs. Section 405(e)(2) of the 1998 Act in turn defines "capital improvement" as "a structure, fixture, or non-removable equipment." In other words, the 1998 Act only provides a leasehold surrender interest in "structures, fixtures, and non-removable equipment" that a concessioner "constructs," *i.e.*, builds, under the terms of a concession contract. The law does not suggest that the repair or maintenance of an existing structure results in leasehold surrender interest.

NPS notes in this connection that Section 405(a)(5) of the 1998 Act states that when a concessioner that makes a "capital improvement" to an existing "capital improvement" in which the concessioner has a leasehold surrender interest, the cost of the additional capital improvement is to be added to the then current value of the concessioner's leasehold surrender interest. The proposed regulations and the final rule reflect this requirement by granting additional leasehold surrender interest for replacement of fixtures and non-removable property, additions to existing structures, and/or the major rehabilitation of existing structures. What the statute does not permit, however, is additional leasehold surrender interest for the repair and maintenance of existing structures (unless a repair and maintenance project is a major rehabilitation as defined in the final rule).

The position of the general concessioner organization, when reduced to its essentials, is that the 1998 Act, when stating that a leasehold surrender interest results from the "construction" of a "structure," means that every time a concessioner replaces a rotted beam or a damaged piece of drywall in a building, it has "constructed" a "structure" within the meaning of the 1998 Act. This position is not credible.

NPS considers, however, that providing leasehold surrender interest for the major rehabilitation of an existing structure is permissible under the terms of the 1998 Act as a major rehabilitation is defined in the final rule as a comprehensive rehabilitation of an existing structure the cost of which exceeds fifty percent of the pre-rehabilitation value of the structure. NPS, accordingly, considers that a major rehabilitation is tantamount to the construction of a new structure (or the addition of a new structure to an

existing structure) in which leasehold surrender interest may be obtained within the leasehold surrender interest limitations of the 1998 Act.

NPS notes that it changed the definition of major rehabilitation in the final rule. In the proposed regulations, the construction cost had to exceed one hundred percent of the pre-rehabilitation value of the structure. The final rule changes this to fifty percent of the pre-rehabilitation value. This change is intended to accommodate to the extent possible the concerns of commenters that seek leasehold surrender interest for repair and maintenance of structures, contrary to the terms of the 1998 Act. NPS considers that a rehabilitation of a structure where the cost exceeds fifty percent of the structure's pre-rehabilitation value is tantamount to construction of a new structure within the meaning of the 1998 Act and therefore eligible for leasehold surrender interest.

Likewise, the proposed regulations and final rule provide leasehold surrender interest for constructing an addition to an existing structure in which a concessioner has a leasehold surrender interest, e.g., a new wing to an existing building or an extension of an existing sidewalk. An addition is treated as a new structure for leasehold surrender interest purposes.

The general concessioner organization suggested that this section be modified in effect to state that if a concession contract contains a repair and maintenance reserve provision that there would be no depreciation deduction for related leasehold surrender interest value. This suggestion is contrary to the 1998 Act's definition of the value of leasehold surrender interest (which requires a deduction for depreciation) and is not valid as a general business matter. The fact that a repair and maintenance reserve exists does not mean that a structure will not undergo depreciation. Even very well maintained buildings depreciate over time. However, NPS considers that the existence of a repair and maintenance reserve will lessen the depreciation deduction that will occur with respect to related leasehold surrender structures. The repair and maintenance reserve, accordingly, in addition to ensuring that concessioner facilities are well maintained, makes good business sense.

The general concessioner organization also stated that any repair and maintenance reserve should be at levels that are commercially reasonable. NPS agrees and considers that the solicitation process for new concession

contracts will ensure that any repair and maintenance requirements of the new contract will be reasonable.

Finally, the general concessioner organization suggested that a repair and maintenance reserve provision contained in a concession contract should require that any balance in the reserve at the expiration of the contract should be retained by the incumbent concessioner. This matter will be addressed by NPS in the development of and consideration of public comments on its proposed standard concession contract.

This section has been changed in the final rule to delete references to the obligations of a concessioner to repair and maintain property. The references have been included in Section 51.81 in the final rule.

Subpart G—Possessory Interest (Subpart H in the final rule)

*Section 51.76 (Section 51.68 in the final rule). If a Concessioner Is Not Awarded a New Concession Contract, How Will a Concessioner That Has a Possessory Interest Receive Compensation for Its Possessory Interest?*

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*Section 51.77 (Section 51.70 in the final rule) If a Concessioner Is Awarded a New Concession Contract, What Happens to the Concessioner's Possessory Interest?*

Several comments objected to this section with respect to the fact that it contemplates NPS determining the value of the prior concessioner's possessory interest. However, NPS notes that the intention of the section was that the determination of the value by NPS is subject to the arbitration proceedings called for by Section 51.78 of the proposed regulations. NPS has changed the section in the final regulations to reflect that a determination of value of a prior concessioner's possessory interest is, in the first instance, to be accomplished by mutual agreement of the parties, and, if that fails, through arbitration proceedings.

The general concessioner organization objected to the element of this section that calls for the value of a prior concessioner's possessory interest to be determined on a unit by unit basis on the grounds that this may impact the overall value of an existing concessioner's possessory interest. NPS, in consideration of this comment, has changed this section in the final regulations to require allocation of possessory interest on a unit by unit basis if not determined initially on such basis. If negotiation of the allocation is

not successful, it will be subject to arbitration. Allocation on a unit by unit basis is necessary in order to provide for depreciation determinations and possible relinquishment of leasehold surrender interest in particular structures.

*Section 51.78 (Section 51.71 in the final rule) 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?*

Several comments objected to elements of this section on the grounds that the limitations it places on the arbitration proceedings are unfair and unlawful. NPS has changed this section in the final regulations. The thrust of the changes is to require binding arbitration under procedures that are to be determined by the arbitration panel. The arbitration panel will adopt procedures it deems appropriate in the circumstances of the dispute in order to treat each party equally and to give each party the opportunity to be heard and a fair opportunity to present its case. The arbitration panel will utilize adjudicative procedures such as cross-examination of witnesses if the arbitration panel determines that adjudicative procedures are necessary in the particular circumstances of the dispute. The arbitration panel may also adopt appropriate provisions regarding confidentiality of information provided by the parties to the panel or to each other in connection with the arbitration proceeding.

These changes are consistent with the commercial arbitration rules of the American Arbitration Association ("AAA") which permit arbitration panels flexibility to adopt appropriate arbitration procedures so long as each party is treated equally and each party has the opportunity to be heard and a fair opportunity to present its case.

NPS feels strongly that in most circumstances the establishment of the value of possessory interest or other related matters subject to arbitration under the regulations is best achieved with efficiency, economy, and fairness by informal proceedings rather than full-blown adjudicative procedures. NPS does not consider that it is in the best interests of concessioners, particularly smaller concessioners, or NPS, to have the arbitrated values of leasehold surrender or possessory interests influenced by the party with the more skillful attorneys rather than the party with the more persuasive appraisal. The final regulations, however, do not bind the arbitration panel in this matter. An arbitration panel may adopt whatever procedures it sees fit under the AAA

standard included in the regulations, including AAA or another arbitration organization's adjudicative procedures.

NPS also feels strongly that the members of the arbitration panel should be qualified appraisers to ensure a professional determination on the appraisal issue. The general concessioner organization agreed with this view. However, the final regulations have been changed in this connection to require that only the neutral arbiter be a qualified appraiser so that a party may select their party arbiter as they see fit. In addition, NPS has deleted the requirement of this section regarding judicial review of an arbitration proceeding. The scope of judicial review will be determined by applicable law.

Several comments suggested that it is unfair or unlawful for NPS to establish the terms of the arbitration without the agreement of the affected concessioner. The changes described above relieve those concerns as they provide that the arbitration panel will establish the procedures to be followed. In any event, the commenters are wrong in their presumption that the affected concessioner will not agree to the procedures. The procedures are only applicable under the terms of a concession contract a person may choose to enter into after the effective date of the final rule. They are not applicable to any existing concession contract.

NPS also points out that the procedures described above are consistent with the applicable standard provision of NPS concession contracts entered into over at least the last thirty years. The standard provision calls for a dispute over the value of possessory interest to be determined by a panel of three appraisers after giving both parties an opportunity to be heard. All existing concessioners with possessory interest contract provisions have agreed to this provision under the terms of their concession contracts.

Finally, several comments suggested that the proposed arbitration provisions are inconsistent with the terms of the Federal Arbitration Act, 9 U.S.C. 14 *et seq.*, and the Alternative Disputes Act, 5 U.S.C. 571 *et seq.* However, neither of these Acts by their terms is applicable to NPS concession contracts.

NPS, for the sake of clarity, has moved the description of arbitration proceedings to Section 51.51 of the final rule.

*Section 51.79 (Section 51.72 in the final rule) If a New Concessioner is Awarded the Contract, What Is the Relationship Between Leasehold Surrender Interest and Possessory Interest?*

Several comments suggested changing this section to eliminate reference to the possibility of the leasehold surrender interest being based on the actual payment to the prior concessioner by the new concessioner for the prior concessioner's possessory interest. NPS has made this suggested change in the final regulations.

*Section 51.80 (Section 51.69 in the final rule) What Happens If There Is a Dispute Between the New Concessioner and a Prior Concessioner as to the Value of the Possessory Interest?*

Several comments objected to the fact that this section requires a new concessioner to obtain NPS approval before agreeing to the value of possessory interest with a prior concessioner and to allow NPS to assist it in any procedures for resolution of the possessory interest value. The comments suggest that this interferes with the rights of the prior concessioner. NPS disagrees. The section imposes no obligations on the prior concessioner nor does it restrict its rights to receive payment for its possessory interest in accordance with the terms of its contract. Further, it certainly is within the rights of a new concessioner to agree that a third party has prior approval rights over a negotiated purchase price and/or to assist it in a dispute resolution process.

NPS notes that this provision is essential in order to ensure that the new concessioner negotiates or engages in dispute proceedings on an arm's length basis. Without the approval right of NPS or the right to assist in dispute proceedings, a new concessioner and a prior concessioner could collude to inflate the value of a possessory interest that NPS would indirectly be obliged to pay.

This is because the amount of money that a new concessioner has to pay for a prior concessioner's possessory interest directly affects the amount of money the new concessioner will be able to make available as a business matter under the terms of the new concession contract (for new improvements, new equipment, franchise fees, etc).

Several comments also suggested that a dispute about the amount of possessory interest compensation a concessioner is to obtain if it is not awarded a new concession contract should be resolved by the concessioner

and NPS, not by the prior concessioner and the new concessioner. However, 1965 Act concession contracts call for dispute resolution between the new concessioner and the prior concessioner. NPS cannot change this provision without the agreement of the concessioner. NPS will consider resolving directly the value of a possessory interest with an existing concessioner at the request of the concessioner.

A new sentence has been added to this section in the final rule making clear that nothing in this part is to be construed as authorizing a new concessioner to refuse to pay a prior concessioner for possessory interest in accordance with the terms of a possessory interest concession contract.

**Subpart H—Concession Contract Provisions (Subpart I in the final rule)**

*Section 51.81 (Section 51.73 in the final rule) What Is the Term or Length of a Concession Contract?*

Several comments questioned the content of this section as changing the intent of Congress as expressed in Section 404 of the 1998 Act. In response, NPS has modified this section in the final rule to more closely reflect the terms of Section 404 and to make clear that it is NPS policy to establish the term of concession contracts to be as short as prudent in the circumstances of each concession contract. NPS considers that this policy is consistent with the purposes of the 1998 Act, particularly its purpose of enhancing competition in concession contracts. Long term concession contracts (where a need for a long term does not exist) equate to less competition.

A comment suggested that all outfitter and guide concession contracts should have a term of ten years on the basis of outside investments outfitter and guide concessioners may have to make. NPS has not accepted this suggestion. NPS will determine terms of outfitter and guide concession contracts on the same basis as other concession contracts, giving due consideration to the particular circumstances of each concession contract.

*Section 51.82 (Section 51.74 in the final rule). When May a Concession Contract Be Terminated by the Director?*

A comment requested clarification as to what termination procedures will be included in concession contracts. The standard NPS concession contract published for comment on September 3, 1999, contains the termination clause NPS proposes to use in standard concession contracts. The comment also

asked NPS to explain why the concessioner is not afforded a right of termination in the event of default by NPS. This is because a concessioner has legal rights to terminate a concession contract in accordance with general contract law in the event of a material breach by NPS.

Several comments objected to this section on the general grounds that it gives NPS too much authority to terminate concession contracts. NPS considers that having the ability to terminate a concession contract when necessary to achieve the purposes of the 1998 Act is necessary in order to properly carry out the purposes of the 1998 Act. NPS has changed this section in the final regulations to refer to the purposes of the 1998 Act rather than the purposes "of this part."

Another comment suggested changes to this section to require a right to cure in case of default or unsatisfactory annual evaluations. The standard concession contract published for public comment describes the right to cure provisions in its termination clause.

*Section 51.83 (Section 51.75 in the final rule) May the Director Split or Combine Concession Contracts?*

Several comments suggested that combining concession contracts should not be undertaken by NPS if the result would be the loss of a preference in renewal. NPS considers that the sentence to which the comments objected is appropriate. However, it has been deleted in the final rule as unnecessary.

One comment suggested that this section misstates Section 417 of the 1998 Act by imposing a blanket prohibition on segmenting concession contracts if the result would be a concession contract with gross receipts under \$500,000. Another comment questioned why this segmentation rule was applicable to outfitter and guide concession contracts when Section 417 only addresses concession contracts with gross receipts under \$500,000.

In response to these comments, NPS has amended this section to state that NPS will not segment concession contracts for the purpose of establishing a concession contract with gross receipts of less than \$500,000.

*Section 51.84 (Section 51.76 in the final rule) May the Director Include in a Concession Contract or Otherwise Grant a Concessioner a Preferential Right To Provide New or Additional Visitor Services?*

A number of comments were received that addressed this section. Almost all

misunderstood it. Accordingly, NPS has clarified it in the final regulations. However, the section did and does not do what the comments perceived. The section only precludes the inclusion of a contractual right in a contract that requires that any new or additional services be offered to the incumbent concessioner. This tracks the requirements of Section 403(9) of the Act. Several comments also asked for amplification of the term "new or additional services." NPS considers that further amplification is unnecessary in light of the clarifications made to this section in the final rule.

NPS also notes that several commenters understood this section to have application to a right of preference to a new contract. This is not the case. The section only concerns the addition of new services under the terms of an existing concession contract.

Several commenters understood this section to mean that a concession contract may not be amended to include additional services. This is not the case. NPS has added a sentence to this section in the final rule to permit by contract amendment minor additions to the visitor services authorized by a contract that are a reasonable extension of the existing services. This language tracks relevant legislative history. H.R. Rep. No. 105-767 at p. 41(1998).

*Section 51.85. (Section 51.77 in the final rule). Will a Concession Contract Provide a Concessioner an Exclusive Right to Provide Visitor Services?*

Several comments objected to this section on the grounds that concession contracts are intended to grant exclusive rights to provide specified visitor services. This is not the case. NPS concession contracts authorize concessioners to provide specified visitor services but do not grant exclusive rights.

The general concessioner organization, although its comment indicated that it understood this section, objected to it on the grounds that it may be in the best interests of NPS to grant exclusive concession contracts. NPS does not consider this to be the case. An exclusive right establishes a monopoly situation that NPS considers contrary to the public interest.

*Section 51.86 (Deleted in the final rule). Is There a Special Rule for Transportation Contracts?*

This section has been deleted in the final rule as unnecessary in light of Section 412 of the 1998 Act.

*Section 51.87 (Deleted in the final rule). Where Will the Director Deposit Franchise Fees and How Will the Director Use the Franchise Fees?*

The general concessioner organization objected to the inclusion of "visitor support activities" as an authorized use for expenditure of franchise fees by NPS. It objected because this category is not specified in the 1998 Act, and, because "it could have a very broad meaning inconsistent with the intent of the 1998 Act." NPS disagrees with this view and notes that NPS may expend funds for needed visitor facilities in park areas from the franchise fee accounts established by the 1998 Act. This includes the construction of facilities (e.g., parking lots, access roads, and sewer systems) that directly support the operations of a concessioner. However, this section has been deleted in the final rule as unnecessary.

*Section 51.88 (Section 51.78 in the final rule and retitled.) Will Franchise Fees be Subject to Renegotiation?*

Several comments suggested that this section be clarified to make clear that either the concessioner or NPS may request an adjustment of the franchise fee. This change has been made in the final rule, and, consistent with this change, the final rule also clarifies that a determination as to the existence of extraordinary, unanticipated changes must be made mutually by the concessioner and NPS.

A commenter also objected to the last sentence of this section as it implies that a franchise fee adjustment is appropriate in all circumstances where an adjustment has been requested. This section has been clarified in the final regulations in accordance with these comments.

A comment suggested that the phrase "extraordinary, unanticipated changes" be defined in the final rule. NPS has not accepted this suggestion in light of the wide variety of circumstances that may trigger a request for an adjustment of a franchise fee under this section.

Another comment asked whether this section is applicable to 1965 Act concession contracts. It is not, as 1965 Act concession contracts have a different franchise fee adjustment clause under a differing provision of the 1965 Act.

NPS, in response to public comments, has also added a subsection (a) to this section to track the terms of Section 407(a) of the 1998 Act regarding franchise fees.

*Section 51.89 (Section 51.79 in the final rule) May the Director Waive Payment of Franchise Fees or Other Payments?*

Several comments objected to this section on the grounds NPS should have flexibility to waive franchisee fees.

NPS generally does not consider waiver of franchise fees appropriate, especially in light of Section 407 of the Act. However, it has added a phrase to this section in the final rule that permits a limited partial waiver of franchise fees if permissible under established administrative guidelines for the purpose of recognizing exceptional concessioners.

*Section 51.90 (Section 51.80 in the final rule) How Will the Director Establish Franchise Fees for Multiple Outfitter and Guide Concession Contracts in the Same Park Area?*

Several commenters objected to this section because it did not reflect their view that Section 411 of the 1998 Act exempts outfitter and guide concession contracts from competition under principal selection factor (5), the amount of the franchise fee offered in a concession contract proposal. However, Section 411 makes no mention of such an exemption. Rather, it states that where multiple outfitter and guide concession contracts are to be awarded in a particular park area concerning the same or similar services, NPS is to establish a comparable franchise fee for such contracts. NPS will do this on a park-by-park basis in the course of its development of franchise fees to be included in prospectuses for new concession contracts. This section was also criticized for failing to give sufficient guidance as to what services are the "same or comparable." This is a matter that is best determined on a case-by-case basis.

*Section 51.91 (Section 51.81 in the final rule). May the Director Include "Special Account" Provisions in Concession Contracts?*

The general concessioner organization, although not objecting to the concept of a repair and maintenance reserve as described in this section, repeated its objections directed to other sections to the effect that repair and maintenance of leasehold surrender interest capital improvements results in additional leasehold surrender interest. The commenter also reiterated its position that any expenditures from repair and maintenance reserves should be deducted from the depreciation element of leasehold surrender interest when valuing leasehold surrender

interest. NPS disagrees for the reasons discussed under Section 51.75.

A comment objected to the concept of repair and maintenance reserves because they allegedly will become a means for direct fee bidding in the prospectus process. NPS does not agree with this view and notes that required maintenance and repair reserves are a standard practice in the commercial real estate industry.

A comment objected to the element of this section that requires the concessioner to repair and maintain all concessioner facilities assigned to it under the terms of the concession contract. The comment asked whether this includes infrastructure assigned to the concessioner and stated that basic infrastructure should be constructed and maintained by NPS. NPS notes that concessioners are assigned a variety of facilities for use in their operations, including, occasionally, basic infrastructure. This has been NPS practice for many years. NPS considers it appropriate that NPS concession contracts require a concessioner that utilizes government property in its business to maintain and repair the property.

A comment suggested that all "special accounts" be forbidden, e.g., "resource protection" funds, as they are a means for NPS to indirectly engage in franchise fee bidding. NPS has not accepted this suggestion. In circumstances where it is otherwise permissible under the 1998 Act or other law, a provision in a concession contract requiring the concessioner to make expenditures from its gross receipts for specified purposes is an appropriate means to carry out the purposes of the 1998 Act.

NPS has added to this section in the final rule the repair and maintenance obligations of concessioners set forth in Section 51.75 of the proposed regulations.

NPS has also added a sentence to this section in the final rule to make clear that repair and maintenance reserve provisions are not to be included in concession contracts in lieu of a franchise fee and funds from such reserves are to be expended only for the repair and maintenance of real property improvements assigned to the concessioner for use in the concessioner's operations.

*Section 51.92 (Section 51.83 in the final rule.) Handicrafts [Reserved]*

This section was reserved as NPS is in the process of developing regulatory guidelines for handicraft sales under Section 416 of the 1998 Act with the advice of the National Park Service Concessions Management Advisory

Board established by Section 409 of the Act.

The general concessioner concessioner organization commented on this section, stating that it should have the right to comment on the proposed handicraft regulations prior to the finalization of the proposed general concession regulations. NPS has published these final regulations prior to the date of possible publication of proposed handicraft regulations. NPS did not consider it to be in the public interest to delay finalization of these general regulations as requested by the general concessioner organization. Numerous concessioners are currently operating under short term extensions of existing contracts. Any delay in the promulgation of the final general concession regulations would have a detrimental effect on not only park visitors but many concessioners as well.

*Subpart I—Assignment or Encumbrance of Concession Contracts (Subpart J in the final rule)*

*Section 51.93 (Section 51.84 in the final rule) What Special Terms Do I Need To Know To Understand This Part?*

The comments received did not directly address the proposed definitions contained in this section. Several comments expressed concerns about some of the definitions indirectly. These comments are addressed under the relevant sections of this subpart.

*Section 51.94 (Section 51.85 in the final rule) What Assignments Require the Approval of the Director?*

Comments stated that the 1998 Act does not allow approval of an encumbrance of a concessioner's revenue stream as contemplated by this section. NPS has deleted as unnecessary the reference to approval of revenue streams in the final rule. This section and other sections within this subpart have been amended accordingly. However, the treatment of revenue streams will necessarily be a consideration in the approval of encumbrances that must be approved in accordance with the requirements of this part under the final rule.

Several comments stated that the 1998 Act does not address approval of a controlling interest in a concession contract, requesting that reference to approval of controlling interests be deleted from this and other sections of the proposed regulations.

NPS has not made this requested change. Requiring approval of the assignment of controlling interests is essential in order to effectuate the purposes of the 1998 Act with respect

to its admonitions that only qualified persons are entitled to own NPS concessions.

In this connection, Section 408(a) of the 1998 Act states as follows:

(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. (Emphasis added).

The “controlling interest” element of this section is generally directed to corporate concessioners. Basically, it recognizes that a concession contract may effectively be conveyed or pledged by a corporate concessioner (“otherwise conveyed or pledged” under the terms of Section 408(a)) without any legal transfer, assignment or sale of a concession contract *per se* held by a corporate concessioner.

If Section 408(a) of the 1998 Act were interpreted to forbid approvals of the transfer of a controlling interest in a corporation that holds a concession contract, only transfers of concession contracts that are held by individuals or partnerships would be subject to NPS approval. A corporate concessioner need only sell its stock to a new party (sale of a controlling interest) in order to effectuate a transfer of the concession contract. Congress did not intend such an anomalous result. Section 408(b) of the 1998 Act (set forth below) describes the statutory intentions for requiring the approval of the transfer of concession contracts by forbidding approval of a transfer by NPS if:

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

(2) such transfer or conveyance is not consistent with the objectives of protecting, conserving, and preserving the resources of the unit of the National Park System and of providing necessary and appropriate visitor services at reasonable rates and charges; or

(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.

The position of the comments concerning transfer of controlling interests in concession contracts would nullify these congressional intentions. This is not a hypothetical concern. Many NPS concessioners are corporations that hold a concession contract as their exclusive business activity. In addition, almost all of the

largest NPS concessioners are wholly owned subsidiaries of larger corporations. If NPS accepted the position of the commenters, NPS would have no right of approval of the transfer by sale of stock of the Yosemite, Yellowstone, Grand Canyon, Grand Teton, Glen Canyon, Glacier, and Mesa Verde National Park concession contracts, among others.

In any event, NPS considers that the phrase “or otherwise conveyed or pledged” directly encompasses the inclusion of controlling interests in this section. NPS also notes that the “controlling interest” concept was contained in 36 CFR Part 51 under the terms of the 1965 Act. Congress must be presumed to have been aware of this in considering the 1998 Act.

Another commenter made essentially the same argument with respect to inclusion in the regulations of a right to approve management contracts a concessioner might enter into. NPS considers it must have the ability to review management contracts for the reasons discussed with respect to controlling interests. Congress did not intend that the most qualified offeror be selected for award of a concession contract only to permit the selected qualified concessioner to turn over management to a third party with no right of NPS to determine that the third party is qualified. NPS considers that it has ample authority to require approval of arrangements under which a third party is to operate a concession under the 1998 Act and 16 USC 1 *et seq.*

NPS notes that Section 408(b) of the 1998 Act uses the word “and” instead of “or” between the second and third determinations that are required for approval of an assignment or encumbrance. NPS has interpreted this in the regulations as “or” in light of the legislative history of this section and the fact that the word “and,” perhaps, and anomalously, could be read as requiring NPS to approve transactions that are detrimental to the resources of the park area or to park area visitors. No commenters on the proposed regulations questioned this interpretation.

*Section 51.95 (Section 51.86 in the final rule) What Encumbrances Require the Approval of the Director?*

Several comments repeated under this section their similar objections directed to Section 51.94. The changes made to Section 51.94 have also been made to this section in the final regulations. In addition, NPS has deleted subsection (f) of this section in the final regulations in response to public comments.

*Section 51.96 (Section 51.87 in the final rule) Does the Concessioner Have an Unconditional Right To Receive the Director’s Approval for an Assignment or Encumbrance?*

Several comments suggested that the preliminary language in this section be amended to more accurately reflect Section 408 of the 1998 Act, that approval of an assignment or encumbrance is to be granted by NPS unless NPS makes a determination that the approval conditions contained in Section 408 are not met. NPS has made this change in the final rule.

Several comments requested modification of the limitations on the purposes for which encumbrances may be approved. In this connection, Section 405(a)(2)(A) of the 1998 Act provides that a leasehold surrender interest:

May be pledged as security for financing of a capital improvement or the acquisition of a concession contract when approved by the Secretary of the Interior pursuant to this section.

The limited purposes for which a leasehold surrender interest may be pledged were the primary basis of the encumbrance limitations contained in the proposed regulations. In response to comments, this section has been modified in the final regulations to broaden the purposes for which encumbrances may be made consistent with the purposes and requirements of the 1998 Act.

*Section 51.97 (Renumbered as Section 51.88 in the final rule) What Happens If an Assignment or Encumbrance Is Completed Without the Approval of the Director?*

NPS has deleted reference to concessioner revenues from this section in accordance with the discussion under Section 51.93.

*Section 51.98 (Section 51.89 in the final rule) What Happens If There Is a Default on an Encumbrance Approved by the Director?*

\* \* \* \* \*

*Section 51.99 (Section 51.90 in the final rule) How Does the Concessioner Get the Director’s Approval Before Making an Assignment or Encumbrance?*

Several comments suggested that this section’s prior approval requirements insert NPS into a concessioner’s business transactions before the transaction is completed. However, Section 408 of the 1998 Act requires written notification and approval before assignments and encumbrances are completed. The changes reducing the scope of transactions subject to NPS

approval under the final regulations will alleviate the concerns of the commenters.

*Section 51.100 (Section 51.91 in the final rule) What Information Will the Director Require in the Application?*

A number of commenters complained that the information requirements imposed by this section are too burdensome. NPS, in response to these comments, has reduced the information described in this section and has worded the section so as to require submission of information only to the extent requested by NPS as necessary in the circumstances of a particular transaction. NPS, in response to comments, has also modified the scope of the information requirements in a number of respects and has deleted subsection (c) in the final regulations. NPS considers that the remaining information requirements are necessary in order to assist in making the determinations required by Section 408 of the 1998 Act. A comment suggested that the word "reasonably" be included in this section to limit what information the Director may request. NPS has not made this change because under applicable law, NPS decisions made pursuant to this part must have an appropriate basis.

The general concessioner organization made a number of specific suggestions regarding the information requirements of this section. They are responded to as follows:

The commenter suggested that NPS should not be provided the actual transaction documents regarding an assignment or encumbrance but should rely on a narrative description of the transaction to be submitted by the concessioner. NPS considers that it must have access to the actual transaction documents in order to be able to make the determinations required by Section 408 of the 1998 Act.

The commenter requested that this section be limited to an opinion of counsel that only goes to the authority of the contracting party and the enforceability of the contract. NPS considers that the broader wording of this section is appropriate. If a proposed acquisition of a concession contract is unlawful, this impacts on the qualifications and ability of the acquiring party to satisfy the conditions of the concession contract within the meaning of Section 408.

The commenter suggested that the last clause of subsection (c) is duplicative. NPS has deleted it.

The commenter objected to the requirement of subsection (g) to the effect that a narrative description of the

transaction is required. The commenter suggested that the narrative description of the financial aspects of the transaction as required by Subsection (c) should suffice for NPS purposes. NPS considers that aspects of a transaction beyond financial considerations are very relevant under the approval conditions of Section 408. This provision has not been changed in the final rule.

The commenter suggested changes and a clarification of subsection (h). This section has been clarified accordingly and the requirement for review by an independent accounting firm deleted as requested by the commenter.

The commenter objected to the allocations required by subsection (i). Subsection (i) has been edited in the final rule to delete a specific list of allocations. The general allocation information is needed in connection with the NPS responsibility to determine that the terms of the transaction will not reduce the concessioner's opportunity for a reasonable profit. It is usual practice when examining the financial implications of purchases of stock or assets to review the allocations of the purchase price among particular asset classes.

The commenter suggested several changes to the times included in subsection (j). NPS has generally made the commenter's requested changes in the final rule. The new times established are considered appropriate by NPS in the circumstances of NPS concession contracts.

The commenter requested deletion of subsection (k). It has been deleted in the final rule.

The commenter requested deletion of subsection (l). NPS has not deleted it. Given the variety of circumstances that may relate to assignment or encumbrance of NPS concession contracts, flexibility in requesting information must be retained.

Another commenter requested that the regulation make clear that the information submitted is confidential. NPS has not made a change to this section in this connection because the extent to which information submitted to NPS by a concessioner is available to the public is determined by the requirements of the Freedom of Information Act and related laws, including the 1998 Act.

*Section 51.101 (Deleted in the final rule) May the Director Waive Any of These Documentation Requirements?*

This section has been deleted in the final regulations in light of the changes made to Section 51.100.

*Section 51.102 (Section 51.92 in the final rule) What Are Standard Proformas?*

Several comments suggested that the standard proformas that are encouraged but not required to be submitted pursuant to this section do not conform to standard business practice because they call for loans to be amortized during the remaining term of the concession contract. NPS notes, however, that Section 408 of the 1998 Act states that an approval of assignments or encumbrances may not be granted if, among other matters, the transaction is "likely to reduce the concessioner's opportunity for profit over the remaining term of the contract."

NPS, nonetheless, in response to these comments, has made a change to this section in the final rule to the effect that a standard pro-forma, if it does not call for amortization of a loan over the remaining term of the contract, must explain why this fact is not inconsistent with the considerations stated in Section 51.87(h) of the final rule.

Another commenter suggested that the responsibility of the NPS to approve transactions with respect to a concessioner's opportunity for profit should be limited to circumstances where NPS determines that a negative effect would result from an unprofitable operation. This interpretation, however, is in conflict with the plain language of the statute.

NPS has also changed this section in the final regulations by deleting subsection (d) in response to comments.

*Section 51.103 (Deleted in the final rule) If the Concessioner Submits a Non-Standard Proforma, Is the Director More Likely To Disapprove the Transaction?*

Because of the changes made to Section 51.92 in the final rule, this section has been deleted in the final rule.

*Section 51.104 (Section 51.93 in the final rule) If the Transaction Includes More Than One Concession Contract, How Must Required Information Be Provided?*

\* \* \* \* \*

*Section 51.105 (Deleted in the final rule) In What Circumstances Will the Director Not Approve an Assignment or Encumbrance?*

Several comments misunderstood subsection (a) to mean that a concessioner may not obtain a bank loan without NPS approval of the bank as qualified to operate a concession. This is not the case. However, in case of foreclosure, a new operator selected by

the bank would have to be approved by NPS as qualified. The final rule makes this clear in Section 51.87(c).

A comment requested that time limits for approval of a transaction be imposed in this section. NPS does not consider this to be practical given the scope and variety of transactions that are subject to approval under the terms of the 1998 Act.

Another comment suggested that NPS should rely on banks with respect to the reasonable opportunity for a profit aspect of a transaction approval. In other words, the comment suggested that if a bank will make a loan for a concession transaction, NPS should automatically agree that it does not reduce the concessioner's opportunity to make a reasonable profit. NPS has not accepted this suggestion. In the first instance, adopting such a rule would be an abrogation of its responsibilities under the 1998 Act. Moreover, the fact that a bank may choose to make a loan relating to a concession transaction by no means ensures that the terms of the transaction will not reduce a new concessioner's opportunity to earn a reasonable profit over the remaining term of the concession contract. The general test for a bank loan is whether the lender will receive the principal and interest on its loan. In addition, a loan may be secured by unrelated assets (personal guarantees, stock pledges, etc.) that make the loan secure but do not necessarily indicate that the concessioner has not reduced its reasonable opportunity for a profit in committing to the transaction. NPS in reviewing transactions will take into account the fact that a bank loan is involved.

NPS has deleted this section in the final rule and moved its content to Section 51.87 in the final regulation for the sake of clarity.

*Section 51.106 (Section 51.94 in the final rule) What Information Will the Director Consider When Deciding To Approve a Transaction?*

This section has been modified in the final rule to clarify that NPS may consider information other than that submitted by the concessioner in determining whether to approve an assignment or encumbrance.

*Section 51.107 (Section 51.95 in the final rule) Does the Director's Approval of an Assignment or Encumbrance Include Any Representations of Any Kind?*

A sentence has been added to this section in the final rule to clarify that

approval of an assignment or encumbrance does not alter the terms of the applicable concession contract unless expressly so stated by NPS in writing.

*Section 51.108 (Section 51.96 in the final rule) May the Director Amend or Extend a Concession Contract for the Purpose of Facilitating a Transaction?*

\* \* \* \* \*

*Section 51.109 (Section 51.97 in the final rule) May the Director Open To Renegotiation or Modify the Terms of a Concession Contract as a Condition of the Approval of a Transaction?*

\* \* \* \* \*

*Section 51.110 (Deleted in the final rule)—May the Director Charge a Fee for the Review of a Proposed Transaction?*

NPS has deleted this section in response to comments.

*Subpart J—Information and Access to Information (Subpart K in the final rule)*

*Section 51.111 (Section 51.98 in the final rule) What Records Must the Concessioner Keep and What Access Does the Director Have To Records?*

Several comments objected to this section with respect to the fact that it applies to related records of parent or affiliated entities of a concessioner. In response, NPS has deleted the references except in circumstances where a concessioner parent or affiliate makes representations or commitments to NPS regarding its support or responsibilities to a concessioner. Access to records of the parent or affiliate in these limited circumstances is necessary in order for NPS to be able to reasonably rely on the representations or commitments.

*Section 51.112 (Section 51.99 in the final rule) What Access To Concessioner Records Will the Comptroller General Have?*

This section has been amended in accordance with the changes to Section 51.111.

*Section 51.113 (Deleted in the final rule) What Information Will the Director Make Publicly Available About the Concessioner and the Concession Contract?*

A number of comments raised confidentiality concerns about this section, arguing that it is in violation of the Freedom of Information Act. NPS has deleted this section in the final rule but moved certain of its information requirements to Section 51.5(f) in the

final rule. The specific information requirements that are retained are those that were contained in 36 CFR Part 51 prior to this amendment. Other information listed in the proposed regulation has been deleted in the final rule in response to comments. Particularly, the reference to the existing concessioner's net profit has been deleted.

However, NPS considers that Section 403(3)(6) of the 1998 Act precludes NPS from exercising exemptions to the Freedom of Information Act with respect to release of information provided to NPS by a concessioner if NPS determines that the release of the information is necessary to allow for the submission of competitive proposals. NPS considers that the information requirements now contained in Section 51.5(f) in the final rule are necessary for this purpose. These specific information requirements (carried over from the existing 36 CFR Part 51) represent at least some of the information about the general scope of a business that a competitor needs in order to submit a competitive proposal.

*Section 51.114 (Section 51.100 in the final rule) When Will the Director Make Proposals and Evaluation Documents Publicly Available?*

This section has been edited by inserting the introductory phrase "in the interests of enhancing competition" to make clear its intentions. The purpose of this section is to avoid actions that may have anti-competitive results, e.g., where, in the course of a contested selection of the best proposal submitted in response to a prospectus, a competitor seeks to obtain a copy of the best proposal that it may then utilize to enhance its proposal in the event a resolicitation of the contract opportunity is required. This is not only unfair to the offeror that submitted the best proposal in the first instance, but also inhibits legitimate competition in the award of concession contracts, contrary to the purposes of the 1998 Act.

One commenter, a municipality that holds a concession contract, suggested that all concession contract proposals be made public upon receipt as it is obliged to make its proposal public because of its status as a municipality. NPS has not accepted this suggestion for the reasons discussed above regarding the need to maintain the confidentiality of proposals.

Subpart K—The Effect of the 1998 Act's Repeal of the 1965 Act (Subpart L in the final rule)

*Section 51.115 (Section 51.101 in the final rule) Did the 1998 Act Repeal the 1965 Act?*

NPS has changed this section in the final rule to clarify that this part as well as the 1998 Act applies to 1965 Act concession contracts except to the extent that its provisions are inconsistent with particular terms and conditions of a 1965 Act concession contract.

*Section 51.116 (Section 51.102 in the final rule) What Is the Effect of the 1998 Act's Repeal of the 1965 Act's Renewal Preference?*

This section is discussed in the General Comments section. As stated, NPS considers that the 1998 Act's repeal of the 1965 Act, including its requirement in Section 5 that NPS give existing satisfactory concessioners preference in renewal of their contracts, applies to the holders of 1965 Act concession contracts. This section of the proposed regulations, however, permits a concessioner to appeal this decision to the Director if a 1965 Act concession contract expressly references a preference in renewal. In circumstances where a 1965 Act concession contract does not make express reference to a preference in renewal, it is the final administrative decision of NPS, based on the considerations discussed in the General Comments section, that the repeal of the 1965 Act's preference in renewal by the 1998 Act is applicable to holders of 1965 Act concession contracts.

This section has also been changed in the final rule to track the language of Section 415 so as to avoid any concern that NPS misinterpreted its meaning with respect to the phrase "inconsistent with the terms and conditions of any such contract or permit." Finally, in response to a comment discussed under Section 51.49 to the effect that a concessioner holding a 1965 Act concession contract not only has a continuing right to a right of preference in renewal, but, also, has a "right" to not submit a responsive proposal in response to a prospectus, a sentence has been added to the final rule to clarify that if an appeal is successful under this section, or if a court determines that a concessioner holding a 1965 Act concession contract does have a preference in renewal, that the otherwise applicable terms and conditions of this part regarding the exercise of a preference in renewal, including, without limit, the obligation

to submit a responsive proposal, apply to any preference in renewal recognized with respect to holders of 1965 Act concession contracts. NPS considers that it has authority to adopt these requirements under the 1998 Act and, in addition, under 16 USC 1 *et seq.* (with particular reference to 16 USC 3).

By providing this appeal right, NPS does not seek to lead existing concessioners to believe that it is likely that they would qualify for an appeal under this section. To the best of the knowledge of NPS, no 1965 Act concession contract or permit with annual gross receipts of more than \$500,000 references a preference in renewal. However, there may be exceptions in which case this section of the final rule will apply.

To avoid requiring concessioners to make administrative appeals that are likely to be unsuccessful, NPS has deleted the sentence in subsection (b) of this section in the proposed regulations that stated that a concessioner must make an appeal under this section in order to be considered as having exhausted administrative remedies with respect to denial of a renewal preference regarding 1965 Act concession contracts. In its place, a sentence has been added to the final rule making final the decision of NPS regarding the repeal of the 1965 Act's preference in renewal with respect to holders of 1965 Act concession contracts.

*Section 51.117 (Deleted in the final rule) What Renewal Preference Exceptions Are Made for Glacier Bay Cruise Ships?*

A comment asked why this section provides an exemption for Glacier Bay cruise ships and requested a similar exemption for other concessioners in "exceptional circumstances." The Glacier Bay exemption was established by Section 419 of the 1998 Act. NPS has no authority to grant similar exemptions from the requirements of the 1998 Act.

This section has been deleted in the final rule in light of Section 419 of the Act.

Subpart L—Information Collection [Subpart M in the final rule]

*Section 51.118 (Section 51.104 in the final rule) Have Information Collection Procedures Been Followed?*

\* \* \* \* \*

3. Additional Comments and Changes

In addition to this discussion of changes made to the proposed regulations, NPS points out that it has added several clarifying sections to the final rule, including new Sections 51.27 and 51.28, to set forth definitions of

terms used in the final rule. It has also added a severability clause in new Section 51.103 of the final rule.

NPS has also added a new Section 51.81 regarding concessioner rate approvals. The new section reiterates most of the rate approval requirements of Section 406 of the 1998 Act. Although NPS administers concessioner rate approvals under administrative guidelines, it has included the text of Section 406 in the final rule so that the final rule is self-explanatory with respect to the nature of rate approvals. NPS considers that its rate approval process requires significant administrative flexibility and therefore is best managed under administrative guidelines, not regulations.

The general concessioner organization suggested that NPS adopt new rate approval policies and procedures without waiting for the advice of the National Park Concessions Management Advisory Board as is contemplated by Section 406(c) of the 1998 Act. NPS has not accepted this suggestion. The recommendations of the Advisory Board are critical to the development of an effective rate approval program under the policies expressed in 1998 Act.

A commenter requested that NPS consider its views and republish the proposed regulations for further public comment. NPS notes that it has accommodated many of the concerns of the commenter through incremental changes in the final rule. However, NPS has determined not to reissue the proposed regulations for further public comment. There is an urgent need to recommence concession contracting actions that were necessarily halted in November of 1998 in order to promulgate contracting regulations under the new law. More than 280 of the 630 NPS concession contracts are operating under contract extensions as of January 1999. Both the concessioners and NPS are in need for the contracting process to resume so that new full term concession contracts may be awarded. Concessioners in general dislike operating on extended contracts with no certainty as to the future.

Particularly, concessioners are reluctant to make capital investments under extended concession contracts and have difficulty in retaining experienced employees in light of the uncertainties created by contract extensions. In addition, the public has an obvious need for concession operations to be stabilized under new full term concession contracts. NPS published the proposed regulations for comment as a matter of policy. The regulations are exempt from mandatory publication as proposed regulations

under 5 U.S.C. 553(b)(B) as regulations relating to government agency contracts and public property. Even if the regulations were required to be republished as proposed, it is considered that this would be impractical and contrary to the public interest in light of the backlog of contracting actions that face NPS.

NPS also considers that solicitation of further public comments is unnecessary and not in the public interest. NPS has fully considered the public comments received and has made incremental modifications to the proposed rule that reflect these comments. The final rule, in the view of NPS, is a logical outgrowth of the proposed regulations in consideration of public comments. Further opportunity for public comment would be detrimental to concessioners and visitors to park areas, and, would not, in the view of NPS, significantly alter the content of the final rule. A delay in the commencement of concession contracting under the 1998 Act may make it impossible for NPS to award a number of expiring concession contracts this year (in light of the length of time required to solicit and award concession contracts), thereby requiring further, otherwise unnecessary, contract extensions.

An environmental consulting firm suggested including in numerous places in the proposed regulations specific references to environmental protection matters. NPS has not done this as references in the regulations to "protection of resources," etc., include by implication the commenter's environmental concerns.

Several comments objected to the fact that the proposed regulations do not include provisions regarding the NPS Concessions Management Advisory Board established by Section 409 of the 1998 Act. However, there is no need for regulations governing this Board. Its activities are described by Section 409 and the Board's administrative charter.

A comment asked why the regulations make no reference to NPS 48, the NPS internal guidelines for concessions management. The regulations do not mention NPS 48 as there is no need for them to do so. Administrative guidelines are necessarily subordinate to the content of the regulations.

Several comments asked NPS to rule in the final regulations on the status of particular concessioners or classes of concessioners under varying provisions of the regulations. NPS has not done this. The final rule establishes the framework for concession contracting decisions. Particular decisions must be made as the need arises after finalization of the regulations.

A comment criticized the proposed regulations for not describing how NPS intends to carry out Section 410 of the 1998 Act. Section 410 requires NPS, to the maximum extent possible, to contract with private entities to assist NPS in the conduct of elements of the NPS concessions management program that are considered to be suitable for non-governmental performance. NPS has not made changes to the regulations in light of this comment. Decisions as to what elements of NPS concessions management should be contracted to third parties are administrative in nature.

Several comments criticized the fact that NPS published for public comment its proposed new standard concession contract after publishing the proposed regulations for public comment. The comments suggested that it is difficult to fully comprehend the proposed regulations in the absence of the proposed new standard concession contract. NPS does not agree with this view as the standard concession contract is subordinate to the terms and conditions of the regulations. NPS also notes that it is under no obligation to publish its standard concession contract for public comment. It does so as a matter of policy. In any event, the proposed new standard concession contract was published for public comment almost six weeks in advance of the deadline for submitting public comments on the proposed regulations. Commenters had ample time to review the documents together.

The general concessioner organization criticized the preamble to the proposed regulations with respect to the fact that it concludes that the proposed regulations do not have takings implications within the meaning of Executive Order No. 12630. NPS has reviewed the position of the general concessioner organization in consultation with the Office of the Solicitor. The NPS and the Office of the Solicitor are of the view that the final rule does not have any takings implications as discussed further below.

Several comments stated that the question and answer format of the regulations is confusing. NPS disagrees. It considers that the question and answer format provides an effective means for readers to locate a particular section of the regulations and to understand its relationship to the other sections.

In addition to the changes made to the proposed regulations in the final rule, NPS has made a number of editorial and conforming changes, including, without limit, changing the introductory questions at the beginning of each

section to reflect changed content of the section.

#### **Drafting Information**

The primary officials that authored this rule are Wendelin M. Mann, Concession Program, National Park Service, and Pamela L. Barkin, Office of the Solicitor, Department of the Interior.

#### **Compliance With Laws, Executive Orders and Departmental Policy**

##### **Regulatory Planning and Review (E.O. 12866)**

This rule is a significant rule under Section 3(f)(4) of Executive Order 12866 and accordingly has been reviewed by the Office of Management and Budget.

##### **Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more. In fact, NPS does not consider that the rule will have any measurable effect on the economy. The rule merely establishes the procedures for award of NPS concession contracts and the terms and conditions of NPS concession contracts. This rule will not result in increased costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions as the rule does not change the manner in which a concessioner's rates and charges to the public are established. Further, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. To the contrary, the rule enhances competition in the award of concession contracts. The primary effect of the proposed rule is to establish procedures for the solicitation, award and administration of National Park Service concession contracts required by the 1998 Act.

##### **Regulatory Flexibility Act**

The purpose of this rule is to describe procedures and terms for the solicitation, award and administration of NPS concession contracts in accordance with the 1998 Act. As such, it is not a rule that is required to be published as proposed for public comment by 5 U.S.C. 553 or other law. 5 U.S.C. 553 exempts from its application regulations that involve a "matter relating to agency management or personnel or to public property, loans, grants, benefits and contracts." The NPS regulations address NPS

concession contracts and public property (park areas). In addition, although Section 417 of the 1998 Act requires NPS to promulgate regulations for its implementation, it does not require that this be done through a general notice of proposed rulemaking. Accordingly, NPS does not consider that this regulation is subject to the Regulatory Flexibility Act as that Act, by its terms, only applies to rules and regulations that are required by 5 U.S.C. 553 or other laws to be promulgated after required publication of a general notice of proposed rulemaking.

On November 22, 1999, however, NPS published in the **Federal Register** a discussion of the proposed regulations that meet the spirit of the Regulatory Flexibility Act in the form of an initial regulatory flexibility analysis. The notice also asked for public comments on the suggestion of NPS that the Regulatory Flexibility Act may not apply to these regulations.

Only two comments were received in response to the notice, both from law firms representing incumbent concessioners. Both comments summarily concluded that the proposed regulations are subject to the Regulatory Flexibility Act. NPS does not agree with this view but considers the matter academic as NPS has fully complied with spirit of the Regulatory Flexibility Act in promulgating these regulations.

NPS also points out that the preamble to the proposed regulations states that it is likely that the number of NPS concession contracts and permits will decrease as a result of the proposed regulations. This statement was erroneously included in the preamble after it had been determined by NPS to be incorrect. The **Federal Register** notice regarding the initial regulatory flexibility analysis stated that this statement should be disregarded.

Upon consideration of public comments on its initial analysis, NPS has concluded that the proposed regulations and final rule, even if subject to the Regulatory Flexibility Act, will not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act for the reasons discussed in the initial notice.

Nonetheless, NPS sets forth below the required elements of a final regulatory flexibility analysis in the spirit of the Regulatory Flexibility Act, as follows:

(1) A succinct statement of the need for, and objectives of the rule.

The final rule is needed to comply with Section 417 of the 1998 Act that requires promulgation of appropriate regulations for its implementation. The objectives of the rule are to provide

appropriate procedures, terms and conditions for NPS concession contracting in furtherance of the purposes of the 1998 Act.

(2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

As stated, only two comments were received in response to the initial regulatory flexibility analysis. The NPS response to the issues raised by the comments on the initial regulatory flexibility analysis (except for restated arguments regarding the preference in renewal issue) are as follows:

a. *Comment.* The environmental requirements of the proposed rule go beyond statutory requirements and impose duties that should be borne by the government.

NPS disagrees with this comment. The environmental requirements of the proposed rules, i.e., that concessioners should undertake activities in the conduct of their operations that enhance the environment (such as recycling and energy conservation) are clearly reasonable operating conditions that NPS may place on a concessioner under the terms of a concession contract. Further, NPS does not understand why the commenter suggests that these type of programs should be borne by the government. NPS considers that concessioners should be responsible for conserving energy in its operations and recycling trash. Finally, the suggestion that a small business (defined by SBA as a business grossing less than \$5 million dollars) cannot afford to undertake progressive environmental management practices such as recycling and energy conservation is not supported by practical experience. Not only are such practices commonplace in the United States, many of them are cost effective. In any event, NPS has modified the environmental requirements in the final rule as discussed above.

b. *Comment.* The restrictions on assignments and sales take the proposed regulations well beyond the statute.

NPS does not consider that the proposed regulations regarding sales and transfers exceeded reasonable implementation of the requirements of Section 408 of the 1998 Act. Section 408 did not exempt small businesses from its application. The information requirements set forth in the proposed regulations are necessary for NPS to carry out its responsibilities under Section 408. In any event, in the final

rule NPS has made the information requirements discretionary in the circumstances of particular transactions. The smaller the business, the less information NPS will generally need in order to approve a sale or transfer. In addition, the final rule has eliminated reference to approval of encumbrances of net revenue as mentioned by the commenter as particularly burdensome to small businesses.

c. *Comment.* The section of the proposed rule that states that a purchaser of a concession does not have to buy the related personal property of an existing concessioner could cause losses to the small business concessioner.

NPS notes that the 1998 Act makes no mention of a requirement that an existing concessioner is entitled to have a new concessioner purchase its personal property. It is the position of NPS that concession contracts should not require an existing concessioner to sell its personal property to a new concessioner or to require a new concessioner to purchase the personal property of a previous concessioner. Both businesses are treated equally. NPS fails to understand why a contract that permits the contractor to sell its personal property on the open market upon contract expiration is burdensome to the contractor or in any way contrary to usual business practices in the United States. In fact, requiring a new concessioner to purchase the personal property of a prior concessioner may well be considered burdensome to small businesses.

d. *Comment.* The requirement in the proposed regulations that the purchaser of a concession operation has a year to pay a prior concessioner for its leasehold surrender interest is burdensome to small businesses.

NPS has discussed the need for this provision in the section-by-section analysis. However, NPS also notes that the final rule is changed in this connection, requiring the payment of interest and only permitting payment after the expiration of a contract in extraordinary circumstances beyond the control of NPS. NPS considers that these changes address any valid concerns of the commenter.

e. *Comment.* One hundred and forty two small businesses constitute a significant number of small businesses within the meaning of the Regulatory Flexibility Act.

The commenter made this assertion without explanation. NPS does not consider that there is any valid basis upon which to conclude that 142 businesses out of all the hotel, restaurant, outfitter and guide,

sightseeing, etc. businesses in the United States are a "significant" number of small businesses within the meaning of the Regulatory Flexibility Act.

f. *Comment.* The lottery system and the lack of regulations regarding rates to the public unduly affect small businesses.

Reference to a lottery system has been eliminated in the final rule. In addition, a section on rate approvals has been added. In any event, NPS rate approvals are accomplished under administrative guidelines, not regulations.

(3) A description of and an estimate of the number of small entities to which the rule will apply.

NPS notes that the vast majority of NPS concessioners (approximately 600 out of 630) are "small businesses" under applicable Small Business Administration guidelines (gross receipts of less than \$5 million) and has developed the proposed regulations and final rule to accommodate to the extent possible the concerns of concessioners and prospective concessioners, almost all of which are small businesses.

There are some 630 existing NPS concessioners. Of these, approximately 75% will be provided a preference in renewal because of the 1998 Act. In addition, there are an unquantifiable number of businesses which may in the future seek to obtain a concession contract and thereby benefit from the 1998 Act's repeal of the preference in renewal as they will have a greater chance of successfully competing for a concession contract. The types of businesses that are generally NPS concessioners are hotel, restaurant, transportation, marina, sightseeing, outfitting, souvenir sales, etc., *i.e.*, businesses that provide necessary and appropriate visitor services in areas of the national park system.

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

All concessioners are subject to these requirements.

Sections 51.98 and 51.99 describe the records and recordkeeping requirements of the final rule. All concessioners are subject to these requirements under the 1998 Act and this part. The type of skills necessary include business, accounting, and, in limited circumstances, legal skills.

(5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated

objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternatives adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The previous discussion under the section-by-section analysis provides this information in detail, including a discussion as to why suggestions from concessioners were not adopted by NPS in the final rule. In general terms, the requirements of the final rule are necessary in order for NPS to properly carry out its responsibilities under the 1998 Act. However, NPS notes that it has made a number of incremental changes in the final rule that ameliorate impacts on smaller entities. For example, it has made the environmental management program elements of the proposed regulations discretionary with respect to businesses grossing less than \$100,000 and has provided for lower information requirements for smaller concession contract solicitations. In addition, a number of changes have been made in the final rule that ameliorate impacts on all concessioners, *e.g.*, arbitration of construction cost, payment of interest on leasehold surrender interest not paid for as of contract expiration, inclusion of additional administrative appeal rights, and more limited, non-mandatory information requirements for assignments and encumbrances of concession contracts.

#### **Unfunded Mandates Reform Act**

The National Park Service has determined (for the reasons discussed above) and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, State, tribal governments or private entities. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

#### **Takings (E.O. 12630)**

In accordance with Executive Order 12360, the rule does not have significant takings implications. The rule has no effect on private property. Existing concessioners are entitled to payment for any real property improvements they may have upon expiration or termination of existing concession contracts in accordance with their terms. Other persons are not affected by the terms of concession contracts issued under the authority of this part unless the person chooses to enter into a concession contract.

#### **Federalism**

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no direct requirements on any governmental entity other than the National Park Service.

#### **Civil Justice Reform (E.O. 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

#### **Paperwork Reduction Act**

The PRA 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 collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1024-0125 (Submission of Offers in Response to Concession Prospectuses) and 1024-0126 (Sales of Concession Operations). 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 approvals. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approval. These additional information collection requirements will not be implemented until OMB approves the emergency request. NPS will publish a **Federal Register** notice when OMB has approved these requirements.

#### **National Environmental Policy Act**

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

### Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the

**SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

NPS notes that comments stated that the rule contains technical language and should be shorter. However, the 1998 Act itself is replete with technical language that must be defined in the rule. NPS also considers that the requirements of the rule are stated as clearly as possible.

### List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Part 51 is hereby revised to read as follows:

## 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?  
51.52 How do I obtain a leasehold surrender interest?  
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

##### § 51.1 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.

##### § 51.2 What is the policy underlying concessions contracts?

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

### § 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

### § 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 § 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 51.16 How will the Director evaluate proposals and select the best one?**

(a) The Director will apply the selection factors set forth in § 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 § 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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

§ 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

##### § 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).

##### § 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 § 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.

##### § 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

##### § 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.

##### § 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 §§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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**

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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**

**§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.)

#### **§ 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.

**§ 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 § 51.57. The Director may at any time amend a construction cost determination (subject to arbitration under § 51.57) if the Director determines that it was based on false, misleading or incomplete information.

**§ 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 § 51.56. If a timely request is not made, the Director's determination of construction cost under § 51.56 shall be the final determination of the construction cost. The arbitration procedures are described in § 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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 § 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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**

**§ 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.

**§ 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.

**§ 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.

**§ 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 § 51.51.

**§ 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**

**§ 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).

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 51.83 Handicrafts. [Reserved]**

**Subpart J—Assignment or Encumbrance of Concession Contracts**

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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**

#### **§ 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).

#### **§ 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

#### § 51.101 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.

#### § 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.

#### § 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

#### § 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.

Dated: April 10, 2000.

**Stephen C. Saunders,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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**APPENDIX E**

**APPROVED RATES FOR CURRENT CONTRACT**

2006 PROSPECTUS - FOR REFERENCE USE

## Statue of Liberty National Monument and Ellis Island

### Approved Rates for Ferry Service, 2006

Category	Fare
Adult	\$11.50
Senior (62 and above)	\$9.50
Child (12 and below)	\$4.50
Student Group	\$4.50

### Approved Rates for Special Event Transportation Services, 2006

Vessel	Basic Rate
Miss Circle Line	\$8,000
Miss New York	\$7,500
Miss Ellis Island	\$7,500
Miss New Jersey	\$7,500
Miss Liberty	\$7,500
Miss Gateway	\$6,500
Miss Freedom	\$6,500

The basic charter rate includes:

- A four (4) hour period of time beginning when the first vessel departs from the slip on the first run, ending when the last vessel arrives at the slip on the last run
- A maximum of two (2) schedule out-bound trips and two scheduled return trips
- Any additional trips (if allowed) will result in additional charges of \$400 per round trip when agreed and scheduled in advance, \$500 per round trip otherwise. Unscheduled additional trips are not guaranteed.

**Approved Prices for Food and Beverage Items, 2006**

<b>Product</b>	<b>Price</b>
Coffee, Tea, Hot Chocolate	\$1.25
Bottled 20 oz. soda	\$2.25
Bottled Water	\$2.25
Hot Dogs	\$2.50
Spicy Sausage	\$3.25
Hot Pretzels	\$2.25
Chips	\$1.00
Muffins	\$1.50
Cookies	\$1.25
Danish (Entenmann's)	\$2.00
Candy	\$1.25
Ice Cream Bars	\$2.50
Minute Maid Frozen Cups	\$3.25
Nachos and Cheese	\$4.75
Combination Meals:	
Hot Dog, Chips, Soda	\$5.00
Pretzel, Chips, Soda	\$5.00
Nacho, Cheese, Soda	\$6.50

### Approved Prices for Merchandise, 2006

<b>Products</b>	<b>Price</b>
Foam Crowns	\$2.00
Post Card Package	\$2.50
Statue of Liberty Sunglasses	\$3.00
Statue of Liberty Hats	\$7.00
Statue of Liberty License Plates	\$3.50
Metal Key Tag	\$3.00
Statue of Liberty Plastic Key Tag	\$1.50
Pewter Key Tag	\$4.00
Poly Magnets	\$4.00
Flex Magnets	\$1.00
Statue of Liberty Large Flex Magnets	\$3.00
Statue of Liberty Poncho	\$2.00
Statue of Liberty Pens	\$3.50
Plastic Statue of Liberty Statue	\$4.00
Poly Statue of Liberty Statue	\$10.00
Large Pewter Statue of Liberty Statue	\$12.00
Statue of Liberty Playing Cards	\$3.50
Statue of Liberty Pennants	\$3.50
Statue of Liberty Water Globe (regular)	\$5.00
Statue of Liberty Water Globe (large)	\$20.00
Statue of Liberty Lapel Pins	\$3.00
Statue of Liberty Pewter Bell	\$5.00
Statue of Liberty Shot Glass	\$3.50
Calendar	\$10.00
Statue of Liberty Coffee Mug	\$10.00
Statue of Liberty Thimbles	\$3.50
Statue of Liberty Spoons	\$5.00
NYC Map	\$2.00
NYC History Book	\$12.00
Jumbo Statue of Liberty Pencils	\$4.50
Tree Ornaments	\$5.00
Golf Balls	\$3.50
Sterling Silver Charms	\$10.00
Statue of Liberty Mouse Pads	\$8.00
Statue of Liberty/NYPD Pencils	\$2.00
Statue of Liberty/NYC Patches	\$3.00
Statue of Liberty Bears	\$12.00
Statue of Liberty/NY Skyline Frame	\$10.00

**APPENDIX F**

**CONCESSIONER-OWNED PERSONAL PROPERTY LIST**

2006 PROSPECTUS - FOR REFERENCE USE

### MARINE PERSONAL PROPERTY INVENTORY

<b>Concessioner-Owned Vessels</b>			
<b>Vessel Name</b>	<b>Official No.</b>	<b>Year Built</b>	<b>Age</b>
MISS GATEWAY	647816	1982	24
MISS ELLIS ISLAND	974032	1991	15
MISS NEW JERSEY	977318	1991	15
MISS NEW YORK	993370	1993	13
MISS CIRCLE LINE	295340	1964	42
MISS LIBERTY	276394	1954	52
MISS FREEDOM	582111	1977	29
MISS CIRCLE LINE XIV	n/a	1908	98

NOTE – Included by reference to each vessel are all on-board marine furniture, fixtures and equipment except for six wheelhouse air conditioners and seven Automatic Identification Systems (see the Draft Contract, Exhibit D, Assigned Government Personal Property). Personal Flotation Devices and onboard furniture, fixtures and equipment used for on-board sales of food, beverages and merchandise are listed below with Non-Marine Personal Property.

In addition to the vessels and their associated marine furniture, fixtures and equipment, the marine inventory includes:

<b>Brooklyn Navy Shipyard, Pier C Maintenance &amp; Repair Facilities: Marine Spares, Stores, Etc.</b>		
<b>Item</b>	<b>Description</b>	<b>Quantity</b>
Ring buoys	30" dia with throw lines B lifesaving on Pier C	8
Fire stations	50 ft x 22" hose w/ nozzles and spanners	12
Zincs	6' x 12"	66
Zincs	3" x 12"	100
Pig iron ballast ingots	20" x 4" x 3"	76
Horn cleats	42"L x 6"W x 9"H B spares	14
Horn cleats	42"L x 6"W x 9"H B dock, mounted on 3' x 4' plates	27
Rebar	20'	24
Ballast plates	24" x 19"	14
Chocks	23"x 6", rounded outside dimension 17" x 10", opening 12" x 5" B spares	6
Rope/wire stand	42" x 48" base of 3" x 2", with four corner braces extending diagonally inboard, 24", with top flange	1
Spare dock gangway railings	14' long, vertical stanchions 33" H w/ 3" x 3" footings, upper rail 1" dia	4

Dock perimeter railing, spares	36" H, 13" pipe. One intermediate course, 5" x 4" x 3" stanchion footings, 16' long ( <i>Pier C railing reportedly acquired and installed by Circle Line for personnel protection.</i> )	7
Dock perimeter railing, installed	Same, 3' long	4
	Same, 4' long	3
	Same, 5' long	2
	Same, 6' long	3
	Same, 7' long	4
	Same, 8' long	2
	Same, 9' long	2
	Same, 10' long	5
	Same, 12' long	3
	Same, 13' long	1
	Same, 14' long	11
	Same, 15' long	10
Installed vertical dock safety ladders	Steel, 2" x 3" side rails with round rung, 12" apart, approx. 22-ft long	9
Bollards, dock	30" x 30" x 1" base, 42" H, 18" top diameter	7
Bollards, spare	Same	5
Exhaust pipe	12' x 12"	1
	24' x 10" x 2"	1
	7' x 10" x 2"	1
	10' x 8" x 2"	1
	10' x 6" x 2"	1
	9' x 6" x 2"	2
Exhaust pipe	4' x 6" x 2"	1
Stands w/ round rollers for pipe welding	Two reels each side, 16" dia x 22" on framework approx 24" H	1
Shore Power	Dock stations with shore power panel, boat shore power plug, 50-ft cords, multiple dock plugs, potable and pneumatic stations.	7
Sewer hose	Rubber wire-core hose, camlock fittings, 50' x 32" D (3" inner diameter), 3" wall thickness	7
	Same, 20' long	3
Paint Scaffolding	Alum., 2'W x 6'L x 7'H, made of 2" x 2" x 3/16ths angle	2
Scaffold hooks	Square hook shape 10" x 42" x 3" high on short end, 22" W, 3" thick	6
Spare boat gangways	15-ft x 54" outside width x 33" H railings, aluminum tube avg 13"	11
Gangway alum. tubing	13" x 15'	8

MISS CIRCLE LINE spare gangway	14'L with additional 32" hinged lip, 67"W, 12" aluminum tube (MISS CIRCLE LINE gangway style different from others )	1
Heavy duty gangway	Steel, 12' x 33", 36"H 1" round stock railing, 9" x 2 2" x 3" side channel. 3" steel deck (used for engine repair, etc.)	1
Generator cooling system	Fabricated water circulating keel-cooler type system with 3" dia. pipes in framework welded to 4" x 2" plate. Pipes angle over pier edge 90 down approx. 25' and loop. Deck ends reduce to 2". Provides cooling for temporary generator on trailer.	1
Hard rubber fendering	10" x 10" with 4" hole, 8' L	2
	Same, 3' L	2
	Same, 20' L	8
	Same, 11' L	2
Channels for boat panels	12" x 2" x c" galvanized steel, 16' L	60
	Same, 7' L	50
Gangway alum. tubing	1" diameter x 20'	65
Buoyant apparatus	20-man (top of first trailer)	3
Gangway materials	T-bar 2" x 2" x 16'	6
	Frame 2" x 12" x c" x 16'	2
	Flat bar 2" x 12" x 16'	22
	Flat bar 2" x 1" x 16"	5
	Flat bar d" x 3" x 16'	3
	Flat bar 2" x 3" x 12'	5
	Flat bar 2" x 3/16" x 16'	4
	Flat bar 2" x c" x 16'	6
	Square stock 1" x 1" x 12'	2
Pier C sewage system	Flyte Quote No. 59803AA, SN 04-0876 Bapprox, 3,760 gallons underground tank with two submersible pumps outside gate/bordered by spare bollards with safety chain; MPE PC Series 7 Multirode Duplex Pump Controller, level indicator and alarm, and electric control panel. (High level sensor will automatically activate discharge pump; Pump 1 1419.6 hrs, Pump 2 228.4 hrs) B reported cost of installation approximately \$300,000.00	1
Hand portable fire extinguishers	Type B-II, DC	4
Flanged steel deck plates	12" x 8" x 3/16" x 7'	12
Sewer piping	4"x 3" x 20' (galvanized)	3
Black iron pipe	4" x 3" x 20'	1
Steel piping	2" x 20'	4
	13" x 12'	1

	1" x 20'	3
	1.5" x 20'	7
	2" x 20'	6
Steel plate/boat repair	6' x 12' x 3/16" ( <i>Neale &amp; Sons reportedly inventoried other steel but not this</i> )	1
	6' x 10' x 3/16"	1
Steel angle	5" x 3" x 3" x 12' ( <i>Neale &amp; Sons reportedly inventoried other steel but not this</i> )	1
Aluminum Z-bar	3" x 4" x 3" x 3" x 10'	22
Aluminum Z-bar	3" x 4" x 3" x 3" x 35'	6
Pig iron basket	Manhole-shaped oval 23" x 14" ballast movement basket sized to hold pig irons and fit through deck hatch/lifted by chain hoist or portable crane; flat bar bracing 162" H, with flat bar and fashioned padeye across top, and shackle.	1
Tubular work float	12" diameter pipe float with 2" x 6" wooden decking, four 14" cleats at corners, 4 zincs 3" x 12"; float corners rounded (pipe elbows)/overall 26' L x 7' Wide; plugged fitting enables air testing.	1
Spare Main Engine	Rebuilt Cummins KTA19M block just delivered (rebuilt by Cummins Engine Co., Memphis, TN, Eng. No. 37144641)	1
Spare props	3-blade 54" Diameter, 12" hub, bronze	2
	3-blade 57" Diameter, 132" hub, bronze	2
	3-blade 42" Diameter, 10" hub, bronze	3
	3-blade 58" Diameter, 48" Pitch, bronze	2
	4-blade, 54" Diameter, 112" hub, stainless steel	2
Alum. saw horses	4' long, 31" high, top surface 42" x 5" T-bar, 2" pipe legs	6
	Same, 16" high	2
Electrician=s wire stand	1" pipe, 42" H, framed legs 32" long; legs at bottom cross-connected by 3" x 12" x 3" channel	1
Oxygen bottles	Extra large (62" H x 9" dia)	6
Argon bottle	Large (57" x 8")	1
Compressed gas (TIG) bottles	Extra large	2
Acetylene bottles	4" H x 12" dia	3
Ladders	24' alum. extension	1
	12' wood lean-on	2
	12' step	1
	10' wood lean-on	1
	8' wood lean-on	2
Tailshaft	5" x 22'8" (on container top)	1

Waste fuel oil/used oil tanks (blue)	6' x 44" x 42" high, centerline bulkhead, 250-gallons each (Sate-T-Corp)	1
20-ft container	Power wash nozzles	6
A	3" pump hoses, 30' each	2
A	20" Craftsman chain saw, 71-36627	1
20-ft container	Search and Rescue AOscar" dummy (est. 5'10" tall, 150 lbs)	1
	RV-type pilothouse air conditioning unit (new)	1
	X-mas decorations (garland, wreaths, etc., for each boat).	7
	Fleetgard air filters, MPL 1100	8
Boat windows (container top)	40" x 60", alum. frames, with glass	2
	32" x 40", alum. frame, with glass	1
Emergency generator	Lister 2 cyl. air cooled diesel with gen unit (Ellis class)	1
20-ft container	Pipe insulation, 48 linear feet, 4" dia, 16 pieces	1
	Pipe insulation, 54 linear feet, 3" dia, 18 pieces	1
	Alum. window frames w/o glass, 40" x 60"	2
	Alum. window frames w/ glass, 32" x 40"	12
	Wall panels, 1" x 4' x 8'	2
	Wall panels, 2" x 4' x 8'	3
	Boat Captain=s chair	1
20-ft container	Cal-June, Inc., Model 1620-T buoyant apparatus, 54" x 162" x 60-3/16" (new)	3
	John Wood 82-gallon pressure tank (new)	1
	Bronze shaft bushing, 6" dia x 18"	1
Cordage container	Blue nylon float line, 1e" x 600' spool	2
	Poly 3-strand, 3" x 600' spool	1
	Blue & white poly, d" x 300'	1
	Yellow & black poly, 5/16" x 600' spool	1
	3-strand yellow poly, e" x 600' spool	3
	Nylon e" x 600' spool	1
	Black poly, 5/16" x 600' spool	2
	3-strand poly, 1e" x 600' spool	2
	3-strand white poly, 1" x 600' spool	4
	Yalex Maxijacketorange heaving line, 3" x 1,000 spool	2
	Black poly proline, 3" x 600' spool	1
	3-strand poly, 2" x 600' spool	1
	Poly, d" poly x 600' spool	2
	Poly, d" poly x one-half spool (300')	1
	Poly 1" x 600' spool	1

	Rope cradles, 4' x 2' bottom channels, 3" x 2" x 3" frame, 5' long pipe axle	2
Tailshaft container	Tailshaft, 42" dia x 22'82"	1
	Tailshaft, 5" dia x 22'3"	1
	Tailshaft, 4" dia x 22'82"	1
	Tailshaft, 5" dia x 20'32"	1
	Tailshaft, 5" dia x 20'7"	1
	Tailshaft, 5" dia x 20'72"	1
	Tailshaft, 5" dia x approx. 18'	2
	Tailshaft, 5" dia x approx. 17'	4
	Shaft couplings, 5" inner dia, 92" outer dia. x 20" L	2
	Tailshaft container improvements for handling shafts: 40-ft. Trailer structurally enhanced by addition of 20 transverse frames, 12" x 12" x 3", and longitudinal intercostals, each two frame stations long, staggered at sides of a top-mounted 40-ft I-beam 6" H, 32" flanges, 3" thick. I-beam welded to each transverse frame by	1
	trapezoid-shaped plate 6" (at I-beam top) x 32" legs x 8" welded to transverse frames. Two Dayton 2-ton trolley rollers with shackles. Tailshaft lifted by chain hoist and trolled towards container door for removal by crane/process of placing shafts in trailer is reverse. Reported trailer cost was \$15,000.00	
Gangway components	Shoes, stainless, 4" x 22" x 2" stainless angle	12
	Backs, 48" x 2" x 13" x 2" x c"	12
	Roller housings (4" x 42" x 23" x d") and solid hard rubber rollers	18
Pipe hangers and bases	2"	12
	1/2"	12
	1"	12
	13"	12
	12"	12
	2"	12
	22"	12
	32"	12
	4"	12
Nightshift gangway shoes	7" x 3" x 3" frames	24
Windows	44" x 40" alum. frames w/glass	4
	glass panes for 44" x 40" windows	4

	Window making template	1
Engine room vent	Spare engineroom blower/complete assembly crated (crate not labeled)	1
Beam clamp	Fashioned plate with narrow top AU" bend, bolts, and backing plate for attachment to overhead I-beam flange/shackle chain hoist to beam clamp for heavy lifting, sizes range 12" to 22"	24
Gangway parts	Stanchions, bases, diagonal braces and rails B components for building a complete boat gangway	4
Slop oil/fuel tanks	3' x 4' x 222"	2
Gangway wire rope	d" x est. 400'	1
Pipe elbows	4" x 12" x 45 (Neale & Sons reportedly inventoried other elbows but missed these.)	12
Vent heads	3" dia pipe with bellmouth grate-covered head"	12
Flange plates	4"	est.12
	various sizes <4"	est.100
Spare batteries	8D, 6 V	6
	12 V	6
Grinder	Baldor, 3-phase 3HP	1
VHF radios	ICOM (new, in office trailer)	2

<b>Circle Line XIV: Marine Equipment, Spares, Stores, Etc.</b>		
<b>Main House, Forward</b>		
Misc. pipe fittings	Locker, stainless steel pipe fittings (plugs, nipples, elbows B range from 12", 1", 2") (Images 4163, 4164)	est.200
Lister Engine parts	6" dia pipe with perforations, coupling (other nondescript parts, nominal value) (4165)	1
Lister Engine parts	misc. parts (bearings, tubes, small gaskets, fuel pump, etc.) (4166-4169)	1
Wire cable	d" x est. 100-ft (4170)	1
Machinist tools	Locker, bits, larger puller, etc. (4171-4175)	est.200
Pipe fittings	70 built-in shelves, T=s, unions, nipples, etc., size ranges 3" to 22", bins labeled, plus approx. 12 baskets of assorted stainless and galvanized nipples and parts. (4176-4186)	est 2,000
<b>Electrical Spares Room (4188 - 4238)</b>		
Flourescent fixtures	4-ft lights	8

Assorted parts boxes, top shelf	McDonald-Miller Low Water cutout (MISS LIBERTY), Westinghouse box (unmarked), start-stop switches, digital RPM meter, MISS GATEWAY globes, incandescent lights (STATUTE OF LIBERTY) and other electrical parts, nav lights, multiple misc. boxes/components	est. 100
Assorted parts and boxes, lower shelf	Motors/DC (fire pumps), voltage regulators, 24 V navigation double socket lights, globes, 25-30 W bulbs, drill press and motor, elec panels (5), Granger box/alternator parts, shore feed plug parts, fuses, approx. 18 ballast boxes/units, starter motors (12), search light, nav. lights, Aknife" switch board, etc.	Numerous
Assorted parts and boxes, deck level	Three Milwaukee drill hammers, two large bolt cutters, crates w/ misc. parts, large generator winding, hand tools, drills, mixing drill (mixing deck materials), spare fire hoses (06), electric chain saw, numerous LIBERTY parts.	Numerous
Locker #31	Navigation light parts (bulbs and lamps), circuit boards and miniature lights for boards, etc.	Numerous
Locker #19	Assorted fuses (hundreds) and lamps	Numerous
Locker #40	Replacement boiler control parts, engine parts (2-53), GATEWAY and FREEDOM starter parts, DC parts.	Numerous
Locker #41	Spider Box parts, plugs, brushes, starter parts.	Numerous
Locker #20	Battery nut cables, steering gear contacts, etc. (all full)	Numerous
Locker #32	Gaskets, globes/brass nav light fixtures (6), generator parts/bolts, welding parts/cables.	Numerous
Locker #33	Hot dog machine parts, coffee carafe, etc.	Numerous
Locker #21	Murphy boxes/alarm panel parts, gauges, etc.	Numerous
Locker #42	Shims, bearings, etc. ( <i>Note lockers three high, three wide, 24" x 22" x 17"</i> )	Numerous
Armored Cable	600-ft spools of armored cable, three reels approx. half full, two approx. b-rds fill, others full, assorted sizes	7
Rubber sheathed cable	Full 600-ft reels, assorted size.	2
	<b>Pipe Storage, Main Deckhouse Centerline Passageway, Port side (4239 – 4242)</b>	
Top shelf	Alum piping, flat bar, Z-bar, gangway rails	est. 12
Second shelf	2" alum pipe x 21-ft	1
Third shelf	Assorted piping, 3" to 1"	20
Fourth shelf	Assorted piping, 12" to 1" (one brass)	18
Fifth shelf	Assorted piping, 2"	12
Bottom	Assorted piping, 3" - 4"	5

	<b>Nut, Bolt, etc., Storage, Main Deckhouse Centerline Passageway, PVC Pipe Hanger, and Elec. Cable, etc., Stbd side (4242 - 4259</b>	
Shelves	Nuts, bolts, washers, screws, etc., labeled by item and size, all but about two of 72 storage shelves are full	Many 1,000ds
Boxes	Resupply of assorted nuts, bolts, etc., for filling empty or low storage bins	est. 30
Deck	Milk crates/boxes of bolts, etc.	Numerous
Pipe Hanger	Z-bar (remnants from work), flat bar, stainless steel angles and flat bars, lath boards (for overhead mounting of PFD=s), PVC piping range from 12" - 3".	est.100
Cables	Extension cords, shore feeds, drydock cables, welding cables,	Est. 15
Spider boxes	Power pack boxes, branch circuits and cords (50, 20 and 30 AMP)	3
Motors	Baldor, 3 HP	2
	<b>Main Deckhouse, stbd side aft of crew dining area (4260 - 4262)</b>	
Flourescent light fixtures	Eight-ft long	2
Jim Buoy water lights	ring buoy lights	2
Threaded rods	Stuffing tube, 3" x 6-ft	12
Threaded rods	Stuffing tube, 5/16-ths" x 6-ft	12
	<b>Cummings Parts Locker (Approx. 10-ft x 5-ft) (4282 - 4350)</b>	
Forward bulkhead, 4'x 8' pegboard	Completely full, gaskets, O-rings, gasket kits, lube oil gauge, 8-gauge cluster, etc.	>1,000
Outboard side bulkhead	V-belts (different sizes, etc. 30), two torque wrenches, pipe wrenches (3), rings, psi gauges (2), etc.	Numerous
Bench/table, forward	Cummings camshafts	6
Beneath bench/table	Heads	12
	Connecting rods (one per box)	6
Cummings 6BT	Head	1
Overhead	Turbo Clamps (various 3" - 6", and 8")	est. 20
Back top/upper shelf	Assorted boxes, head gasket kits Control parts (boxes) Gear units Control handles Steering parts/Morse controls (boxes)	12 8 5 3 3
Back second shelf	Assorted boxes of bolts, multiple sizes (d", 2", e", 1", etc.), fuel pump parts, gasket kits, injectors, piston pins, alternator, starter part	Numerous

Back third shelf	(tools), turbo kit (KT19A), O-rings, gaskets, fuel pump parts, front and rear seals, wrap-around cover gaskets, etc.	Numerous
Back bottom shelf	Turbo chargers (3), carrier heads tools, clamps, heat exchange test kit, roller items, pressure gauge, crankshaft seals (est. 10), thermo units (5), sleeves, thermo kits (10), thermostat, push rods (est 15 boxes), crankshaft bolts, injector link (est. 8), pyrometer, solenoids (5), head bolts (2 boxes "36 each)	Numerous
Back deck (beneath shelving)	Pump parts, turbos (three new in boxes), heads (6, with gears), fuel pump (1), oil pumps (2), Caterpillar parts (nozzle assemblies/12 boxes), two LIBERTY brass pump housings (9-10-in dia), ring sets (est. 12), push rods, gasket kits, thermostat, rod bearings (3 boxes), bushings/cutlass bearing housings (2 " 6" dia x 20", 1 " 7" dia x 10", 1" 7" dia x 8"), bearing housing without cutlass (7" dia x 12"), bow thruster alignment plate, two pullers, two heavy pipe sections (5" OD/ 3" ID x 17")...	Numerous
<b>Filter Room (4351 - 4385)</b>		
Water filters	Fleetgard, WF2075, 2 boxes (12 ea)	24
Filter replacement kits	Seafar, 30 microns (diesel) (boxes)	7
Oil filters	Fleetgard cannister, WF205 oil filters (2 boxes, 1 stray)	25
Air tool oil	quarts	9
Starbrite gas additive	gallon/stabilizer	1
Fuel Filters	MT8	6
Fuel Filters	Fleetgard MPO3125	7
Hydraulic Filter	Wix 51712	1
Fuel Filter	Fleetgard MP0359A	12
Lister Oil Filters	Fleetgard LF3460	12
Lister Air Filters		6
Fuel Filters	Fleetgard MPL 5264	3
M18 hex nuts	One bag	50
Racor Kits	box	1
Fuel filters	Fleetgard MPL 7971	7
Fuel Filters	Fleetgard MPL 5264 (2 full boxes of 12, one open with 9)	33
Fuel Filters	Fleetgard MPL 5268	10
	Fleetgard MPL 397	18
	Fleetgard MPL 862 (1 box " 6, 1 "5)	11
	Fleetgard MPL 969	10
Fuel	Baldwin F906C	28
Fuel	Baldwin 916C	24

Fuel	Fleetgard FF109	12
	Fleetgard FF106	12
Generator Oil	Fleetgard MPL 796	6
	Fleetgard MPL 796	24
Hydraulic	Fleetgard HF6061	6
	Fleetgard MPL 5539	7
Hydraulic	Fleetgard HF6243	18
Air compressor filters	Baldwin C78P	10
Hylo Lube Oil	Fleetgard LF-607	9
Fuel	Fleetgard FF112	24
	Baldwin F844-A	12
	Fleetgard FF-112	12
	Fleetgard MPL 36D	6
	Fleetgard M1066	2
Lube	Fleetgard LF-525	12
Gear box	Fleetgard HF-6061	3
	Baldwin F844-A	12
	Fleetgard MPL 10-D	12
	Fleetgard LF3689	9
Lube	Fleetgard MPL 883A	20
Water	Parker RC4 (drinking fountain)	20
	Canister cartridge, approx. 4" dia x 9"	3
Maintenance kits	Fleetgard MK13007 (three different filters per kit)	3
	Fleetgard MPL791M	24
	Fleetgard MPL 319 (MISS FREEDOM)	4
Lube	Fleetgard LF525	9
	Fleetgard MPL 319	24
Separate filter parts	box...	1
Air filters	Fleetgard AH1136 (boxes)	15
	Fleetgard MPL 7940	21
	Fleetgard MPL 427	24
	Fleetgard FF5138	8
Fuel Catalyst	AFC705 (jugs)	4
Filter gaskets	3/32-nds" x 5f" ID	50
	<b>Machine Shop (Main Deckhouse aft)</b>	
Cummins main engine	Rebuilt KTA-19M, engine serial no. 37133788 (4386, 4405)	1
Cummins aux. diesel	Series 402, 5.9 liter, serial no. 44765071 (engine in shop to be rebuilt) (4394, 4404)	1
	<b>Electrician's Shop (4410 - 4453)</b>	
Speakers	Spare boat speakers	8
Radio parts and microphones	Top shelf above work bench	Numerous

VAMPS system recorders	parts and spares	Numerous
Light bulbs	spares (boxes, different sizes)	est. 12
Wire	Spools, all sizes (small to armored cable)	25
Instrumentation	assorted	est. 24
Fire Lite Alarm Panels		3
Bogen communication	Amplifier	3
Lighting sockets/parts	assorted (also stored below/space in shop limited)	Numerous
Shore feed plugs	crate	Numerous
Motor starter parts	assorted	Numerous
Pressure switches		Numerous
VAMPS batteries		Numerous
Starters		est. 12
Alternators		est. 10
Brass/copper lengths	(in mailer stuffing tube)	est. 8
Storage drawers	assorted electrical components	Numerous
Meters	YOGOGAWA panel meters	7
Cable	Box (rubber sheathed, three -strand, 14-gauge), E-241-3-MSAH, full spool (250-ft)	1
Cable	14/3, SJEW black, 250-ft	1
Breaker	MAG.ADJ1000.2250 225 amp GE circuit breaker	1
Gauges	misc. boxes	Numerous
BX cable	coils, each 50-ft	3
Lovejoy sleeves	(bearings)	3
Hubs		2
	<b>Brass Fittings "Gold" Room (#6) (4454 - 4475)</b>	
Extension cords, pipe wrenches	assorted	Misc.
Faucets	B-0712 - bathroom	6
Air conditioning coolant	R-22, est. 3-gallon bottle	1
Locker	wire, hose clamps, air freshener units for boat heads, etc.	Numerous
Locker	Utility pump, tools, grinder, pump parts, hangers, ferrule fittings, etc.	Numerous
Sink	boat sink	1
Shelving, plywood	20 shelves, assorted Milwaukee valves (different sizes/six small, two each of larger sizes), brass nipple piping assorted lengths (4", 3", 2") x 12; couplings, unions, elbows, T's, etc.	Numerous
Plastic bulkhead mounted trays (8)	45 and 90-degree elbows	12
	Plugs and nipples, 1"	18
	Couplings and T's	12
	Reducers	12

	threaded pipe	24
	couplings	6
	Elbows	12
	T's	10
	Unions	10
Trap kits	(sink/drain traps)	7
Downspout kit		1
Hydraulic hoses	Spare transmission hoses, 54"	2
<b>Filter and Valve Room (4476 - 4491)</b>		
Valves/components	Valves and rocker assemblies	Numerous
Filters	Fuel, Fleetgard MPL 494	51
Valves	boxes (2, 18 valves each)	36
Air filters	Fleetgard MPL 5304	12
Assorted valve parts	misc	Numerous
Rocker arms	boxes	15
SFT-LEV	Cummins part no. 3176773	6
Injectors	Cummins part no. 3803518	12
Valve springs	three boxes and loose	20
Adrag" stems	box	1
Valve parts	Cummins part no. 3081081, ROTAROR valves	12
Insert valves	IST Valve 3052819, boxes	3
Rocker arms	boxes	4
Misc parts.	assorted	Numerous
Exhaust valves	box	1
Hose	box, flexible hose	1
Hose parts	assorted	Numerous
24-drawer cabinet	parts (round head screws No. 6 to 3", nuts, washers, etc.)	Numerous
<b>Storage, GM Parts (4492 - 4547)</b>		
Spare hand portable fire extinguishers	B-II DC	13
	B-II CO2	3
Ring Buoys	(new)	5
Man overboard recovery safety collar		1
Gaskets and V-belts	Peg board mounted, assorted sizes	100s
Portable pumps	three water, one oil	4
Open shelves, pump parts	GM parts	Numerous
Misc.	Shaft parts, boiler tube brushes, assorted	Numerous
Misc.	Boiler tube brushes/components, assorted	Numerous
Head	GM 3-71	1
Blowers	GM V-12	2
Head	GM 2-53	1

Clamps	assorted	Numerous
Gear box	Twin Disc	1
Sewer traps	boxes, misc.	Numerous
Flushometers	flush parts	Numerous
Plumbing hose fittings	assorted, 40 shelves on bulkhead	Numerous
Tubing	Assorted sizes, est 200-ft	1
Hose	2' x 2' x 2' box, full	1
Gasket material	on rolls/bolts, full, various gasket materials	12
Cabinet	Hose fittings (for hose making, including fire hose)	Numerous
Packing material	Assorted	Numerous
	<b>Storage, Main Deckhouse Aft Centerline Port Side Passageway (4548 - 4556)</b>	
Compartment blowers	Shipyard corpus blowers with hose	4
Halogen light stands		2
Welding rods	boxes	12
Shop Vacs		2
Extension cords	coiled	est. 12
5-gallon pales	deck coating and assoc. materials	est. 50
Ceramic material	inventory for restroom repair	Numerous
	<b>Below Deck Two Compartments Forward of Machinery Space (4569, 4576 - 4677)</b>	
Squirrel Cage wind turbines		est. 12
Lister Emergency Generators	Spare diesel and 20 KW gen set	3
ABB pump	spare	1
Baldor blower	restroom	1
Generator ends	one wrapped/crated Bno label, one in open/Delco AC 3 phase, 50 KW	2
Controller panel	spare	1
Baldor blower	engineroom	1
Resistors	(Crate)	1
AC-DC Converter	spare for MISS LIBERTY	1
Shaft bearing	30" L x approx. 8" OD	1
Outer running ring	box	1
Detroit V-12 heads	spares	2
Cummins crankshafts	crated, new or reman.	3
Blowers	engineroom and restroom ventilation	6
Gear boxes	GM	2
Rudders	spares, 69" x 46" and 78" x 60"	2
Water tank	spare, 80 gallon (new)	1
Pressure tanks	potable water and sewage	4
Oil pumps	gears and parts	3
Turbo chargers	Cummins	2

Armored cable	multiple reels and sizes/full	est. 15
Vinyl/rubber sheathed cable	multiple reels and sizes/full	est. 6
Detroit Diesel V-12	short block	1
Detroit Diesel V-12	pistons, rods, multiple assorted parts	Numerous
Turbos	Detroit Diesel V-12	2
Expansion tank	4' x 18" dia	1
Speakers	new, in box	8
Shaft sections	with couplings, est. 4-5" dia x 4'	2
Generator end	KW unk	2
Flywheels	assorted	7
Ballast	pig iron ingots	est. 100
Filter housing	dual in-line unit with piping/plumbing	1
Valves	assorted/large	Numerous
Gear box	MISS LIBERTY spare	1
Heat pump	spare	1
Crates	misc. parts	Numerous
Crates	steel structure (?), Cummins part no. 3036088 (crates approx. 4' x 1' x1')	2
Steering accumulator	Ellis class, crated	1
Detroit Diesel V-12	spare block, heads and cylinders	1
Cummins KTA-19M	crated engine (new or rebuilt)	1
Engine parts	connecting rods, gears, etc.	Numerous
Controller	Label 6352091, Allis Chalmers (in crate)	1
Rectifier	(spare)	1
Exhaust couplings	braided stainless steel sheathed	est. 6
Steering wheel	30-in dia	1
	<b>Below Deck Aft of Machinery Space</b> (4678 - 4693)	
Shelf brackets		est 25
Armored cable	coils, est 100-ft each	2
Controller box	(old, LIBERTY or FREEDOM)	1
Head bolts	box	Numerous
Pump impellers	various	est.6
Pump parts	misc.	Numerous
Valve parts	crate	Numerous
Exhaust bellows	stainless steel, new, approx. 2' x 9" ID	1

### NON-MARINE PERSONAL PROPERTY INVENTORY

Qty	Item	Mfg	Model	Description	Year of Acquisition
4501	Life Preservers Adult	Jim Buoy & Safeguard	601T	USCG Type I, Hard cover and vinyl, Condition: (G).	2004
2737	Life Preservers Child	Jim Buoy & Safeguard	603T	USCG Type I, Hard cover and vinyl, Condition: (G).	2004
30	Life Preservers	Safeguard	198	Offshore, Type I, PFD, Condition: (G).	2001
10	Hotdog Roller Grills	Sabrett	Grill City	30 Hotdog Grill, Condition: (VG).	2004
15	Electric Cash Registers	Samsung	SAM4S / ER-5200M	117 compartments. Condition: (VG).	2004
8	Nacho Cheese Dispensers	Gehls		Vertical table top model, (VG)	2005
10	Soft Pretzel Merchandisers	J & J Snackfoods	850C	Stainless Steel table top model heated, (VG)	2005
12	Display Merchandisers	Custom	Table top	48" x 10" x 16" Stainless Steel and plexiglas	2000
4	2 Station Coffee Brewer	Blickman	MB-3	Stainless Steel with touch & brew. Two brewing volumes.	2003
5	Stainless Steel Sinks	Marlo & Other		Two tub with faucets, 18" x 30". Condition: (G).	1990
1	Stainless Steel Sink			Two tub with faucets, 13" x 20". Condition: (F).	1954
1	Stainless Steel Sink			Two tub with faucets, 12" x 12". Condition: (G).	1990
3	Stainless Steel Sinks	Amtex		Two tub with faucets, 14" x 19" x 12" x 16". Condition: (G).	1990
3	Stainless Steel Hand Sinks	Amtex		One tub, 10" x 14" with faucet. Condition: (G).	1990
2	Porcelain Hand Sinks			One tub, 13" x 18" with faucet. Condition: (G).	1990
1	Walk In Refrigerator	Low Temp		MISS GATEWAY. Stainless Steel. Inside measurements 5' x 5' x 6'6" x 2 1/2" thick. With floor and two Dunnage racks. Condition: (G).	1982
1	Walk In Refrigerator	American Insulated Panels		MISS ELLIS ISLAND Stainless Steel. Inside measurements 5' x 5' x 6'6" x 2 1/2" thick. With floor and two Dunnage racks. Condition: (G).	1990
1	Walk In Refrigerator	James & Company		MISS CIRCLE LINE. Stainless Steel. Inside measurements 5' x	1964

				5' x 6'6" x 2 1/2" thick. With floor and two Dunnage racks. Condition: (G).	
1	Walk In Refrigerator	American Insulated Panels		MISS NEW JERSEY. Stainless Steel. Inside measurements 5' x 5' x 6'6" x 2 1/2" thick. With floor and two Dunnage racks. Condition: (G).	1990
1	Walk In Refrigerator			MISS LIBERTY Galvanized. Inside measurement 2'9" x 4'4" x 6'6". Wood door. Condition: (F).	1954
1	Walk In Refrigerator	Thermo Rigid		MISS FREEDOM Stainless Steel. Inside measurements 5' x 5' x 6'6" x 2 1/2" thick. With floor and two Dunnage racks. Condition: (G).	1985
1	Walk In Refrigerator	Jamison		MISS NEW YORK Stainless Steel. Inside measurements 5' x 5' x 6'6" x 2 1/2" thick. With floor and two Dunnage racks. Condition: (G).	1993
19	Menu Boards	Custom		65" x 7" Stainless Steel and plexiglas.	2005
45	Swing Top Garbage Cans			24 Gallon painted metal. Condition: (F).	1982
1	Swing Top Garbage Cans			25 Gallon Stainless Steel. Condition: (G).	2004
4	Compact Refrigerator	Avanti U-Line & Other		(2) Condition: (G). (2) Condition: (F).	2001
3	Portable Drink Bins			PROPERTY OF COCA-COLA. 5' x 2'6" x 2'6" Red plastic with wheels.	2006
2	Bottle Racks			Stainless Steel under counter, 33"L.	2001
7	Break Room Equipment	Various		35 Locker section (5 per section). 7 Compact refrigerators. 7 Microwaves. 25 Chairs. Condition: (F-P).	1990
<b>MAINTENANCE YARD</b>					
1	Automobile	Chevrolet	Suburban C1500	SUV 4 Door, 4WD, automatic transmission, full power, 2 wheel drive. Mileage: 30,518. VIN: 3GNFK16Z93G311949.	2003
1	Automobile	Jeep	Cherokee Sport	SUV 4 Door, automatic transmission, 4WD, 6 cyl. Engine. Body with damage. Mileage: 64,552. VIN: 15FJ88S2NL107451.	1992

1302	Life Preservers Adult	Jim Buoy & Safeguard	601T	USCG Type I, Hard rubber (NIB). In storage	2004
320	Life Preservers Child	Jim Buoy	603T	USCG Type I, Hard rubber (NIB). In storage	2004
144	Life Preservers Adult	Jim Buoy	601T	USCG Type I, Hard rubber (used). In storage	1999
36	Life Preservers Child	Jim Buoy	603T	USCG Type I, Hard rubber (used). In storage	1999
880	Life Preservers Adult	Safeguard		USCG Type I, Nylon cover (NIB). In storage	1999
220	Life Preservers Child	Safeguard		USCG Type I, Nylon cover (NIB). In storage	1999
160	Life Preservers Adult	Safeguard		USCG Type I, Nylon cover (used). (X). In storage	1975
40	Life Preservers Child	Safeguard		USCG Type I, Nylon cover (used). (X). In storage	1975
4	Used Shipping Containers	KCI	KB20- DC-10	20' x 8' x 8'w Grade A, with flooring and installation. Condition: (G).	1992-2006
4	Used Shipping Containers	KCI	KB20- DC-10	20' x 8' x 8'w Grade A with flooring, lights & installation. Condition: (G).	1992-2006
1	Used Shipping Container	KCI	KB20- DC-10	20' x 8' x 8'w Grade A, with flooring, lights, paneling & installation, CO 2 station. Condition: (G).	1992-2006
3	Used Shipping Containers	KCI	KB-40-DC-10	40' x 8' x 8'w Grade A, with flooring, installation, (1 of 3 ) units w/ co2 station. Condition: (G).	1992-2006
1	Used Shipping Container	KCI	KB-40-DC-10	NOTE: Assumed to be the (1) container being used or held for use exclusively for concessioner's other business interests. Furthermore, it is assumed that the inventory of this container has not been included in this report. 40' x 8' x 8'w Grade A, with flooring, lights, installation. Condition: (G)	1992-2006
1	Wooden Shed	Custom		20' x 8' x 8' For golf cart.	1994
1	Above Ground Waste Oil Tank	Safe-T-Tank	HS-250-SPB-1A	6' x 3'6" x 3'6" (2) 250 gal. compartments	1994
2	Haz-Mat Stations	P & D Solutions	K17-3502	4'8" x 4'2" x 4'6" Metal lift door. 2 drum capacity	1994
1	Haz-Mat Locker	P & D Solutions	K17-357	5'3" x 4'10" x 7'h. Metal two door. (2) barrel capacity	1994
1	Haz-Mat Shed	Custom		7'9" x 6'10" x 6'2"h Modified	1995

				shipping container.	
2	Office Trailers	Beck Corp.		33'L x 10'w Single wide FSC each with two A/C, metal stairs, electric & delivery.	1991
1	Walk In Refrigerator	Bally	3478-3-N	FSC with floor. Inside 9' x 7' x 8' x 4" thick.	1991
<b>MAINTENANCE OFFICES</b>					
5	Desks	Various		Formica & wood: Single and double pedestal. Condition: (F-G).	1990
3	Lateral Files	Hon		Two drawers 30", letter size, lockable.	1990
14	Vertical Files	Cole & Other		2-4 Drawers, legal and letter, lockable. Condition: (F-P).	1990
1	Computer Equipment	Various		At Maintenance Facility.	1997-2004
1	Electric Cash Registers	Samsung	Sam4"S / ER-5200M	117compartments, electric, Condition: (VG).	2005
1	Laser Printer	Brother	MFC 7820N	All-in-One	2003
1	Telephones	Various		At Maintenance Facility.	1991-2002
1	Laser Printer	Canon	D-760	Image Class D-760 w/ ADF.	2003
1	Electric Typewriter	IBM	Wheel writer 6	Series II	1995
1	2 Way Radio Equipment	Radio Shack & other			1992-1998
9	Office Chairs	Various		High back executive, Low back executive & misc.	1992-2004
1	Misc. Office Equipment	Various		In mobile offices. Case goods, equipment, refrigerator, water dispenser, fire extinguishers	1992-2006
1	Misc. Tools	Various		In mobile offices. Tap, Die & misc.	
1	2 Door Cabinet			6' Two doors, metal.	1990
<b>MAINTENANCE YARD II</b>					
1	Pedestal Grinder	Baldor	CAT # 1216W	12", 3 HP, 220V. Condition: (F). (In Battery Room). With pedestal	1996
4	Battery Chargers & Load Tester	Various		Floor and table top models. Condition: (P-G).	1998
2	Warehouse Carts	Various		4'6"L With casters. Condition: (P).	
1	Ice Merchandiser	Thermal		PROPERTY OF THOMAS ICE. 4'3" x 4'3" x 5'3"h Self Serve, one door reach in.	1995
1	Ice Merchandiser	Thermal		PROPERTY OF THOMAS ICE. 8'L x 5'6" x 3'6" Self Serve, two door reach in.	

1	Electric Golf Cart	E-Z GO		Runs good, Body: Poor with charger.	1989
1	Electric Golf Cart	Yamaha	G16E	1998 Model with canopy & S/S bed. Condition: (G).	2006
2	Snow Blowers	Toro	Tecumsen #38620	10HP, 6HP, 24" Pneumatic tire. Condition: (VG).	2005
2	Salt Spreaders	Earth Way	EV-N-Spread #2170	Plastic. Condition: (VG).	2005
1	Cement Mixer, Towable			3HP Electric, towable, chassis. Condition: (G).	1993
1	Diesel Generator	Generac	92A	1992 Double axle trailer. 50 KVA	2001 Used
1	Diesel Generator	GM Power	50 KW	(1) Partial Disassembled. 1950 GM 50KW Generator (1) 671 Diesel Engine. (1) Chassis. Condition: (G).	1988 Used
1	Fork Lift	Caterpillar/Towmotor	V60	6,000 lbs., 144" Boom. Pneumatic, propane. (1,284 hrs.)	1993 Used
1	10 Ton Carry Deck Crane	Grove	IND-36	1976 Diesel engine, carry deck. Condition: (G). S/N: 35672 (1,960 hrs.)	1990 Used
1	Welding Stands			(2) 5' x 3'6" x 5" Thick, plated with heavy duty stand, vice and accessories.	1990 Used
1	Acytelene Welding Equip.			(2) Carts, (8) sets gauges, (8) sets torches, (8) sets hoses.	2000
1	DC Arc Welder	Miller	400SS	Gold Star 400SS. 350 Amp with cart.	1996
1	DC Welder Source	Miller	Miller Matic 250	With wire feed, tank, cart and supplies.	1996
1	Misc. Welding Equipment	Various		(10) Saw horses. (2) Work tables. (2) Metal stock racks. (LOT) Misc. Supplies.	1990
1	Aluminum Metal Stock Inventory			Z Bar, flatbar, T-bar and etc.	
1	Steel Stock Inventory			Plates, Flange Plate, angle, flat.	
1	Galvanized Pipe Fittings Inventory			Tees, elbows, plugs, SHL, unions, reducers, etc.	
1	Galvanized Pipe Inventory			Threaded & unthreaded.	
1	Zinc Anodes Inventory			Sizes: 6" x 12" & 3" x 12".	
1	Lead Balast Inventory			Size: 18" x 3".	
1	NO ENTRY				
1	Stainless Steel Pipe Inventory			3/4" & 1 1/2" dia.	

1	Cleaning Supplies Inventory	Various		Misc. in shipping container (NIB )	2006
1	Paint Inventory	Various		NOTE: 10% of concessioner's paint inventory is used or held for use exclusively for vessels that ARE NOT PART OF CONCESSION OPERATIONS. Which has been deducted from the total herein. (NIB) Unopened stock throughout facility.	2005-2006
1	Hardware Inventory	Various		Nuts & bolts, etc. Throughout facility	
1	Pipe Bending Equipment	Green-Lee		(1) #975 Power Pump. (1) #880 Hydraulic bender. With Supplies and accessories.	2003
1	Plasma Cutter	Hyper Therm	Max 42		1994
1	Welding Tools & Accessories	Various		Throughout Facility.	2000
1	Floor Buffer	Pacific Stream	P-20	Acme tool & equipment rental. With misc.	
1	Stainless Steel Cable	Atlantic Cordage		3/8" dia. x 7 x 19.	2005
2	Ice Cream Freezers	Caravel		PROPERTY OF WARDS ICE CREAM. (1) 70" x 26". (1) 48" x 26".	1989
1	Paint Equipment	Various		Misc. throughout facility. (F-P)	
1	Table Saw	Craftsman	10"	Contractors Series 10", 3HP.	1998
1	Hand Tools	Various		PROPERTY OF EMPLOYEES.	
1	Dust Collector	Craftsman		1HP.	2004
1	Compact Refrigerator	Avanti		(G) condition	2001
21	Power Tools	Various		Throughout Facility.	
1	Misc. Carpentry Equipment	Various		(3) Metal shelves. (LOT) Wood working tools. (1) Large bolt cutters. (1) Work table.	
1	Misc. Material & Wood Inventory			In Woodworking and containers.	2000-2006
3	Oil Fired Heaters	Dayton	3E218E	110,000 BTU.	2001
2	High Pressure Washers	Devoe Paint		11HP, 3600 psi	
2	Portable Pumps	North Star	109170	15,000 gph	
2	Spill Containment Pallets	P & D	K17-3105	107" x 50". 8 drum capacity.	2002

2	2 Door Cabinets			Metal. Condition: (F-P).	1991
<b>FIREBOAT</b>					
1	Power Pipe Threader	Rigid	1224	With (7) die heads & stand. Condition: (VG).	
10	Misc. Cabinets	Various		Condition: (F-P).	
1	Floor Beam Scale	Toledo	1000 lb	Manual, non electric.	1961
3	Pneumatic Tools	Various		Throughout Facility (F-G).	
1	Precision Tools	Various		Throughout facility. Gauges, drop gauges, dial indicators, etc.	
1	Misc. Plumbing Hand Tools	Various		Flaring tools, wrenches, etc.	
2	Torque Wrenches	OTC		(1) #7378, 1/2" Drive (25-250lb.). (1) #7379, 3/4" (100-600lb.).	
1	Drill Press	M & M	CH-25	12 Speed (Taiwanese) Floor model with large vice.	1997
1	Engine Lathe	South Bend	10"	4' L Bed, Condition: (F). Rebuilt 1960. with four Chucks: (1) 6"-3 Jaw Chuck. (1) 7" 3 Jaw Chuck. (1) 10"-4 Jaw Chuck. (1) 13"-4 Jaw Chuck.	Pre 1960
1	Misc. Tools	Various		Electric cords, growler, etc.	1990
1	Pedestal Grinder	Baldor	102	8", 3/4HP with pedestal. Rebuilt 1960	Pre 1960
1	Stationary Compressor	Speedaire		5HP, 250 gallon tank.	1999
1	Engine Lathe	Manning, Maxwell & Moore	16" Prentice	72"L Bed, (1) 11"-4 Jaw Chuck. Condition: (F).	Pre 1960
1	Vertical Band Saw	Do All	J	S/N: 2837638. Condition: (F).	Pre 1960
1	Horizontal Milling Machine	Cincinnati	No. 3	With 43" Table and large vice. Condition: (F). Rebuilt 1960	Pre 1960
1	Horizontal Band Saw	Kalamazoo	P42	Condition: (F).	1960
1	Welder / Generator	Hobart	ML-204	200 AMP. 15HP. Condition: (F-P).	Pre 1960
1	55 Ton Press	OTC	Power Team	H Frame Press, with accessories.	
1	Drill Press	Buffalo Forge		Floor model with 24" vice. Condition: (F). Rebuilt 1960	Pre 1960
1	Hand Tools and Cabinet	Various		PROPERTY OF EMPLOYEES.	
1	Sand Blasting Cabinet			30" x 20" x 17" Plastic housing with accessories.	1995
1	Engine Stand	Kiene	900	For Ship Engines.	1993



1	Copier	Xerox	24	Workcentre with ADF & Sorter.	2005
2	Laser Faxes	Brother	Intelifax 4100		2003
1	Bill Counter	Teller Mate			1999
1	Accounting Computer System	Great Plains & Dell		(1) Server: Dell 2650. (1) Printer: HP 4050N. (1) Software Great plains. (7) User licenses.	2003-2006
95	Cases of New Tickets			(NIB). For Boca Printers. Circle line "white" tickets, 2" x 2.5" (20,000 per case).	2006
<b>LIBERTY PARK TELLER OFFICE</b>					
1	File Server	Dell	Edge 1600SC	W /APC UPS1500	2003
1	Telephone System	AT&T	Sprint		1990
2	Safes	Murray & City Safe		(1) Murray 41" x 26" x 27". (1) City Safe 37" x 26" x 27". Single door, rotary dial.	1990
1	Paper Shredder	GBC	5220S	Shred Master 5220S.	2001
2	2 Door Cabinet	Hon		6' Beige, metal. Condition: (F).	1998
1	Copier	Canon	PC 940		2001
1	2 Door Cabinet	Tennesco		Small.	1998
2	Portable A/C	Maytag	M160952A...	Stand alone with outside ventilation.	2003
1	Computer Equipment	Dell & HP		(1) Computer. (2) Printers.	2002-2005
1	Fax	Brother	770	Intelifax 770.	2000
1	Vertical File	Hon		Black two drawer. Condition: (F).	1998
6	Office Chairs	Various		Sled base, ergonomic, steno & stools.	1998-2000
3	Desks	Various		Grained finish. Condition: (F).	1998
1	Table Top Safe		17.0004A	15" x 12" x 12" Metal, Credit card entry system.	1998
1	Misc. Office Equipment	Various		Folding tables, lunch room equipment, signage and vacuum.	1998
<b>CASTLE CLINTON TICKET OFFICE</b>					
18	Lockers	Various		(12) 35"h. (6) 67"h. Condition: (F).	1987
3	2 Door Cabinets			Metal. Condition: (F-G).	1987
1	Computer Equipment	Various		(1) Notebook Computer. (2) Computers. (1) Ethernet System.	2003-2004
1	Vertical File	Hon		Three drawers.	1987
1	Lunch Room Equipment	Various			
3	Desks	Various		Grained finish.	1987
7	Office Chairs	Various		Ergonomic, steno and stools.	1998-2001
2	Safes	Standard		Floor models.	1970-1986
1	PA System	Realistic		(1) Amplifier: MPA-45 (35	1987

				watt). (1) Speaker. (1) Shure microphone.	
1	Telephone System	Nortel	North Star	(3) Telephones. (1) Key unit with (2) modules.	2001
1	Fax	Brother	770	Intelifax 770.	2000
5	Window Microphones	Norcon	TTU-1	Through the glass.	2006
1	Misc. Office Equipment & Signage	Various		Signage, Lunch room, folding tables, equipment.	
1	Copier	Canon	PC 940		2001
<b>NEW YORK CORPORATE OFFICES</b>					
22	Office Chairs	Norstar & Other		Conference, leather executive and waiting room.	2006
2	Waiting Room Seating			Green leather: (1) Sofa. (1) Armchair.	2006
2	Leather Sofas			72"L Low back, modernistic: (1) Black. (1) Brown.	2006
1	Executive Desk Suite	Kimball		(1) 72" Oak executive desk. (1) 60" Oak executive credenza.	1992
1	Receptionist Desk	Carmel		12'6" x 3'9". "L" Shaped, grained finish.	2006
11	Jr. Executive Desks			Various Styles, grained finish.	2006
1	Small Conference Table			83"x36". Grained finish, oval.	1992
1	Executive Desk Suite	Paoli Furniture		(1) Executive Desk: (2) Lateral files. (2) Bookcases.	2006
2	Accent Tables	Bombay Company		Oval.	2004-2006
9	Bookcases	Various		(5) 2006. (4) 1992.	2006
5	Lateral Files	Hon		2, 4 & 5 Drawers, beige.	1992
2	2 Door Cabinet	Hon		6' Beige.	1992
1	Copier	Xerox	24	Workcentre with ADF & Sorter.	2005
1	Postage Equipment	Pitney Bowes		LEASED. PROPERTY OF PITNEY BOWES (1) #DDL3 Postage meter base. (1) MPO6 Digital Scale.	2006
1	Safe	Gardall		Floor model. 45" x 26" x 27" Single door, rotary dial. (G) Condition	1990
1	Misc. Office	Various		Racks, folding tables, office equipment, lunch room equipment, paper shredder, TV & VCR.	1992-2006
5	Portable Credit Card Machines			NOTE: This item is being used or held for use exclusively for concessioner's other business	

				interests.	
1	Computer Equipment	Dell & HP		(3) Notebook computers. (8) Computers. (2) UPS. (8) Printers. (1) Fax. (1) Ethernet System.	2003-2006
1	Telephone System	Nortel	Norstar	(24) Telephones. (1) Key Unit. (1) Extension Cabinet.	2001-2002
1	File Server	Dell	2650	(1) Sharing device. (1) Switch. (1) Monitor & Keyboard. (1) Server. (1) UPS. (1) Rack.	2003-2006
1	Artwork	Various		(1) 1/35 Scale model ship. (1) Fuchs Lithograph. (1) Fazzino Serigraph. (LOT) Misc.	1990-2006
1	Conference Table			12' Wood grained top. Boat shaped	1992
3	Lateral File / Credenza			72" w/ 4 lateral files. Grained finish (VG) Condition	2006
1	Metal Detector				2005
1	X-Ray Equipment				2004

2006 PROSPECTUS - FOR REFERENCE USE

**APPENDIX G**

**CONCESSION VESSEL FACT SHEETS**

2006 PROSPECTUS - FOR REFERENCE USE

## Summary

The seven passenger vessels in the Existing Concessioner's fleet have a no-frills design and are outfitted with basic marine equipment and machinery. The boats were built for short duration trips within one mile of land and have a period appearance appropriate for current services. The specifications of each vessel are presented on the following pages.

The NPS understands that the fleet has been generally well maintained and is in better-than-average condition for its age. The fleet has been maintained by the Existing Concessioner at an extensive and largely self-sufficient repair and maintenance facility with shore-side staff, machinery and tools, and parts and spares inventory. All seven of the boats, including the oldest, *Miss Liberty* (built in 1954) are expected to last at least another 20 years if properly maintained.

2006 PROSPECTUS - FOR REFERENCE USE

**MISS CIRCLE LINE, O.N. 295340**

Registered Length: 139.7-ft  
Registered Breadth: 32.8-ft  
Registered Depth: 13-ft  
Flag: USA  
Hailing Port: New York  
Builder: Wiley Manufacturing, Port Deposit, MD  
Year Built: 1964  
Gross/Net Tons: 369/251  
Lightship displacement: *Not listed on Stability Letter*  
Ballast: 30.2 long tons pig iron (*per Stability Letter*)  
Radio Call Sign: WU2571  
Berthing: None  
Max. No. Passengers: 1,035  
Required Crew: 1 Master  
3 Deckhands  
1 Quartermaster/Deckhand  
1 Licensed Engineer

Tankage

Fuel Oil: 7,150 gallons (reported); two (02) fuel oil day tanks,  
400 gallons each  
Lube Oil: 150 gallons (reported)  
Potable Water: 800 gallons (two 400 gallon tanks)  
Fresh Wash Water (non-potable): Unk. (for restroom sinks)  
Sewage Holding Tank: Est. 3,100 gallons

Engineering & Propulsion

Main Propulsion: Twin Cummins KTA19 six cylinder turbo-charged  
diesels, air start; keel cooled, each has belt-driven  
alternator.  
Reduction Gears: Twin Disc Model MG-518, ratio 5.92:1.  
Generator Sets: Two (02), Cummins 6BTA diesels, powering  
Magnaplug 362 PSL 1604 73 KW gen sets, air start,  
keel cooled, belt driven alternators.

**MISS ELLIS ISLAND, O.N. 974032**

Registered Length: 122.9-ft  
Registered Breadth: 32.5-ft  
Registered Depth: 14-ft  
Flag: USA  
Hailing Port: New York  
Builder: Blount Marine Corp., Warren, RI (Hull 285)  
Year Built: 1991  
Gross/Net Tons: 93/63  
ITC (International Tonnage Convention) Gross/Net Tons: 543/238  
Lightship displacement (per Stability Letter) 303.50 long tons  
Radio Call Sign: WAV4107  
Berthing: None  
Max. No. Passengers: 799  
Required Crew: 1 Master  
3 Deckhands  
1 Quartermaster/Deckhand

Tankage

Fuel Oil: 4,056 gallons (98%)  
Lube Oil: Est. 120 gallons  
Potable Water: 1,415 gallons  
Main Holding Tank: 3,696 gallons

Engineering & Propulsion

Main Propulsion: Twin Cummins KTA19 six cylinder turbo-charged diesels, battery started (four tray boxes with eight (08) 8D batteries); each has belt-driven alternator, keel cooled with surge tank.

Reduction Gears: Twin Disc Model MG-518, ratio 4.48:1.

Generator Sets: Two (02), Cummins 6BT diesels, battery started, each has belt-driven alternator, keel cooled, which drive Lima 70 KW AC generators.

**MISS FREEDOM, O.N. 582111**

Registered Length:	121.6-ft
Registered Breadth:	27-ft
Registered Depth:	8-ft
Flag:	USA
Hailing Port:	New York
Builder:	Blount Marine Corp., Warren, RI (Hull CL-207)
Year Built:	1977
Gross/Net Tons:	98/74
Radio Call Sign:	WYF74436
Berthing:	None
Max. No. Passengers:	564
Required Crew:	1 Master 2 Deckhands 1 Quartermaster/Deckhand

Tankage

Fuel Oil:	3,000 gallons (98%)
Lube Oil:	Est. 120 gallons
Potable Water:	500 gallons
Sewer Sump Tank:	est. 500 gallons (beneath restrooms)
Main Holding Tank:	3,000 gallons

Engineering & Propulsion

Main Propulsion:	Two (02) Detroit V-12 12N71 turbo charged diesels, closed circuit keel cooled, air vents at each end of keel coolers with surge tanks in exhaust trunks.
Reduction Gears:	Twin Disc Model MG-518, ratio 3:1.
Generator Sets:	Two (02) GM 2-71 diesels powering Delco 20 KW AC generators.

**MISS GATEWAY, O.N. 647816**

Registered Length: 120.9-ft  
Registered Breadth: 7.6-ft  
Registered Depth: 8-ft  
Flag: USA  
Hailing Port: New York  
Builder: Blount Marine Corp., Warren, RI (Hull CL 241)  
Year Built: 1982  
Gross/Net Tons: 95/72  
Propulsion: Diesel  
AC Power: 208 VAC, 50 amp, 3 phase  
DC Power: 24 VDC and 12VDC  
Radio Call Sign: WRB2096  
Berthing: None  
Max. No. Passengers: 500  
Required Crew: 1 Master  
2 Deckhands  
1 Quartermaster/Deckhand

Tankage

Fuel Oil: 2,519 gallons (98%)  
Lube Oil: 120 gallons  
Potable Water: 605 gallons  
Sewer Sump Tank: 420 gallons  
Main Holding Tank: 4,610 gallons

Engineering & Propulsion

Main Propulsion: Twin Cummins KTA19 450 HP each (converted KTA 1150M engines) six cylinder turbo-charged diesels, battery started, each has belt-driven alternator; keel cooled.

Reduction Gears: Twin Disc Model MG-518, ratio 4.48:1.

Generator Sets: Two (02), International Electric Corp G-7189 3-phase 60 Hz, 20 KW, powered by two-cylinder GM 2-71diesels.

**MISS LIBERTY, O.N. 267394**

Registered Length: 121.5-ft  
Registered Breadth: 32.1-ft  
Registered Depth: 11-ft  
Flag: USA  
Hailing Port: New York  
Builder: Blount Marine Corp., Warren, RI  
Year Built: 1954  
Gross/Net Tons: 98/66  
Radio Call Sign: WL2006  
Berthing: None  
Max. No. Passengers: 827  
Required Crew: 1 Master  
2 Deckhands  
1 Quartermaster/Deckhand

Tankage

Fuel Oil: 7,000 gallons reported, plus two (02) 400 gallons each day fuel oil tanks  
Lube Oil: Unk. gallons  
Potable Water: 600 gallons  
Fresh wash water (non-potable): Unk. gallons (for restroom sinks)  
Main Holding Tank: Unk. gallons

Engineering & Propulsion

Main Propulsion: Twin Cummins KTA19 six cylinder 450 HP each turbo-charged diesels, battery started, each has belt-driven AC alternator (rectified to DC/charge starting batteries); sea water heat exchangers. (*Note MISS LIBERTY was re-engined in the early 1980's.*)

Reduction Gears: Twin Disc Model MG-518, ratio 4.48:1.

Generator Sets: Two (02), Detroit 2-71 diesels, with General Motors 20 KW 167 amps DC generators. One (01) Detroit 2-53 with Lima 15 KW AC generator (for hand dryers, fluorescent light fixtures, and concessions).

**MISS NEW JERSEY, O.N. 977318**

Registered Length:	122.9-ft
Registered Breadth:	32.5-ft
Registered Depth:	14-ft
Flag:	USA
Hailing Port:	New York
Builder:	Blount Marine Corp., Warren, RI (Hull 286)
Year Built:	1991
Gross/Net Tons:	93/63
ITC (International Tonnage Convention) Gross/Net Tons:	543/238
Lightship displacement (per Stability Letter)	302.74 long tons
Radio Call Sign:	WAZ7008
Berthing:	None
Max. No. Passengers:	799
Required Crew:	1 Master 3 Deckhands 1 Quartermaster/Deckhand

Tankage

Fuel Oil:	3,696 gallons (98%)
Lube Oil:	Est. 120 gallons
Potable Water:	1,415 gallons
Main Holding Tank:	3,696 gallons

Engineering & Propulsion

Main Propulsion:	Twin Cummins KTA19 six cylinder turbo-charged diesels, battery started (four tray boxes with eight (08) 8D batteries); each has belt-driven alternator, keel cooled with surge tank.
Reduction Gears:	Twin Disc Model MG-518, ratio 4.48:1.
Generator Sets:	Two (02), Cummins 6BT diesels, battery started, each has belt-driven alternator, keel cooled, which drive Lima 70 KW AC generators.

**MISS NEW YORK, O.N. 993370**

Registered Length:	122.9-ft
Registered Breadth:	32.5-ft
Registered Depth:	14-ft
Flag:	USA
Hailing Port:	New York
Builder:	Blount Marine Corp., Warren, RI (Hull CL-290)
Year Built:	1993
Gross/Net Tons:	94/63
ITC (International Tonnage Convention) Gross/Net Tons:	534/238
Lightship displacement (per Stability Letter)	308.84 long tons
Radio Call Sign:	WBW8480
Berthing:	None
Max. No. Passengers:	799
Required Crew:	1 Master 3 Deckhands 1 Quartermaster/Deckhand

Tankage

Fuel Oil:	4,056 gallons (98%)
Lube Oil:	Est. 120 gallons
Potable Water:	1,415 gallons
Main Holding Tank:	3,696 gallons

Engineering & Propulsion

Main Propulsion:	Twin Cummins KTA19 six cylinder turbo-charged diesels, battery started (four tray boxes with eight (08) 8D batteries); each has belt-driven alternator, keel cooled with surge tank.
Reduction Gears:	Twin Disc Model MG-518, ratio 4.48:1.
Tailshafts/props	5-inch tailshaft, three-bladed 58" dia x 48" pitch stainless steel props.
Generator Sets:	Two (02), Cummins 6BT diesels, battery started, each has belt-driven alternator, keel cooled, which drive Lima 70 KW AC generators.

**APPENDIX H**

**NPS RATE APPROVAL GUIDE**

2006 PROSPECTUS - FOR REFERENCE USE

# CONCESSION MANAGEMENT RATE APPROVAL GUIDE

September 2002



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2006 PROSPECTUS - FOR REFERENCE USE

## OVERVIEW

This document is divided into two sections. The first section outlined below is a general guideline of the entire Rate Approval Program. The second section has been designed as a “how-to” Manual, that outlines the various components of the NPS Concessioner Rate Approval Program with detail instructions on how to conduct rate reviews.

### PUBLIC LAW

Title IV of the National Parks Omnibus Management Act of 1998 relates to Concession Management. Sec. 406 of Title IV relates to Reasonableness of Rates and states the following:

Sec. (a). Each concession 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).

Sec. (b). A concessioner’s rate 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,

**Requirements/Instruction.** The National Park Service is required by law to approve all rates

goods and services, after taking into account the factors referred to in the preceding sentence.

### POLICY

The *Management Policies Manual*, Chapter X provides the following direction that pertains to rates charged the public:

#### 10.2.4.7 Rates.

The National Park Service must approve all rates charged to visitors by concessioners. The reasonableness of a concessioner’s rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with current rates and charges for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision of peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage and other factors deemed significant by the Director.

### DIRECTOR’S ORDER NPS-48 4.3 RATE APPROVAL PROGRAM

**Legal Authority.** 16 U.S.C. 20 (Sec. 3); P.L. 105-391

**Objectives.** Through an analytical process, review and approve concessioner rates that:

Produce defensible results that are valid and reliable

Reflect the competitive marketplace

Ensure a consistent Servicewide approach

Allow professional flexibility to individual NPS areas in the conduct of the program

charged to the public by park concessioners and to ensure that those rates are comparable to similar

goods and services outside of the park. To meet this requirement and to ensure consistency and accountability the following procedures, steps, or processes are required of all NPS employees who have responsibility for approval of concessioners' rates.

There are six methods identified in detail in the *Rate Approval Manual* that a Superintendent can use to determine appropriate rates. The selection depends mostly on the type of product or service being sold and the local situations impacting the business. The six methods are (1) Direct Comparability, (2) Core Menu, (3) Merchandise Pricing, (4) Contract Specified Rate, (5) Competitive Market Declaration, and (6) Financial Analysis/Indexing.

The National Park Service must also approve local rules outlining reservation and refund policies for lodging at the same time that annual rates are approved.

If disagreements can not be resolved locally, a regional director is the highest authority to which a concessioner can appeal rates or the way the rate approval program is conducted. The required appeal process is outlined in the *Rate Approval Manual section, which begins on page 9.*

An annual written rate schedule is to be developed and must be maintained by the park. A copy should be provided to the concessioner and others on request. The schedule should be very specific as to what is provided for the price charged.

When conducting the Direct Comparability method of rate approval there are 12 steps to be completed and documented as outlined in detail in the *Rate Approval Manual section.*

NPS employees who have rate approval responsibilities and have not yet received formal training in rate approval are required to have a cosigner for any rate approval actions taken. The cosigner will also provide a review and process analysis. Extensive details on this process are in outlined the *Rate Approval Manual section.*

There are specific criteria that must be analyzed for each of the six types of businesses in order to determine comparability for rate approvals. Those

businesses are lodging, food and beverage, campgrounds, marinas, tour operations, and gasoline stations. The criteria are outlined in detail in the *Rate Approval Manual section.*

Once actual comparables are determined, extra quality features, which are used to identify the approximate value and comparable rate for the concession facilities, must be analyzed. The process is outlined in detail in the *Rate Approval Manual section.*

When approving rates on retail merchandise it is appropriate to round up or down to arrive at a final rate. Specific guidelines on Servicewide increments for rounding are in the *Rate Approval Manual section.* Although rounding is optional the procedure for accomplishing it is mandatory.

Allowable components of product cost that can be passed along to the public and procedures for computing the final cost are outlined in the *Rate Approval Manual section.* Parks do not have the option of allowing a concessioner to pass on costs that are prohibited.

## SUMMARY

### PROGRAM GOAL

To ensure that rates charged to the public for concessioner-provided facilities and services are fair, reasonable, and in accordance with the requirements law.

### OBJECTIVES

Through an analytical process, review and approve concessioner rates that:

Produce defensible results that are valid and reliable

Reflect the competitive marketplace

Ensure a consistent Servicewide approach

Allow professional flexibility for individual NPS areas to conduct the program

### RESPONSIBILITIES

An outline of the various responsibilities of all the offices and entities involved in the Rate Approval Program is presented below. The methods and procedures for accomplishing these responsibilities will be identified and discussed in more detail in the *Rate Approval Manual section*.

WASO will:

Establish and update policy

Concessions Program Center will:

Requested) to the inspector general, Office of Management and Budget, and Congress.

Coordinate Servicewide training.

Concession Program Center will:

Use the indexing or financial analysis methods of rate approval.)

Maintain and distribute, on request or annual basis, comparability data and various indexes

Develop and disseminate technical support data

Provide direct assistance to parks and other field areas in the completion of rate approval studies upon request

Make determinations regarding the appropriate markup classification of retail sales items when discrepancies are noted among park areas

Regional offices will:

Provide the final level of appeal, review, and decision for concessioner rates

Provide technical program support to park areas as requested

Review and act on park requests to use indexing or financial analysis to approve rates

Parks will:

Establish a time frame in which concessioners should request rate actions

Determine the appropriate rate approval method if there is a qualified employee available. If a qualified/trained employee is not available the regional office or Concession Program Center can identify the method to be used, [see section I.B. of the *Rate Approval Manual*].  
Park staff must obtain assistance if they

Perform rate approval studies, approve rates, and maintain current rate schedules for all services provided by concessioners

Monitor compliance with approved rates through the Concessioner Review Program

Concessioners will:

Submit rate requests that are timely, accurate, and thorough

Comply with the established appeal process

Adhere to approved rates

## **RATE APPROVAL METHODS**

The following information briefly describes the six approved methods that the Superintendent may use when reviewing a concessioner's rate request. Each of these methods conforms to and is in compliance with The Concessions Policy Act of 1998 (PL 105-391). Each of the six methods has specific applicability depending upon the combination of the different types of services, products, and operating situations with which a concessioner operates. Detailed procedural information on the six methods is outlined in the *Rate Approval Manual section*.

### **1. Direct Comparability**

This method consists of two processes. The Full Review and the Limited Review. The Full Review requires that the National Park Service collect extensive information from businesses outside of the park that are identified as potential comparables and that are similar to the concession operation. This information is then analyzed and those properties determined to be most similar are then used as actual comparables in the assessment of the concessioner's rate request. This data is primarily used in approving rates to the public for lodging, food and beverage, gasoline, marinas, transportation, and campgrounds.

The Limited Review process has two applications. This process can be used to update the information gathered by the Full Review process or it can be used as a stand alone rate approval process. Limited Reviews are less complex than Full Reviews and can be generally accomplished over the phone with less cost involved.

### **2. Merchandise Pricing**

when there is a limited number of items or services, no comparables are readily available, or

On a Servicewide basis, maximum markups (percentage increase above wholesale in arriving at retail price to customers) for specific merchandise categories are established and provided by the National Park Service for use by the concessioner in calculating rates for grocery, convenience, and retail (gift) operations. This permits the National Park Service and the concessioner to quickly arrive at approved rates for thousands of retail sales items. These markup guidelines are determined and updated annually through a compilation of nationally published industry statistics. The application of this method involves pricing merchandise by using the concessioner's documented product cost multiplied by the percentage determined. The National Park Service will conduct compliance reviews of concessioner invoices on random products to verify that correct pricing is used.

### **3. Core Menu**

The Core Menu Rate concept has been developed to provide a more fluid and professional procedure for approving food and beverage rates for park concessioners. The determination to use and/or continue using the core menu method is one that should be determined from consultation and between the park and concessioner. The basic core menu should be developed before the comparability review is conducted. The core menu is intended to identify those specific food categories and items that are standard on the comparable menus and that should be reflected on the concessioner's menu.

### **4. Contract-Specified Rate**

This procedure establishes the approved rate(s) as part of the contracting process. Rates are actually incorporated into the wording of the contract and are initially determined by direct comparability, competition in response to a prospectus, or negotiation with a successful bidder. Annual price changes are initiated based upon a previously identified sub-index of the consumer price index (CPI) provided by the Department of Labor, Bureau of Labor Statistics. This method is used

the method is determined to be advantageous to

the government. The WASO Concession Program Office will provide this CPI data upon request.

### **5. Competitive Market Declaration**

This method provides a process by which the National Park Service determines that the pricing of a specific item or service is not related to or enhanced by a specific NPS area. Such services include those in a highly competitive market, negotiated sales items, or unusual items (such as antiques) wherein value is unrelated to the place they are sold. For these items or services a declaration is made that further rate reviews are unnecessary, as the concessioner's pricing must be competitive to secure business and is, therefore, comparable. The declaration must be reviewed annually to ensure that significant changes have not occurred in the marketplace that would necessitate the use of another rate approval method. This review process must be documented. The superintendent may rescind the use of this method if it is determined that the competitive situation has changed or if another method appears to be more appropriate.

This method works well in many urban areas where there is a significant level of external competition. Since the administration of a competitive market declaration requires low level of NPS involvement, it is encouraged unless it is apparent that rates will escalate beyond the external competitive environment.

### **6. Financial Analysis/Indexing**

Almost 100% of the rate approval actions in the National Park Service fall under the above five categories, but there may be occasions when a service, product, or situation precludes successful use of these methods. In those situations the National Park Service may approve rates using either the consumer price index (CPI) in a process called indexing or through a financial analysis process. Both of these methods are very limited in their application and require consultation with NPS officials beyond the park level. More specific guidance is available in the *Rate Approval Manual*.

### **UTILITY COSTS**

When the National Park Service provides a concessioner with utilities (electricity, water,

sewer, and solid waste removal) at a rate higher than comparable utility charges in the private sector, those costs are to be considered when conducting rate review.

Exhibit 4 outlines specific information applicable to the NPS Concessioner Utility Program.

### **MISCELLANEOUS**

#### **Reduced Rates to Government Employees**

These rates can be provided by the concessioner only while the government employees are conducting official business and in order to benefit the government by lowering travel expenses, permitting more effective program control, and maximizing use of federal funds. The amount of discount is usually based on the federal government published per diem rate or a percentage discount. Reduced rates must be made part of the concessioner's approved rate schedule.

#### **Reservations**

Concessioners should develop reservation procedures, including standards for deposits and cancellations that are patterned after industry standards or those businesses that are used as comparables. Conditions under which deposits will be refunded or cancellation fees charged will be stated in detail in the concessioner's approved rate schedule and advertising material. Reservations may not be accepted more than two years in advance for accommodation facilities or services such as lodge rooms, trail rides, river runners, or houseboats.

#### **Appeal Process**

If a concessioner disagrees with the findings of a rate study there is a right to appeal. An appeal should only be processed after reasonable efforts have been made to work out the concessioner's disagreement(s) with the park superintendent. Appeals should be made in the form of a letter to the Superintendent stating the concessioner's

desire to appeal to the Regional Director. The letter should clearly state the concessioner's objection to the rate study determination(s) and should include a rationale and supply sufficient data and support information.

The Superintendent will immediately forward the letter of appeal to the Regional Director. The park will provide local NPS comments relating to the concessioner's objections and sufficient support to justify the park position relating to each issue of the appeal. The determination of the Regional Director will be final. Until the Regional Director has rendered a decision, the rates charged by the concessioner for the services in question will remain as currently approved.

The decision of the Regional Director is returned to the concessioner through the superintendent. If the Regional Director has changed the Superintendent's action, the memorandum will become an amendment to the Superintendent's approved rates. The entire appeal review should be acted upon in a timely manner (30 days or less).

## **IMPLEMENTATION**

After the Superintendent has approved the rates the following actions and procedures should be implemented:

**Rate Schedule.** A written rate schedule is to be developed by the concessioner and maintained

by the park. A copy should be provided to the concessioner and to others upon request. The schedule should be very specific and should show what is provided for the price charged. At the bottom of each page should be printed: "*These rates are to remain in effect until specific changes are approved by the Superintendent.*"

At a minimum the schedule should include, as applicable:

portion size, including meal components, prices for children and senior citizens, seasonal rates, duration for rental equipment, charge per person, single/double occupancy, extra bed/crib, seasonal rates, tour destination, and stops

reservation deposit and cancellation refunds

group and package rates

reduced rates for federal employees

**Advertising Material.** The Superintendent must approve all advertising, brochures, and other concessioner promotional materials to ensure that facilities and services are properly described and rates conform to those approved.

**Compliance with Approved Rates.** Using the evaluation program, rates should be monitored when evaluating facilities and services (see chapter on Concessioner Review Program-Operational Standards).

# CONCESSIONS RATE APPROVAL MANUAL

## INTRODUCTION

This manual is designed to provide an in-depth understanding of the procedures for processing concession rate requests. It is a how-to guide for conducting a comprehensive and professional rate review action. It can also serve as a reference document on some points of debate between the NPS and the concessioner. Procedures outlined are mandatory (Director's Orders) in order to ensure accountability, Servicewide consistency, and accuracy. There are other procedures that are optional depending on the specific rate approval situation and local prerogatives. Mandatory procedures are noted.

The procedures outlined are all in compliance with Sec. 406 of Title IV of the National Parks Omnibus Management Act of 1998 relates to Reasonableness of Rates and states the following:

Sec. (a). 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).

Sec. (b). A concessioner's rate 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.

The basic principle evident in Sec. (b) is the concept of comparability. This concept does not apply only to establishment of rates for concessioners in the national park system. It is used throughout the country for rate determinations in areas where an agency, commission, or other entity is required to approve or authorize rates for goods or services that might otherwise not have normal marketplace controls.

Concessioners may operate in an environment where there is little or no competition that would restrict or otherwise mitigate aggressive pricing.

When businesses are required to function under the approval of another entity they are known as regulated monopolies. The National Park Service is required by law (PL105-391) to be the regulator of concessioner rates. If rates are approved that are in excess of comparables, the National Park Service is culpable because of the legislated responsibility to approve final rates. The National Park Service may still approve a rate in excess of comparability under section (b) "*and other factors deemed relevant by the Secretary*", which provides for the concessioner to receive compensation above comparability for operating expenses identified as in excess of comparable facilities. An example of this application is the adjustment to recapture utility charges demonstrated as being in excess of those paid by the actual comparables (see section on utility program). Other concessioner expenses may also result in rate adjustments, but such situations must be demonstrably supported and justified through proper documentation and must be approved by the National Park Service. If it is determined that the additional costs are unnecessary or due to poor business decisions, the National Park Service may not approve additions to the comparable rate.

This manual will cover authorized methods and procedures for approving concessioners rates to the public, how to implement and conduct the procedures and processes to determine appropriate rates, and actions that a concessioner may take in appealing an NPS rate decision.

2006 PROSPECTUS - FOR REFERENCE USE

## DIRECT COMPARABILITY METHOD

Direct comparability relies on an actual review, analysis, and recommendation at the local level.

The direct comparability method is the most complex and widely used application that can be applied to a full range of concessioner services with the exception of gifts, souvenirs, groceries, and other merchandise. There are two variations of the Direct Comparability Method: Full Review and Limited Review.

### Method Description

Under the direct comparability method, the Superintendent is responsible for directly evaluating an array of generally similar business establishments, or *potential comparables*. From that group several are selected that are most similar to the concessioner and that will serve as the *actual comparables*. Once that step is completed, the approved rates for the concessioner may be established by comparison with the actual comparables' rates, taking into consideration appropriate operating differences as outlined in PL 105-391.

The purpose of the direct comparability study method is to correlate the concessioner's rates to those in the competitive marketplace and offset the possibility of monopoly pricing. By establishing approved rates for the concessioner based on a review of similar services operating under similar conditions, it is possible to ensure that the concessioners' rates are locally comparable.

Establishment of the concessioners' approved rates under this method involves (1) identifying those businesses that will serve as actual comparables based on the degree to that they are similar to the concessioner's operation and (2) a review of the concessioners' rates compared to rates charged by the actual comparables, taking into consideration operating differences.

Identification of comparables need not be done each time the concessioner proposes new rates. Comparables, once selected, may be used for several years, and the rate approval process can proceed to a review of the proposed rates based

on updated pricing information. It is important to verify that no significant changes have occurred in the operating conditions of either the comparables or the concessioner.

The National Park Service has two variations of the direct comparability method from which to select (**Full Review or Limited Review**).

The **Full Review** process actually requires an onsite visit to collect data. Typically the full review is used for more complex operations such as hotels, full-service restaurants, large marinas, and other operations where a thorough inspection of operating conditions and business impacts is only possible on location. **Full Reviews** are more time consuming than **Limited Reviews**, but the same information is gathered and evaluated using the same steps.

The **Limited Review** process, which permits the collection of the same data by telephone or through correspondence, is normally used for smaller, less complex operations such as snack bars, service stations, and small boat rentals. The **Limited Review** is also used to update information gathered by a **Full Review**.

A direct comparability review (**full or limited**) should be conducted every three years. At the end of the third year period and if no significant changes have occurred in the operating condition of the comparables or the concessioner then it may not be necessary for a **full review** to be conducted and a **limited review** would be adequate. During the interim years, rates may be adjusted based on an appropriate index. Indexing may only be utilized for two years. Immediately after indexing a **full or limited review** study would be required to re-establish base rates. As a result, indexing would shorten the time in between **full or limited reviews**. When utilizing the indexing method rates may rise or fall dependent on the index and should be explained carefully to the concessioner before indexing is utilized. The amount of adjustments should be dependent upon the concessioner's satisfactory performance.

The selection of actual comparables is the cornerstone of the process. Potential comparables are any business enterprises or establishments

suggested by either the concessioner or the Superintendent as a candidate. Potential comparables should be similar enough to the concessioner's operation to be used in approving rates. (Throughout this document whenever the term **comparables** is used refers to **actual comparables**. When referring to **potential comparables** the whole term is used.)

Actual comparables are defined as those businesses selected from the potential comparables. Their selection is based on analysis of all data collected to determine the degree of similarity to the concessioner's operation. Selection is the responsibility of the Superintendent and concessions management personnel. The determination must be based on a thorough analysis and must include supporting justification. If the concessioner disagrees with the selections, the decision may be appealed to the Regional Director.

Selection of comparables is followed by NPS review and formulation of recommendations for approval or disapproval of the concessioner's requested rate. This involves the direct comparison of the proposed concessioner rates and the quality or level of service with the rates charged for similar services by the comparables. The Superintendent should include a review of extra quality features (EQFs). These are additional attributes that add value. Extra quality features for both the concessioner and the potential comparables should be documented. The purpose of including EQF information is to more accurately determine the value provided by the concessioner relative to the comparables. This helps the Superintendent to determine where the concessioner's rates should fall within the range of rates charged by the comparables. Extra quality features are not intended to be used in the process of selecting actual comparables but only to analyze the variables between the actual comparables (see Appendix 8 for a list of applicable EQF).

Park areas can identify specific EQF information that has particular local applicability. To ensure program consistency and adherence to policies and guidelines, EQF lists should be submitted to the Concessions Program Center.

Based on a review of the actual comparables rates and EQF, a comparable rate can be developed for each of the concessioner's services. The comparable rate is defined as the rate that would be approved by the Superintendent based strictly on comparison to similar operations outside of the park. Occasionally other factors come into play, and concessioners incur specific operating costs not shared by the comparables. P.L. 105-391 allows for consideration of *other factors deemed relevant* and for adjustment of rates based on those factors. Examples include added utility costs, additional transportation charges for food, gasoline, or other products due to distance from suppliers, or the cost of providing employee housing. The concessioner is responsible for providing the documentation to support requested adjustments. The Superintendent ensures that any such adjustments to the comparability rates are justified.

The direct comparability study method provides specific criteria to be applied in the selection of comparables for:

- overnight accommodations
- food and beverage service
- campgrounds
- Marinas
- Tour operations
- Gasoline service stations

In addition, examples of EQF specific to those types of businesses are included. The criteria established for each of the six types of operations identified should be used uniformly for all comparability studies in order to provide Servicewide consistency.

Development and application of additional EQF are left to the discretion of the Superintendent. This provides the latitude for consideration of individual or local operating circumstances and the identification of particular features that are considered important in a particular geographic area.

The level of review to be made is determined based on the information outlined under *Method Description*. The following 12 steps must be documented by the park when conducting a **full review**. When conducting a **Limited Review** as a

stand alone process, you may eliminate steps 4 and 7.

**1. Determine Study Level.** Is it a full or a limited review?

**2. Develop a List of Potential Comparables.**

This step may not be necessary if the study is intended to update a full review. If it is a new full or limited review then the Superintendent and the concessioner should develop a list of potential comparables. The Superintendent must be very clear in explaining the difference between potential and actual comparables.

**3. Make Contact with Potential Comparables.**

This should be done as a courtesy to business people to be visited and can be done by telephone or in written correspondence. An appointment can be arranged and the purpose of the visit explained. This type of pre-contact can be valuable in paving the way for accurate information collection. For a limited review or an update of a full review, information collection can take place during this step.

**4. Visit Potential Comparables.** This step can be omitted for a limited review or for an update of a full review. Visits must be conducted in a professional manner with necessary aids to ensure accurate data collection. Concessioners may be invited to accompany NPS personnel on these visits.

**5. Compile Data Collected.** All the information collected through visits, correspondence, and telephone must be compiled and analyzed. If done properly this will result in the best possible selection of actual comparables. When conducting a full review the Superintendent is required to complete a comparability matrix as part of this analysis (The matrix is described in detail in Exhibit 6.)

**6. Select Actual Comparables.** Selection of actual comparables follows the analysis. In general there should be at least three actual comparables.

**7. In-Depth Analysis of Actual Comparables.**

This step focuses entirely on the actual comparables selected. Other factors deemed

significant and EQF are thoroughly reviewed as part of determining where the concessioner falls along the range of actual comparables. This step may be eliminated for limited review or an update of a full review.

**8. Rate Request from Concessioner.** Rate requests can come in almost any time agreeable to the Superintendent and the concessioner, but the actual rate request review is not addressed until in-depth analyses of actual comparables have been completed. Certain minimum standards for development of rate requests are to be expected and outlined to concessioners.

**9. Rate Recommendation to Superintendent.**

The rate recommendation should be written and include an executive summary of the process and the information collected. Some recommendations are long and complex, such as those for large operations in a big park like Yellowstone while others may be fairly simple and short for small business in areas such as Great Basin.

**10. Notification to Concessioner of Approved Rates.** This should be similar in form and contain the same information as the rate recommendation and include any change from the rates originally requested by the concessioner. All pertinent information should be shared with the concessioner

**11. Appeal.** Concessioners may appeal a Superintendent's rate decision to the Regional Director. An appeal is an official part of the rate approval process and the procedures previously outlined in the Overview section are to be followed.

**12. Print Approved Rates.** Approved rates are printed and copies are retained by the concessioner and the National Park Service.

**Rate Approval Cosigner**

NPS concession management employees often face major challenges during the completion of initial rate approval studies using the direct comparability method. The initial study can be

very confusing and demanding for both collateral duty employees and new full-time employees who have this responsibility. In order to ensure studies are consistent to established procedures a qualified co-signer should be requested.

The role of the co-signer is to provide support and advice during the study and to ensure the analysis is valid and recommendations are supportable. To qualify as a co-signer the employee must have at least three years experience in conducting rate approval studies following successful completion of training. They must be full time concession management employees and be familiar with the park and concession operation(s) in question. Co-signers can be staff members of other parks, regional offices, WASO, or the Concessions Program Center. Studies conducted by those without proper training and experience would be invalid.

Collateral duty employees that have rate approval responsibilities must have their rate study reviewed and co-signed by qualified employee.

New full-time employees with rate approval responsibilities that have not received training in the Rate Approval Program must have their first official rate study reviewed and co-signed by a qualified employee and must continue with utilizing a co-signer until training has been received. Subsequent studies after that, a co-signer may be requested.

The Regional Concession Office can assist any park in identifying a possible co-signer.

2006 PROSPECTUS - FOR REFERENCE ONLY

## COMPARABILITY DETERMINATION CRITERIA

### Full Reviews:

The following criteria are used to determine comparability when using the direct/Full Review comparability method of rate approval. They apply to only the following types of operations: (For other type of operations you may need to develop important criteria.)

Concession Type	Criteria Number
Lodging	1-2-3-4-5-6-7
Food and beverage	1-2-3-4-6-8-9
Campgrounds	1-2-5-10-11
Marinas	1-2-3-4-12-13
Tours	1-14-15-16-
Gasoline stations	1-3-17

The specific criteria are:

**1. Competition.** Each comparable operation should have at least one competitor engaged in a similar operation (service, amenities) in the immediate area. More than two would be advantageous. Comparables should be in an area that is relatively free and unencumbered by permits and restrictions. Ownership of the comparable should be different from that of the concession operation. More competition ensures greater accuracy and fairness in the pricing approval.

**2. Seasonality.** One aspect of the level of comparability is the similarity of operating and visitation seasons in relation to the concessioner.

**3. Similar Area (lodging, food and beverages, marinas).** The degree to which a potential comparable is similar to the concessioner.

**4. Similar Clientele (lodging, food and beverages, marinas).** A potential comparable should serve a clientele similar to that of the concessioner. The concessioner serves the vacationing public almost exclusively. Properties that serve a significant percentage of commercial or convention business normally operate

differently and have different costs and average revenues than those that are more tourist-oriented.

**5. Occupancy Rate (lodging, campgrounds).** Ideally, a comparable facility's occupancy rate would be similar to the in-season occupancy rate of the concessioner.

**6. Facility Characteristics (lodging, food and beverage).** A comparable facility should be examined for several characteristics, including age, building type, and construction type. Some of the features of the building could be new, renovated, or original. Building type includes high-rise (three stories or higher), low-rise (two story), single-story attached, detached rooms, cabins, and tents. The construction types include masonry, steel, lumber, logs, canvas, and others. All these factors are important when comparing facilities to measure similarities in construction and maintenance costs.

**7. Similar Size (lodging).** Lodging facilities of varying sizes (numbers of guestrooms) can be used as comparables even though they probably have different costs of construction and different costs of operation. Ideally the comparable would fall within a similar size range as the concessioner.

**8. Similar Number of Restaurant Seats (food and beverage).** Comparability improves if the concessioner and the comparables have about the same number of seats as the concessioner. This can ensure similar operational costs and reflects the impacts that total seat numbers have on rates.

**9. Similar Menu and Number of Meals (food and beverage).** It is important that the park have a documented definition of the desired level and type of service and menu style established. The menus of the comparables should be similar (i.e., fast food, family type / full service restaurant, cafeteria, gourmet). This is important if the full review rate study or the limited review method is used. A potential comparable should serve the same meals (i.e., breakfast, lunch, and dinner) as

the concessioner. Any exception should be documented and made a part of the rate study.

**10. Similar Size (campgrounds).** Campgrounds of varying sizes (number of sites) can have different operating costs. Comparability improves if the concessioner and the comparable have about the same number of sites.

**11. Site Type (campgrounds).** Campgrounds may provide different areas to accommodate RV users and tenters or a combination of the two. To achieve maximum comparability, it is appropriate to compare the concession operation with just the segment(s) of the potential comparable's operation that it most resembles. Site types can be classified and described as primarily RV (high density, small sites that are close together, tent space lacking or minimal, hook-ups provided); primarily tent (access roads narrow or steep or lacking, few level sites, no large vehicle parking, few or no hookups); and mixed use (more than half of the sites are useable by RVs or tenters, average site separation 50 feet, hookups considered an EQF). Most NPS campgrounds are of this type.

**12. Similarity of Operations (marinas).** Length of boats, number of slips, security and protection, type of boats, repair and launch facilities, utilities, dry storage, and transient use should be reviewed.

**13. Construction Characteristics (marinas).** The construction type of the dock (floating, pilings, metal, wood), weather protection, and breakwater should be reviewed.

**14. Similarity of Operations (tour operations).** The concessioner and potential comparable should use the same type of equipment (car/van, bus, tram, boat) and preferably the same type of power and fuel. These affect the initial investment and ongoing operating costs for various kinds of equipment. Additionally, the concessioner and the potential comparable should provide the same type of guide service, whether live narrative or tape recording.

**15. Tour Length (tour operations).** Tour comparables should be based upon the length of the tours (2-hour, 2-day, or full day). Ideally, extended tours would not be used as comparables

for tours of a short duration because fixed costs could vary. When evaluating 1-day tours, significant cost factors include the time and distance traveled to provide the tour. Ideally the concessioner and comparables would have similar factors.

**16. Locally Important Criteria. (concession activities)** Because of the wide variety of services and activities unique to parks, it is appropriate for the local park to identify certain **local** criteria for comparability. The criteria should specifically identify the desired levels of service or equipment. Samples of local criteria may include the type of tour operation being provided, the level of narration provided, length of the tour, the type of equipment i.e. size and type of windows, engine noise and amenities such as air conditioning, engine noise, food or snacks provided, and restrooms on board

**17. Type of Service (gasoline stations).** Service stations are available in several different configurations, such as self or full service or a combination. Some are associated with convenience stores, while others are more traditional but offer varying level of mechanical or repair services. The comparable should closely resemble the type of services that the concessioner provides.

#### **Limited Review:**

When conducting a Limited Review as a stand-alone method, the only mandatory criterion is "competition". It is also recommended that other suitable criteria shown above be used or that it be developed locally.

When using the **Limited Review** process to update the **Full Review** information for actual comparables, simply update the information previously collected during your visits by utilizing the phone.

## MERCHANDISE PRICING METHOD

Approved prices for retail merchandise are established by applying approved markup percentages to product costs. This method of rate approval should only be used for retail products and not for service-related items for which quality or amenities are factored into rates. This method should not be used for food and beverage items, marinas, overnight accommodations, transportation, or campgrounds.

This rate approval method uses percentages that have been obtained through a nationally recognized source (the Convenience Store News or Consumer Price Index (CPI) published by the Bureau of Labor) to ensure comparability with the private sector. Some variance from the published percentages can be allowed under certain circumstances and can be approved on a case-by-case basis by the park superintendent.

### DETERMINING RETAIL PRICE

Markup percentages, markon, keystone, gross profit margins, net profits, and other terms can be confusing to those without a retail background.

Markon percentages and markup percentages are closely related. Markon is rarely used in the retail industry and is found almost exclusively in grocery store operations. Markon represents that percentage of the selling price that is profit. Markup, which is commonly used in retail operations, is the profit percentage that is added to the product cost to establish the selling price.

Markup percentages are broken down into merchandising categories. Some merchandise sold by concessioners may not be listed or might fit into more than one category. The Washington Concession Office will provide assistance in determining the designations. Concessioners who operate in more than one park sometimes use different categories for the same merchandise to determine retail rates. It is important to identify

those discrepancies so that the percentages can be applied consistently.

The Washington Office should be contacted with these discrepancies so that a final determination can be made and information can be provided to all affected parks.

The markup percentage list is distributed annually, normally at the beginning of the calendar year. Only the most current markup percentages should be used for rate reviews. Concessioners should be given copies of the updated percentages quickly so those new rates can be implemented.

Concessioners and NPS staff should agree on a reasonable implementation period and the agreement should be documented in the rate files. (The concessioner should be given a copy of the documentation).

The following example outline the formulas for markup and markon percentages:

Assumptions used in this exercise:

Product cost X \$4.50

Selling price X \$6.00

Approved markup percentage X 33%

Approved markon percentage X 25%

### Markup

The percentage of cost that is profit is determined by subtracting the cost from the selling price, as:

Selling price - cost = profit

Profit) /cost = markup

For example:

\$6.00 (selling price)

-4.50 (cost)

1.50 (profit)

$\$1.50 / \$4.50 = 33\%$  (markup)

To determine selling price from the approved markup percentage:

Cost x (1 + markup) = selling price

\$4.50 x 1.33 = \$5.985 (selling price rounded to \$6.00)

### Markon

To determine the percentage of selling price that is profit:

Selling price - cost = profit  
Profit) /selling price = markon

For example:

\$6.00 (selling price)  
-4.50 (cost)  
1.50 (profit)

\$1.50) /6.00 = 25% (markon)

To determine the selling price from the approved markon:

cost)/(1 - markon) = selling price

\$4.50 (cost)/1 - .25 (markon %), or

\$4.50)/.75 = \$6.00

Rounding is acceptable and common. The approved procedure for rounding should be used in merchandise pricing.

#### Retail Price      Round to Nearest

Below \$10.00	\$0.05
\$10 to \$24.99	0.10
\$25 to \$49.99	0.25
\$50 to \$99.99	0.50
Over \$100.00	1.00

For example, if the wholesale cost is \$ 6.23, the retail price after 120% markup would be \$13.71, so the approved retail price after rounding would be \$13.70. If the wholesale cost is \$101.26, retail

Merchandise on hand at the time the wholesaler announces a price change may be revalued to

price after 100% markup would be \$202.52, and the approved retail price after rounding would be \$203.00.

### VARIATIONS FROM LISTED PERCENTAGES

The percentages provided on the approved markup percentage list are the upper range of profitability and should be used as a maximum allowable percentage.

Comparability may be achieved where retailers in a particular area price items above or below the national markup/markon percentages. This can be documented by contacting retailers in the area, and rates can be adjusted by using a limited review process, but this should be the exception and not the rule. Retail outlets have too many different types of merchandise that would have to be reviewed continually to allow this method as a routine way of approving rates.

Use of manufacturer's suggested retail prices are generally discouraged. These prices are frequently used as a marketing technique in which items are marked with a suggested price but sold at a lower price in order to appear as a bargain. It is more accurate to approve merchandise rates using the standard merchandise pricing method. Items that are universally sold at a factory printed price, such as magazines, paperback books, newspapers, film, candy bars, and some snack foods can be sold at the pre-marked price. The concessioner must be able to demonstrate that these items are nationally marketed at the same rate.

Unusual items or those that are not marketed in a routine manner or do not fit into the normal pricing practices may be priced using the limited review process. Antiques could fall into this category.

### PRODUCT COSTS

reflect new wholesale costs, and retail prices can be adjusted accordingly. Invoices showing price increases on these items can be used for documentation.

Cash discounts of 5% or less do not have to be deducted from normal product costs. The normal product cost must be reflected on the invoice, and the discount amount must be clearly indicated. Even if a discount of more than 5% is offered, only 5% may be used in calculating the retail price. Discounts above 5% are regarded as a reduction in the wholesale price on which the markup is based.

Documented freight costs may be added to the product cost prior to applying the markup/on percentages. The concessioner must produce explicit documentation for these expenses. An option for the concessioner is to accurately identify average annual freight costs. With NPS approval the concessioner may propose a fixed freight cost to be added as a percentage of the wholesale cost. This method allows a concessioner to keep the same prices on hundreds of items throughout the year as restocking shipments come in with slightly different freight costs. Adjustments are necessary each year (see Exhibit 7 for details).

Warehouse charges may not be added to the product cost. These charges are the normal labor and other expenses incurred by the concessioner in handling merchandise in storage and in sales outlets. Freight charges may not be added to product costs for delivering merchandise from the concessioner's warehouse to the point of sale (gift shop). Warehousing expenses can be recouped through increased sales volume due to lower retail prices, revalued merchandise due to documented wholesale price increases, and convenience and availability of products.

Concessioners may take advantages of volume discounts offered by suppliers. When requested by the National Park Service, the concessioner must provide documentation of volume discounts (the invoice and the corresponding check). This discount should be clearly documented on the invoice along with the normal wholesale cost. Markups should be based on purchase prices for the quantity that the business would normally purchase in order to keep the product in stock.

#### **COMPLIANCE REVIEWS**

Compliance reviews or rate checks should be conducted in conjunction with the operational review program to ensure that concessioners are in compliance with merchandising rate approval requirements. Guidelines and assistance in conducting these reviews can be found in the *Concessioner Review Program Manual*.

## CONTRACT SPECIFIED RATE METHOD

This method provides a process for approving and annually adjusting rates in many situations. Once the contract has been written or amended as described, the procedure for annual rate changes is the same as the indexing method, which follows.

The three steps involved with this method are (1) establishing the initial base rate, (2) writing or amending the contract to accommodate the method while very specifically spelling out the exact index to be used (see Indexing as described in Other Methods), and (3) following up each year, adjusting the rate for indexing as spelled out in the authorization.

Indexing is not to exceed five years before reestablishment of the base rate.

The specified rate method is intended to be used when comparables are not readily available and/or when there are a limited number of services and a simple rate structure for each of the services identified in the contract. The method should have practical application for unusual services such as seaplane rides, mountaineering services, river running operations, swimming pools, golf courses, bathhouses, interpretive services, and others.

This process should be determined to be administratively advantageous to the National Park Service because it eliminates the annual need to conduct comprehensive rate approval reviews on activities and services that do not have adequate representative comparables. In many cases concessioners favor this method because it provides a definitive process that they can use when determining annual and projecting future rates. It also requires minimal preparation prior to establishing new rates. Once the appropriate Consumer Price Index is known, the concessioner will be able to immediately determine the new rates (see Other Methods).

### **Establishing the Initial Specified Rate**

The NPS representative making this determination should use any reasonable means to establish a rate that will be fair to visitors and provide a

reasonable opportunity for a profit to the concessioner. A current rate that is considered reasonable can be used as a base rate. An economic feasibility study or financial analysis may be necessary in determining a base rate. The superintendent could request assistance from the Regional office or the Concessions Program Center.

**New Authorization.** Once the NPS-proposed rate has been established, it can be published in the prospectus as the base rate. The prospectus could allow applicants to propose a rate different from the amount issued in the prospectus. If a new rate is proposed, the submittal must justify any increase over the proposed base. This justification should never modify the scope of the services identified in the prospectus. In such situations the prospectus must indicate that lower rates are considered more responsive.

The following prospectus language should be included when using this method:

Inasmuch as there are no comparable services in the area of National \_\_\_\_\_, the rates charged shall be those approved in this contract and subject to change annually. The maximum approved rate shall be adjusted annually to reflect the rise or fall in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI)-“All Urban Consumers” covering the same period. If the CPI figure for the month of January of the year following the effective date of this contract shall show either a rise or fall from the index figure for the month of January of the preceding year, the maximum rates shall be correspondingly increased or decreased for the succeeding 12-month period, commencing on the 1st day of April, to the nearest (quarter, half, or one) dollar figure representing the percentage difference of increase or decrease of the current January index figure.

Likewise, similar recalculations of the rates to be used shall be made using the CPI index for the month of January in each succeeding year. In each instance, the figure shall be compared with the figure of the proceeding January and an adjustment made for the next succeeding 12 months in the manner aforesaid.

The National Park Service (proposes) (requires)\_\_\_\_\_ as the rates for the calendar year beginning on the execution date of this contract. All prospective offerors responding should submit proposed rates along with justification and financial rationale to substantiate the proposal. If the justification and rationale are not deemed appropriate, the National Park Service will respond by establishing the maximum rate. The lowest rates possible under the circumstances described in the prospectus while maintaining a reasonable opportunity for a profit are preferred and will be judged as more responsive. Under the same circumstances, lower rates than those currently charged by the operator for the service provided are also preferred.

When this method is to be used, rate(s) proposed by the offeror should be considered. This will provide competitive rate proposals. Should the proposals or the best proposal have a rate lower or higher than the NPS-proposed rate, the rate could be determined through negotiation.

Should all of the proposed rates be considered not reasonable, too low or high, then the proposals may be treated as any other prospectus where no satisfactory proposals were made. However, if this is a qualified concession contract, preferential right for renewal would not be affected.

The National Park Service can either pre-establish the base rate or permit offerors (within certain limitations) to identify and suggest, in competition with other offerors, the base rate as part of an offer to a prospectus.

### **Existing Operation**

When it has been determined that this method will be used and a prospectus is issued, the same procedures and prospectus language can be used, but the preferential right for renewal will figure into the final selection of a successful offeror (assuming that the concessioner has submitted a responsive bid). If there is a satisfactory concessioner who has submitted a responsive bid, that concessioner shall be given the right to meet the proposal of the better offer. (36CFR Part 51.32)

A valid contract may be amended to specify a new rate. In areas where a contract has three or more years before expiration and when mutually agreeable, the Superintendent may amend the contract. A contract amendment requires a substantial NPS effort. In some situations, it is in the government's and/or park visitors' best interests to amend the contract. Decisions for amendments should be considered on a case-by-case basis.

## COMPETITIVE MARKET DECLARATION PROGRAM

This rate method reduces the administrative burden of rate approvals where the concessioner operates in a competitive market, where the concessioner derives no competitive advantage from the location on park land, or when prices for items or services are routinely negotiated between the buyer and seller. Parks are encouraged to give this process strong consideration as a means of simplifying the rate approval process when it can be justified. Examples of when a business would qualify follow:

### COMPETITIVE MARKET SITUATIONS

The following three scenarios are representative of situations where a competitive market declaration could be used.

#### Competitive Market

A highly competitive market nearby could require that the concessioner compete with other businesses, which would ensure market pricing. A concession restaurant in an urban park may compete directly with other nearby restaurants and have little or no competitive advantage due to location. On the other hand, a marina on the same property could enjoy a substantial competitive advantage if it provides the only access to a nearby body of water. There could be a competitive market for overnight accommodations adjacent to a park while a park location could still provide a competitive advantage if many visitors want to stay in the park.

#### No Competitive Advantage

For example, sales of antiques may derive little or no competitive advantage from being in a park, since individuals often travel substantial distances to obtain antiques, and the place of purchase is of less importance than the character of the item.

#### Prices Routinely Negotiated

The price of consignment items, antiques, boats, and many other products is often negotiated between the buyer and seller.

### INITIATING A COMPETITIVE MARKET DECLARATION

The decision to use a competitive market declaration should not be made lightly, as it reduces the superintendent's control of the concessioner but does not reduce the responsibility for ensuring that rates are fair and reasonable and in accordance with the law. The decision-making process must be well documented and should provide a thorough justification for this method of rate approval.

The declaration should be included as part of the approved rate schedule. The format of the declaration may be adjusted to meet individual needs and circumstances; however, it should include as a minimum a statement to the effect that:

- (1) The concessioner operates in a competitive market and derives no advantage from being in the park, and competitive market forces are the determining factor of the concessioner's rates.
- (2) The concessioner's rates may be adjusted without the specific approval of the superintendent but are subject to review to ensure that they remain reasonable in comparison to similar services offered outside the park.
- (3) The declaration must be reviewed annually and the use of this method may be rescinded if the situation changes.

See Exhibit 5 for an example of a declaration and a rate schedule sheet.

## OTHER METHODS

There are two other methods that can be used to establish concessioner rates. Prior to use, approval must be granted by the regional office and assistance must be provided by either the regional office or the Concessions Program Center. The methods are discussed in detail below.

### FINANCIAL ANALYSIS METHOD

As a last resort, the financial analysis method could be used to approve rates. This method relies on a financial review conducted by the Concessions Program Center when a decision is made by the support office and the park to request this method.

### INDEXING METHOD

Index pricing is an easily implemented procedure for approving or adjusting concessioner prices on an interim basis. It does not eliminate the need for periodic rate approval. Index pricing can reduce the administrative burden on both concessioners and NPS personnel by eliminating the need for an elaborate study to permit an adjustment. An example of index pricing may provide a clearer understanding:

In April 1998 the concessioner requests a price increase to \$57.50 per night for a double room in the hotel. The most recent approved price for a double room is \$56.00, which was approved in January 1997 through a direct comparability study. The superintendent could refer to a CPI price index (Lodging Prices While Out of Town) that indicates that from January 1997 to January 1998 those lodging prices have increased by 72%. On this basis, the concessioner would be entitled to \$60.20, a 72% increase over the old price. Therefore, the superintendent could approve the requested price of \$57.50. At the same time, the concessioner requests that the price of the fish platter, established in January 1997, be increased from \$10.00 to \$11.25. The superintendent determines from the CPI price index (Food Away From Home) that those food prices have increased 8.2% over the period from January 1997 to

January 1998. On this basis the superintendent denies the requested increase to \$11.25 and approves instead a price not to exceed \$10.82, or an 8.2% increase.

Concessioner rates approved using the indexing method are good for two years. They may not be indexed for a third year; another method must be used. Indexing may only be used repetitively when the original method used was the contractual specified method of rate approval. This requirement is necessary in order to (1) ensure that concessioner prices do not move significantly out of line when compared to prices in the competitive local economy and (2) to limit the continued use of the more easily administered but less appropriate indexing method.

The index pricing system is a method used to alleviate the burden of other pricing methods on both concessioner and NPS personnel. It is not a panacea and cannot be used in every instance. It allows concessioner prices to be adjusted more frequently in special circumstances with minimal administrative burden. The indexing method is an integral component of the specified rate method of authorization and is the one exception of permitting a repetitive use of indexing. (Refer to specified rate method section of this manual for additional information.)

**EXHIBITS**

2006 PROSPECTUS - FOR REFERENCE USE

## EXHIBIT 1 CORE MENU RATE APPROVAL PROCESS

The core menu concept has been developed to provide a more fluid and professional procedure for approving food and beverage rates for park concessioners. In the past the establishment of comparable rates for food and beverage operations required more in-depth analysis by the National Park Service than other services. This was due to the overall complexity and multiple variables that are a part of the food and beverage industry.

In recognition of the cumbersome approach required to properly address the establishment of appropriate menu rates, format and content using the direct comparability (full review) method, the concept of establishing a core menu has been developed as an **option** for use by NPS concessions management officials. The determination to use and/or continue using the core menu method is one that should be determined from consultation and agreement between the park and concessioner. *If factors surface such as the level of agreement between the park and concessioner or other factors considered significant to the overall quality and integrity of the process, the park has the responsibility and authority to divert back to the use of the full review process of rate approval.*

### Establishing Comparables

The knowledge of the park staff and concessioner can be utilized to help locate appropriate businesses. These businesses should be located in the same geographic region of the concession facilities. Concessioners may recommend potential comparable facilities/services, however final selection of comparables rests with the park Superintendent.

#### (a) Selection Factors

Competition is the only selection factor that must be considered and those food establishments being considered as potential comparable must have at least two or more competitors. Special screening and consideration factors, such as similar services, facility and clientele, may also be established by the park to help evaluate the similarities of the establishments being considered.

Parks need to pay special attention to those food establishments that are clustered in an area or location, such as resorts, where demand exceeds availability and rates are higher than those found in more competitive areas.

#### (b) Collection of Data

Once the comparables are selected, the core menu process permits the development of the core menu. All that is required at this point is the acquisition of the comparable's menus.

### Core Menu Development

The basic core menu should be developed before the comparability review is conducted. The core menu is intended to identify those specific food categories and items that are standard on the comparable menus and that should be reflected on the concessioner's menu.

The core menu should be developed locally and should be representative of the needs and expectations of park visitors in that specific area. It should include a predetermined number of popular food and beverage selections. These selections cover food categories such as entrees, (beef, fish, fowl, pork, vegetarian, etc.), beverages, desserts, salads, appetizers, etc. and items that are regionally expected and offered in similar facilities. The basic core menu is established when the above are documented. Core menu application is not appropriate for activities that include food as part of a package deal such as river running, mountain climbing and backcountry operations.

### Non-Core Menu Items

After the core menu items have been established, the concessioner is permitted to add additional items to the core menu without the need for a detailed park analysis. However, the rates for these additional items must still be established within the philosophy and concept of comparability and recognition of the market. The concessioner is charged with the responsibility for setting non-core rates consistent with the

established comparables. If the park questions rates of non-core menu items, the concessioner should be prepared to justify the rates set and show how the rates were determined.

**In situations where the concessioner does not demonstrate reasonable sensitivity to the comparable marketplace, the park has the option to return to the direct full review comparability method of rate approval.**

By federal law the National Park Service is required to approve all concessioner services, products and rates. The National Park Service will not normally take any action beyond review and acknowledgement of the non-core menu rates and portions if the concessioner uses a positive approach in establishing sensitive rates. With an appropriate core menu it should not be necessary for the park to be concerned with minor or subtle pricing variations in the remainder of the menu. The core menu meets the NPS responsibility for meeting the requirements of the law by furnishing appropriate rates to the public while providing added flexibility and opportunity for creativity to park concessioners and ease of management to the National Park Service.

### **Rate Approval Process**

Before prices are approved, an approval and agreement of the actual menu format and content must be established to ensure appropriate identification and menu placement of those core items.

The following outlines the details on how to structure and manage food and beverage rate approvals through utilization of the Core Menu Rate process.

#### **A. Type of Food Service**

When the rate review is conducted, the type of food service will be identified. Some examples of service types usually found in parks are:

Full Service Restaurants – This category includes restaurants ranging from small casual facilities with limited menus and table service to large formal gourmet operations that offer extensive and elaborate services

and menu selections. Often, food service facilities in parks fall between these two extremes and similar comparables should be used. While the comparable or the concessioner may provide singular service types or different food options, it is important that the primary service style and menu be similar. For example, either may offer occasional buffets, seasonal features, traditional selections of the immediate area or package plans in conjunction with lodging or other promotions, but the standard menu and service style should be similar.

Coffee Shops – Usually limited menus/sit down and take-out food service operations.

Cafeteria – This includes operations that permit the customer to view and select from individual a-la-carte items as they pass through a serving line. The items are usually individually priced. A cafeteria usually offers specials that may provide a lower overall price when a set number or selection of items is chosen.

Fast Food & Snack Bar – May be table or counter service/walk up or waited/limited menu/eat-in or take-out.

Gourmet Fine Dining/Specialty/Limited/Ethnic – Operations that have been established for catering to special food service needs (i.e. special selected and prepared items that may only meet the interests, needs and/or requirements of a small number of the general public). These operations are often located in parks which also offer standard food service; however, there may be a few situations where this may be the only service type offered by the park. A menu item from this type of facility may also be found on the other standard type of menus.

Other Facilities – These can be take out, limited seating and/or prepared food service operations in a setting such as a grocery store, service station, or other environment where prepared food is not the primary product offered.

#### **B. Determine the Core Menu Rates**

After the core menu is established as outlined above, the approval of rates should be relatively simple using the originally selected comparables. You may simply average the core menu item rates on the comparable menus and use that average as the approved rate. It is unacceptable to establish rate ranges and then approve only the high-end rates for menu items. The rate review process combined with the core menu concept produces an inventory of similar items at similar prices.

The core menu should also be reviewed to verify that selections of a national interest or expectation and items required for normal health considerations are included. Examples include salads, low calorie/low fat selections, grilled or baked fish and chicken selections, pastas, vegetables, etc. Local and regional selections are usually limited. The comparables menus can be used for approving the special needs and local/regional item rates.

Other items made available outside of the core menu do not usually require a significant level of review, but even with the core menu concept it is still necessary for the National Park Service to grant approval for non-core rates. This approval does not denote anything other than the recognition of the type of items on the menu. This is important to ensure that the configuration of the total menu is acceptable and that the park knows basic data of portions and rates. The additional menu offerings permit the concessioner the opportunity to be innovative. It also provides a reasonable means of merchandising without the need for item by item NPS comparability. It retains the visitor's ability to have a reasonable selection of items (core menu) at comparable rates.

The following sample outlines the Core Menu Rate process for a full-service restaurant. Other types of food service operations may be of a different size and have different types of menus and menu items, but the **Core Menu Rate process should include the following:**

1. Concessioner has requested a rate increase. The concessioner's proposed rates and menu items are a matter of record at this point.

The first step to take is to review the menus of the selected comparable's and identify those **food categories** that are generally found on each. Some specifics that may be included are:

Menu Layout	Other
Appetizers	Children's menus
Salads and soups	Senior citizen menus
A-la-carte items	Alcoholic beverage menus
Entrees	
Sandwiches	
Desserts	
Beverages	

Where applicable, these categories will be included for each meal period being reviewed (breakfast, lunch, and dinner).

2. Next, review the menus of the established comparables and identify those **food types** that are made available by most of the comparables (fish, fowl, pork, beef, pastas, diet, etc). Confirm that similar food types are on the core menu.

3. After establishing the food types then you need to identify the actual **food items** in the core menus. These items are routinely found on the majority of the comparable menus. Some portion sizes and special feature information should be collected for general reference. Other than those items that are typically described at a certain portion size on the menu (meats and some beverages) the approval of core and non-core items do not have to be tied to specific portions. The concessioner should have some leeway, especially on side dishes, to be creative in presentations and combinations. Adequate portion sizes must be provided by the concessioner. Failure on the part of the concessioner to provide reasonable portioning will result in an "A" deficiency on the operational periodic review.

The following listings reflect examples of food items that are found on most menus for each meal.

Attention should be given to selections of national interest or expectation and items necessary to satisfy normal health considerations. These should be included on the core menu even if not found on the comparable menus.

The last food item(s) to be added to the core menu are those items that are considered local or regional or those that meet the park's theme. There are usually only a few items of this type. While desirable, these items are not essential. They may be represented as a part of the non-core menu development by either the concessioner or the park.

**Breakfast:**

Juice (selection of two to three)  
Eggs (Any Style) Grade A-Large  
Bacon (three strips) or Sausage (two patties)  
Grits or Potatoes  
Toast or Biscuits  
6" Pancakes (two to three)

A-La-Carte  
Hash Browns  
Grits  
Order of Toast (2-slices) w/butter/jam  
Bacon (3 slices)

Coffee (Decaf or Regular)

**Lunch:**

Soup (8 oz cup/12 oz. Bowl)  
Garden Salad (1 to 1.5 cups mixed greens, tomato, onion, etc.)  
Hamburger (6 oz.) (lettuce, tomato, onion, mayonnaise, etc. on sesame seed bun) served with fries  
Fish Sandwich (5 oz. Natural filet) (lettuce, tomato, onion, mayonnaise, etc. on sesame seed bun)/served with fries (4 oz.)  
Dessert  
Soft Drink

**Dinner:**

Fried Mushrooms (4 oz.)  
Soup (8 oz. cup /12 oz. bowl)

Garden Salad (1-1.5 cups mixed greens, tomato, onion, etc.)  
Tuna Salad (6 oz. Tuna on mixed greens w/tomato and egg slices)  
Strip Steak (12 oz. USDA Choice), served with choice of potato, garden salad, bread/butter  
Dessert  
Soft Drinks (12 oz. Free refills) (both regular and diet)

**Summary:**

If the procedures outlined above are followed, park visitors will be provided with a selection of food items at reasonable prices guided by both the comparability process and market place consistent with public law

## EXHIBIT 2 INDEXING

### Price Indexes

A price index is a ratio of related prices for commodities or groups of commodities to prices in a base year. For instance, the consumer price index for all items for urban wage earners and clerical workers for 1967 through 1982 was:

YEAR	CPI	YEAR	CPI
1967	100.0	1975	161.2
1968	104.2	1976	170.5
1969	109.8	1977	181.5
1970	116.3	1978	195.3
1971	121.3	1979	217.7
1972	125.3	1980	247.0
1973	133.1	1981	272.3
1974	147.7	1982	288.6

Prices in subsequent years are relative to the base year (1967); prices in 1973 were 33.1% higher

than they were in 1967. The percentage change in prices (inflation rates) can be calculated by dividing the change in the index over a period of time by the index at the beginning of the same period. The change from 1970 to 1977 was:

$$\frac{181.5 - 116.3}{116.3} = .5606 \text{ or } 56.1\%$$

### Application of Price Indexes

The Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, on which the index pricing system is based, is compiled by the Bureau of Labor Statistics of the Department of Labor. Cities and regions are broken down into certain specific data bases and categories for specific products and services are established. The CPI detail indexes for specific products and services offered by NPS concessioners are identified in the chart below.

NPS Concessioner	Corresponding CPI Index
Restaurants (food service)	Food away from home
Restaurants (alcoholic beverages)	Alcoholic beverages away from home
Lodging	Lodging while out of town
Retail sales	Retail sales
Grocery items	Food at home
Housekeeping	Housekeeping supplies
Clothing	Apparel commodities
Newspapers, magazines, etc.	Reading material
Sporting goods	Sporting goods and equipment
Souvenirs	Toys, hobbies
Tobacco products	Tobacco products
Personal care products	Toilet goods and personal care appliances
Photographic sales	Photographic supplies and equipment
Nonprescription drugs and medical supplies	Nonprescription drugs and medical supplies
Bus transportation	Intercity bus fare

The Consumer Price Index and associated indexes are computed and available monthly, are found in a number of government publications, and are usually available with a three-month lag period. Monthly data makes an index pricing system with a practical time resolution possible.

A sample of one of the pages from the *Monthly Labor Review* report follows. The Concessions Program Center will provide the regional offices, support offices, and park with a copy of the statistics on request. Each page contains the Consumer Price Index for specific cities and for regions under the Bureau of Labor Statistics. Each region is further broken down by population size as follows:

Class A	1,250,000 and above
Class B	385,000B1,250,000
Class C	75,000B385,000
Class D	Below 75,000

Cities and regions close to the park should be chosen to aid in determining which Consumer Price Index to use.

Instructions and price index worksheets for calculating rates appear at the end of this appendix. When concessioners submit price increase requests, the superintendent should break out the request by type of business (e.g., lodging, food service). The initial application of indexing involves an update of previously approved prices and does not establish rates on a first-time basis. The inflation adjustment is computed as the percentage change in the relevant index from the month and year of the request. If the requested percentage price increase is less than the increase in the index, then the increase would be allowed, but if the request is for more than the increase in the index, the request would not be approved unless it was sufficiently justified.

Price increase requests greater than prices established by indexing rather than another price approval method (direct comparability, merchandise pricing, contract/permit specified rate and competitive market declaration) would be judged on the same basis. The only computational variation is in the price index reporting lag. The

percentage change in the price index should be calculated from the index at the time the earlier prices were granted as compared to the most recent index for the current requested increase. For example, if the prices of food away from home in the West were:

DATE	INDEX
August 1978	108.8
June 1979	118.8
August 1979	120.3

The concessioner established a price of \$3.00 for a fish platter in August 1978 through the direct comparability rate approval method and in July 1979 requested a price increase to \$3.25 (an 8.3% increase). The most recent price index available is the June 1979 figure of 118.8 or a 9.2% increase over the index in August 1978. Since the concessioner's proposed rate increase is less than the index, the request is granted and a new price of \$3.25 is approved. If the concessioner's requested increase had been greater than the increase in the index, the request would have been limited to the percentage rise in the index.

If the concessioner were to request an increase from \$3.25 to \$3.35 in October 1979, it would be determined that the last price was established in July 1979 and was based on the price index from June 1979. The increase in the index from June to August (the most recent index available) would be calculated and the increase determined to be 1.3%. Since the requested increase is 3.1%, greater than the increase in the index, the increase would be limited to \$3.29.

Concessioner rates approved using the indexing method are good for two years. They may not be indexed for a third consecutive year; another method must be used. Indexing may only be used repetitively when the original method used was the contractual specified method of rate approval. This requirement is necessary in order to (1) ensure that concessioner prices remain comparable to prices in the competitive local economy and (2) to limit the continued use of indexing method.

## MONTHLY LABOR REVIEW REPORT

Consumer Price Index X Urban Wage Earners and Clerical Workers: selected areas, selected items  
December 1977=100 unless otherwise noted

Area	Other Index Base	Food away from home						
		Aug 1982	Mar 1983	Apr 1983	May 1983	June 1983	July 1983	Aug 1983
U.S. city average	1967	311.8	319.7	321.3	321.9	322.5	323.0	324.3
Anchorage, AK	10/67	X	296.7	X	297.5	X	298.9	X
Atlanta, GA	1967	313.1	X	321.6	X	322.7	X	324.2
Baltimore, MD	1967	X	328.3	X	336.2	X	337.0	X
Boston, MA	1967	X	277.1	X	278.3	X	286.7	X
Buffalo, NY	1967	296.5	X	280.7	X	281.1	X	283.0
Chicago, IL	1967	291.3	299.4	300.3	298.8	298.8	298.8	298.8
Cincinnati, OH	1967	X	303.6	X	306.5	X	304.3	X
Cleveland, OH	1967	309.7	X	317.0	X	321.7	X	335.0
Dallas/Ft. Worth, TX	1967	331.2	X	350.8	X	350.8	X	357.2
Denver/Boulder, CO	1967	X	316.7	X	321.0	X	326.4	X
Detroit, MI	1967	281.9	285.4	285.4	283.0	282.0	282.8	283.0
Honolulu, HI	1967	298.9	X	313.8	X	312.5	X	312.4
Houston, TX	1967	368.0	X	373.2	X	377.1	X	376.9
Kansas City, MO/KS	1967	309.3	X	313.2	X	316.3	X	321.0
L.A./Long Beach, Anaheim, CA	1967	308.2	319.1	319.2	320.1	322.7	323.3	323.9
Miami, FL	11/77	X	173.6	X	174.1	X	174.2	X
Milwaukee, WI	1967	X	332.9	X	334.2	X	334.9	X
Minneapolis/St. Paul, MN	1967	339.3	X	359.6	X	356.9	X	359.7
NY/Northeastern NJ	1967	302.3	307.7	310.2	312.2	312.1	311.9	312.7
Northeast Pennsylvania, PA	1967	X	271.3	X	273.8	X	276.9	X
Philadelphia, PA	1967	385.9	388.8	392.5	393.0	396.9	399.1	402.7
Pittsburgh, PA	1967	318.2	X	328.5	X	329.2	X	329.6
Portland, OR	1967	X	325.8	X	325.6	X	331.0	X
St. Louis, MO	1967	X	296.9	X	297.9	X	299.5	X
San Diego, CA	1967	X	405.8	X	408.9	X	410.3	X
San Francisco/Oakland, CA	1967	298.4	X	305.6	X	306.2	X	312.0
Seattle/Everett, WA	1967	X	304.8	X	305.7	X	311.8	X
Washington, DC, MD/VA	1967	X	321.8	X	324.5	X	321.1	X
Region								
Northeast		150.1	X	154.1	X	155.0	X	156.2
North Central		148.0	X	151.8	X	151.5	X	152.3
South		152.7	X	158.2	X	159.2	X	159.3
West		156.2	X	161.9	X	162.9	X	164.1

Provided as a sample only. Contact CPC for current statistics.

**EXHIBIT 3 INDEX PRICING WORKSHEET**

Concessioner	Date
Location	NPS initials
Specific items	

	Item Price (A)	Date of Column A (B)	CPI (C)	Date of Column C (D)
(1) Proposed				
(2) Previous				
(3) Line (1) minus line (2)				
(4) Line (3) divided by line (2)	%			

If line (4) column (A) is greater than line (4) column (C), see below. Otherwise enter the requested price on line (9) below.

(5) Enter amount on line (2) column (A)

--

(6) Enter amount on line (4) column (C)

--

(7) Multiply line (5) by line (6)

--

(8) Add line (5) and line (7)

--

(9) Approved Indexed Price

--

## INDEX PRICING WORKSHEET INSTRUCTIONS

Complete the required information regarding concessioner, date, location and specific item to be priced, then initial the form in the space provided. The Aall items≅ index should be used if no similar item is listed. Complete the space provided at the top of column C.

### LINE 1

Column A: enter the proposed item price

Column B: enter the current month and year

Column C: enter the latest CPI for the item

Column D: enter the month and year for the latest Consumer Price Index

### LINE 2

If the previous price was established by comparability or other study:

Column A: enter the previous price

Columns B and D: enter the month and year the previous price was set

Column C: enter the Consumer Price Index for the month and year that the old price was set

If the previous price was established through index pricing refer to the pricing form completed at that time and:

Column A: enter amount on line 9 of the earlier form

Columns B, C, and D: copy from line 1, columns B, C, and D from the earlier form

### LINE 3

Column A: subtract line 1 from 2

Column C: subtract line 1 from 2

### LINE 4

Column A: divide line 3 by line 2 (3 decimal places)

Column C: divide line 3 by line 2 (3 decimal places)

Compare the amounts on line 4, columns A and C.

If the amount in column C, line 4, is greater than or equal to the amount in column A, place the figure shown on line 1, column A, on line 9.

If the amount if column A is greater than the amount in column C:

### LINE 5

Enter the amount on line 2, column A

**LINE 6**

Enter the percent on line 4, column C

**Line 7**

Multiply line 5 by line 6

**Line 8**

Add lines 5 and 6

**Line 9**

Round the amount on line 8

2006 PROSPECTUS - FOR REFERENCE USE

## EXHIBIT 4 NPS UTILITY PROGRAM IMPLEMENTATION

### Utility Charges to Concessioners

Costs associated with the provision of utility services to concessioners are to be recovered in conjunction with the instructions in Director Order 35B. The costs of utilities are to be considered as an element of comparability and in calculating the financial feasibility of a concession operation.

Adjustments to visitor service rates do not apply when the concessioner purchases the utility from nonpark sources or when the National Park Service charges a comparable utility rate.

**Procedures.** The following steps are to be taken to establish comparable rates, adjusting approved concessioner rates, and monitoring the additional revenue resulting from the add-on.

*Calculating Utility Charges* - Calculating actual and comparable utility charges is done in accordance with Director Order 35B and is usually the responsibility of the Maintenance Division. Maintenance personnel should be well informed about actual comparables. Comparable utility charges should be obtained from the area where the concessioner's comparable rates are determined.

The concessioner must be notified of increased utility charges 60 days before the charges become effective. The concessioner must notify the superintendent within 15 days if an adjustment to the approved rate(s) charged to visitors is desired or if an exception is requested. The request must be acted upon within 15 days. The concessioner must be notified of all utility charge increases higher than comparability at the same time, which should be enough in advance of the main visitor season that only one yearly adjustment to approved charges to visitors will be required.

*Establish Base Price* - Approved rates may be expressed in terms of unit price, markup, or other appropriate measure, and the utility add-on would be expressed in compatible units.

*Documenting Additional Utility Charge Impact* - The concessioner multiplies the difference

between operating costs and comparability by anticipated use.

*Requesting Rate Adjustments* - If the concessioner decides to adjust visitor rates the superintendent must be provided with a proposed adjusted rate increase schedule. The schedule must clearly show:

- (1) past unit sales or sales volume for goods and services to be adjusted
- (2) current approved rate or markup percent
- (3) estimated units to be sold or dollar volume
- (4) amount of add-on shown as a dollar amount or as a percentage
- (5) adjusted rate shown as a dollar amount or as a percentage
- (6) estimated additional revenue
- (7) an explanation if a decrease in units or volume sold is expected

The following table is an example of a concessioner's visitor rate adjustment request. The format is recommended but not required. It provides all of the necessary information needed for NPS review and documents the justification for the final decision. It is the responsibility of the local NPS official to outline to the concessioners exactly how to request a rate adjustment.

**PROPOSED CONCESSIONER RATE ADJUSTMENT  
TO RECOUP \$10,000 ADDITIONAL UTILITY CHARGES**

<b>Product / Services Adjustment</b>	<b>Units or Dollar Volume Sold Last Year</b>	<b>Comparable Approved Rate Dollar Amount or Markup</b>	<b>Estimated Units or Dollar Volume to be Sold</b>	<b>Amount of Add-on Dollar Amount or Markup</b>	<b>Adjusted Rate Dollar Amount or Markup</b>	<b>Estimated Additional Revenue</b>
Rooms (units)	8,000	50.00	8,000	.75	50.75	\$6,000
Breakfast buffet (units)	9,200	3.75	*8,000	.25	4.00	2,000
Sandwiches (units)	5,000	2.85	5,000	.15	3.00	750
Tobacco products	\$100,000	30.6%	\$100,000	.4%	31.0%	400
Postcards	\$ 4,000	50.0%	\$ 4,000	1.0%	51.0%	40
Groceries	\$ 30,000	29.9%	\$ 30,000	2.0%	31.9%	600
Boat tours (units)	3,500	4.00	**3,000	.10	4.10	300
						\$10,090

\* Past history indicates approximately a 12% sales resistance when prices are increased by \$.25. (Perhaps the rate change should be further reconsidered).

\*\* Boat dock will open one week later next season

**Reviewing Adjusted Rate Increase Schedule**

The schedule is to be reviewed by the superintendent to ensure the accuracy of calculations and the reasonableness of projections. If the visitor rate adjustment exceeds 15% of the base price the concessioner should be asked to spread the adjustment over more items or classes of merchandise. Only if this is not practical should an exception for utility charges be considered.

**Monitoring**

The superintendent should ensure that the accounting system used provides for monitoring revenues generated as a result of the adjustment

**Distribution of Adjustment**

Goods and services adjusted should affect a wide range of visitors. If the superintendent does not agree with the proposed adjusted rates, concerns

should be discussed with the concessioner. Differences that cannot be resolved are treated as an appeal and referred to the regional director.

After an agreement has been reached as to the goods and services to be adjusted and the amount of the increase, the superintendent approves the new rates. The concessioner is provided with a copy.

**UTILITY CHARGE EXCEPTION**

A utility charge exception may be applied when the visitor service rate adjustment is so high that consumer resistance begins. At this point, higher prices are offset by reduction in the number of items sold, and the concessioner suffers lost sales and lost repeat business. There is no set point when resistance begins; differences are attributed to the types of goods and services involved, the

clientele, and the part of the country. The sales mix greatly affects price flexibility.

The utility charge exception procedure may be used when charging actual costs for utility services would create an unacceptable financial situation and would frustrate the ability of the NPS to carry out its statutory responsibilities to preserve and protect areas of the National Park system and to provide for their use and enjoyment by the public. Such a situation could also be a justification for eliminating or not granting a concession authorization due to a lack of a reasonable opportunity for a profit without government subsidy.

Authority to approve reduction of utility charges is reserved by the regional director, and the procedure parallels that for appeals. The superintendent's forwarding recommendation should include a discussion of the relevant guidelines. The regional director's approval for a utility exception is valid for one year, and requests for exceptions must be made annually.

The following guidelines apply:

- (1) Price increases of 15% or less should not create an undue competitive situation.

- (2) Utility costs must be spread over as wide a range of goods or services as possible, thus reducing the per-item increase. Concentrating price increases in a narrow range of items to produce an artificial need for the utility charge exception is not acceptable.

- (3) Low profit, high dollar volume merchandise (such as gasoline or groceries) is not amenable to large increases.

- (4) Merchandise prices approved under a competitive market declaration should not be subject to the utility charges.

- (5) Price increases based on utility charges that occur about the same time as increases based on normal market comparability may combine to create consumer resistance. The combined increase should be limited to 20% at one time and the remaining portion of the utility charge increase should be phased in.

#### **MONITORING PROCEDURES**

The following procedures are to be used by the superintendent and concessioner to ensure that the increases in rates for goods and services approximate the additional utility charges.

The concessioner, using sales records, invoices, inventory records, and other reports, provides the superintendent with documentation showing the rate adjustments and the added cost based on the actual amount of utility consumed. The following table illustrates the necessary documentation:

<b>Products/Services Adjustment</b>	<b>Projected</b>	<b>Actual</b>
Rooms	\$ 6,000	\$ 6,375.00
Breakfast buffet	2,000	2,625.00
Sandwiches	750	930.00
Tobacco products	400	418.00
Postcards	40	40.00
Groceries	600	800.00
Boat tours	<u>300</u>	<u>310.00</u>
Added revenue	\$10,090	\$11,498.00
Added utility costs	10,000	10,300.00
Actual additional revenue generated		\$11,498.00
Actual additional utility charges		<u>10,300.00</u>
Amount to be recouped or (deducted)		\$(1,198.00)

#### **MINOR DIFFERENCES**

After utility costs and rate adjustments are reconciled, any difference of less than 5% of the actual additional utility costs may be ignored.

Reconciliation should be done at the end of the prime operating season or at a time agreeable to both parties prior to the next rate increase based on comparability. This should be done well in advance for seasonal operations so that adjustments can be noted in the rate schedules provided to the public.

#### **SUBSEQUENT ADJUSTMENTS**

The above documentation shows that the concessioner adjusted rates generated \$1,198 more than actual utility charges. Since the difference is greater than 5% of additional utility costs, the adjustment to comparable rates is to be adjusted downward by \$1,198 the following year. If the difference between additional sales generated and actual utility costs is less than 5%, the difference is ignored.

If during the year the concessioner believes, based on past and current records, that the adjusted rates could result in a substantial shortage or excess of revenue, changes should be recommended to the superintendent that would bring the revenue into the correct range.

**EXHIBIT 5 COMPETITIVE MARKET DECLARATION AND RATE SCHEDULE**

Catfish Marina Services, Incorporated  
Waterhole National Recreation Area

Catfish Marina Services, Inc. is an authorized dealer for Glaston and Sea Ray boats and sells used Starry rental boats. As a boat sales dealer Catfish Marina Services directly competes for customers with the following businesses:

- Rainbow Boats, Holioak, WY, 7 miles away
- Everude Sales, Holioak, WY, 7 miles away
- Lemon Leased Boats, Tidewater, WY, 3 miles away
- Park Boats, Boundary, WY, 2 mile away

The distance between Catfish Marina at Catfish Basin and its competitors is minimal. All of the above firms sell boats in the same class as those offered by the concessioner. In addition, the selling price of boats is generally negotiated between buyer and seller. The many variables that enter into boat prices, such as changes in season, interest rates, model year, and salesmanship make the application of fixed prices unrealistic. It is determined that the concessioner's ability to complete is not enhanced by the location in Waterhole National Recreation Area. Prices are comparable based on competition and negotiation.

Use of a competitive market declaration for approving rates for this service would be authorized. Rates could be adjusted without the specific approval of the superintendent, but they are subject to review to ensure that they remain comparable to similar services offered outside Waterhole National Recreation Area.

This declaration will be reviewed annually and the use of this method could be rescinded if the superintendent determines that the situation has changed. The decision to change rate approval methods is at the discretion of the superintendent.

**Rate Schedule**

**Boat Sales - Competitive Market Declaration.** Boats sold by Catfish Marina Services, Inc., at Catfish Basin, Waterhole Recreation Area, are vended in a competitive market. The prices charged for boats are negotiated between buyer and seller. In consideration of these factors, it is declared that rates charged by the concessioner are comparable and approved. Catfish Marina, Inc. may price boat competitively without further approval from the National Park Service.

This declaration is for (insert inclusive dates).

---

Superintendent

Date

## **EXHIBIT 6 ASSISTANCE WITH THE DIRECT COMPARABILITY METHOD**

### **Develop a List of Potential Comparables**

This simple process can be accomplished jointly with the concessioner, who should be asked to provide a list of potential comparables to the superintendent. The superintendent and the concessions staff will also create a list of potential comparables. Businesses that are not comparable should not be included since any properties that are greatly dissimilar will not make the final selection of actual comparables. By accepting the properties that a concessioner suggests at this stage it eliminates an unnecessary point of conflict. If a proposed property is a substantial distance (i.e., several hundred miles) from the park, and there are plenty of potential comparables nearer, the property should be rejected. In some situations it is necessary to use comparables that are hundreds of miles away because they are so rare.

### **Contact Identified Potential Comparables**

*(Full Review)* Contact with a potential comparable in preparation for full review study should begin with a letter that identifies the National Park Service and the program used to review concessioner rate requests through comparability. This letter would state that a park representative would appreciate permission to visit the property in order to ask questions and collect basic information. A date and time for the visit could also be suggested. The letter could mention that a phone call would follow to discuss needs and set an appointment, which gives the potential comparable time to think about the proposal and decide whether or not to participate. The phone call should confirm a visit date and time. Very few operators decline to assist when approached in this manner.

*(Limited Review)* A letter may not be necessary in a limited review, but is still a good idea. The follow up phone call could include an interview with the manager to collect the necessary information. A follow-up to an earlier full review can begin with an information collection call

because the manager will already be familiar with NPS needs from past contacts.

### **Visit Potential Comparables**

This step can be skipped for a limited review. If a letter was sent and follow-up call made, the actual visit should go smoothly. Information collection is easier if a form is prepared in advance. This sheet could include a space for information on each of the criteria and notes about EQF. Utility cost data should be collected. Thorough notes should be taken on each point. Photographs should be taken to record exterior and interior conditions, and measurements (especially for guest rooms) should be taken to compare spaciousness or crowding with the concessioner facility.

### **Analyze Data**

The selection of actual comparables has a direct impact on a concessioner's final approved rates. It also has a significant impact on the expenditures of park visitors.

The following procedures are mandatory and must be used when evaluating potential comparables as part of the direct comparability study method. The comparability matrix provides a defensible method for analyzing the data collected for lodging, food and beverage, marinas, tour operations, campgrounds, and gasoline service stations. This analysis is always collected for lodging, food and beverage, marinas, tour operations, campgrounds, and gasoline service stations. This analysis is always required unless the number of comparable businesses is extremely limited. Even with very few comparable businesses this process eliminates properties that are beyond a reasonable level of comparability. The concessioner does not participate in the matrix process.

**Detailed Matrix Discussion (Strengths and Weaknesses).** The matrix provides a less subjective approach for determining the properties that are selected as actual comparables. The matrix does not eliminate the need for good judgment and a thorough knowledge of the comparability process. The matrix is based on values of similarity that express differences between a particular potential comparable and the concessioner. The values are determined using the concessioner's criterion as the base against which all others are compared. These values are assigned to each of the identified criteria for lodging, food and beverage, marinas, campgrounds, transportation, and gasoline service stations.

Numeric values can be assigned to the criteria, such as number of rooms, percentage of occupancy, number of restaurant seats, and number of boat slips. It is more problematic and requires judgment and knowledge to assign values to nominal criteria such as type of area, clientele, facility characteristics, and similar menu.

This method provides a balanced procedure for rating potential comparables in an unbiased manner. Determining an approved rate is not an exact science; the concessioners rates are appropriate if most customers would expect to pay similar prices for similar services under similar conditions outside the park.

The comparability matrix has a dual axis. The business properties measured (including the concessioner) are listed down the left column. The criteria measured are listed across the top. When completed, this matrix will note the degree of similarity between the concessioner and the potential comparables. It does not designate the properties as better or worse, but only shows the degree of similarity. Quality and value are not analyzed thoroughly until after the selection of actual comparables.

Information on the criteria (food and beverage [8], lodging [7], marinas [6], tour operations [4],

campgrounds [5], and gasoline service stations [3]) must be collected during visits to all potential comparables. These criteria are the only items measured to determine comparability. After the comparables are identified, then EQF may be used to determine final approved rates.

When completing the comparability matrix, it is critical that the same person(s) evaluate all the properties in the matrix to ensure consistency (concessioners do not participate in the matrix process). The concessioner is listed first on the matrix and is assigned a value of 10 points for each criteria. This format would result in a total of 70 points for the concessioner in a lodging matrix because there are seven criteria ( $10 \times 7 = 70$ ). The concessioner always has the most points because they provide the base on which all the potential comparables are compared. The total does not signify a level of performance or quality but only similarity of operations compared to the concessioner. The NPS employee completing the matrix will then devise point spreads for each of the criteria analyzed that reflect the differences between potential comparables. For example, if a concessioner has 100 guest rooms a potential comparable should have 95-105 guest rooms to receive 10 points. A possible rating scenario on the criteria for number of guest rooms follows:

95-105 rooms	10 points
85-94 and 106-115 rooms	9 points
75-84 and 116-125 rooms	8 points
65-74 and 126-135 rooms	7 points

Some criteria may not be as varied and could result in either 10 (the same), five (partially the same), or zero (completely different). The NPS employee should strive for consistency supported by knowledge and thoroughness, not perfection.

This technique is valuable and easy to use because the final scores for each potential comparable are not important alone, but only in relationship to the other potential comparables. The most critical aspect of completing the matrix is to maintain

program consistency by ensuring that the same person(s) evaluates all of the properties. Then any rating can be given on a particular criterion as long as properties that are similar receive the same rating.

After the matrix is completed and the points are totaled for each property, the NPS employees involved will look for a natural break in the point spread. All properties above that number will be selected as actual comparables. If a break level is not apparent or provides too few or too many properties, then an arbitrary number of properties may be selected. The determination can be made locally or through consultation. No specific number of comparables is required, but as a rule there should never be fewer than three actual comparables selected.

After the actual comparables are designated, further analysis will consider EQF to determine where the concession fits among the comparable properties and the range of rates. Following this analysis other factors deemed significant are introduced that help define the comparative quality of the concessioner's goods and services. These factors impact the final rates to the public and should not be considered until a rate based on comparability has been determined. Additional rates above comparability should never be authorized without written documentation.

The matrix system can seem confusing and complicated at first, but with use it becomes simple, easy to use, and productive. It contributes to an objective analytical final rate decision.

### **In Depth Analysis of Actual Comparables**

The properties that did not become actual comparables are no longer considered. Information, including other factors deemed significant and EQF, are thoroughly reviewed as part of determining where the concessioner falls among the range of the actual comparables. This is the step where better and worse are measured and noted.

After completion of this step it is possible to determine approximately where the concessioner's operations fit within the range of quality and type of services or facilities offered by the actual

comparables. To make this determination the analysis must compare, measure, and appraise the level of EQF in both the concession and the actual comparable facilities. These features generally add operating costs and value and benefit to the customer. The review can be a simple comparison of the concessioner's EQF against the corresponding lists of the individual actual comparables.

Each actual comparable should be discussed in a well-written narrative that includes the EQF and other criteria for each specific type of facility or service. The narrative should demonstrate first-hand knowledge of the property and should add value to the matrix comparison. The narrative should discuss various aspects of the property or service and management attention to detail.

After point-by-point comparisons and development of property narratives, a logical determination of where the concessioner fits in among the actual comparables in respect to service, condition of facilities, and attention to detail can be made. Rates have not yet been considered. Proceeding to review the rates of the actual comparables and positioning the concessioner among them will provide a good indication of the acceptable price range based on comparability.

### **Rate Request from Concessioner**

Certain standards for the development of rate requests are to be expected and locally outlined to concessioners. The standards should be summarized in the concessioner's operating plan. A timetable should include the latest date that rates should be submitted for consideration. All dates should be discussed and should provide logical time frames for completing the necessary reviews. It is critical that adequate and descriptive requests from the concessioner describe the level of services and products provided for the rate requested.

Rate requests should include information from the concessioner about which the National Park Service may be unaware. Without a detailed rate request, assumptions should not be made by the National Park Service to support a concessioner's desired rates.

At this point the concessioner must submit and support any other factors that they believe should be considered. The National Park Service must carefully evaluate requests for rates over and above comparability to ensure that there are expenses that the comparables do not share in one form or another.

With this data and the positioning among comparables, a determination can be made as to whether the concessioner's rate request is reasonable.

### **Rate Recommendation to Superintendent**

This should be written and could include an executive summary of the process and information collected. The rate recommendation should include the formal comparability study and analysis and should provide all the support documentation for approving or disapproving the requested rates. Some recommendations are long and complex. Others may be fairly simple and short.

Recommendation documents should be presented in a logical and analytical format that outlines the procedures and methods followed in reviewing the concessioner's rates and in analyzing the comparability data. A recommended format for the analysis and accompanying recommendation would include:

- (1) Determination of study level (full or limited)
- (2) List of potential comparables
- (3) Description of properties visited and associated data
- (4) Analysis of data collected
- (5) Selection of actual comparables (comparability matrix)
- (6) In-depth analysis of actual comparables (with narrative)
- (7) Rate request from concessioner
- (8) Recommendations for approval or disapproval

An executive summary should be included to provide a quick synopsis of the results and recommendations for those who do not have the time to read the entire report.

## EXHIBIT 7 AVERAGING FREIGHT COSTS

This program is optional. It provides a way for concessioners to include an **add on** for freight costs without having to recalculate the retail price after every shipment of merchandise, so that prices do not fluctuate on items throughout the year.

The major burden is on the concessioner, who must keep accurate records for calculation of an average freight cost. The freight cost should be stated as a percentage of merchandise sold for the previous year. The concessioner would document to the National Park Service (at the park level) exactly what the percentage for freight was for the past year. If the park agrees to permit averaging and the concessioners documentation is adequate, then the percentage could be added to all merchandise sold in the following year. This procedure is a variation on the standard process that requires the concessioner to calculate the freight rate for each individual item based on the identified costs on the separate invoices.

The concessioner is required to track the actual costs for the year in order to determine if recovery for freight costs is above or below the actual cost. This difference would then be taken into consideration in the next year by either raising or lowering the percentage to account for the difference. This is only an annual adjustment.

If a park decides to allow this time-saving process it is necessary to ignore the invoice freight charges in calculating approved retail sales prices. The final rate for all merchandise would have the same percentage of freight charges (for example, 3.2%). Some of the actual freight rates would be higher and some lower than the overall average. The average percentage figure also includes reductions to freight charges received for quantity purchases or prompt payment.

As an example, if the wholesale cost of an item to the concessioner is \$10.00, \$0.32 (3.2% in the example above) could be added before the item is marked up to the final retail price. If the mark up is 100%, the final retail price of the example item would be \$20.64. This does not include rounding, local utility add on charges, or other appropriate costs. No add on costs are permitted for warehousing.

This process, when supported by accurate records, results in more stable pricing and a more convenient administrative process.

**EXHIBIT 8 EXTRA QUALITY FEATURES  
CAMPGROUNDS**

Features (check if present)	<b>Concessioner</b>	<b>Comparable A</b>	<b>Comparable B</b>	<b>Comparable C</b>	<b>Comparable D</b>
Utility hookups (water, sewer, electric)					
Trash receptacles					
at site					
centralized					
Dumping station					
included in campsite rate					
extra charge					
Showers					
included in campsite rate					
coin operated					
partitioned stalls					
open/common area					
heated					
Restroom service					
pit toilets					
flush toilets					
hot and cold water					
Water					
at individual sites					
scattered hydrants					
central only					
<b>Site Characteristics</b>					
Site seclusion (utmost, moderate, limited)					
Separate area for tents					
Landscaping appropriate for natural terrain					
Type of access					
rough or gravel road					

paved					
Pull through for RVs and trailers					
Compliance with ADA requirements					
Lighted areas and paths					
Picnic table at site					
Fireplace/grill at site					

<b>Service Related</b>					
Reservation system					
Public phone available					
Camper service store					
Food service					
Gasoline service station					
Propane					
24-hour onsite available					
Firewood available					
Coin-operated laundry available					
Ice available					
Vending machines					
Interpretative programs					
Entertainment programs					
Recreation room					
Swimming pool					
<b>Local Factors Deemed Appropriate</b>					

**EXTRA QUALITY FEATURES  
FOOD AND BEVERAGE SERVICE**

Features (Check if Present)	<b>Concessioner</b>	<b>Comparable A</b>	<b>Comparable B</b>	<b>Comparable C</b>	<b>Comparable D</b>
Decor representative of local area					
Compliance with ADA requirements					
Baby changing area in restrooms (men/women)					
<b>Comfort Related</b>					
Air conditioning					
Live entertainment/stage					
Smoking/nonsmoking areas					
<b>Service Related</b>					
Accommodates tour groups					
Takeout service available					
Complimentary coffee in lobby/waiting area					
Special menus (such as diabetic, vegetarian)					
Senior citizen discounts					
Children's menu					
Ability to pay at table vs. central cashier					
Accepts reservations					
<b>Organizations</b>					
Major credit cards accepted					
Linen tablecloths (dinner)					
Glass vs. paper or plastic cups					
Single-service vs. flatware					
<b>Local Factors Deemed Appropriate</b>					

**EXTRA QUALITY FEATURES  
GASOLINE SERVICE STATIONS FACILITIES**

Features (Check if Present)	<b>Concessioner</b>	<b>Comparable A</b>	<b>Comparable B</b>	<b>Comparable C</b>	<b>Comparable D</b>
Restroom					
Public phone					
Car wash					
Air and water					
free to customers					
charge					
Convenience store					
Overhead canopy					
Compliance with ADA requirements					
<b>Comfort Related</b>					
Waiting room for auto repair					
<b>Service Related</b>					
Trailer/RV service					
Tires, batteries, and accessories					
Tire repair service available					
Tow service available					
Mechanic on duty					
Open 24 hours					
Open 7 days per week					
Accepts major credit cards					
Credit cards accepted at pump					
<b>Local Factors Deemed Appropriate</b>					

**EXTRA QUALITY FEATURES  
MARINA FACILITIES**

Features (check if present)	<b>Concessioner</b>	<b>Comparable A</b>	<b>Comparable B</b>	<b>Comparable C</b>	<b>Comparable D</b>
Hotel/motel					
Restaurant/bar					
Groceries					
Adequate water depth for draft of boats					
Secure boat tie-up system					
Fuel dock and other fuels (propane, etc.)					
Fire protection water and equipment					
Dock utilities (water, electric, cable TV, phone)					
Availability and proximity of parking lot					
Dock boxes and carts					
Dinghy racks and other storage areas					
Restroom, showers, and laundry					
Ice, vending machines					
Fish cleaning station					
Ship store/parts and accessories					
Landscaping					
Picnic area, swimming pool, tennis courts, etc.					
Recreation or lounge area					
Posted marina rules					
Boat haul-out facilities					
Repair/maintenance (mechanical, hull, rigging, etc.)					
Transient berths/moorings					
Dry storage					
Trailer parking					
Compliance with ADA requirements					
<b>Service Related</b>					
Sewage pumpout station					
Marine VHF monitoring					

Dock hands to assist in docking					
Weather information					
Book/VCR library					
Charter boat operation					
Camping					
Swimming					
Water skiing					
Fishing					
Beach rentals					
Boat rentals					
Fishing equipment					

<b>Local Factors Deemed Appropriate</b>					

2006 PROSPECTUS - FOR REFERENCE USE

**EXTRA QUALITY FEATURES  
OVERNIGHT ACCOMMODATIONS**

Features (check if present)	<b>Concessioner</b>	<b>Comparable A</b>	<b>Comparable B</b>	<b>Comparable C</b>	<b>Comparable D</b>
Rooms					
individual temperature control					
suites					
compliance with ADA requirements					
kitchenettes					
television					
free cable					
pay per view movies					
telephone					
free local calls					
Vending					
in-room					
common area					
Swimming pool					
indoor					
outdoor heated					
outdoor unheated					
pool deck and/or patio area					
Retail facilities					
Restaurant/bar facilities					
cafeteria					
full service dining room					
bar					
Fireplace in common area					
Designated bus/camper parking					
Children's play area					
Recreation/weight room					
Marina					

Beach					
Tennis courts					
Golf privileges					

<b>Convenience/Comfort Related</b>					
Wall-to-wall carpet in rooms					
Grade-A furniture					
Bedside lighting controls					

<b>Service Related</b>					
Baggage (bell hop)					
Valet parking					
Room service					
Entertainment					
Medical assistance/RN on duty					
Audiovisual movies					
Make other reservations					
Rental cars available					
Major credit cards accepted					
Registration office open 24 hours					
800 number available					

<b>Local Factors Deemed Appropriate</b>					



## Appendix I. Excel Forms for Principal Selection Factor 4

INITIAL INVESTMENTS AND START-UP EXPENSES FORM	
Grey Cells Are Input Cells	
Company Name	
CONCID	STLI001-07
<b>Assets</b>	
<b>Existing Assets</b>	
Assets necessary to the operation of the Concession, <u>already owned by the Offeror</u> , that will be allocated to the operation of the Draft Contract.	
Real Property (not within the Park)	\$
Personal Property	\$
Inventory and Supplies	\$
Other (describe)	\$
Subtotal	\$
<b>Planned Asset Acquisition</b>	
Assets necessary to operate the Concession, that will be acquired by the Offeror if awarded the Draft Contract.	
Real Property (not within the Park)	\$
Personal Property	\$
Inventory and Supplies	\$
Other (describe)	\$
Subtotal	\$
<b>Total</b>	\$
<b>Other</b>	
Start-Up Expenses	\$
Working Capital	\$
Other (describe)	\$
<b>Total</b>	\$
<b>Total Initial Investment and Start-Up Expenses</b>	\$

## INITIAL INVESTMENTS AND START-UP EXPENSES FORM

Grey Cells Are Input Cells

**Company Name**

**CONCID**

**STLI001-07**

### Notes

- 1) Formulas included in this form are provided by the NPS as guidance only. The Offeror is responsible for its financial projections and their accuracy.
- 2) Yellow cells represent categories that need to be explained on the "Investments Assumptions" worksheet.
- 3) All Offerors must include their estimate of the value of all property intended, whether planned for acquisition or owned, for use in the Draft Contract.
- 4) The items indicated above are the estimated planned expenditures for initial investment, defined as one-time costs either the year prior to or the first year after the start of the Draft Contract.
- 5) Expenditures entered in this form should be in addition to that of typical annual capital investments and operating expenses of the first year of the Draft Contract.
- 6) Expenditures entered into this form should not be included in the proforma as capital expenditures in either the year prior to or the first year after the start of the Draft Contract.

### Definitions

#### *Start-Up Expenses*

One-time expenses incurred prior to the beginning of the contract, or during the first year of the contract, if necessary to implement your proposal.

#### *Working Capital*

Additional funds for working capital **current** assets such as pre-paid expenses, contingencies, and other necessary cash flow requirements. This should not be confused with Net Working Capital (current assets-current liabilities). **Current** liabilities (such as advanced deposits and accounts payable) should be included as funding sources in Start-Up Expenses.



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Working capital

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2006 PROSPECTUS - FOR REFERENCE USE

**APPENDIX J**

**NPS MANAGEMENT POLICIES**

2006 PROSPECTUS - FOR REFERENCE USE

# 10 Commercial Visitor Services

The National Park Service will provide, through the use of concession contracts, commercial visitor services within parks that are necessary and appropriate for visitor use and enjoyment. Concession operations will be consistent with the protection of park resources and values and demonstrate sound environmental management and stewardship.



Public accommodations, facilities, and services must be consistent to the highest practicable degree with the preservation and conservation of park resources and values.

2006 PROSPECTUS FOR REFERENCE USE

Commercial visitor services will be authorized through concession contracts or commercial use authorizations, unless otherwise provided by law. Section 10.2 addresses concession authorizations. Section 10.3 addresses commercial use authorizations.

*(Also see Director's Orders #48A: Concessions Management, and #48B: Commercial Use Authorizations)*

## 10.2 Concessions

### 10.2.1 Concession Policies

Concession operations are subject to the provisions of the National Park Service Concessions Management Improvement Act of 1998; National Park Service regulations published at 36 CFR Part 51; this chapter of NPS Management Policies; and Director's Order #89A: Concession Management, and OTHER SPECIAL GUIDANCE THAT MAY BE ISSUED UNDER THE DIRECTOR'S authority.

### 10.2.2 Commercial Visitor Services Planning

Commercial visitor services planning will identify the appropriate role of commercial operations in helping parks to achieve desired visitor experiences, and will be integrated into other plans and planning processes.

Concession management plans or commercial services plans WILL SUPPORT A PARK'S PURPOSE AND SIGNIFICANCE, EXCEPTIONAL resource values, and visitor experience objectives, and will be consistent with enabling legislation. These plans will also determine whether proposed concession facilities and services are necessary and appropriate, and will consider alternatives. Proposed concession operations must be economically feasible and generally supported by a feasibility study prepared by a QUALIFIED INDIVIDUAL.

Any concession facilities improvement program, or any service authorized in a concession contract, will be in conformance with the appropriate approved plan(s) for the area being considered. A decision to authorize a park concession will be based on a determination that the facility or service:

- Is necessary and appropriate for the public use and enjoyment of the park in which it is located and identified needs are not, nor can they be, met outside park boundaries;
- Will be provided in a manner that furthers the protection, conservation, and preservation of the environment, and park resources and values;
- Incorporates sustainable principles and practices in planning, design, siting, construction, utility systems, selection and recycling of building materials, and waste management; and
- Will enhance visitor use and enjoyment of the park without causing unacceptable impacts to park resources or values.

The number, location, and sizes of sites assigned for necessary facilities will be the minimum necessary for proper and satisfactory operation of the facilities, emphasizing compatibility of design; preservation of esthetic values, and natural and cultural resources; and integration of sustainable design concepts.

For information about leasing historic structures for concession purposes, see Director's Order #38: Real Property Leasing.

### 10.2.3 Concession Contracting

Approved standard contract language will be used in all National Park Service concession contracts.

#### 10.2.3.1 Terms and Conditions of Contracts

Concession services will be authorized under concession contracts, unless otherwise authorized by law. The term of a concession contract will generally be 10 years or less. However, the Director may award a contract for a term of up to 20 years if the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. In this regard, the term of concession contracts should be as short as is prudent, TAKING INTO ACCOUNT THE FINANCIAL REQUIREMENTS OF THE CONCESSION contract, resource protection, visitor needs, and other factors that the Director may deem appropriate.

#### - MODIFICATIONS

CONCESSION CONTRACTS MAY BE MODIFIED ONLY BY WRITTEN AMENDMENT. Amendments developed after the issuance of a concession contract must be consistent with current National Park Service policies and orders. Unless otherwise authorized by the contract, a concession contract may be amended to provide additional visitor services only if the services are minor and comprise a reasonable extension of the existing services.

#### 10.2.3.3 Extension

Concession contracts may be extended only in accordance with the requirements of 36 CFR Part 51, subpart D. The signature authority for contract extensions or amendments must be consistent with delegations of authority from the Director.

#### 10.2.3.4 Competition

In order to obtain the best service provider and maximize benefits to the Government, THE NATIONAL PARK SERVICE ENCOURAGES competition in the awarding of concession contracts. The National Park Service also encourages, through outreach, the participation of American Indian, minority and women-owned businesses when new business activities occur.

#### 10.2.3.5 Third-party Agreements and Sub-concessions

5NESS SPECIFIED IN THE CONTRACT SUB CONCESSION OR OTHER THIRD party agreements, including management agreements, for the provision of visitor services that are required and/or authorized under concession contracts are not permitted. The NPS may also advertise for a new concession contract to provide these additional services.

#### 10.2.3.6 Multi-park Contracts

Concessioners operating in more than one park unit must have separate contracts for each park unit. An exception may be made in the case of those park units having common National Park Service management or where service is provided in contiguous park areas (for example, a pack trip that crosses the boundary of two adjoining parks).

#### 10.2.3.7 Termination

The Service may terminate concession contracts for default AND UNDER ANY OTHER CIRCUMSTANCES SPECIFIED IN THE CONCESSION contract.

## 10.2.4 Concession Operations

### 10.2.4.1 Operating Plans

The operating plan is an exhibit to the concession contract, and will describe operative responsibilities authorized in the contract between the concessioner and the NPS. The plan is reviewed and updated annually by the Service, in accordance with the terms of the contract. Operating plans are considered an integral part of a concessioner's contractual performance compliance.

### 10.2.4.2 Service Type and Quality

It is the objective of the National Park Service that park visitors be provided with high-quality facilities and services. Where appropriate, the concession contract will specify a range of facility, accommodation, and service types that are to be provided at reasonable rates.

### 10.2.4.3 Evaluation of Concession Operations

Concession operations will be evaluated to ensure that park visitors are provided with high-quality services and facilities, which are safe and sanitary, and meet National Park Service environmental, health, safety, and operational standards. As outlined in the Concessioner Operational Evaluation Program, the evaluation results will provide a basis for NPS management to determine whether to continue or terminate a concession contract, and whether a concessioner is eligible to exercise a right of preference in the award of a qualified new concession contract.

### 10.2.4.4 Interpretation by Concessioners

Concessioners will be encouraged to train their employees and, through their facilities and services, to instill in their guests an appreciation of the park, its purpose and significance, its proper and sustainable management, and the stewardship of its resources. When the provision of interpretive services is required by the contract, concessioners will provide formal interpretive training for their employees, or will participate in formal interpretive training that is either offered by the NPS or co-sponsored by the concessioner.

Instilling appreciation of the park in visitors can be accomplished in many ways. For example, it can be accomplished through guided activities; the design, architecture, landscape, and decor of facilities; educational programs; interpretive menu design and menu offerings; and involvement in the park's overall interpretive program. Gift shop merchandise and displays also present opportunities to educate visitors about park history; natural, cultural, and historical resources; and sustainable environmental management.

Concession contracts will require the concessioner to provide all visitor services in a manner that is consistent with, and supportive of, the interpretive themes, goals, and objectives articulated in each park's planning documents, mission statement, and/or interpretive prospectus.

(See Chapter 7: Interpretation and Education)

### 10.2.4.5 Merchandise

The National Park Service will approve the nature, type, and quality of merchandise to be offered by concessioners. ~~! THOUGH THERE IS NO SERVICE WIDE LIST OF SPECIFIC PREFERRED~~ merchandise, priority will be given to those sale items that interpret, and foster awareness and understanding of, the park and its resources. Merchandise should have interpretive labeling, or include other information to indicate how the merchandise is relevant to the park's interpretive theme(s).

Each park with concession activities will have a gift shop mission statement, based on the park's concession service plan or GMP. Concessioners will develop and implement a merchandise plan based on the park's gift-shop mission statement. The merchandise plan must be satisfactory to the Director, ~~AND SHOULD ENSURE THAT MERCHANDISE SOLD OR PROVIDED REFLECTS THE SIGNIFICANCE OF THE PARK AND PROMOTES THE CONSERVATION OF~~ the park's geology; wildlife; plantlife; archeology; local Native ~~! MERICAN CULTURE LOCAL ETHNIC CULTURE HISTORICAL SIGNIFICANCE~~ and other park resources and values. The plan should also integrate pollution prevention and waste-reduction objectives and strategies for merchandise.

Merchandise must be available at a range of prices. Theme-related merchandise manufactured or handcrafted in the United States—particularly in a park's geographic vicinity—will be emphasized. The revenue derived from the sale of United States Indian, Alaska native, native Samoan, and native Hawaiian handcrafts is exempt from any franchise fee payments. Foreign merchandise is not encouraged, but will not be prohibited.

### 10.2.4.6 Artifacts and Specimens

Concessioners will not be permitted to sell any merchandise in violation of laws, regulations, or National Park Service policies. Some merchandise may be determined by the park superintendent to be locally sensitive or inappropriate for sale, and may, at the discretion of the superintendent, be prohibited for retail sale. The sale of original objects, artifacts, or specimens of a historic, archeological, paleontological, or biological nature is prohibited. Replicated historic, archeological, paleontological, or biological objects, artifacts, or specimens may be sold if they are obvious replicas and clearly labeled.

Any geological merchandise that is approved for sale or exhibit by concessioners must be accompanied by appropriate educational material and a written disclaimer clearly stating that such items were not obtained from inside park boundaries. The proposed sale of any replicas, or of geological merchandise, must be addressed in the gift shop merchandise plan.

### 10.2.4.7 Rates

The National Park Service must approve all rates charged to visitors by concessioners. The reasonableness of a concessioner's rates and charges to the public will, unless otherwise provided in the contract, be judged primarily on the basis of comparison with current rates and charges for facilities and services of comparable character under similar conditions. Due consideration will be given to length of season, provision for peak loads, average percentage of occupancy, accessibility, availability and costs of labor and materials, type of patronage, and other factors deemed significant by the Director.

#### 10.2.4.8 Risk Management Program

Concession contracts require each concessioner to develop a risk management program, which is approved by the superintendent, and is in accord with the Occupational Safety and Health Act and the National Park Service Concession Risk Management Program.

Concessioners are responsible for managing all of their operations in a manner that minimizes risk and controls loss due to accident, illness, or injury. To ensure compliance, the Service will include a risk management evaluation as part of its standard operational review of concession operations.

#### 10.2.4.9 Natural and Cultural Resource Management Requirements

Concessioners are required to comply with applicable provisions of all laws, regulations, and policies that apply to natural and cultural resource protection. The use, maintenance, repair, rehabilitation, restoration, or other modification of concession facilities that are listed on or eligible for the National Register of Historic Places are subject to the applicable provisions of all laws, Executive orders, regulations, and policies pertaining to cultural properties.

The National Park Service will assist concessioners in understanding and complying with regulations for the protection of historic properties (36 CFR Part 800) promulgated by the Advisory Council on Historic Preservation. Historic structures and their contents and museum objects that are in the control of concessioners will be treated in accordance with the appropriate standards contained in National Park Service guidance documents.

*(See Chapter 4, Natural Resource Management; Use of Historic Structures 5.3.5.4.7. Also see Reference Manual 24: the Museum Handbook, and 28: the Cultural Resource Management Guideline; Director's Order #38: Real Property Leasing, and #48A: Concessions Management)*

#### 10.2.4.10 Environmental Program Requirements

In the operation of visitor services, concessioners will be required by contract to meet environmental compliance objectives by:

- Complying with all applicable laws pertaining to the protection of human health and the environment; and
- Incorporating best management practices (BMPs) in all operations, construction, maintenance, acquisition, provision of visitor services, and other activities under the contract.

Concessioners will be required by contract to develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive, written environmental management program (EMP) to achieve environmental management objectives. The EMP must be updated at least annually, and must be approved by the Director.

The EMP must 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.

Superintendents are encouraged to require the EMP to be submitted as part of the prospectus package. The National Park Service will review concessioner compliance with the EMP under the contract. The National Park Service will also conduct environmental compliance audits of all commercial visitor services at least every three years in accordance with the concessions environmental audit program. The concessioner will be RESPONSIBLE FOR CORRECTIVE ACTIONS REQUIRED BY LAW AND IDENTIFIED during the environmental compliance audits.

The National Park Service will assist concessioners in understanding environmental program requirements, and will also include an environmental management evaluation as part of its annual standard operational reviews of concession operations.

*(See Compensation for Injuries to Natural Resources 4.1.6; Compensation for Damages 5.3.1.3; Integrated Pest Management Program 4.4.5.2; Overnight Accommodations and Food Services 9.3.2. Also see Director's Order #83: Public Health)*

#### 10.2.4.11 Insurance

Concession contracts will identify the types and minimum amounts of insurance coverage required of concessioners in order to:

- provide reasonable assurance that concessioners have the ABILITY TO COVER BONAFIDE CLAIMS FOR BODILY INJURY, DEATH, OR property damage arising from an action or omission of the operator;
- protect the government against potential liability
- protect the government against potential liability for claims based on the negligence of the operators; and
- enable rapid repair or replacement of essential visitor facilities located on park lands that are damaged or destroyed by FIRE OR OTHER HAZARDS

Concessioners will not be permitted to operate without liability insurance. Under limited conditions, concessioners may operate without property insurance, as described in Director's Order #48A: Concession Management.

#### 10.2.4.12 Food Service Sanitation Inspections

Concessioners who prepare food on or off park lands, or serve food on park lands will be subject to inspection for compliance with all applicable health and sanitation requirements of local and state agencies, the U.S. Public Health Service, and the Food and Drug Administration.

*(Also see Director's Order #83: Public Health)*

#### 10.2.4.13 Smoking

Generally, all NPS concession facilities will be smoke free. THE ONLY EXCEPTIONS WILL BE SPECIALLY DESIGNATED SMOKING areas and rooms. The sale of tobacco products through vending machines is prohibited.

*(See Executive Order 13058 (Protecting Federal Employees and the Public from Exposure to Tobacco Smoke in the Federal Workplace))*

### 10.2.5 Concessions Financial Management

Concession contracts must provide for payment to the government of a franchise fee, or 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 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 is subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

#### 10.2.5.1 Franchise Fees

The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concession ~~CONTRACT MUST BE SPECIFIED IN THE CONCESSION CONTRACT AND MAY ONLY BE MODIFIED TO REFLECT EXTRAORDINARY UNANTICIPATED CHANGES~~ from the conditions anticipated as of the effective date of the ~~CONTRACT~~ #CONTRACTS WITH A TERM OF MORE THAN FIVE YEARS WILL include a provision that 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 will 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.

#### 10.2.5.2 Franchise Fee Special Account

All franchise fees and other monetary considerations will be deposited into a Department of the Treasury special account. In accordance with the NPS Concessions Management Improvement Act of 1998, twenty percent (20%) will be available to support activities throughout the national park system, and eighty percent (80%) will be available to the park unit in which it was generated, for visitor services and funding high-priority and urgently necessary resource management programs and operations.

#### 10.2.5.3 Record-keeping System

All concessioners will establish and maintain a system of accounts and a record-keeping system that utilize written journals and general ledger accounts to facilitate the preparation ~~OF ANNUAL CONCESSIONER FINANCIAL REPORTS~~

#### 10.2.5.4 Annual Financial Reports

#CONCESSIONERS WILL BE REQUIRED TO SUBMIT AN ANNUAL FINANCIAL REPORT THAT REFLECTS ONLY THE OPERATIONS THAT THEY ARE AUTHORIZED TO PURSUE.

#### 10.2.5.5 Donations to the NPS

The National Park Service will not solicit or accept donations or gifts from entities that have, or are seeking to obtain or establish a contract, lease, or other business arrangement with the Service. Nor will the NPS require any concessioner to donate or make contributions to the Service under any circumstance, including the incorporation of such a requirement in concession contracts. Further guidance on donations is available in Director's Order #21: Donations and Fundraising.

### 10.2.6 Concession Facilities

#### 10.2.6.1 Design

Concession facilities will be of a size and at a location that the Service determines to be necessary and appropriate for their intended purposes. All concession facilities must comply with applicable federal, state, and local construction codes, and meet accessibility requirements as set forth in applicable accessibility guidelines. Proposed concession facilities must conform to NPS standards for sustainable design, universal design, and architectural design. Concession development or improvement proposals must undergo review for compliance with NEPA and section 106 of NHPA (16 USC 470f), and be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and other applicable legal requirements.

In addition to general park design requirements, the NPS will apply value analysis during the design process to analyze the functions of facilities, processes, systems, equipment, services, and supplies. Value analysis must be used to help achieve essential functions at the lowest life-cycle cost, consistent with required performance, reliability, environmental quality, and safety criteria and standards.

*(See Facility Planning and Design 9.1.1)*

#### 10.2.6.2 Accessibility of Commercial Services

Concessioners share the National Park Service's responsibility to provide employees and visitors with the greatest degree of access to programs, facilities, and services that is reasonable, within the terms of existing contracts and agreements. Applicable laws include, but are not limited to (1) regulations issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended (43 CFR Part 17), which prohibits discrimination on the basis of disability in programs or activities conducted by federal executive agencies; and (2) the Architectural Barriers Act of 1968, which requires physical ~~ACCESS TO BUILDINGS AND FACILITIES~~ 7 HERE THERE IS NO SPECIFIC language identifying applicable accessibility laws in an existing concession contract, the NPS will address the issue of compliance in the annual concession operating plan.

*(See Physical Access for Persons with Disabilities 5.3.2; Accessibility for Persons with Disabilities 8.2.4 and 9.1.2. Also see Director's Order #42: Accessibility for Visitors with Disabilities)*

#### 10.2.6.3 Maintenance

Concession contracts will require concessioners to be responsible for all maintenance and repair of facilities, lands, and utility systems assigned for their use, in accordance with standards acceptable to the Service. Exceptions will be made only in extraordinary circumstances, as determined by the Director. All concession contracts must ~~INCLUDE A CURRENT MAINTENANCE PLAN AS SPECIFIED IN THE CONCESSION CONTRACT~~. Maintenance plans are an exhibit to the concession contract and will be considered an integral part of a concessioner's contractual performance compliance.

Maintenance of historic properties and cultural landscapes will be carried out in a manner consistent with applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

#### 10.2.6.4 Utilities and Services

Utilities include, but are not limited to, electricity, fuel, natural gas, water, disposal of wastewater and solid waste, and communication systems. The Service may provide utilities to the concessioner for use in connection with the operations required or authorized under the contract, when available, at rates to be determined in accordance with applicable laws. If the Service does not provide utilities to the concessioner, the concessioner will, with the written approval of the Director, and under any requirements prescribed by the Director, (1) secure necessary utilities at its own expense from sources outside the area; or (2) install the utilities within the area, subject to conditions mentioned in the contract.

*(Also see Director's Order #35B: Sale of Park Utilities and Services to Support Activities Within Parks)*

#### 10.2.6.5 Closure of Commercial Operations During Government Shutdown

THE NATIONAL SECURITY CENTER REQUIRES FEDERAL AGENCIES TO SUSPEND all non-essential activities whenever there is a failure to enact an appropriations bill or adopt a continuing resolution. All concessioner-operated programs and services must cease, and visitors must be asked to leave within 48 hours.

All commercial facilities and services in a park will be closed in order to protect the safety of visitors and the integrity of park resources. Exceptions to this policy include concessions that are required for health and safety purposes or protection of the environment, or necessary to support park operations that are deemed essential, such as law enforcement.

Commercial facilities located on through-roads (roads or public highways that begin and end outside of a park, plus parkways) and public highways may remain open if doing so does not result in additional costs to the park (for example, THE STARTING OF ENTRANCE STATIONS THESE COMMERCIAL FACILITIES may include operations such as service stations, food services, stores, and lodging, or portions of such operations that will not contribute to additional park expenses. The commercial facility in question should have access directly from the road or highway, and not require the re-opening of park roads having other destinations.

THE SPECIAL ASPECTS OF CLOSURES MAY BE GUIDED BY A SERVICE wide shutdown plan.

#### 10.2.7 Concessioner Employees and Employment Conditions

##### 10.2.7.1 Non-discrimination

Concessioners will comply with all applicable laws and regulations relating to nondiscrimination in employment and the provision of services to the public.

##### 10.2.7.2 Substance Abuse

In compliance with state and federal regulations condemning substance abuse, the NPS prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol. The Service also prohibits the unlawful manufacture, cultivation, processing, or transportation of illicit drugs. This policy applies to concessioners and their employees, at any facility or in any activity taking place on National Park Service lands. Concessioners are required to provide and advise employees about the availability of Employee Assistance Programs addressing substance abuse problems.

#### 10.2.8 National Park Service Employees

##### 10.2.8.1 Accepting Gifts and Reduced Rates from Concessioners

National Park Service employees may not receive concessioner goods or services at a discount unless it is in connection WITH COMMERCIAL BUSINESS IS TO THE GOVERNMENT'S ADVANTAGE and is provided for under the terms of a concession contract. However, employees may accept reduced rates or discounts offered by the concessioner when those same reduced rates or discounts are available to the general public.

National Park Service employees may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a concessioner or other person who conducts operations and activities that are regulated by the Department of the Interior. Employees should consult with their assistant ethics counselor regarding the limited exceptions to the general prohibition on accepting gifts from outside sources.

##### 10.2.8.2 Employment of NPS Personnel or Family Members by Concessioners

Federal law prohibits government employees from making recommendations, decisions, or approvals relating to applications, contracts, controversies, or other matters in which the employee or the employee's spouse or minor child has a NATIONAL INTEREST. NATIONAL PARK EMPLOYEES MAY NOT MAKE DECISIONS approvals, or recommendations related to concession activities when their spouse or dependent child is employed by a park concessioner in that particular park. For example, the spouse or dependent child of the superintendent, assistant superintendent, concession staff, environmental manager, or public health specialist may not be employed by a concessioner in THE SPECIAL PARK IN WHICH THE. 03 EMPLOYEE WORKS

*(Also see Director's Order #37: Home Businesses in Parks)*

##### 10.2.8.3 NPS Employee Ownership or Investment in Concession Businesses

Department of the Interior policy prohibits employees and their spouses and minor children from acquiring or retaining for commercial purposes any permit, lease, or other rights granted by the Department for conducting commercial services on federal lands. Therefore, no National Park Service concession contract or commercial use authorization to conduct commercial services in a park will be issued to

National Park Service employees or their spouses and minor children who are owners, partners, corporate officers or general managers of any business seeking such a contract in federal land managed by the Department of the Interior. & FURTHER TO AVOID THE APPEARANCE OF PARTIALITY AND CONFLICTS OF interest, and to comply with ethics laws that apply to all federal employees, National Park Service employees may not work on any matter involving a business in which they, their spouse or their minor children have a financial interest.

#### # CONCESSION - MANAGEMENT PERSONNEL QUALIFICATIONS

To effectively carry out the concession management program, managers and supervisors will make every effort to ensure that personnel selected for positions meet the essential competencies established for the position being filled. When concession management personnel lack the full complement of essential competencies or require refresher training for their position, managers and supervisors will ensure that those employees are trained and certified as competent. If personnel vacancy announcements issued for concession management must include program competencies.

### 10.3 Commercial Use Authorizations

Commercial Use Authorizations (CUAs) may be issued under the authority of 16 USC 5966. CUAs are not considered concessions contracts.

As of the date of publication of this edition of *Management Policies*, the NPS has not yet issued policies or regulations for the administration of CUAs. However, the applicable provisions of law are quite prescriptive and should be carefully considered. A more detailed discussion of CUAs will be included at a later date in implementing regulations and Director's Order 48B: Commercial Use Authorizations.

2006 PROSPECTUS - FOR REFERENCE USE

**APPENDIX K**

**NEW YORK EMBARKATION POINT AGREEMENTS**

**Current License Agreement**

**Current License Extension**

**NPS Letter Requesting Additional Extension**

**MOU for Future Agreement**

2006 PROSPECTUS FOR REFERENCE USE



City of New York  
Parks & Recreation

Betsy Gotbaum  
Commissioner

The Arsenal  
Central Park  
New York, N.Y. 10021

Marjorie A. Cadogan  
General Counsel

**LICENSE AGREEMENT**

**between**

**CIRCLE LINE STATUTE OF LIBERTY FERRY, INC.**

**and**

**CITY OF NEW YORK  
PARKS & RECREATION**

**Dated:** Dec. 8, 1992

2006 PROSPECTUS - FOR REFERENCE USE



City of New York  
Parks & Recreation

Betsy Gotbaum  
Commissioner

KFB  
WM  
The Arsenal  
Central Park  
New York, N.Y. 10021

Marjorie A. Cadogan  
General Counsel

February 19, 1993

Mr. Joseph A. Moran  
Circle Line - Statue of Liberty Ferry, Inc.  
17 Battery Place, Suite 715  
New York, New York 10004-1102

Re: Circle Line Statue of Liberty  
Ferry in Battery Park

Dear Mr. Moran:

I am writing to confirm our recent conversation regarding the dating of new License Agreement for operation of the above-referenced concession. The executed copies you have in your possession should be dated "as of" April 1, 1992 to bring the term of this License into alignment with your agreement with the Federal government.

As always, if I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Elizabeth B. Okin  
Assistant Counsel

2006 PROSPECTUS FOR REFERENCE

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LICENSE AGREEMENT made this 8<sup>th</sup> day of October 1992, between the City of New York (the "City") acting by and through Betsy Gotbaum, Commissioner of the Department of Parks and Recreation ("Commissioner" and "Parks", respectively), whose address is The Arsenal, Central Park, New York, New York 10021, and Circle Line Statue of Liberty Ferry, Inc. ("Licensee"), a corporation organized under the laws of the State of New York, whose address is 17 Battery Place, Suite 715, New York, New York 10004-1102:

W I T N E S S E T H:

WHEREAS, Parks, pursuant to law, has jurisdiction over parks of the City of New York including Battery Park in the Borough of Manhattan; and

WHEREAS, Licensee currently operates a commercial ferry service for the transportation of passengers between Battery Park and Liberty Island and Ellis Island pursuant to authorizations from appropriate Federal, State and City agencies; and

WHEREAS, in connection therewith, Commissioner desires to provide certain services and facilities for the accommodation and convenience of the public and Licensee desires to operate

and maintain same;

WHEREAS, Parks has complied with the requirements of the Franchise and Concessions Review Committee ("FCRC") for the selection of concessionaires and has received authorization to enter into a sole source concession agreement with Licensee pursuant to the rules of the FCRC.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the parties hereto do agree as follows:

ARTICLE I  
GRANT OF LICENSE

1.0 Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to:

a) Maintain, repair and operate the Licensed Premises, which is comprised of landing and docking facilities, more particularly described in Article II herein, for the purpose of embarking and discharging passengers in the operation of passenger ferries on a regular schedule between Battery Park, Liberty Island and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises, other ferry operations and day and night charters of

vessels owned, operated or chartered by the Licensee;

b) Maintain the entire Licensed Premises;

provided Licensee obtains all necessary approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders. In order to be in compliance with this License Agreement, Licensee must fulfill the obligations contained within this Article I. Commissioner may deem a default Licensee's failure to provide said services, for any reason.

ARTICLE II

DEFINITIONS

2.0 As used throughout this License, the following terms shall have the meanings set forth below:

a) "Operating Year" shall be defined as the period between July 1st of any calendar year and June 30th of the following year.

b) "Licensed Premises" shall mean the area denoted on Exhibit B, that is, Landing Slips numbered 3, 4, and 5, and adjacent walkways located in Battery Park. In the event Licensee is granted any Temporary Use Authorizations for additional, adjacent areas, such areas shall, for the duration

of such Temporary Use Authorization be deemed part of the Licensed Premises and subject to the terms and conditions of this License.

c)i) "Gross Receipts" shall be defined to include all funds received by Licensee without deduction or set-off of any kind, from the sale of ferry tickets, whether at individual, charter, or group rates, merchandise or services of any kind, resulting directly or indirectly from Licensee's use of the Licensed Premises, provided that Gross Receipts shall exclude the amount of any federal, state or city taxes which may now or hereafter be imposed upon or be required to be paid by Licensee as against its sales. Gross Receipts shall include any orders, placed or made directly or indirectly at Licensed Premises, although delivery of merchandise or services may be made outside, or away from the premises, and shall include all receipts for services to be rendered or orders taken at the Licensed Premises for services to be rendered outside thereof.

All sales made or services rendered directly or indirectly from Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered directly or indirectly upon Licensed Premises may be made other than at Licensed Premises.

ii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises, under the control of Licensee, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, and other items is approved by Parks, Licensee's net receipts only from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's net receipts only from rental, sublicense fees, or subcontracting fees in connection with all services provided by Licensee's subcontractors, including independent contractors, if any.

iii) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums received by Licensee from all sources from the operation of this License Agreement shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. Licensee shall provide sufficient documentation to prove that such gratuities were paid to employees and staff in addition to their regular salaries.

ARTICLE III

TERM OF LICENSE

3.0 This License shall become effective upon full execution by the parties. This License shall be for an operating term of twelve (12) years, commencing upon full execution by the parties ("Commencement Date").

3.1 This License is terminable at will by the Commissioner in her sole and absolute discretion at any time she deems it to be in the best interest of the City. Such termination shall be effective after thirty (30) days written notice to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein. In the event such notice is not given this License shall terminate no later than twelve (12) years following such Commencement Date.

ARTICLE IV

PAYMENT TO CITY

4.0 Licensee shall pay to City Annual License Fees ("Annual License Fees") for each Operating Year, consisting of the higher of the Minimum Annual Fee ("Minimum Annual Fee"), which shall be Three Hundred Thousand (\$300,000.00) dollars, versus

the annual percentage of gross receipts derived from the operation of this license, which shall be seven percent (7%).

4.1 a) Licensee shall submit payments to City on a monthly basis ("Minimum Monthly Fee") on or before the tenth day of each month, which payments shall consist of one-twelfth (1/12) of the Minimum Annual Fee (that is, Twenty-five thousand (\$25,000.00) dollars) or 7% of Licensee's the gross receipts, as defined herein, for the previous month, whichever is greater.

b) In any month during which ferry service to Liberty Island or Ellis Island Service cannot be operated for a substantial period of time (which shall be determined by Parks based on all the relevant circumstances) due to a) an order of suspension by the National Park Service or b) fire, water conditions, tornado, explosion, windstorm, strike, riot or other cause not within the control of Licensee, Licensee may request, in writing, from Parks an abatement of the Minimum Monthly Fee payable in such month. Parks shall promptly review such request. The determination of the Commissioner regarding any such request shall be final.

4.2 Licensee shall provide to Parks forty-five (45) days after the end of each Operating Year, an annual statement, in auditable form, certified and signed by an officer of Licensee, of the preceding Operating Year's Gross Receipts broken down

into the following categories:

- a) excursion ferry tickets for service from Battery Park only;
- b) charter service for service from Battery Park only;
- c) all other revenue

Licensee must indicate whether or not these amounts are inclusive of sales tax collected.

4.3. Licensee shall keep books and records as set forth in Article IV of the General Provisions, annexed hereto as Exhibit A, and shall institute a revenue control system acceptable to Commissioner.

4.4 In the event Parks determines that Licensee or his/her employees, agents, sublicensees, or subcontractors have breached sections 4.1 through 4.3, hereinabove and sections 6.2 through 6.7, herein, Licensee may be subject to a charge of \$100.00 in the nature of liquidated damages with respect to each incident of such breach provided that Licensee has been given reasonable notice of such breach and has willfully failed to cure within thirty (30) days of such notice.

4.5 License fees to Parks, shall be made payable to the City of New York at the Arsenal, Central Park, New York, New

York, 10021, Attn. Revenue Division.

ARTICLE V

UTILITIES

5.0 Licensee, at its sole cost and expense, shall install or cause to be installed, and maintain all utility lines, meters and supplies of power necessary for the proper operation of this license as described herein. Utilities may include, but shall not be limited to electricity, gas, heat, coolant, water and sewer. Parks does not make representation or warranty that existing cables, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available.

5.1 Licensee shall not undertake the installation of any utilitylines, meters, or suppliers of power as described in section 6.0 hereinabove, without having first obtained all necessary permits and approvals.

5.2 Licensee shall be responsible for payment of all utility costs incurred during the term of its license.

ARTICLE VI

OPERATIONS

6.0 Licensee, at its sole cost and expense, shall operate this License for the accommodation of the public during such seasons and times of day, in such manner as the Commissioner reasonably shall prescribe and as permitted by Federal, State, and City, laws, rules, regulations and orders. Licensee shall have the right to use the Licensed Premises to:

- a) Provide, program and manage the landing and docking facilities located on the Licensed Premises in accordance with a schedule of sailing as set forth in Exhibit C, attached hereto and made a part hereof. The schedule of sailing must be approved in writing by the Commissioner and may be modified from time to time if approved in writing by the Commissioner.
- b) Maintain entire Licensed Premises

6.1 Licensee agrees to operate this License for the accommodation of the public daily, except Christmas Day, on a year round basis, at such times of day and, in such manner as the Commissioner reasonably shall prescribe in writing. In regulating the hours of operation, the Commissioner may consider hours of

operation of other similar Park's facilities the nature of the community and the environs of the concession, the rules and regulations of Parks' operations, the public health and safety, and other similar considerations.

6.2 Licensee shall order and pay for all transportation tickets which shall be numbered consecutively and shall provide to Parks a certified copy of Licensee's order and receipt therefor and a certified statement of the number of tickets printed and delivered to Licensee. These certified copies must be delivered to Commissioner prior to the distribution of tickets.

6.3 Licensee at its sole cost and expense, shall obtain all licenses and permits that may be required to operate the License.

6.4 Licensee shall collect charges for:

- a) excursion ferry service;
- b) charter service;
- c) any other services approved by Commissioner;

6.5 Attached hereto as Exhibit C is the approved Schedule of Sailings for the 1992-93 Operating Year. Licensee shall notify Commissioner promptly of any permanent changes to said schedule. Such changes shall be subject to Commissioner's approval.

6.6 Licensee shall obtain equipment which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to the bank. If any funds derived from operations under this license are either determined as counterfeit currency or are stolen from Licensee, such loss shall be borne solely by Licensee.

6.7 Licensee at its sole cost and expense, shall print, frame, prominently display in a place and manner designated by Commissioner, the approved schedule of:

- (a) excursion ferry service;
- (b) charter service;
- (c) any other services.

6.8 Licensee shall personally operate said License or employ an operations manager satisfactory to Commissioner. The designated manager must be available by telephone during all hours of operation. Licensee shall replace any manager, employee, subcontractor or sublicensee whenever reasonably demanded by Commissioner.

6.9 Licensee, at its sole cost and expense, shall provide a sufficient number of uniformed attendants on duty at the Licensed Premises for the proper operation of this License. The uniform shall be of a color and design approved by Commissioner and all employees shall wear name tags with their names legibly printed

thereon. Licensee, at its sole cost and expense, shall provide, hire, train and supervise all personnel necessary for the proper operation of this License, including but not limited to:

- (a) the collecting of all monies;
- (b) the maintaining of the Licensed premises;
- (c) the conduct and supervision of all activities to be engaged in upon the Licensed Premises; and

6.10 Licensee shall prepare and provide to Parks, reports of major accidents occurring on the Licensed Premises. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises and Licensee shall notify Parks in writing, as to said person's name and address.

6.11 Licensee shall promptly notify Parks' personnel of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty or substantial damage of any character.

6.12 Licensee shall maintain close liaison with the Parks Enforcement Patrol and New York City Police and cooperate with all efforts to remove illegal vendors from the Licensed and

surrounding Premises.

6.13 Licensee may establish an appropriate advertising and promotion program. Licensee shall have the right, subject to the prior approval of the Commissioner, to print or to arrange for the printing of programs for events containing any advertising matter except advertising matter which is indecent, or in obvious bad taste, or which demonstrates a lack of respect for public morals or conduct.

6.14 Any sign permanently posted at the Licensed Premises, or any advertisement used in connection with such facility, shall be appropriately located and shall state that they are New York City Municipal concessions operated by Circle Line Statue of Liberty Ferry, Inc.

6.15 Licensee, throughout the Licensed Premises, shall post such signs as may be necessary to direct patrons to its facilities within the Licensed Premises. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. It is expressly understood that if Licensee contemplates placing any signs off-site, such as on nearby highways or streets, for the purpose of directing patrons to the Recreation Facility, or for any purpose, it shall be Licensee's responsibility to obtain any necessary approvals or permits from

any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all signs, whether on or off Parks' property, are subject to Commissioner's prior approval.

## ARTICLE VII

### MAINTENANCE, SANITATION AND REPAIRS

7.0 During the term of this License, Licensee at its sole cost and expense and to the reasonable satisfaction of Commissioner, shall put, keep, repair, preserve in good order Licensed Premises, as defined in Article II herein. Licensee shall at all times keep Licensed Premises clean, litter free, and neat. Licensee shall provide regular cleaning and maintenance services for Licensed Premises.

7.1 During the term of this License, Licensee shall maintain and repair the Licensed Premises in accordance with the standards set forth in this Agreement, including but not limited to repair and replacement of damaged piles, wales and chocks. All such maintenance and repair shall be performed by Licensee in a good and workmanlike manner. To secure Licensee's obligation to maintain and repair the Licensed Premises Licensee shall provide Parks with a Security Deposit as provided for in Article VI of the General Provisions, annexed hereto as Exhibit A.

7.2 Attached to this License is Exhibit B, a map of the Licensed Premises as defined in Article II herein, and adjacent areas setting, forth the areas which are the maintenance responsibility of Licensee.

7.3 Licensee, at its sole cost and expense and to the reasonable satisfaction of Commissioner, shall provide (and replace if necessary), all equipment and utility connections necessary for the operation of this license, and put, keep, repair, preserve and maintain in good order all equipment and utility connections found on, placed in, installed in or affixed to Licensed Premises. Licensee shall provide regular maintenance contracts for all utility connections, equipment and mechanical systems and follow maintenance schedules suggested by the manufacturers for all utility connections, equipment and mechanical systems.

7.4 At the expiration or sooner termination of this License, Licensee shall turn over to Parks the Licensed Premises which consists of Landing Slips, well maintained, in good repair, ordinary wear and tear excepted, together with the adjacent walkways to the extent described in Paragraph 2.0(b) herein.

## ARTICLE VIII

### APPROVALS

8.0 Licensee is solely responsible for obtaining all government approvals, permits and licenses required by Federal, State and

City laws, regulations, rules and orders to fulfill this License.

8.1 Whenever any act, consent, approval or permission is required of City or Commissioner under this license, the same shall be valid only if it is, in each instance, in writing and signed by Commissioner or her duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon City, Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or her duly authorized representative.

#### ARTICLE IX

#### ASSIGNMENTS AND SUBLICENSES

9.0 Notwithstanding anything contained in this License Agreement to the contrary, Licensee may assign its interest in this License Agreement subject to the following conditions:

a) No assignment of this License shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than forty-nine percent (49%) of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the

assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a prepared statement by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth satisfactory to Commissioner, together with a certification of its intention to continue the management and operation of the Licensed Premises in accordance with the provisions of this License. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises or to create any rights to payment as a condition of the granting of any required consent or approval.

(b) As used in this Article IX the term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than 49% in stock or voting control of the Licensee, including any transfer by operation of law. No sale or transfer of the stock owned by Licensee or its nominee may be made under any circumstance if such sale will result in a change of control violative of the intent of this Section.

9.1 Should Licensee choose to assign or sublicense the management and operation of any element of the Recreation facility to another party, Licensee must first obtain the

approval of Parks. Additionally, Parks shall have the right to be a signatory to any sublicense or assignment agreement Parks may, without prejudice veto any provisions in such sublicense or assignment agreement, whether it exercises its option to be a signatory to such agreement or not.

9.2 No consent to or approval of any assignment or sublicense granted pursuant to this Article IX shall constitute consent to or approval of any subsequent assignment or sublicense.

9.3 Failure to comply with this provision shall cause the immediate termination of this license.

#### ARTICLE X

#### PARKS CONSTRUCTION

10.0 Parks reserves the right to undertake construction on or through the Licensed Premises during the term of this License, Provided that any such construction shall not unreasonably interfere with Licensee's operations hereunder. Licensee agrees to accommodate any such construction and provide security and public access through the Licensed Premises as deemed necessary by the Commissioner.

ARTICLE XI

GENERAL PROVISIONS INCORPORATED HEREIN

11.0 The General Provisions annexed hereto as Exhibit A are hereby incorporated herein. In the event that there is any conflict between the General Provisions and this License Agreement, the language of this License Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have caused this License to be signed and sealed on the day and year first above written.

CITY OF NEW YORK  
PARKS & RECREATION

BY: Betsy Gotbaum  
Betsy Gotbaum, Commissioner

Dated: Dec 8, 1992

Circle Line Statue of Liberty Ferry,  
Inc.

BY: Beverly B. Kessenich  
BEVERLY BARRY KESSENICH VICE President  
Print Name and Title

Dated: NOV 24, 1992

APPROVED AS TO FORM;  
~~CERTIFIED AS TO LEGAL AUTHORITY~~

[Signature]  
-----  
ACTING CORPORATION COUNSEL

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this 8<sup>th</sup> day of December, 1992 before me personally came Betsy Gotbaum to me known, and known to be the Commissioner of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

*Elizabeth B. Okin*  
\_\_\_\_\_  
Notary Public

ELIZABETH B. OKIN  
Notary Public, State of New York  
No. 31-4936143  
Qualified in New York County 294  
Commission Expires June 13, 1994

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

On this 27<sup>th</sup> day of November, 1992 before me personally came BENJAMIN B. KESSELMAN, who, being duly sworn by me did depose and say that he resides at 930 PARK AVE NYC and that she is the President of the corporation described in and who executed the foregoing instrument and she acknowledged that she executed the same in his official capacity and for the purposes mentioned therein.

FRANCISCO GUEVARRA  
Notary Public, State of New York  
No. 31-4936143 Qual. in Queens Co.  
Commission Expires in New York County  
Commission Expires June 4, 1994

\_\_\_\_\_  
Notary Public  
*Francisco Guevara*



# City of New York

Department of Parks & Recreation - Revenue Division

## Permit

<b>PERMITTEE NAME &amp; ADDRESS</b>  Mr. Kevin Moran Circle Line-Statue of Liberty Ferry, Inc. 17 Battery Place, Suite 715 New York, NY 10004-1101	<b>TELEPHONE</b> (212) 809-0808	<b>CELLULAR</b>
	<b>BUSINESS</b>	<b>CONTACT</b> Kevin Moran
<b>DESCRIPTION OF CONCESSION/EVENT</b> Operation and Maintenance for the purpose of embarking and discharging passengers in the operation of passenger ferries on a regular schedule between Battery Park, Liberty Island and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises, other ferry operations and day and night charters of vessels, owned, operated or chartered by the Licensee at landing slips numbered 3, 4, and 5, and adjacent walkways located in Battery Park, Manhattan		
<b>PARK/LOCATION IN PARK</b> Landing slips numbered 3, 4, and 5, and adjacent walkways located in Battery Park, Manhattan.	<b>BOROUGH</b> Manhattan	<b>PERMIT #</b> M5-E-M
<b>EFFECTIVE DATE:</b> May 1, 2004	<b>EXPIRATION DATE:</b> March 31, 2007	
<b>FEE AND PAYMENT TERMS</b> Year One: \$500,000 versus 7.25% of gross receipts Year Two: \$500,000 versus 7.25% of gross receipts Year Three: \$500,000 versus 7.25% of gross receipts <i>(Please see payment schedule in attached letter.)</i>		
<b>INSURANCE REQUIREMENT:</b>  Please see "Other Terms and Conditions" below	<b>BROKER</b>	
<b>SECURITY DEPOSIT</b> \$50,000.00 (already held by Parks)	<b>IC NUMBER &amp; DATE RECEIVED</b>	
<b>OTHER TERMS &amp; CONDITIONS</b> <i>Aside from the fee payment structure that is cited in the attachment and the new effective and expiration dates listed above, all other terms and conditions of License Agreement #M5-E-M, dated December 8, 1992, attached hereto and incorporated herein, shall apply to this operation. Notwithstanding the foregoing, in addition to the provisions stated in Section 3.1 of the December 8, 1992 License Agreement, the NYC Department of Parks reserves the right to immediately terminate this agreement upon the expiration or sooner termination of Circle Line-Statue of Liberty, Inc.'s contract with the National Park Service.</i>		

TERMS ACCEPTED BY

ISSUED BY

TITLE

DATE

*[Signature]*

*[Signature]*

4/27/04



City of New York  
Parks & Recreation

Adrian Benepe  
Commissioner

The Arsenal  
Central Park  
New York, New York 10021

Joanne G. Imohiosen  
Assistant Commissioner  
Revenue

(212) 360-3404  
joanne.imohiosen@parks.nyc.gov

April 27, 2004

Mr. Kevin Moran  
Circle Line-Statue of Liberty Ferry, Inc.  
17 Battery Place, Suite 715  
New York, NY 10004-1101

**RE: Modification of License Agreement between City of New York Department of Parks & Recreation and Circle Line-Statue of Liberty Ferry, Inc. for the Operation and Maintenance of a Commercial Ferry Service in Battery Park, Manhattan (M5-E-M)**

Dear Mr. Moran:

This is to authorize Circle Line-Statue of Liberty Ferry, Inc. to operate and maintain a commercial ferry service for the purpose of embarking and discharging passengers in the operation of passenger ferries on a regular schedule between Battery Park, Liberty Island and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises, other ferry operations and day and night charters of vessels, owned, operated or chartered by the Licensee at landing slips numbered 3, 4, and 5, and adjacent walkways located in Battery Park, Manhattan for a three year term commencing on May 1, 2004 and expiring on March 31, 2007.

Aside from the fee payment structure and security deposit requirement that is cited on the following page, and the new effective and expiration dates, *all other terms and conditions of License-Agreement M5-E-M, dated December 8, 1992, shall apply to this operation. In addition to the provisions stated in Section 3.1 of the license agreement, the NYC Department of Parks reserves the right to terminate this agreement upon the expiration or sooner termination of Circle Line-Statue of Liberty, Inc.'s contract with the National Park.*

If you have any questions, please feel free to call Slater Gray, Project Manager for Revenue, at 212-360-3405.

Sincerely,

Joanne Imohiosen

cc: Mike Leonetti, Accounting

**FEE PAYMENT SCHEDULE  
M5-E-M**

The fee requirement for License Agreement #M5-E-M from (April 1, 2004 – May 1, 2004 operating under a temporary permit) May 1, 2004 – March 31, 2007 shall be as follows:

*\$500,000 versus 7.25% of gross receipts, whichever is greater:*

The minimum fee schedule is as follows:

<b>Date Due, Year One</b>	<b>Amount Due</b>
May 10, 2004	\$41,665.00
June 10, 2004	\$41,665.00
July 10, 2004	\$41,665.00
August 10, 2004	\$41,665.00
September 10, 2004	\$41,665.00
October 10, 2004	\$41,665.00
November 10, 2004	\$41,665.00
December 10, 2004	\$41,665.00
January 10, 2005	\$41,665.00
February 10, 2005	\$41,665.00
March 10, 2005	\$41,665.00
April 10, 2005	\$41,685.00
<b>Date Due, Year Two</b>	<b>Amount Due</b>
May 10, 2005	\$41,665.00
June 10, 2005	\$41,665.00
July 10, 2005	\$41,665.00
August 10, 2005	\$41,665.00
September 10, 2005	\$41,665.00
October 10, 2005	\$41,665.00
November 10, 2005	\$41,665.00
December 10, 2005	\$41,665.00
January 10, 2006	\$41,665.00
February 10, 2006	\$41,665.00
March 10, 2006	\$41,665.00
April 10, 2006	\$41,685.00
<b>Date Due, Year Three</b>	<b>Amount Due</b>
April 10, 2006	\$41,665.00
May 10, 2006	\$41,665.00
June 10, 2006	\$41,665.00
July 10, 2006	\$41,665.00
August 10, 2006	\$41,665.00
September 10, 2006	\$41,665.00

October 10, 2006	\$41,665.00
November 10, 2006	\$41,665.00
December 10, 2006	\$41,665.00
January 10, 2007	\$41,665.00
February 10, 2007	\$41,665.00
March 10, 2007	\$41,665.00
April 10, 2007	\$41,685.00

Circle Line-Statue of Liberty Ferry, Inc. shall submit payments to the City on a monthly basis on or before the tenth day of each month, which payments are listed above, or 7.25% of the gross receipts for the previous month, whichever is greater.

**SECURITY DEPOSIT:**

The security deposit required for this concession is \$50,000. Parks is currently holding this deposit.

Please sign where indicated below, and return the original copy to us for our records.

AGREED TO:

  
 Kevin Moran / President

DATE:

4/27/07

2006 PROSPECTUS FOR REFERENCE USE



IN REPLY REFER TO:

# United States Department of the Interior

NATIONAL PARK SERVICE  
Statue of Liberty National Monument  
Liberty Island  
New York, New York 10004

C-3817

November 13, 2006

Joanne G. Imohiosen  
Assistant Commissioner Revenue  
City of New York Parks and Recreation  
The Arsenal, Central Park  
New York, NY 10021

Dear Ms. Imohiosen:

I am writing to request an extension of the City of New York Parks and Recreation's License Agreement with the National Park Service's (NPS) ferry concessioner, Circle Line – Statue of Liberty Ferry to operate landing and docking facilities at Battery Park for ferry services to the Statue of Liberty National Monument and Ellis Island.

The original term of the License Agreement was from April 1, 1992 to March 31, 2004; when Circle Line's concession contract with NPS was extended through March 31, 2007, the License Agreement also was extended. As you are aware from our recent discussions, the NPS intends to issue a Prospectus seeking proposals for a new ferry service concessions operation by the end of December 2006. To avoid an interruption in visitor services to the Statue of Liberty and Ellis Island, it is anticipated that a continuation of services will be authorized for Circle Line until a new concessions contract is in place. We expect a new contract to be in place in the fall of 2007. Extension of the City Parks License Agreement to be coterminous with the continuation of the NPS concessions contract also is needed to avoid an interruption of visitor services.

I would be happy to discuss these issues with you and look forward to continuing collaboration between NPS and the City of New York Parks and Recreation.

Sincerely,

  
Cynthia R. Garrett  
Superintendent

MEMORANDUM OF UNDERSTANDING  
 BETWEEN THE  
 NATIONAL PARK SERVICE  
 STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND  
 AND  
 CITY OF NEW YORK DEPARTMENT OF PARKS & RECREATION

Article I. BACKGROUND

This MEMORANDUM OF UNDERSTANDING, hereinafter called AGREEMENT, is entered into by and between the United States Department of the Interior, National Park Service, acting through the Superintendent Statue of Liberty National Monument and Ellis Island, hereinafter referred to as NPS; and, The City of New York, acting through the Department of Parks & Recreation, hereinafter referred to as Parks;

WHEREAS, the Statue of Liberty National Monument and Ellis Island was established by Presidential Proclamation as a symbol to the world of the dreams and aspirations which have drawn millions of immigrants to America; and

WHEREAS, the Statue of Liberty stands as eternal as the symbol of the freedom which has been made a living reality in the United States for men and women of all races, creeds, and national origins who have united in allegiance to the Constitution of the United States and to the imperishable ideals of our free society; and

WHEREAS, the NPS is responsible for the administration of the Statue of Liberty National Monument and Ellis Island and the safe transportation of millions of visitors every year who visit Liberty and Ellis Islands; and

WHEREAS, the NPS is currently in the process of developing a prospectus to seek offers for a new contract to operate a ferry concession to transport visitors to Liberty and Ellis Islands; and

WHEREAS, the Parks is responsible for the administration of Battery Park which is the current embarkation point for the Statue of Liberty National Monument and Ellis Island ferry concession; and

WHEREAS, successful conclusion of the process to obtain offers to provide transportation to the Statue of Liberty National Monument and Ellis Island is dependent upon obtaining a license from Parks to operate a ferry service from Battery Park; and

WHEREAS, the Parks desires to facilitate the process of establishing a new NPS ferry concession contract in order to accommodate the millions of visitors who access the Statue of Liberty National Monument and Ellis Island from lower Manhattan.

NOW THEREFORE, in consideration of the mutual covenants herein contained the parties agree as follows:

Article II. RESPONSIBILITIES OF THE PARTIES

A. Parks hereby agrees to seek the approval required by applicable City laws, rules and regulations to grant a (10) ten year term license to operate a ferry service for the transportation of passengers between Battery Park and Liberty and Ellis Islands to the party which is designated by the NPS to provide such service and enters into a concession contract with the NPS. It is anticipated that the said license shall require similar responsibilities as the license attached hereto as Exhibit A, and the fee for said license payable to Parks is projected to require an annual payment of either a \$2,000,000 minimum annual fee or 8% of the Concessioner's gross revenues from ticket sales for embarkation from Battery Park for the first five years of the concession contract and for the next five years 8 1/2% percent

of the gross revenues from ticket sales for embarkation from Battery Park, whichever is higher; provided, however, that in the event of any suspension of ferry operations by force majeure or other circumstance beyond the control of the Concessioner, the minimum annual fee due to Parks shall be reduced pro rata. Subject to all necessary approvals, the term of said license shall be coterminous with the period for which the ferry concession operator is authorized to provide ferry service from the Parks docks at Battery Park by the NPS. Parks acknowledges that during the course of this contract, the NPS may require the Concessioner to move to another location terminating its license with Parks. Subject to the necessary approvals, said license will provide that should NPS require the Concessioner to terminate said license in order to move to another location and to enter into a similar license for those facilities and after formal notification by NPS to Parks documenting such directive to the Concessioner, Parks will agree to not pursue any claims for lost revenues related to such early termination of said license.

B. The NPS shall provide Parks with one hundred (100) days advance written notice of the date when the new ferry concession contract becomes effective. If the license can not be executed in this time, Parks will issue a temporary license under the terms described in Article II A to the party which is designated by the NPS to provide ferry service and enters into a concession contract with the NPS.

#### Article III. TERM OF AGREEMENT

Unless sooner terminated, this AGREEMENT shall be effective upon execution by both parties and shall remain in effect for ten (10) years from that date.

#### Article IV. KEY OFFICIALS/PERSONS

For the National Park Service:

Cynthia R. Garrett  
 Superintendent, Statue of Liberty National Monument and Ellis Island  
 Liberty Island  
 New York, NY 10004

For Parks:

Joanne G. Imohiosen  
 Assistant Commissioner Revenue  
 City of New York Parks & Recreation  
 The Arsenal, Central Park  
 New York, NY. 10021

#### Article V. GENERAL PROVISIONS

1. All obligations of the NPS hereunder are subject to the laws and regulations applicable to the NPS. The NPS shall have no obligation to reimburse the Parks for any services rendered pursuant to this AGREEMENT.

2. No member of, or delegate to, Congress, or resident commissioner, shall be admitted to any share or part of this AGREEMENT, or to any benefit that may arise therefrom.

3. This Agreement and the obligations of the NPS hereunder shall be subject to the availability of funding, and nothing contained herein shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names.

Dated at New York, New York, this 13<sup>th</sup> day of Dec, 2006.

UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By: Cynthia R. Garrett  
Cynthia R. Garrett, Superintendent  
Statue of Liberty National Monument

CITY OF NEW YORK, DEPARTMENT OF PARKS & RECREATION

By: Joanne G. Imohiosen  
Joanne G. Imohiosen, Assistant Commissioner Revenue  
City of New York Parks & Recreation

2006 PROSPECTUS - FOR REFERENCE USE

**APPENDIX L**

**NEW JERSEY EMBARKATION POINT AGREEMENTS**

**Current MOU between New Jersey and Existing Concessioner**

**MOU for Future Agreement**

2006 PROSPECTUS FOR REFERENCE USE

STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY

MEMORANDUM OF UNDERSTANDING  
CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.

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STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Four (2004)

BETWEEN THE STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY  
501 East State Street, 4th Floor  
PO Box 404  
Trenton, New Jersey 08625-0404

AND CIRCLE LINE-STATUE OF LIBERTY FERRY, INC.  
Suite 715  
17 Battery Place  
New York, New York 10004

WHEREAS, the National Park Service, hereinafter referred to as Service, has contracted for passenger ferry transportation from Liberty State Park, New Jersey, to Liberty and Ellis Islands with a concessionaire, Circle Line-Statue of Liberty Ferry, Inc., a New York Corporation, hereinafter referred to as Statue Ferry; and

WHEREAS, the State of New Jersey, Department of Environmental Protection and its Division of Parks and Forestry, hereinafter referred to as New Jersey, has determined that the provision of facilities and services so that the public may visit the Statue of Liberty and Ellis Island is consistent with the effective administration of Liberty State Park for public recreation; and

WHEREAS, the parties hereto entered into a Memorandum of Understanding, effective June 13, 1994, hereinafter referred to as Agreement, whereby New Jersey made available to Statue Ferry temporary pier and ticketing facilities until permanent facilities were available by New Jersey for the operation of passenger ferry transportation service from Liberty State Park, New Jersey to Liberty and Ellis Islands within Statue of Liberty National Monument; and

WHEREAS, the parties entered into three (3) Amendments to the Agreement, with Amendment No. One going into effect on January 21, 1998 and Amendments No. Two and Three effective March 31, 1999 and letter of June 16, 2004, pending execution of this Agreement; and

WHEREAS, New Jersey has available mooring facilities, ticketing space and visitor waiting space and has determined to make these available for use in support of the passenger ferry service desired by the Service; and

WHEREAS, Statue Ferry has agreed to make appropriate payments for use of the facilities provided to it by New Jersey at Liberty State Park for the support of this service; and

NOW THEREFORE, the parties hereto agree to enter into this Memorandum of Understanding, hereinafter referred to as Agreement, as follows:

## 1. NEW JERSEY

A. Shall continue to provide to Statue Ferry a permanent location on the first floor of the restored CRRNJ Terminal Building for use as a visitor staging area and the operation of its ticketing facilities as shown on Exhibit A, attached hereto and made a part hereof, and additional external patron waiting space in the cross-hatched areas along the North Baggage Tunnel and the Ferry Concourse, together with mooring facilities at the Pier identified as Circle Line Dock as shown in Exhibit A-1, attached hereto and made a part hereof.

B. The permanent facilities designated pursuant to Paragraph A above are to be used by Statue Ferry for the purpose of the Agreement while the same remains in effect and Statue Ferry continues to be authorized by Concession Contract with Service to conduct ferry operations.

- (I) The pier located in the area described in Exhibit A-1 will be made available to Statue Ferry on an exclusive basis during Statue Ferry's regularly scheduled hours of operation from Liberty State Park.
- (ii) Notwithstanding B(I) above, New Jersey shall remain in ultimate control of any and all space covered by this Agreement. It may allow persons other than Statue Ferry to utilize the pier described in B(I) above with the prior written approval of Statue Ferry which shall not unreasonably be withheld.
- (iii) In the event that New Jersey permits or allows any person to use the pier in B(I) above, New Jersey shall, as a pre-condition of said use, require the person to provide New Jersey with a surety bond or other guarantee in cash or cash equivalent satisfactory to New Jersey and Statue Ferry in an amount and form satisfactory to New Jersey and Statue Ferry guaranteeing the repair of any damage to the docking facility resulting from the person's use, reimbursing Statue Ferry for loss of business during interruption of Statue Ferry's operations due to such damage and repair, and payment to New Jersey of pro-rata fees due to be paid by Statue Ferry to New Jersey during such period. The bond or guarantee shall name New Jersey and Statue Ferry as co-obligees.

Statue Ferry shall have the option to repair damage inflicted by any said third (3<sup>rd</sup>) party utilizing therefor the proceeds from the said surety bond or other guarantee in cash or cash equivalent, except as provided for in Paragraphs 19D and 23A. Such repairs shall be subject to the prior written approval of New Jersey.

- (iv) Shall provide public restroom facilities in the CRRNJ Terminal Building, maintain them, provide the necessary cleaning of them, and provide the necessary supplies and utilities for their care and support.
- (v) Shall provide parking facilities for automobiles and buses. The number and location of parking facilities shall be determined by New Jersey.
- (vi) Shall clean and maintain and provide all necessary utilities for the grounds, public areas of buildings and related spaces, furniture, and fixtures not including areas provided for the exclusive use of or devoted to the sole purpose of supporting Statue Ferry which shall be Statue Ferry's responsibility.
- (vii) Shall encourage public transportation service to the ferry-service facilities area and shall take such action as can reasonably be taken to facilitate that transportation and public access to and from that transportation.
- (viii) Shall clear snow as may be necessary, except in the area of Statue Ferry liability shown on Exhibit A-1.
- (ix) Shall not authorize others to operate or conduct activities in the ferry service facilities area that will interfere with the scheduled service to be conducted by Statue Ferry. New Jersey's food and beverage concessionaire at Liberty State Park shall be allowed to operate mobile concession carts in the ferry service facilities area for the purpose of selling food and beverages to Statue Ferry's customers waiting to buy tickets, waiting to board the ferry or disembarking from the ferry. However, New Jersey's food and beverage concessionaire shall be required by New Jersey to remove its carts from the immediate loading area as more specifically described on Exhibit A-1 when Statue Ferry's vessels are loading and unloading passengers. In addition, New Jersey may authorize other ferries to operate out of Liberty State Park so long as those other ferries do not interfere with Statue Ferry's scheduled service at Liberty State Park, and so long as those other ferries do not interfere with whatever contractual rights Statue Ferry has to provide passenger ferry service to Liberty and Ellis Islands.
- (x) Shall supply and install directional and informational signs in Liberty State Park about the ferry service and/or will permit them to be supplied and installed by Statue Ferry with the prior written approval of New Jersey and insofar as they conform to the signing practices and policies acceptable to New Jersey within Liberty State Park.
- (xi) Shall request that all reasonable steps are taken by the appropriate authorities of the State of New Jersey to provide directional signing to the "Statue of Liberty and Ellis Island Ferry" from the New Jersey Turnpike at Exit 14B and at other appropriate roadway points in advance of Exit 14B.

## 2. STATUE FERRY

A. Shall provide all of the necessary equipment, supplies and personnel and shall operate the New Jersey ferry service as required in the concession contract between Service and Statue Ferry and in this Agreement

B. Shall use the building, land, and docking space provided by New Jersey only for the operation of the scheduled ferry service described in this Agreement and to pick-up and discharge passengers as part of that scheduled ferry service during regularly scheduled Park operating hours. Statue Ferry shall, upon prior notification to the Superintendent of Liberty State Park of not less than forty-eight (48) hours, be permitted to use the ferry service facilities for charters and special groups as part of the ferry service described in this Agreement. This Agreement does not authorize the conduct of any service other than the ferry service specifically described herein and specifically does not include the sale of products or the sale of foods or the sale of beverages or the sale of any products through vending machines from the building, land and docking space provided by New Jersey.

- (I) Statue Ferry and/or any person or entity which owns a controlling interest in Statue Ferry's ownership shall not assign or otherwise sell or transfer responsibilities under this Agreement or the concession operations authorized hereunder, nor sell or otherwise assign or transfer (including but not limited to, mergers, consolidations, reorganizations, or other business combinations), a controlling interest in such operations, this Agreement or a controlling interest in Statue Ferry's ownership without the prior written approval of the Secretary of the United States Department of the Interior (the "Secretary") and without having notified New Jersey of the proposal and the Secretary's approval of it.
- (ii) Statue Ferry may not enter into any agreement with any entity or person except employees of Statue Ferry to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without written approval of the Service at least thirty (30) days in advance of such transaction.

C. Understands and agrees that this Agreement is not a lease and that no building, space, or equipment is leased to Statue Ferry by New Jersey. Statue Ferry shall have the use of the buildings, space, and docks provided by New Jersey, except as herein provided, and may occupy them, operate them only for the purposes herein established, and continue in possession thereof for the term of this Agreement unless this Agreement is sooner terminated by New Jersey as hereinafter provided in Paragraph 27 and only so long as Statue Ferry remains concessionaire authorized to provide ferry service to Ellis and Liberty Islands by Service.

### 3. TERM OF AGREEMENT

A. The initial term of this Agreement (the "Initial Term") shall be for a period commencing on the effective date of this Agreement and expiring on the third (3<sup>rd</sup>) anniversary thereof, unless sooner terminated as hereinafter provided in Paragraph 27 or until the expiration or termination of the concession contract between Statue Ferry and Service, whichever may from time to time be shorter. For the purposes of this Agreement, the Effective Date shall be the date on which the last of the following has occurred:

- (I) this Agreement is signed on behalf of New Jersey and Statue Ferry; Statue Ferry provides and New Jersey accepts the Operation and Management Plan as set forth Paragraph 6 hereof;

- (ii) the letter of credit required under Paragraph 16 hereof is received and approved by Department;
- (iii) the certificate of insurance required under Paragraph 18 hereof is received and approved by New Jersey;
- (iv) Statue Ferry provides New Jersey with satisfactory evidence that Statue Ferry has obtained all licenses, permits, authorizations or any documents required by any applicable government agency having jurisdiction over the Statue Ferry premises and/or the conduct of Statue Ferry's operations thereon as required under Paragraph 13 hereof;
- (v) Corporate resolution has been received by New Jersey, as required under Paragraph 29; and
- (vi) this Agreement is dated by New Jersey and forwarded to Statue Ferry by Certified Mail.

B. Provided that Statue Ferry shall keep, observe and perform all of the terms, covenants and conditions of this Agreement on Statue Ferry's part to be kept, observed and performed and provided further that the concession contract between Statue Ferry and Service shall be in full force and effect, Statue Ferry shall have the right to extend the Initial Term of this Agreement if the concession contract between Statue Ferry and Service is extended. The Initial Term and any Renewal Term are collectively herein referred to as the "Term". In order to exercise right to renew this Agreement, Statue Ferry shall notify New Jersey, in writing by certified mail, return receipt requested, not less than twelve (12) months prior to the expiration of the then existing Term hereof, that Statue Ferry's concession contract with Service has been extended and the Statue Ferry elects to extend the Term of this Agreement, and provided further that this Agreement, as extended, shall be upon the same terms, covenants and conditions as are contained herein, except as to the duration of the Term hereof, the consideration to be paid under Paragraph 4 of this Agreement during the renewal term, any amendments approved during the Term, and any other provisions of this Agreement which by their terms, are applicable only to any portions of the Term and, excluding, upon the expiration of the Renewal Term, any further option of extension.

#### 4. RENT

A. Statue Ferry shall, on a calendar year basis beginning on April 1<sup>st</sup> and ending on March 31<sup>st</sup> (hereinafter referred to as the "Calendar Year"), pay to New Jersey as consideration for the privileges herein granted an annual fee which shall be an amount equal to the greater of Seventy Five Thousand (\$75,000.00) Dollars or seven (7%) percent of the Total Gross Revenue which for the purposes of this Agreement shall be the total gross revenue from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park during each said Calendar Year. For the purpose of this Agreement, stolen tickets shall be deemed to be accounted for. In the event that the New Jersey Sales Tax is imposed on the sale of tickets by Statue Ferry, the amount of New Jersey State Tax shall be excluded in the computation of Total Gross Revenue on which percentage fees are payable.

B. Statue Ferry shall pay the minimum annual fee of Seventy Five Thousand (\$75,000.00) Dollars to New Jersey in two (2) installments of Thirty Seven Thousand Five Hundred (\$37,500.00) Dollars each. The first (1<sup>st</sup>) installment shall be paid on or before June 1<sup>st</sup> of the then current Calendar Year. The second (2<sup>nd</sup>) installment shall be paid on or before October 1<sup>st</sup> of the then current Calendar Year. New Jersey shall make a final determination of the total payment due for said Calendar Year based on a certified audit of Total Gross Revenue. The audit shall be prepared by a certified public accountant and submitted by Statue Ferry in accordance with Paragraph 26E. In the event that the audit determines that the percentage of Total Gross Revenue for said Calendar Year is greater than the minimum annual fee, Statue Ferry shall, upon submission of the audit, pay such amount which in addition to the minimum fixed annual payment makes the total annual payment equal to seven (7%) percent of the Total Gross Revenues for said Calendar Year.

C. All payments shall be made to the Liberty State Park Superintendent by check made payable to "Treasurer - State of New Jersey". In the event that any check for payment is returned to New Jersey, all future compensation payments shall be made by certified or cashier check.

D. A one and one half (1 ½) percent payment penalty shall be assessed for any payment not posted to New Jersey on or prior to the payment dates specified in this Agreement. In addition, a one and one half (1 ½) percent monthly interest charge shall be applied to any unpaid balance for each thirty (30) day period or portion thereof that payment is delayed.

E. If Statue Ferry fails to pay the above consideration at such time and in such manner as specified therein, such failure shall constitute grounds for termination of this Agreement.

F. It is the intention of New Jersey and Statue Ferry that this Agreement shall yield to New Jersey the net annual compensation specified herein during the term of this Agreement, and that all costs, expenses and obligations of every kind and nature whatsoever relating to Statue Ferry's operations hereunder shall be paid by Statue Ferry. The compensation, additional compensation and any other sums payable hereunder by Statue Ferry shall be paid without notice or demand and without set-off, counterclaim, deduction, defense or deferment, except as provided for in Paragraph 19B of this Agreement.

G. If Statue Ferry shall fail to make or perform any payment or any act on its part to be made or performed under this Agreement, then:

- (i) upon Statue Ferry's failure to make such payment within thirty (30) days after Statue Ferry receives New Jersey's written notice thereof;
- (ii) upon Statue Ferry's failure to perform such act within thirty (30) days after Statue Ferry receives New Jersey's written notice thereof (or if such act is not capable of being performed within such thirty (30) day period, upon Statue Ferry's failure to commence to perform such act within such thirty (30) day period and diligently to complete such act thereafter; or
- (iii) without notice to Statue Ferry upon the occurrence of any emergency situation.

New Jersey may (but shall not be obligated to), without waiving any default or releasing Statue Ferry from any obligation, make such payment or perform such act for the account and the cost and expense of Statue Ferry. All sums so paid by New Jersey and all reasonable necessary and incidental costs and expenses (including reasonable attorney's fee and expenses) incurred in connection with the performance of any such act by New Jersey, together with interest at the Prime Rate plus three (3%) percent per annum from the date of the making of such payment or of the incurring of such costs and expenses by New Jersey, shall be payable by Statue Ferry, such amount constituting additional compensation hereunder.

H. The annual compensation payable by Statue Ferry during the Initial Term and any Renewal Term as provided in Paragraph 4A hereof shall be an amount equal to the greater of seven (7%) percent of the Total Gross Revenue as provided in Paragraph 4A above or the minimum fixed annual payment to become payable during each such year. The minimum fixed annual payment for any Renewal Term shall be agreed upon by New Jersey and Statue Ferry prior to the commencement of such Renewal Term and shall not be less than the minimum fixed annual compensation for the last year immediately preceding the commencement of such Renewal Term.

I. The parties acknowledge that:

- (i) as indicated in the Report of the Senate Committee on Appropriations relating to enactment of P.L. 102-143, it is likely that a pedestrian bridge will be opened that would link Liberty State Park and Ellis Island; and
- (ii) in addition to serving pedestrians, the bridge may also be used by emergency vehicles, solid waste vehicles, and vehicles necessary to support the Conference Center that may be built on Ellis Island.

If such a bridge is constructed or opened, or both, Statue Ferry agrees not to seek injunctive relief against the operation or construction of the bridge. Moreover, Statue Ferry agrees that its sole relief against New Jersey as the result of the construction or operation of the bridge, or both, is to have its percentage rate of rent reduced at one-half ( $\frac{1}{2}$ ) the proportion as the number of ferry passengers from Liberty State Park to Ellis Island in each year following the opening of the bridge bears to the said number of ferry passengers in the year preceding the opening of the bridge, provided however, that in no event shall Statue Ferry's percentage rent be reduced below two and one-half (2.5%) percent of its Total Gross Revenue. For example, if Statue Ferry serves one-hundred (100) customers prior to the opening of the bridge, and only sixty (60) after its opening, its annual rent should be adjusted from seven (7%) percent to five and one half ( $5\frac{1}{2}$ %) percent. This Agreement shall have no effect on whatever rights Statue Ferry otherwise may have.

- (iii) to seek money damages against any party other than New Jersey for damages, if any, sustained as a result of the construction or operation of the bridge; or
- (iv) to pursue its remedies against any party, including New Jersey, in any other matter involving this Agreement.

## 5. IMPROVEMENTS, REPAIRS OR MODIFICATIONS

A. In the event that Statue Ferry desires to make any improvements, repairs or modifications to the facilities herein provided, Statue Ferry shall, prior to commencing any improvements, construction, repairs, or modifications to the facilities provided by New Jersey under the terms of this Agreement, submit plans to New Jersey and obtain the written approval thereof by New Jersey.

B. Shall make alterations, repairs improvements or affix equipment to the real property of New Jersey provided for the purpose of this Agreement at the sole cost of Statue Ferry. Such alternations, repairs and all equipment affixed (except for ticket machines and other similarly affixed equipment provided by Statue Ferry and reasonably removable by Statue Ferry without damage to the property of New Jersey) shall become the property of New Jersey when made or affixed without payment of compensation therefor by New Jersey to Statue Ferry. Statue Ferry shall, at its sole cost and expense, obtain all licenses, permits, certificates and/or other documents of approval required by all public agencies having jurisdiction over the pier area and/or the work to be performed in any proposed alternation, repair, improvement, or installation of equipment. Statue Ferry shall, prior to the letting of a contract and the commencement of work, provide New Jersey with written evidence that all such licenses, permits, certificates and/or other documents of approval have been obtained. After completion of the work, Statue Ferry shall provide New Jersey with appropriate documentation that the work has been completed in accordance with the license, permit, certificate and/or other documents of approval. All written evidence and appropriate documentation of approval shall be submitted by Statue Ferry in form satisfactory to New Jersey.

C. Shall at its sole cost and expense, put, keep, and maintain the facilities and all equipment and improvements thereon provided by Statue Ferry or by New Jersey to Statue Ferry for Statue Ferry's exclusive use or for use exclusively in support of Statue Ferry's operations under the terms of this Agreement in good order and in full and complete repair to the satisfaction of New Jersey during the term of this Agreement. Such maintenance shall include all repairs and painting as directed by New Jersey. At the expiration or sooner termination of this Agreement, Statue Ferry shall surrender the facilities provided under this Agreement and all equipment and improvements affixed thereon (except for ticket machines and other similarly affixed equipment provided by Statue Ferry, and reasonably removable by Statue Ferry without damage to the property of New Jersey) in the same condition as was found by Statue Ferry, reasonable wear and tear excepted.

## 6. MANAGEMENT/OPERATION PLAN

Shall conduct its operation within Liberty State Park in accordance with a Management Plan approved by New Jersey and written Operations Plan to be identified as Exhibit B, attached hereto and made a part hereof, developed by the Superintendent, Statue of Liberty National Monument and Ellis Island and such modifications therein, if any, as may be directed by the said Superintendent during the term of this Agreement. Provisions included in such Plan shall be consistent with the management objectives of Liberty State Park and shall not interfere with public access to and enjoyment of Liberty State Park. Statue Ferry shall keep on file with New Jersey a current sailing schedule as approved from time to time by the Service.

**7. UNIFORMS**

Shall provide and/or require each employee working within Liberty State Park that comes into direct contact with the public to wear a uniform of a color and design approved by the Service and to wear a name tag with their names legibly printed thereon.

**8. DISCRIMINATION**

During the performance of this Agreement, the participants agree to abide by the terms of Executive Order 11246 on non-discrimination and will not discriminate against any person because of race color, religion, sex, age, sexual preference or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age, sexual preference or national origin.

**9. SIGNAGE/ADVERTISING**

A. Shall submit prior to publication, posting or broadcasting or other use all forms of signage/advertising pertaining to Statue Ferry's operations from Liberty State Park for the prior approval of New Jersey. Said approval shall not be unreasonably withheld.

B. Shall, in all promotion and advertisement of its operations from Liberty State Park under this Agreement, provide that such premises are administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry as part of Liberty State Park.

C. Shall not erect, post or paint signs within Liberty State Park without the prior written approval of New Jersey.

**10. DANGEROUS SUBSTANCES**

Shall not use, store, or permit to be stored on the property of New Jersey provided under this Agreement any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or any explosives of any kind or any substance or thing prohibited in the standard policies of fire insurance companies in the State of New Jersey.

**11. CONDITION OF PREMISES**

Shall keep at all times the premises provided by New Jersey under the terms of this Agreement neat and clean and in good order. Waste receptacles shall be provided by New Jersey for use by the public. All waste material shall be collected and stored in closed containers in a manner satisfactory to New Jersey and shall be disposed of by New Jersey.

**12. PAYMENT FOR UTILITY SERVICE**

Statue Ferry will provide its own telephone service at the CRRNJ Terminal Building. For un-metered utilities such as heat and air conditioning, the cost of such utilities shall be assessed by New Jersey to Statue Ferry on a per square foot basis.

### 13. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE

A. Shall obtain all necessary and required Federal and State licenses, permits and approvals for the operation of the activities described in this Agreement at Statue Ferry's expense and maintain such licenses, permits and approvals current throughout the duration of this Agreement. Statue Ferry shall submit copies of said licenses, permits, and approvals to New Jersey prior to signature of this Agreement by New Jersey.

B. Shall comply with all Federal and State laws, statues and regulations pertaining to the activity authorized herein and to Liberty State Park.

### 14. VIOLATIONS/SUMMONS

Shall if Statue Ferry is issued a summons for violation of Federal or State requirements concerning the activities authorized in this Agreement, immediately forward a copy of the summons to New Jersey. Statue Ferry shall have such period of time to correct said violation as is prescribed in the summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of this Agreement and New Jersey may in its discretion immediately suspend or terminate Statue Ferry's operations under this Agreement. Statue Ferry shall indemnify New Jersey against all liability, claims, loss, or payments of any kind arising from Statue Ferry's failure or omission to comply with any such law or regulation.

### 15. ALARM SYSTEM

The CRRNJ Terminal Building shall be secured by the use of an alarm system installed and to be maintained by New Jersey; provided however, that New Jersey shall not be responsible to Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors or invitees, express or implied, for loss, damage, or destruction of equipment or personal property on the area provided or any other State-owned property, except for the willful, malicious, deliberate or grossly negligent act of New Jersey, its officials, officers, agents, employees, successors, assignees, contractors or invitees. New Jersey shall be responsible for security of the area during use thereof by any person other than Statue Ferry as provided in Paragraph 1B(ii) of this Agreement and New Jersey shall be responsible to Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors or invitees, express or implied, for loss, damage or Destruction of equipment or personal property on the area provided or any other State-owned property caused by the negligent act of said person.

### 16. BANK LINE OF CREDIT - IRREVOCABLE LETTER OF CREDIT

Shall in order to assure its satisfactory performance of the terms and conditions of this Agreement, establish and maintain an irrevocable bank letter of credit in favor of New Jersey in the amount of Twenty Five Thousand (\$25,000.00) Dollars which shall be available for payment by the bank to New Jersey upon receipt from New Jersey of sufficient documentation that Statue Ferry is in default in the payment of money due and payable under this Agreement or that New Jersey has expended or may be required to expend any sum by reason of Statue Ferry's default of any terms, conditions, and covenants of this Agreement and that such sum has remained unpaid for not less than five (5) days, Statue Ferry shall not draw down on the letter of credit. In the event that New Jersey draws down on the letter of credit, Statue Ferry shall immediately restore the letter of credit to the full amount drawn down by New

Jersey. The amount of the letter of credit shall not represent a limitation on the liability of Statue Ferry. Statue Ferry shall maintain said irrevocable bank letter of credit in a form satisfactory to New Jersey for the duration of this Agreement and for a period of forty-five (45) days after the expiration or termination of this Agreement. Said letter of credit shall be submitted to and approved by New Jersey prior to New Jersey's final approval of this Agreement. In the event this Agreement is renewed, Statue Ferry shall prior to the commencement of operations for each Renewal Term, submit to New Jersey satisfactory written evidence from the bank that the irrevocable bank letter of credit is in full force and effect as above provided. The letter of credit shall not be available to Statue Ferry for any purpose or to any creditor of Statue Ferry in the event of the bankruptcy, reorganization, insolvency or receivership of Statue Ferry, or for any other reason. Statue Ferry shall not assign or encumber or attempt to assign or encumber the letter of credit.

## 17. INDEMNIFICATION

- (i) Shall for itself, its successors, and assigns defend, indemnify, protect and save harmless New Jersey, its officials, officers, agents, employees, successors, assignees, contractors, invitees, and does hereby release New Jersey, its officials, officers, agents, employees, successors, assignees, contractors, invitees, from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of any act, error, or omission of Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, express or implied in the performance of this Agreement. Statue Ferry shall, at its own expense, appear, defend, and pay all charges for attorneys and all costs and other expenses arising from such suit or claim in connection therewith. If any judgement shall be rendered against New Jersey for which indemnification is provided under this Paragraph, Statue Ferry shall, at its own expense, satisfy and discharge the same. New Jersey shall require and enforce the requirement that New Jersey's food and beverage concessionaire shall obtain and maintain comprehensive general public liability insurance covering the concessionaire's operations adjacent to and within the ferry service facilities area in accordance with Paragraph 1B(ix) of this Agreement.
- (ii) Shall as soon as practicable after a claim has been made against it, give written notice thereof to New Jersey, along with full and complete particulars of the claim. If the suit is brought against New Jersey or any of its officials, officers, agents, employees, successors, assignees, contractors, invitees, Statue Ferry shall expeditiously forward or have forwarded to New Jersey every demand, complaint, notice, summons, pleading, or other process received by Statue Ferry or its representatives.
- (iii) New Jersey shall as soon as practicable after a claim has been made against it, give written notice thereof to Statue Ferry, along with full and complete particulars of the claim. New Jersey shall expeditiously forward or have forwarded to Statue Ferry every demand, complaint, notice, summons, pleading, or other process received by New Jersey.
- (iv) Statue Ferry's liability under this Paragraph shall continue after the termination or expiration of this Agreement with respect to any liability, loss, expense or damage to third parties resulting from acts occurring prior to termination or expiration in accordance with the pertinent statute of limitations.

- (v) Statue Ferry's indemnification obligation shall not be limited by, but is in addition to the insurance obligations contained in this Agreement.

## 18. INSURANCE

A. Within the designated cross-hatched areas on Exhibit A and A-1, assigned to Statue Ferry for its use pursuant to this Agreement. Statue Ferry shall at all times during the term hereof procure, maintain or cause to be maintained at the sole cost and expense of Statue Ferry, insurance of the types and amounts hereinafter provided:

- (I) Statue Ferry shall, in the event of damage or destruction (except for damage or destruction caused by the negligent act of any person using the pier area other than Statue Ferry as provided in Paragraph 1B(iii) of this Agreement), repair or replace those buildings structures, equipment, furnishings and improvements determined by New Jersey to be necessary to satisfactorily discharge Statue Ferry's obligations under this Agreement and for this purpose shall provide fire and extended coverage on both the Statue Ferry improvements and New Jersey improvements including all buildings, walkways, piers, bulkheads and similar structures and all replacements and additions thereto, and all fixtures, equipment and other property attached thereto, and/or physically incorporated therein, as part of the ferry service facilities area.
- (ii) Statue Ferry shall provide comprehensive general public liability insurance as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsement limiting the breadth of coverage (including coverage for product liability, liquor law legal liability, protection and indemnity, and for any Statue Ferry owned or operated motor vehicles, and broad form contractual liability, completed operations and broad form property damage endorsements) against claims for bodily injury, death or property damage occurring on, in or about the ferry services facility area. Such insurance shall be in an amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than Five Million (\$5,000,000.00) Dollars per occurrence and Five Million (\$5,000,000.00) annual aggregate and property damage of at least Twenty Five Thousand (\$25,000.00) per occurrence and Fifty Thousand (\$50,000.00) Dollars annual aggregate. If claims reduce available insurance below the required per occurrence limits, Statue Ferry shall obtain additional insurance to restore the required limits. The limits of said policies shall be increased from time to time to meet changed circumstances including but not limited to changes in the purchasing power of the dollar as measured by changes in the U.S. Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.
- (iii) Workers' Compensation and employer's liability insurance applicable to the laws of the State of New Jersey and containing a Longshoreman's and Harbor Worker's Compensation endorsement, with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability; and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee; with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars for occupational disease.

- (iv) Such other insurance, and in such amounts as may from time to time be reasonably required by New Jersey against other insurable hazards which at the time are commonly insured against in the case of operations similar to that provided for in this Agreement with due regard to the type of improvements, construction, use, or occupancy thereof. If Statue Ferry objects to obtaining the type of insurance or amount thereof required by New Jersey under Paragraph 18A(1) - (iii) above, the matter shall be submitted to a risk management consultant mutually satisfactory to New Jersey and Statue Ferry and whose determination shall be conclusive and binding on New Jersey and Statue Ferry. The procedure herein above set forth shall apply whenever, and as often as, New Jersey may require, pursuant to this Paragraph, that Statue Ferry obtain other insurance or obtain increased amounts of insurance coverage. However, the determination by the risk management consultant regarding a specific type or amount of insurance shall be binding for a period of two (2) years after the date of the determination. The costs of the risk management consultant shall be paid by New Jersey. Within thirty (30) days after New Jersey's written demand therefor, Statue Ferry shall reimburse New Jersey for all reasonable and customary costs incurred by New Jersey in said process, or the cost shall be deemed unpaid Additional Compensation under the terms and conditions of this Agreement and may be collected as such.

B. All insurance policies shall name the State of New Jersey, Department of Environmental Protection as an additional insured and shall be effected by valid enforceable policies issued by insurers of responsibility and licensed or authorized to do business in the State of New Jersey. On or before the effective date of this Agreement, Statue Ferry shall deliver the original policies or certificates thereof to New Jersey. At least ten (10) days prior to the expiration date of any policy, a certificate of renewal or the renewal policy for such insurance shall be delivered by Statue Ferry to New Jersey, together with satisfactory evidence of payment of the then due premiums on such policy. All certificates shall be signed by Statue Ferry's insurance agent or insurer and shall be accompanied by the following statement attested to by Statue Ferry's senior risk management officer; "I certify that have reviewed the insurance specifications of the Agreement for which the attached certificate was issued, and that the insurance contracts identified therein meet all of said specifications." To the extent obtainable, all such policies shall contain agreements by the insurers that:

- (i) no act or omission by Statue Ferry shall impair or affect the rights of the insured to receive and collect the proceeds under the policy;
- (ii) such policies shall not be cancelled except upon twenty (20) days prior written notice to each named insured and loss payee; and
- (iii) the coverage afforded thereby shall not be affected by the performance of any work in or about the ferry service facilities area.

In addition, all policies shall contain endorsements that the rights of the insured to receive and collect the proceeds shall not be diminished because of any additional insurance carried by Statue Ferry for its own account.

C. New Jersey shall not be required to prosecute any claim against any insurer or to contest any settlement proposed by any insurer, provided that Statue Ferry may, at its cost and expense, prosecute any such claim or contest any such settlement, and in such event Statue Ferry may bring any such prosecution or contest in the name of New Jersey and Statue Ferry and New Jersey shall cooperate with Statue Ferry and will join therein at Statue Ferry's written request upon receipt by New Jersey of an indemnity agreement from Statue Ferry pursuant to which Statue Ferry agrees to indemnify New Jersey against all costs, liabilities and expenses in connection with such cooperation, protection or contest.

D. Insurance claims by reason of damage or destruction to any portion of the ferry service facilities area shall be adjusted with the insurance companies by and at the sole cost and expense of Statue Ferry except that in case of any particular casualty resulting in damage or destruction exceeding One Hundred Thousand (\$100,000.00) Dollars in the aggregate, no adjustment shall be made with the insurance companies without the prior written approval of New Jersey. Said approval shall not be unreasonably withheld or delayed.

E. Each payment for single loss which does not exceed One Million (\$1,000,000.00) Dollars shall be made directly to Statue Ferry, shall be used by Statue Ferry solely for reconstruction of the ferry services facility area as provided in Paragraph 18 of this Agreement, and all other losses (including all losses which exceed One Million (\$1,000,000.00) Dollars under any such policy shall be made payable to the Largest Bank in New Jersey or such other commercial bank as New Jersey and Statue Ferry may agree, as trustee (the "Insurance Trustee"), to be held in trust and applied as provided in Paragraph 19 of this Agreement.

F. Should Statue Ferry fail to affect, maintain or renew any insurance provided for in this Paragraph 18, or to pay the premium therefor when due, or to deliver to New Jersey any of such policies or certifications when due hereunder, New Jersey, at its option, shall have the right, upon written notice to Statue Ferry to require Statue Ferry to immediately suspend the operation of the ferry service until such insurance is obtained in compliance with this Agreement; provided, however, that nothing herein shall prevent New Jersey from declaring a default pursuant to the terms of this Agreement.

G. The insurance requirements set forth in this Paragraph 18 shall in no way be intended to modify, limit or reduce the indemnifications herein made by Statue Ferry to New Jersey or to limit Statue Ferry's liability hereunder to the proceeds of, or premiums due upon, the policies of insurance required to be maintained by Statue Ferry under this Agreement nor shall the insurance requirements preclude New Jersey from taking such other actions as are available to it under any provisions of this Agreement or otherwise in law.

## 19. IMPROVEMENTS

A. If the improvements on the ferry service facilities area or any part thereof shall be damaged or destroyed by fire or other casualty, Statue Ferry shall, as promptly as possible after Statue Ferry has knowledge of such damage or destruction, notify New Jersey thereof.

B. Unless such loss was caused by Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, New Jersey shall promptly and diligently after any damage or destruction, and at its sole cost and expense, repair or restore the improvements to substantially the same condition as existed prior to such damage or destruction or New Jersey may direct Statue Ferry to

repair the same on mutually agreeable terms, including abatement of consideration payable hereunder; provided, however, that if such loss occurs as a result of persons allowed by New Jersey to use the Pier shown on Exhibit A-1., pursuant to the authority reserved to New Jersey in Paragraph 1B(I) the damage shall be repaired by Statue Ferry as provided in the said Paragraph 1B(I).

C. If the damage incurred is so extensive that the same cannot be repaired in ninety (90) days from occurrence, (1) New Jersey shall use its best efforts to relocate the operations of Statue Ferry within Liberty State Park failing in which (2) Statue Ferry at its option, with approval of the Service, may terminate this Agreement.

D. In the event such loss was caused by action(s) of Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, Statue Ferry shall promptly and diligently after any such damage or destruction, and evaluation of the damage by the insurer, and at its sole cost and expense, repair or restore the improvement to substantially the same condition as existed prior to such damage or destruction or as otherwise mutually agreed upon by New Jersey and Statue Ferry in either case, irrespective of the sufficiency of any fire or other insurance proceeds payable with respect thereto. The repair and restoration of the improvement required by this Paragraph 19 shall be subject to the prior written approval of New Jersey.

E. All insurance proceeds required by the terms of this Agreement to be expended by Statue Ferry for the repair or restoration of the improvements which are paid to the Insurance Trustee shall be disbursed in the manner hereinafter provided.

F. In the event of any restoration, repair, replacement or rebuilding of any improvements to the ferry service facilities area due to their damage or destruction by fire or any other cause, (hereinafter referred to in this Paragraph 19 as the "work"), the disbursement of any monies held by the Insurance Trustee shall be paid in stage payments based upon a schedule to be provided by Statue Ferry and approved by New Jersey. Each stage payment shall be made to Statue Ferry prior to performance of the work to enable Statue Ferry to perform the necessary work for each such stage. Disbursement of any stage payment after the first payment shall be made to Statue Ferry upon receipt by the Insurance Trustee of certificates of the architect, engineer or construction manager in charge of the work certifying to the cost and completion of the work performed in the previous stage, and upon satisfactory proof that there are no liens or financing statements under the Uniform Commercial Code filed and undischarged pertaining to that portion of the work. The Insurance Trustee may require the submission to it of any additional data reasonably required by it to assure that the payment is in all respects proper. All payments shall be received by Statue Ferry in trust to pay the cost of the work and shall not be co-mingled with Statue Ferry's other funds. New Jersey and the Insurance Trustee shall have the right to examine Statue Ferry's contracts, books and records pertaining to the work. Nothing herein shall prevent the Insurance Trustee from imposing such reasonable additional conditions to the disbursement of funds as it may in the circumstances deem prudent and necessary to achieve the prosecution and completion of the work and the full and due payment thereof.

G. If the cost and expense of such repairs or restoration of the improvement shall exceed the amount of any such net proceeds, the deficiency shall be paid first out of Statue Ferry's own funds to the extent of the deficiency or estimated deficiency before Statue Ferry shall be entitled to receive any portion of the net proceeds pursuant to Paragraph 19F above. If the amount of the net proceeds received by Statue Ferry or the Insurance Trustee, as the case may be, exceed the cost and expense of such restoration,

Statue Ferry shall retain, or the Insurance Trustee shall pay to Statue Ferry, any such excess. No payment of any such excess shall be made to Statue Ferry if any monetary default or default which can be cured upon the payment of the excess insurance funds shall have happened and be continuing under this Agreement. In such an event, any such funds shall be paid to New Jersey to be applied to the complete or partial cure of any such default.

H. After paying or providing for the cost of the work, the expense and fees of the Insurance Trustee may be charged against the fund possessed by it to the extent funds are available for services performed by it.

## 20. NO INTERFERENCE WITH STATE PARK - PARK CLOSURE

A. Shall, if New Jersey is unable to give or continue Statue Ferry's possession and use of the facilities and area provided under this Agreement because of national or local emergency, calamity, epidemic, or strike; suspend operations at the direction of New Jersey for the period during which possession cannot be delivered to Statue Ferry. During such period New Jersey may immediately re-enter the facilities provided under this Agreement and remove any and all persons or property either by suitable action or proceeding at law or in equity, or force, or otherwise without being liable to indictment, prosecution or damages therefor. Statue Ferry shall not be obligated to make any payment to New Jersey under Paragraph 4A of this Agreement for the period during which possession cannot be delivered to Statue Ferry for the reasons provided in this Paragraph 20.

B. Shall, at the direction of New Jersey, suspend, delay, or interrupt all or any part of its activities in the area and facilities provided under this Agreement for such period of time as New Jersey determines to be appropriate to protect public health or safety and/or State-owned property due to Statue Ferry's failure to perform any of the covenants, agreements and conditions herein contained where New Jersey determines that the continuance of the operation of the ferry service may detrimentally impact the State-owned property and/or the health or safety of persons on-site. Statue Ferry hereby waives any claim and New Jersey shall not be liable to any party claiming through Statue Ferry for damages, rent abatement, or compensation as a result of New Jersey's actions under this Paragraph 20 provided such action is taken by New Jersey solely as a direct result of the acts (or failure to act) of Statue Ferry as required by the provisions of this Agreement.

## 21. INSPECTION

Shall make available at the demand of New Jersey all of the property provided by New Jersey under this Agreement for inspection as New Jersey may deem necessary to assure compliance by Statue Ferry with the terms and conditions of this Agreement.

## 22. COMPLIANCE WITH FEDERAL AND STATE LAWS

Shall comply with all Federal and State laws, statutes, or regulations now or hereafter in effect and as may subsequently be amended pertaining to the payment of taxes or charges on prices, admissions and other fees charged by the Statue Ferry or otherwise assessed or levied on Statue Ferry's operation under this Agreement and make returns and pay all such taxes or charges immediately when due, and indemnify New Jersey against all liability, claims, loss or payment of any kind by reason of Statue Ferry's failure or omission to comply with any such law or regulation and/or pay all or any such taxes or charges.

23. DAMAGE AND REPAIRS

A. Statue Ferry shall repair any damage to the property provided pursuant to this Agreement, including but not limited to, docks, bulkheads, piers and pilings caused by Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees. In the event that the property provided pursuant to this Agreement or any other State-owned property is damaged or lost by any cause arising out of or related to any act, error or omission of Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees express or implied, Statue Ferry shall promptly repair or replace any property of any description which may be lost or damaged thereby at the sole expense of Statue Ferry.

B. All repairs by Statue Ferry pursuant to Paragraph 23A shall be completed in accordance with plans and specifications submitted to and approved by New Jersey.

24. APPROVAL

Any approval by New Jersey as provided in this Agreement shall not operate to limit the obligations of Statue Ferry assumed under this Agreement.

25. KEY OFFICIALS AND NOTIFICATION

A. The parties hereto agree that all submissions, approvals, and notices which may be required under this Agreement shall be forwarded by certified mail, return receipt requested and addressed to the Key Officials identified below:

Key Officials for New Jersey:

Director,  
Division of Parks and Forestry  
New Jersey Department of  
Environmental Protection and Administrator,  
501 East State Street, 4th Floor Office of the Director  
PO Box 404  
Trenton, New Jersey 08625-0404

and

Superintendent  
Liberty State Park  
Morris Pesin Drive  
Jersey City, New Jersey 07305

Key Officials for Statue Ferry:

Mr. Kevin G. Moran, President  
Circle Line-Statue of Liberty Ferry, Inc.  
17 Battery Place - Suite 715  
New York, New York 10004-1101

and

Mr. Rafael Abreu  
Director of New Jersey Business Development  
Circle Line-Statue of Liberty Ferry, Inc.  
17 Battery Place - Suite 715  
New York, New York 10004-1101

## 26. RECORDS AND REPORTS

A. Statue Ferry during the term of this Agreement, shall maintain adequate systems of internal control and shall keep complete and adequate records, books of account and data, including daily dated computer tapes and reports, monthly computer backup disc, and records which shall show in detail the total business transacted and will allow Statue Ferry to prepare financial statements in accordance with generally accepted accounting principles of the Total Gross Revenue from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park. Such dated computer tapes, discs, books and records maintained pursuant to this Agreement shall be segregated from other business matters of Statue Ferry and shall include, but not limited to, all federal, State and local tax returns; daily dated computer tapes and reports; monthly computer backup discs, sales books, duplicate bank deposit slips and bank statements.

B. Statue Ferry shall use the following records, procedures and reports to account for the total business transacted and the Total Gross Revenue realized by Statue Ferry from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park. For each classification of ticket offered, i.e., adult, child, group, or senior citizen, the tickets shall be serialized and color coded. Statue Ferry shall maintain a daily report itemizing each serialized ticket sold including lost or destroyed tickets for each classification of ticket. The daily reports, together with daily cash register tapes, daily computer tapes and reports, and monthly computer backup disc, shall be submitted to New Jersey as part of the monthly report required pursuant to Paragraph 26E below. The monthly report shall, in addition to the information required in Paragraph 26E below, include a statement signed by Statue Ferry's chief financial officer or his authorized designee that the daily reports accurately account for the number of tickets sold, including destroyed or lost tickets, for each classification of tickets.

C. All transactions of Statue Ferry shall be registered and recorded on accurate cash registers, totaling or computing machines or on other income recording devices which shall register each transaction sequentially and contain locked-in cumulative tapes with cumulative capacity satisfactory to New Jersey. All such machines and devices shall be approved by New Jersey prior to installation and Statue Ferry agrees to notify New Jersey of the name and serial numbers of all such machines and devices used and of any changes or additions within five (5) days thereof. All reports and data generated from or by such machines and devices shall be retained, and all transactions shall be recorded daily and posted monthly on books and records of accounts.

D. Statue Ferry shall use such accounting and internal control methods and procedures and keep such additional books and records as may be prescribed by New Jersey. New Jersey shall have the right to examine the record keeping procedures of Statue Ferry prior to the commencement of the term of this Agreement and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by Statue Ferry. All records maintained by Statue Ferry for the purposes of this Agreement shall be available for audit during normal business hours by an authorized representative of New Jersey to determine the adequacy of Statue Ferry's financial management system and internal control system that have been established to meet the terms and conditions of this Agreement and that the financial statements are fairly presented in accordance with generally accepted accounting principles. Statue Ferry shall maintain all records, books of account, data, dated computer tapes and reports, and monthly computer backup disc for a minimum of six (6) years after the date of the record.

E. Statue Ferry shall furnish to New Jersey by the fifteenth (15<sup>th</sup>) day of the succeeding month, monthly statements sworn to and verified by the chief financial officer of Statue Ferry or his authorized designee and in such form as may be requested by New Jersey, showing in detail the Total Gross Revenues from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations at Liberty State Park for each day of the previous month. The report shall itemize by serial number the daily tickets sold, including lost or destroyed tickets with a summary total for each category of ticket, to wit; adult, child, group and senior citizens. In addition, Statue Ferry shall, annually, as soon as possible but not later than sixty (60) days after the end of the first Calendar Year (ending on March 31<sup>st</sup>) and each succeeding Calendar Year during which this Agreement is in effect, submit to New Jersey a complete annual audit of Total Gross Revenue from all tickets for passenger fares (including charters) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park for the Prior Calendar Year. Said audit shall be prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey and shall for said Calendar Year express an opinion as to whether or not Statue Ferry's financial statements are fairly presented in accordance with generally accepted accounting principles, the effectiveness of the financial management systems and internal control procedures that have been established by Statue Ferry to meet the terms and conditions of this Agreement, the Total Gross Revenue from all tickets for passenger fares (including charter) sold or unaccounted for as part of Statue Ferry's operations from Liberty State Park and the total annual consideration due to be paid to New Jersey for said Calendar Year. Said audit shall be accompanied by a "Letter of Compliance" prepared by said Certified Public Accountant.

F. The failure or refusal of Statue Ferry to furnish any of the statements required to be furnished under this Agreement within fifteen (15) days after its due date, the failure or refusal of Statue Ferry to maintain adequate internal controls or to keep any of the records as required by this Paragraph or the existence of an unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by New Jersey, of more than five (5%) percent in any two (2) out of three (3) consecutive months or more than ten (10%) percent in one (1) month shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this Agreement and a default hereunder, which shall entitle New Jersey at its option, to terminate this Agreement in accordance with Paragraph 27C. In addition, the failure or refusal of Statue Ferry to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize New Jersey to make reasonable projections of the amount of gross receipts which would have been disclosed had the required statements been furnished or the required records maintained based upon such extrinsic factors as the auditors deem appropriate in making such projections. Statue Ferry agrees to pay any assessment based upon such reasonable projections with thirty (30) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this Agreement and a default hereunder.

## 27. TERMINATION

A. This Agreement shall terminate immediately at any time that the concession contract between the Service and Statue Ferry expires or is terminated by Service.

B. This Agreement shall terminate if Statue Ferry shall cease for any reason to be the authorized concessionaire of the Service or if Statue Ferry shall be rated as Unsatisfactory by Service. The term Unsatisfactory shall be as defined in the National Park Service Concessionaire Review Program.

C. This Agreement may be terminated by New Jersey at any time after thirty (30) days notice to Statue Ferry and Service for failure by Statue Ferry to comply with any of the terms and conditions of this Agreement or for failure of Statue Ferry to insure compliance by its officials, officers, agents, employees, successors, assignees, contractors, invitees, with the terms and conditions of this Agreement.

D. This Agreement may be terminated as specified in other Paragraphs of this Agreement.

E. This Agreement may be terminated by New Jersey if, at any time during the term of this Agreement Statue Ferry shall:

- (I) apply for or consent to the appointment of a receiver, trustee or liquidator of it or all or substantial part of its assets;
- (ii) admit in writing its inability to pay its debts as they mature;
- (iii) make a general assignment for the benefit of creditors;
- (iv) be adjudicated bankrupt or insolvent;
- (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an agreement with creditors to take advantage of any insolvency law, or any answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceedings, or corporate or other action shall be taken by it for the purpose of effecting any of the foregoing; or
- (vi) be subject to any order, judgement or decree, without the application, approval or consent of Statue Ferry, by any court of competent jurisdiction, approving a petition seeking reorganization of, or appointing a receiver, trustee or a liquidator of Statue Ferry or of all or a substantial part of its assets, and such order, judgement or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days.

F. In the event of any termination of or upon the expiration of this Agreement, New Jersey may at once re-enter and remove any and all persons occupying the assigned facilities. If Statue Ferry shall fail to remove any ticket machines and other similarly affixed equipment provided by and lawfully belonging to Statue Ferry and reasonably removable by Statue Ferry without damage to the property of New Jersey within fourteen (14) days from the date of termination or the expiration of this Agreement, New Jersey may appropriate the same to its own use without allowing any compensation therefor or may remove the same at the expense of Statue Ferry. New Jersey is hereby released from any and all claims for damages or loss which may be sustained by reason of such removal. In the event that Statue Ferry removes any such equipment, Statue Ferry hereby covenants to pay any and all damages which may be caused to the property of New Jersey by said removal.

## 28. REPORT OF INJURY

Any injury which shall occur to Statue Ferry, its officials, officers, agents, employees, successors, assignees, contractors, invitees, express or implied, on property provided by New Jersey under this Agreement and requiring medical intervention of which Statue Ferry shall be notified shall be reported to New Jersey in writing within one (1) day of the injury.

## 29. REQUIRED CLAUSES AND GENERAL CLAUSES

A. No member or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

B. Statue Ferry assures that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by Statue Ferry for the purpose of securing business.

C. Statue Ferry does hereby warrant and represent that this Agreement has not been solicited or secured, directly or indirectly, in a manner contrary to the Laws of the State of New Jersey and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of this Agreement by any conduct, including the paying or giving of consideration of any kind, directly or indirectly, to any State employee, official, officer, agent, successor, assignee, contractor, or invitee.

D. This Agreement constitutes the entire agreement between the parties, and all prior understandings, agreements, and representations have been merged herein.

E. The waiver by any party of any breach of this Agreement shall not be deemed to be a waiver of a subsequent breach of the same or any other covenants, conditions, or terms of this Agreement.

F. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than to those which it is held invalid or unenforceable, shall not be affected and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

G. The parties hereto agree that this Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of the parties hereto in writing.

H. Unless otherwise provided in this Agreement, all claims, counter claims, disputes and other matters in question between New Jersey and Statue Ferry arising out of, or relating to, Agreement or the breach of it shall be decided according to the Laws of the State of New Jersey in a court of competent jurisdiction within the State of New Jersey.

I. Statue Ferry shall, at all times, act as an independent principal and not as an agent or employee of New Jersey. Statue Ferry agrees not to enter into any agreement or commitment on behalf of New Jersey.

**30. CORPORATE RESOLUTION**

The Board of Directors of Statue Ferry has adopted a resolution authorizing the execution of this Agreement by Statue Ferry for the purposes and subject to the terms and conditions herein provided and has submitted a copy of said resolution to New Jersey in form and substance satisfactory to New Jersey.

**31. QUIET POSSESSION**

New Jersey agrees that Statue Ferry, on satisfactorily conforming with the covenants contained herein, shall peaceably and quietly have, hold and enjoy the Premises for the above stated Term.

**32. HOLD OVER**

If New Jersey permits Statue Ferry to remain in possession of the Premises after expiration of this Agreement without having executed a new written Agreement with New Jersey, then Statue Ferry shall occupy the Premises subject to all the terms, covenants and conditions contained in this Agreement. Such holding over by Statue Ferry shall not constitute a renewal or extension of this Agreement. New Jersey may, at its option, elect to treat Statue Ferry as one who has not removed at the end of its term and thereupon be entitled to all the remedies against Statue Ferry provided by Law.

**33. CORPORATION - CERTIFICATE OF INCORPORATION**

A. When Statue Ferry returns this Agreement, signed by Statue Ferry, to New Jersey for signature, Statue Ferry shall submit to New Jersey a certified copy of Statue Ferry's current Certificate of Incorporation. Statue Ferry shall not amend, modify or otherwise change the Certificate of Incorporation without first submitting the proposed amendment, modification or change to New Jersey for comment. New Jersey shall have a period of thirty (30) days to review any proposed amendment, modification or change before same can become effective.

B. When Statue Ferry returns this Agreement, signed by Statue Ferry, to New Jersey for signature and annually thereafter on the anniversary of the Effective Date, Statue Ferry shall submit to New Jersey a certificate of standing issued by the Secretary of State.

**34. ENTIRE AGREEMENT - AMENDMENT**

This Agreement, including all exhibits attached hereto, constitutes the entire agreement between the parties, and all prior negotiations, understandings, oral agreements, and representations have been merged herein. Upon the Effective Date of this Agreement, this Agreement supersedes and cancels all previous agreements covering the Premises or operation of Statue Ferry. This Agreement shall not be amended, supplemented, changed, modified or altered except upon mutual written agreement of the parties.

### **35. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances, other than to those to which it is held invalid or unenforceable, shall not be affected and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

### **36. TENANT AS INDEPENDENT PRINCIPAL**

A. Statue Ferry is an independent principal and is not undertaking the Improvement, maintenance, management and operation of the Premises on behalf of New Jersey and it has no relationship with New Jersey in connection with this Agreement as New Jersey's agent, servant, employee, contractor or otherwise. Statue Ferry agrees not to enter into any agreement or commitment on New Jersey's behalf.

B. Statue Ferry shall have direct supervision of all its officials, officers, agents, employees, contractors and subcontractors, and sublessees performing any activity under this Agreement, Statue Ferry shall assure compliance by its officials, officers, agents, employees, contractors, sub-contractors and sublessee with this Agreement.

### **37. NO THIRD PARTY BENEFICIARIES**

There shall be no third party beneficiaries of this Agreement and no person, firm or entity not a party to this Agreement shall be entitled to claim any right, benefit or presumption from or estoppel by this Agreement.

### **38. NEGOTIATED DOCUMENT**

Each and every provision of this Agreement has been independently, separately and freely negotiated by the parties as if this Agreement were drafted by all parties hereto. The parties therefore waive any statutory or common law presumption which would serve to have this document construed in favor of or against any party as the drafter of this Agreement.

### **39. HEADINGS**

The Paragraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the dates written below.

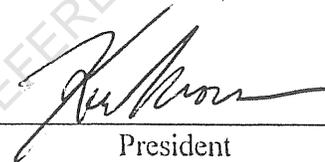
STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

By:   
Date Signed: 8-9-04

ATTEST:

CIRCLE LINE-STATUE OF  
LIBERTY FERRY, INC.

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

By:   
President

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

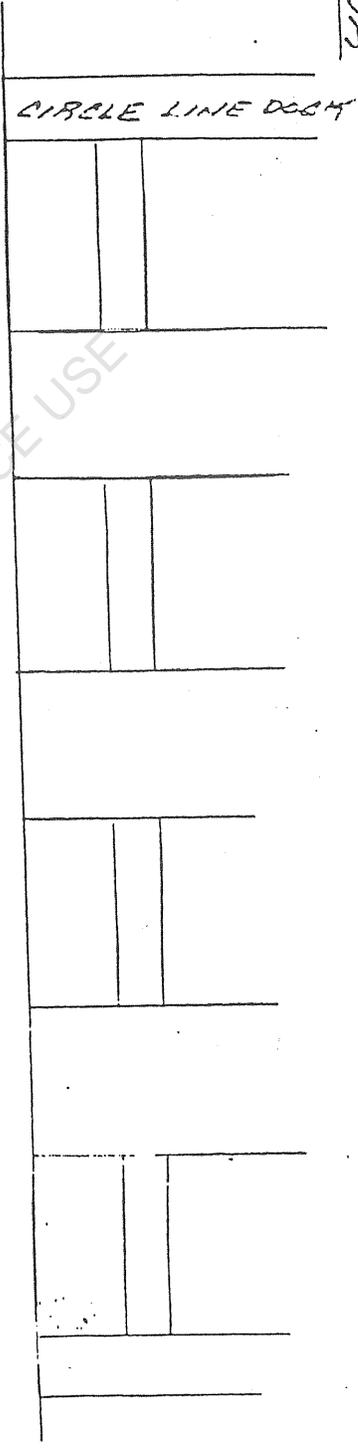
Date Signed: 7/27/04

This Agreement has been review and approved as to form by:

Peter C. Harvey  
Attorney General  
State of New Jersey

By:   
Deputy Attorney General  
Date Signed: 8/11/04

LIBERTY STATE PARK  
TRAIN TERMINAL  
FIRST FLOOR



AREAS OF LIABILITY

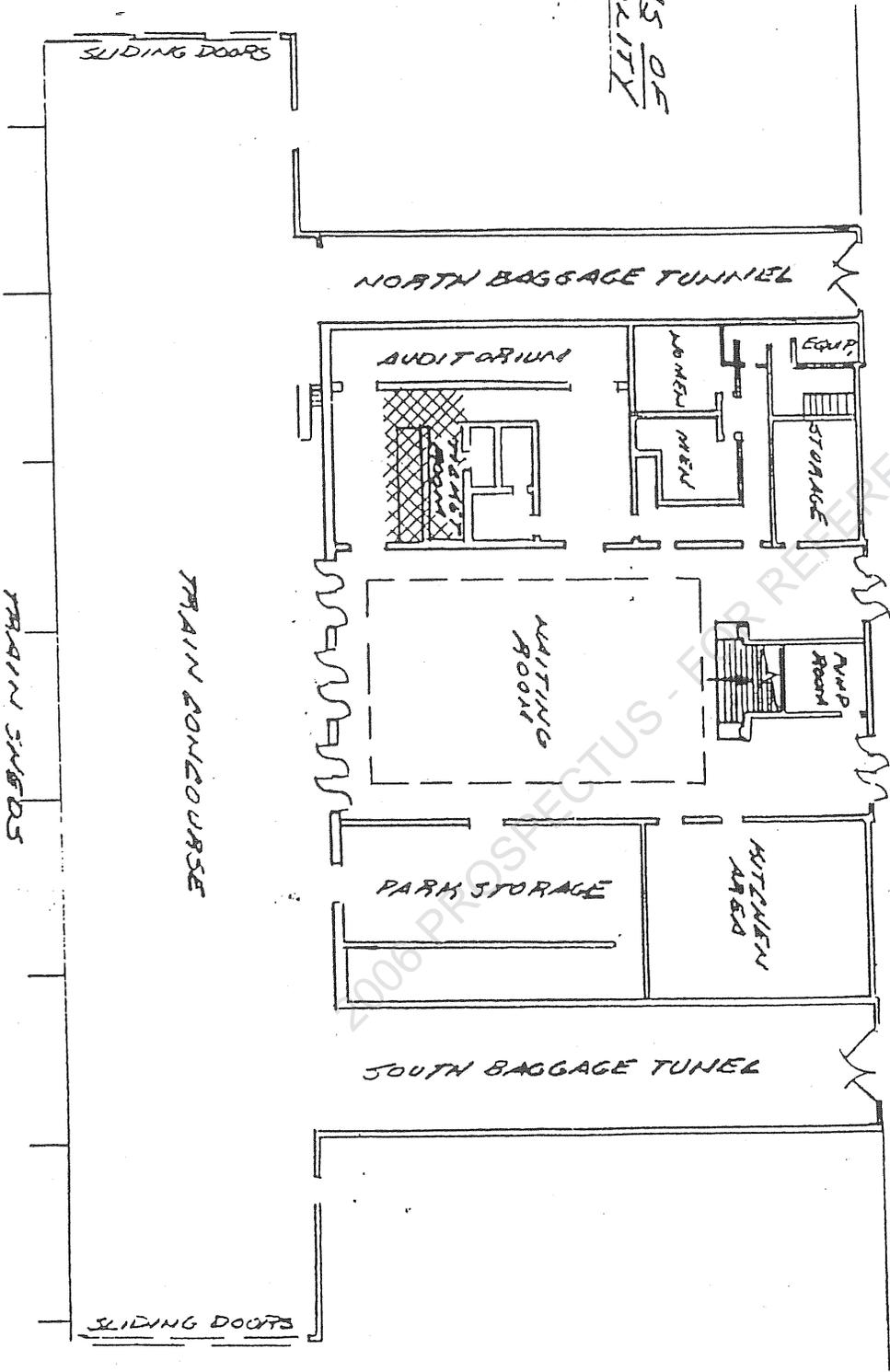


Exhibit A

TRAIN SCHEDULES

TRAIN CONCOURSE

FOR REFERENCE USE

LIBERTY STATE PARK  
LIBERTY TERMINAL  
FIRST FLOOR

CIRCLE LINE DOCK

FERRY CONCOURSE

AREAS OF  
LIABILITY

NORTH BAGGAGE TUNNEL

AUDITORIUM

WOMEN  
MEN

EQUIP.

STORAGE

TRAINST  
ROOM

WAITING  
ROOM

AVOID  
ROOM

PARK STORAGE

ATTENTION  
AGENTS

SOUTH BAGGAGE TUNNEL

SLIDING DOORS

SLIDING DOORS

Exhibit A1

TRAIN SHEDS

TRAIN CONCOURSE

2006 PROTECTUS - FOR REFERENCE

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
NATIONAL PARK SERVICE  
STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND  
AND  
STATE OF NEW JERSEY,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION,  
DIVISION OF PARKS AND FORESTRY

Article I. BACKGROUND

This MEMORANDUM OF UNDERSTANDING, hereinafter called AGREEMENT, is entered into by and between the United States Department of the Interior, National Park Service, acting through the Superintendent Statue of Liberty National Monument and Ellis Island, hereinafter referred to as NPS; and, the State of New Jersey, Department of Environment Protection, Division of Parks and Forestry, hereinafter referred to as DEP.

WHEREAS, the Statue of Liberty National Monument and Ellis Island was established by Presidential Proclamation as a symbol to the world of the dreams and aspirations which have drawn millions of immigrants to America; and

WHEREAS, the Statue of Liberty stands as eternal as the symbol of the freedom which has made a living reality in the United States for men of all races, creeds, and national origins who have united in allegiance to the Constitution of the United States and to the imperishable ideals of our free society; and

WHEREAS, the NPS is responsible for the administration of the Statue of Liberty National Monument and Ellis Island and the safe transportation of millions of visitors every year who visit Liberty and Ellis Islands; and

WHEREAS, the NPS is currently in the process of developing a prospectus to seek offers for a new contract to operate a ferry concession to transport visitors to Liberty and Ellis Islands; and

WHEREAS, DEP is responsible for the administration of Liberty State Park which is the current embarkation point for the Statue of Liberty National Monument and Ellis Island ferry concession; and

WHEREAS, successful conclusion of the process to obtain offers to provide transportation to the Statue of Liberty National Monument and Ellis Island is dependent upon obtaining a Memorandum of Understanding with the DEP to operate a ferry service from Liberty State Park; and

WHEREAS, the DEP desires to facilitate the process of establishing a new ferry concession contract in order to accommodate the millions of visitors who access the Statue of Liberty National Monument and Ellis Island from Liberty State Park.

NOW THEREFORE, in consideration of the mutual covenants herein contained the parties agree as follows:

Article II. RESPONSIBILITIES OF THE PARTIES

A. DEP hereby agrees to issue a Memorandum of Understanding to operate a ferry service for the transportation of passengers between Liberty State Park and Liberty and Ellis Islands to the party which is designated by the NPS to provide such service and enters into a concession contract with the

NPS. The said MOU shall be in a form substantially the same as the MOU attached hereto as Exhibit A, and the fee for said MOU, payable to the DEP, shall be an amount equal to the greater of One Hundred Thousand (\$100,000.00) Dollars or seven and one-half (7 1/2 %) per cent of the Total Gross Revenue from ticket sales for embarkation from Liberty State Park. Any agreement for additional space is at the sole discretion of the DEP and will include an additional fee to be determined at fair market value. The term of said MOU shall be coterminous with the period for which the ferry concession operator is authorized to provide ferry service from Liberty State Park by the NPS.

B. The NPS shall provide the DEP with thirty (30) days advance written notice of the date when the new ferry concession contract becomes effective.

#### Article III. TERM OF AGREEMENT

Unless sooner terminated, this AGREEMENT shall be effective upon execution by both parties and shall remain in effect for fifteen (15) years from that date.

#### Article IV. TERMINATION

If either party fails to observe any of the terms and conditions of this Agreement, the other party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period.

#### Article V. KEY OFFICIALS/PERSONS

For the National Park Service:

Cynthia R. Garrett  
Superintendent, Statue of Liberty National Monument and Ellis Island  
Liberty Island  
New York, NY 10004

For the DEP:

Joshua Osowski Superintendent,  
Liberty State Park  
200 Morris Pesin Dr.  
Jersey City, NJ 07305

Frank Gallagher, Administrator  
Liberty State Park  
200 Morris Pesin Dr.  
Jersey City, NJ 07305

#### Article VI. GENERAL PROVISIONS

1. All obligations of the NPS hereunder are subject to the laws and regulations applicable to the NPS. The NPS shall have no obligation to reimburse the DEP for any services rendered pursuant to this AGREEMENT.

2. No member of, or delegate to, Congress, or resident commissioner, shall be admitted to any share or part of this AGREEMENT, or to any benefit that may arise therefrom.

3. All applicable requirements of P.L.2005, c.51 shall apply to this Agreement for the purpose of preserving the integrity of State government procurement. Any and all such applicable requirements of P.L.2005, c.51 shall be deemed to be material terms of this Agreement.

4. This Agreement and the obligations of the NPS hereunder shall be subject to the availability of funding, and nothing contained herein shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the NPS in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

5. Nothing in this Agreement shall be construed as binding the DEP to any expend in any one fiscal year any sum in excess of appropriations made by the New Jersey State Legislature or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the DEP in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names.

Dated at Jersey City, New Jersey, this 13<sup>th</sup> day of December 2006.

UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By: Cynthia R. Garrett  
Cynthia R. Garrett, Superintendent  
Statue of Liberty National Monument and Ellis Island

For DEP

By: Amy Cradic  
Amy Cradic, Assistant Commissioner  
Natural and Historic Resources

**APPENDIX M**

**CONCESSIONS MANAGEMENT IMPROVEMENT ACT**

2006 PROSPECTUS - FOR REFERENCE USE

2006 PROSPECTUS - FOR REFERENCE USE

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2006 PROSPECTUS - FOR REFERENCE



















2006 OSPECTUS REFERENCE















**APPENDIX N**  
**FERRY SCHEDULES**

2006 PROSPECTUS - FOR REFERENCE USE

## Ferry Schedules

Ferry schedules from Liberty State Park and Battery Park depend on the projected daily level of visitation. There are one-, two-, three- and four-boat schedules for Battery Park departures, and one- and two-boat schedules for Liberty State Park departures. The following four schedules provide examples of some of these schedules.

### LIBERTY STATE PARK, NEW JERSEY FERRY SCHEDULE SUMMER TWO BOAT SCHEDULE

EFFECTIVE SATURDAY MAY 27, 2006 THRU MONDAY SEPTEMBER 4, 2006  
DAILY SCHEDULE  
8:30 AM TO 4:30 PM

Trip	Boat	Depart Liberty State Park	Arrive Ellis Island	Depart Ellis Island	Arrive Liberty Island	Depart Liberty Island	Arrive Liberty State Park
1	1	<b>8:30</b>	8:40	<b>8:50</b>	9:00	<b>9:15</b>	9:30
2	2	<b>9:00</b>	9:10	<b>9:20</b>	9:30	<b>9:45</b>	10:00
3	1	<b>9:45</b>	9:55	<b>10:05</b>	10:15	<b>10:30</b>	10:45
4	2	<b>10:30</b>	10:40	<b>10:50</b>	11:00	<b>11:15</b>	11:30
5	1	<b>11:15</b>	11:25	<b>11:35</b>	11:45	<b>12:00</b>	12:15
6	2	<b>12:00</b>	12:10	<b>12:20</b>	12:30	<b>12:45</b>	1:00
7	1	<b>12:45</b>	12:55	<b>1:05</b>	1:15	<b>1:30</b>	1:45
8	2	<b>1:30</b>	1:40	<b>1:50</b>	2:00	<b>2:15</b>	2:30
9	1	<b>2:15</b>	2:25	<b>2:40</b>	2:50	<b>3:05</b>	3:20
10	2	<b>3:00</b>	3:10	<b>3:20</b>	3:30	<b>3:45</b>	4:00
11	1	<b>3:45</b>	3:55	<b>4:10</b>	4:20	<b>4:30</b>	4:45
12	2	<b>4:30</b>	4:40	<b>4:50</b>	5:00	<b>5:15</b>	5:30
			<b>RETURN</b>	<b>TRIPS</b>	<b>ONLY</b>		
13	1	<b>5:00</b>	5:10	<b>5:20</b>	5:30	<b>5:40</b>	5:55
14	2	<b>5:45</b>	----	----	6:00	<b>6:15</b>	6:30
15	1	<b>6:10</b>	6:20	<b>6:30</b>	----	----	6:40

**LIBERTY STATE PARK, NEW JERSEY FERRY SCHEDULE  
WINTER/SPRING TWO BOAT SCHEDULE (Low visitation)**

**EFFECTIVE TUESDAY JANUARY 3, 2006 THRU SATURDAY MAY 13, 2006**

**EMBARKATIONS FROM LIBERTY STATE PARK: FROM 9:30AM TO 3:30PM**

**FINAL RETURN TRIPS WHEN ISLANDS CLOSE: FROM LIBERTY ISLAND AT 5 PM & FROM ELLIS ISLAND AT 5:15 PM**

Trip	Boat	Depart Liberty State Park	Arrive Ellis Island	Depart Ellis Island	Arrive Liberty Island	Depart Liberty Island	Arrive Liberty State Park
1	1	<b>9:30</b>	9:40	<b>9:50</b>	10:00	<b>10:15</b>	10:30
2	2	<b>10:15</b>	10:25	<b>10:35</b>	10:45	<b>11:00</b>	11:15
3	1	<b>11:00</b>	11:10	<b>11:20</b>	11:30	<b>11:45</b>	12:00
4	2	<b>11:45</b>	11:55	<b>12:05</b>	12:15	<b>12:30</b>	12:45
5	1	<b>12:30</b>	12:40	<b>12:50</b>	1:00	<b>1:15</b>	1:30
6	2	<b>1:15</b>	1:25	<b>1:35</b>	1:45	<b>2:00</b>	2:15
7	1	<b>2:00</b>	2:10	<b>2:20</b>	2:30	<b>2:45</b>	3:00
8	2	<b>2:45</b>	2:55	<b>3:05</b>	3:15	<b>3:30</b>	3:45
9	1	<b>3:30</b>	3:40	<b>3:45</b>	4:00	<b>4:10</b>	4:25
			<b>RETURN</b>	<b>TRIPS</b>	<b>ONLY</b>	<b>BELOW</b>	
10	2	3:55	4:05	<b>4:15</b>	4:25	<b>4:35</b>	4:50
11	1	4:35	-----	-----	4:50	<b>5:00</b>	(cont'd below)
11 (cont'd).	1	-----	5:10	<b>5:15</b>	-----	-----	5:25

## 4 BOAT BATTERY PARK NY FERRY SCHEDULE

**EFFECTIVE SATURDAY MAY 27, 2006 THRU MONDAY SEPTEMBER 4, 2006  
8:30 AM TO 4:30 PM**

TRIPS	BOAT	DEPART BATTERY PARK (G5)	ARRIVE LIBERTY ISLAND	DEPART LIBERTY ISLAND	ARRIVE ELLIS ISLAND	DEPART ELLIS ISLAND	ARRIVE BATTERY PARK (G4)
1	1	<b>8:30</b>	8:45	<b>8:55</b>	9:05	<b>9:15</b>	9:25
2	2	<b>9:00</b>	9:15	<b>9:25</b>	9:35	<b>9:45</b>	9:55
3	3	<b>9:25</b>	9:40	<b>9:50</b>	10:00	<b>10:10</b>	10:20
4	1	<b>9:50</b>	10:05	<b>10:15</b>	10:25	<b>10:35</b>	10:45
5	4	<b>10:15</b>	10:30	<b>10:40</b>	10:50	<b>11:00</b>	11:10
6	2	<b>10:40</b>	10:55	<b>11:05</b>	11:15	<b>11:25</b>	11:35
7	3	<b>11:05</b>	11:20	<b>11:30</b>	11:40	<b>11:50</b>	12:00
8	1	<b>11:30</b>	11:45	<b>11:55</b>	12:05	<b>12:15</b>	12:25
9	4	<b>11:55</b>	12:10	<b>12:20</b>	12:30	<b>12:40</b>	12:50
10	2	<b>12:20</b>	12:35	<b>12:45</b>	12:55	<b>1:05</b>	1:15
11	3	<b>12:45</b>	1:00	<b>1:10</b>	1:20	<b>1:30</b>	1:40
12	1	<b>1:10</b>	1:25	<b>1:35</b>	1:45	<b>1:55</b>	2:05
13	4	<b>1:35</b>	1:50	<b>2:00</b>	2:10	<b>2:20</b>	2:30
14	2	<b>2:00</b>	2:15	<b>2:25</b>	2:35	<b>2:45</b>	2:55
15	3	<b>2:25</b>	2:40	<b>2:50</b>	3:00	<b>3:10</b>	3:20
16	1	<b>2:50</b>	3:05	<b>3:15</b>	3:25	<b>3:35</b>	3:45
17	4	<b>3:15</b>	3:30	<b>3:40</b>	3:50	<b>4:00</b>	4:10
18	2	<b>3:40</b>	3:55	<b>4:05</b>	4:15	<b>4:25</b>	4:35
19	3	<b>4:05</b>	4:20	<b>4:30</b>	4:40	<b>4:50</b>	5:00
20	1	<b>4:30</b>	4:45	<b>4:55</b>	5:05	<b>5:15</b>	5:25
<b>RETURN TRIPS ONLY</b>							
21	4	<b>4:35</b>	5:00	<b>5:15</b>	----	----	5:30
22	2	<b>5:00</b>	5:15	<b>5:30</b>	-----	-----	5:45
23	3	<b>5:10</b>	-----	-----	5:20	<b>5:45</b>	5:55
24	1	<b>5:35</b>	5:50	<b>6:00</b>	-----	-----	6:15
25	4	<b>5:40</b>	5:55	<b>6:15</b>	-----	-----	6:30
26	2	<b>5:55</b>	-----	-----	6:05	<b>6:15</b>	6:25
27	3	<b>6:05</b>	-----	-----	6:15	<b>6:30</b>	6:40

### 3 BOAT BATTERY PARK NY FERRY SCHEDULE

FALL 2006 PRIMARY DAILY NY SCHEDULE  
EFFECTIVE TUESDAY OCTOBER 10, 2005 THRU MONDAY JANUARY 1, 2007

**EMBARKATIONS FROM NY : FROM 9:30 A.M. TO 3:40 P.M.**

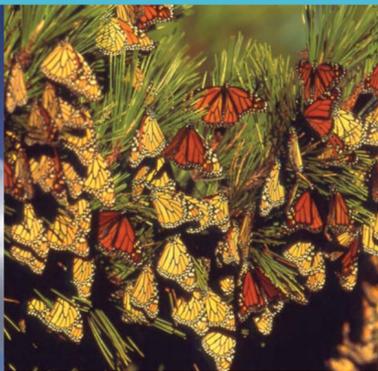
**FINAL RETURN TRIPS WHEN ISLANDS CLOSE: FROM LIBERTY ISLAND AT 5 PM & FROM ELLIS ISLAND AT 5:15 PM**

TRIP	BOAT	DEPART BATTERY PARK	ARRIVE LIBERTY ISLAND	DEPART LIBERTY ISLAND	ARRIVE ELLIS ISLAND	DEPART ELLIS ISLAND	ARRIVE BATTERY PARK
1	1	9:30	9:45	10:00	10:10	10:20	10:30
2	2	10:00	10:15	10:30	10:40	10:50	11:00
3	3	10:30	10:45	11:00	11:10	11:20	11:30
4	1	11:00	11:15	11:30	11:40	11:50	12:00
5	2	11:30	11:45	12:00	12:10	12:20	12:30
6	3	12:00	12:15	12:30	12:40	12:50	1:00
7	1	12:30	12:45	1:00	1:10	1:20	1:30
8	2	1:00	1:15	1:30	1:40	1:50	2:00
9	3	1:30	1:45	2:00	2:10	2:20	2:30
10	1	2:00	2:15	2:30	2:40	2:50	3:00
11	2	2:30	2:45	3:00	3:10	3:20	3:30
12	3	3:00	3:15	3:25	3:35	3:45	3:55
13	1	3:40	>>>>>	>>>>>	3:50	3:55	To Liberty Is.
13 (Cont'd.)	1	-----	4:05	4:15	>>>>>	>>>>>	4:30
		<b>RETURN</b>	<b>TRIPS</b>	<b>ONLY</b>	<b>BELOW</b>		
14	2	3:40	3:55	4:00	4:10	4:20	4:30
15	3	4:05	4:20	4:30	----	----	4:45
16	1	4:40	----	----	4:50	5:00	5:10
17	2	4:40	4:55	5:00	----	----	5:15
18	3	4:55	----	----	5:05	5:15	5:25

**APPENDIX O**

**MAP OF NEW YORK HARBOR NPS SITES**

2006 PROSPECTUS - FOR REFERENCE USE



Many people are surprised to discover the 10 National Parks comprising 23 unique destinations that can be found in and around New York Harbor. These parks are in northern New Jersey, Staten Island, Brooklyn, Queens, Manhattan and Westchester County, New York.

From international icons such as the Statue of Liberty National Monument to the 27,000 acre ecological and recreational treasure that is the Gateway National Recreation Area, the National Parks of New York Harbor welcomes more than 12 million visitors each year. Right here in one of the largest and busiest urban areas in the world, your National Parks are wonderful places for respite and renewal.

These parks are among the 390 of America's historical and natural treasures cared for by the National Park Service. At each of our destinations you will find friendly and knowledgeable Park Rangers, as well as valued partners and dedicated volunteers, who care for these special place.

It is our hope that you will use this guide and map to plan a visit to our parks and reconnect with the natural world, our national heritage and yourself.

Maria Burks, Commissioner  
The National Parks of New York Harbor, [www.nps.gov/npnh](http://www.nps.gov/npnh)



**CASTLE CLINTON**



**FEDERAL HALL**



**GENERAL GRANT MEMORIAL**



**HAMILTON GRANGE**



**THEODORE ROOSEVELT BIRTHPLACE**



**ST. PAUL'S CHURCH**



**GOVERNORS ISLAND**



**AFRICAN BURIAL GROUND**



**ELLIS ISLAND**



**STATUE OF LIBERTY**



**LOWER EAST SIDE TENEMENT MUSEUM**



**GATEWAY**



**CANARSIE PIER**



**FLOYD BENNETT FIELD**



**JAMAICA BAY**



**BREZY POINT**



**FORT TILDEN**



**JACOB RIIS PARK**



**GREAT KILLS PARK**



**FORT WADSWORTH**



**MILLER FIELD**



**SANDY HOOK**



**FORT HANCOCK**





**APPENDIX P**

**NPS 48 CHAPTER 21**

**Concessioner Review Program  
Operational Performance Standards**

2006 PROSPECTUS - FOR REFERENCE USE

CONCESSIONER REVIEW PROGRAM  
OPERATIONAL PERFORMANCE STANDARDS

Standards In Order Of Appearance

	Pages	
General Standard		1-4
Food Service Sanitation Inspections	Exhibit	1
Safety and Occupational Health	Exhibit	2
Food and Beverage Services	Exhibit	3
Overnight Accommodations	Exhibit	4
Merchandising Operations	Exhibit	5
Automobile Service Stations	Exhibit	6
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CONCESSIONER REVIEW PROGRAM-OPERATIONAL PERFORMANCE STANDARDS

INTRODUCTION

The following General Standard elements apply to almost all concession operations. There are, however, some instances where individual elements contained in the operating standards, include additional requirements to the general standards. In such cases, the operating standard element so states. Exhibits of the various operating standards and forms used in this program can be found at the end of this chapter.

A. GENERAL STANDARD FACILITY EXTERIOR

1. Structure Condition. The exterior of the buildings and other outdoor appurtenances must be in good physical condition, well painted or otherwise treated to protect against deterioration and kept clean and in good repair. (B)
2. Grounds. Grounds shall be well maintained, properly illuminated, uncluttered and free of litter, and debris. This will include facility entrances, stairways, parking areas, trails, driveways, walkways and other areas for which the concessioner is responsible or as outlined in the land assignment. (B)
3. Public Signs. Public signs for which the concessioner is responsible must be appropriately located, accurate, attractive and well maintained. Signs of a permanent nature shall be prepared in a professional manner, consistent with NPS standards, appropriate for the purpose they serve and, be approved by the Superintendent prior to installation. (B)or(C)
4. Garbage and Trash. The concessioner shall provide an effective system for the collection and disposal of garbage and trash within its areas of responsibility at the facilities. Waste should not accumulate in trash containers to the point of overflowing. Trash containers shall be conveniently located and in sufficient quantity to handle the needs of the area. Refuse shall be stored in receptacles which are covered, waterproof, and which comply with all relevant construction standards (such as bear and vermin proof), as specified by the National Park Service. State and/or county codes shall also be followed if applicable. (A)or(B)

B. FACILITY INTERIOR

5. Public Restrooms. Public toilet areas shall be clean, odorless, free of litter, well illuminated, ventilated, and maintained. Toilet bowls, sinks and urinals shall be clean, reasonably free of stains and in proper operating condition. Toilet tissue, towels or air drying devices and soap shall be provided. Walls, floors, ceilings, mirrors, waste receptacles, chairs and other furnishings shall be clean, and well maintained. (A)
6. Public Signs. Public signs for which the concessioner is responsible must be appropriately located, accurate, attractive and well maintained. Signs of a permanent nature shall be prepared in a professional manner consistent with NPS standards, appropriate for the purpose they serve and, be approved by the Superintendent prior to installation. (C)
7. Public and Other Areas. The lobby, offices, storerooms, workrooms, ticket booths, tackrooms, corridors and other space shall be clean, properly illuminated and well maintained. All furniture provided should be commensurate with the size of the area and its intended purpose, present a well organized and uncluttered appearance and, be in good repair. Chairs, lamps, tables, ash trays, draperies and other furnishings shall be appropriate and adequate for the visitors' comfort. Floors must be clean, free of litter and stains. Vinyl floor coverings must be clean, waxed or buffed, free of cracks, chips and worn places. Masonry tile or flagstone grouting must be in good repair and clean. Wood floors are to be clean and waxed or otherwise sealed. Carpeting must be clean, reasonably free of stains and be in good repair. Walls and ceilings are to be free of breaks and stains and have a fresh appearance. Windows must be clean and free of breaks. (B)

C. OPERATIONAL

8. Employee Performance. An active training program for the development of the necessary skills and techniques must be provided for all employees.

These sessions shall stress work performance and also include product and service presentation,

cleanliness, employee attitudes and NPS philosophy and policy. Performance should be indicative of good training. (A)

9. Employee Attitude. Each employee is to project a hospitable, friendly, helpful, positive attitude and be capable and willing to answer visitors' questions (about both job and general park information). (A)

10. Employee Appearance. The concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the employees of the concessioner. The concessioner shall require its employees to exercise courtesy and consideration in their relations with the public and present a neat, clean and otherwise attractive personal appearance. (A)

11. Operating Hours. All facilities and services shall be operated in accordance with the hours authorized by the Superintendent or as specified in the operating plan and/or rate schedule. Hours of operation shall be prominently displayed at each facility in such a manner as to be easily visible to the public. (B)

12. Staffing. All facilities and services must be properly staffed so as to prevent undue delays, e.g., registration areas, tour and transportation services, rental services, etc. In determining what constitutes undue delay, consideration shall be given to the kinds and types of service being rendered and situations or conditions beyond the control of the concessioner such as unanticipated influxes of visitors, facility or equipment breakdowns or sudden weather changes. The reasonableness of the delay, based on the above, should be the determining factor. (A)

D. RATES

13. Authorized Rates. All rates being charged shall not exceed those approved by the Superintendent. These rates are to be verified against the specific approved service, portion size, quality, price or other such criteria. (A)

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14. Posting of Rates. Rates shall be prominently posted in sales areas (point of purchase) as necessary. (B)
15. Sales Verification. Sales must be accurately and legibly recorded. Receipts shall be given for purchases when requested. (C)

E. OTHER

16. Vending. Vending and ice machines and their location shall be easily identified, adequately illuminated, conveniently located as approved by NPS, clean, properly stocked and be in good working condition. (B)
17. Beverage Container Guidelines. All of the requirements of the NPS Beverage Container Guidelines, as stated in Chapter 33 must be followed for all beverage sales including vending machines. Any State mandatory deposit law in effect must also be adhered to. (B)

FOOD SERVICE SANITATION INSPECTIONS - STD. NO. I

The goal for a system of sanitation inspections is to ensure correction of health hazards. An effective system must not only identify hazards, but also assign responsibility for correction and follow up to assure that some action is taken, in addition to rating the concessioner's performance. The correction of most of the operational and equipment deficiencies will be the concessioner's responsibility. Others, usually involving structural faults in government buildings, may be the responsibility of NPS.

INSPECTION AND RATING PROCEDURES

A. Official Inspections

Each food service facility (restaurant, snack bar, bar, etc.), is to be inspected for sanitation at least quarterly in year-round operations and at least twice during the operating period for seasonal operations. The number of periodic food service sanitation inspections of a facility may be reduced by two for year-round and one for seasonal operations if all rating scores for such facility for the previous year and the current year have been 85 (Satisfactory) or higher. The 1976 PHS (FDA) Food Service Sanitation Ordinance and the Food Service Establishment Inspection Report (Form FD 2420, 5/78) related thereto will be used as the standard as well as for recording inspection findings. All such inspections shall be made by either a PHS representative or an NPS, State or local Sanitarian.

Upon completion of an inspection, the Food Sanitation Inspection Report will be completed by the PHS representative or other Sanitarian before leaving the park. All significant deviations from the PHS standards will be identified on the PHS inspection report for each operation by circling the appropriate item number. A specific explanation of the deficiencies shall be noted on the reverse side of the report form or appended thereto and a correction period assigned (See Correction Period Section Below). A rating score for that inspection should then be calculated and recorded on the report.

The Sanitarian will discuss the report with the park concession specialist or other assigned individual who will at that time identify those deficiencies, if any, which are the responsibility of the park (NPS) to correct. The park representative will at that time also make the necessary adjustments on the front of the report on the line immediately below

the PHS rating score (See example form at end of this exhibit.) He/she will indicate on this line the corresponding item numbers of those deficiencies which are NPS's responsibility to correct. Then all deficiency points relating to NPS areas of responsibility should be totaled and added to the rating score so that the score will reflect only the concessioner's responsibilities.

The park representative will then give a copy of the adjusted report to the concessioner and point out respective responsibilities. If the unadjusted score for the establishment is less than 75 or if a severe health hazard exists regardless of the score, the Superintendent or his authorized representative shall meet with the concessioner as soon as possible following the inspection to discuss corrective action and correction dates.

The Sanitarian is to immediately notify the Regional Concessions Office and the Regional and WASO Environmental Sanitation Offices of the Unsatisfactory Rating.

Copies of all reports are also to be forwarded immediately to the Regional Concessions Office and the Regional PHS Representative by the park. Attached to this should be a statement of action taken or proposed by the park to correct NPS deficiencies, or a copy of an applicable budget request (Form 10-237, 10-238 or other submission). Once an action statement is submitted with the PHS report it need not be attached to subsequent reports for that year unless there is a change.

B. "UNOFFICIAL" OR COURTESY INSPECTIONS

The Superintendent or designated staff member may, from time to time, conduct courtesy inspections for conformity to PHS standards. Such inspections are for the purpose of assisting the concessioner in maintenance of standards and/or to aid in the identification of potential future problems. Such inspections, while beneficial, have no official standing and may not be considered in assignment of periodic or overall ratings. Courtesy inspections may be made using a locally designed form or the regular PHS form, provided that if the PHS form is used, the word "UNOFFICIAL" is printed in large letters at the top and the concessioner is made aware of its courtesy purpose.

C. CORRECTION PERIOD

The Environmental Sanitation Officer shall designate specific correction dates for each deficiency based on the severity of the item, using his/her professional knowledge. In the absence of such design-

nation and as a general rule, all deficiencies should be assigned a correction period of 15 days of the initial sanitation inspection. Where correction of an item(s) requires a large expenditure, all responsible parties should discuss the situation and mutually agree upon correction dates. This does not preclude modifying or discontinuing parts or all of the food service until correction is completed.

D. REINSPECTION; FOLLOW-UP INSPECTIONS

Where the Rating Score of an establishment is less than 75, a comprehensive full reinspection shall be conducted within 30 days or as otherwise specified in the inspection report, to determine whether the overall status of the facility has improved. Reinspections are to be made by the person making the original inspection or where that is not possible, by another Sanitarian. A copy of the reinspection report should be sent to the Regional Concessions and Sanitation Offices and to the Environmental Sanitation Program Office in WASO.

Where the Rating is 75 or above, a follow-up inspection shall be made as soon as possible following the correction period specified by the Public Health Inspector on the back of Form 2420, to determine whether correction of the specific violations described in the report has been accomplished. Follow-up inspections shall be made by either the person making the inspection or an NPS representative designated by the Superintendent who is knowledgeable of the deficiencies noted.

E. RECORDING PERIODIC RATINGS

Numeric Periodic Rating Scores shall be entered on a Summary of Periodic Food Service Sanitation Rating Scores Form 10-622. Re-evaluation or Follow-up Inspection Scores should not be recorded on this sanitation summary form.

F. ANNUAL RATINGS

After the end of the evaluation year (not later than September 30), an Average Annual Rating Score shall be calculated for each food service establishment or operation following the instructions set forth on the Summary of Periodic Food Service Sanitation Rating Scores (Form 10-622). This resulting score shall then be transferred to the Concession Operational Performance Report (Form 10-629) using a separate line for each facility.

As previously stated, scores from reinspections or follow-up inspections are not to be included in calculation of the annual rating. An Annual Overall Average Rating Score combined for all food service establishments operated by that concessioner shall then be calculated and converted to an NPS Equivalent Rating using the following conversion table:

OVERALL AVERAGE PHS RATING SCORE	NPS EQUIVALENT RATING
85 - 100	SATISFACTORY
75 - 84	MARGINAL
< - 75	UNSATISFACTORY

The NPS Equivalent Rating so determined is to be entered on the Concession Operational Performance Report (Form 10-629).

In assigning the year-end NPS Equivalent Rating, the Superintendent shall take into account, in addition to the numeric inspection scores, the extent to which deficiencies have or have not been corrected within the time specified for correction, as well as excessive fluctuations in rating scores during the operating period. Where warranted, the Superintendent may assign an NPS equivalent rating different from the calculated Numeric Rating but such action must be fully explained in the mandatory narrative (end of the year statement) on the NPS Concessioner Annual Overall Rating (Form 10-631). The end of the year narrative must also discuss by name any facility which has received an unsatisfactory PHS rating throughout the year and give the current status of that facility's operation.

G. Less Than Satisfactory Operations: When any food service facility receives a less than Satisfactory PHS rating or if a severe health hazard exists regardless of score, the Superintendent is to take immediate action.

1. UNSATISFACTORY: When the rating score for an inspection is less than 75 or if a severe health hazard exists regardless of score, the Superintendent may:
  - a. Close that facility until the deficiencies have been corrected, or
  - b. Take any action listed under 2, below.
2. MARGINAL: When the rating score is from 75 to 84, the Superintendent may:
  - a. Require that service be modified or, that certain activities be discontinued until the deficiencies have been corrected, and/or
  - b. Closely monitor progress through additional inspections, spot checks or reports and report findings to WASO through the Regional Office.

In every case, the concessioner should be reminded that an annual overall sanitation inspection of less than satisfactory for the year may result in a less than Satisfactory Annual Overall Rating.

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EXHIBIT 1

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Std. No. 1

SAMPLE - FOOD SERVICE ESTABLISHMENT INSPECTION REPORT

U.S. PUBLIC HEALTH SERVICE  
FOOD SANITATION REPORT  
for the National Park Service

NPS Owns Building  
Concessioner Owns Equip.

Park Anywhere National Park Region RMR Estab. No. \_\_\_\_\_  
 Estab. Name Blue Sky Inn Concid No. XXXXX000  
 Date 2/20/87 Owner/operator U.S. Concessions, Inc.  
 Operates under NPS concession authorization: Yes X No \_\_\_\_\_  
 Type of Estab: Restaurant X Snack Bar \_\_\_\_\_ Bar \_\_\_\_\_ Grocery \_\_\_\_\_  
 Special Event (Temporary) \_\_\_\_\_ Demonstration \_\_\_\_\_ Other \_\_\_\_\_  
 Type of Insp: Regular X Follow-up \_\_\_\_\_ Re-insp. \_\_\_\_\_  
 Informal \_\_\_\_\_ Investigation \_\_\_\_\_ Other \_\_\_\_\_

ITEM NO.	DEBIT	ITEM NO.	DEBIT
<b>FOOD</b>		<b>SEWAGE</b>	
*01	Source, sound condition	5	
02	Original container, properly labeled	1	
<b>FOOD PROTECTION</b>		<b>PLUMBING</b>	
*03	Potentially hazardous food meets temperature requirements during storage, preparation, display, transportation	5	
*04	Facilities to maintain product temperature	4	
*05	Thermometers: provided, conspicuous, accurate	1	
*06	Potentially hazardous food properly thawed	2	
*07	Cross-contamination prevented: detained food segregated, unwrapped and potentially hazardous food not re-served	4	
08	Food protection during storage, preparation, display, dispensing, packaging, transportation	2	
09	Handling of food (ice) minimized	2	
10	In use, food dispensing utensils properly stored	1	
<b>PERSONNEL</b>		<b>TOILET &amp; HANDWASHING FACILITIES</b>	
*11	Personnel with infections restricted	5	
*12	Hands washed and clean; good hygienic practices	5	
13	Clean clothes; hair restraints	1	
<b>FOOD EQUIPMENT &amp; UTENSILS</b>		<b>GARBAGE &amp; REFUSE DISPOSAL</b>	
*14	Food-contact surfaces: designed, constructed, maintained, installed, located	2	
15	Non-food-contact surfaces: designed, constructed, maintained, installed, located	1	
16	Warewashing facilities: designed, constructed, maintained, installed, located, operated	2	
17	Accurate thermometers and chemical test kits provided	1	
18	Preflushed, pre-scraped, presoaked	1	
19	Wash, rinse water: clean, proper temperature	2	
*20	Sanitization rinse: clean, temperature, concentration, time; Equipment and utensils sanitized	4	
21	Wiping cloths: clean, use-restricted, stored	1	
22	Food-contact surfaces of equipment and utensils: clean, free of abrasives and detergents	2	
23	Non-food-contact surfaces of equipment and utensils clean	1	
24	Clean equipment/utensils: storage, handling	1	
25	Single-service articles: storage, handling	1	
26	No re-use of single service articles	2	
<b>WATER</b>		<b>INSECT, RODENT, ANIMAL CONTROL</b>	
*27	Source: sufficient supply; hot & cold; under pressure	5	
		*35 Presence of insects/rodents; outer openings protected; no animals	
		34 Outside storage area and enclosures: properly constructed clean; controlled incineration	
		<b>FLOORS, WALLS &amp; CEILINGS</b>	
		*36 Floors: constructed, drained, clean, good repair, covering, installation, dustless methods	
		*37 Walls, ceilings: attached equipment, constructed, clean, good repair, surface, installation, dustless methods	
		<b>LIGHTING</b>	
		*38 Lighting provided as required; fixtures shielded	
		<b>VENTILATION</b>	
		*39 Rooms and equipment vented as required	
		<b>DRESSING ROOMS</b>	
		40 Rooms, area, lockers: provided, located, used	
		<b>OTHER OPERATIONS</b>	
		*41 Toxic items: necessary; properly stored, labeled, used	
		42 Premises maintained free of litter, unnecessary articles; cleaning maintenance equipment properly stored	
		43 Complete separation from living/sleeping quarters, laundry	
		44 Clean, soiled linen properly stored	

Public Health Rating = 100 less weight of debits = 79 (See Back)

Person in charge of estab. \_\_\_\_\_

NPS Representative Kicker Langer

Public Health Inspector John H. ...

\*Critical health items requiring immediate attention

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**CONCESSION**

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**EXHIBIT 1**

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**Std. No. I**

**SAMPLE - FOOD SERVICE ESTABLISHMENT INSPECTION REPORT**

ITEM NO.	REMARKS	CORRECTED BY
3	Walk-in refrig. #1 50°F. Must be kept 45°F or less.	24 hrs.
5	Provide thermometer in walk-in #1	15 days
6	Chicken thawing at room temp. Thaw in refrig.	immediately
14	Repair or replace deeply gouged, cracked chopping block.	90 days
20	Final rinse on dishwash machine 150°F. Repair to achieve 180°F. If cannot do before next meal, use chemical sanitizer or paper service.	immediately
33	Remove accumulation of grease and rotting food from inside of dumpster. Regular cleaning is needed.	15 days
36	Clean grease spillage from around stoves.	48 hrs.
<b>STRUCTURE or EQUIPMENT</b>		
*31	Handwashing sink needed near food prep. area.	6 mos.
35	Repair broken screens all kitchen windows	90 days
*37	Plywood walls in salad room should be painted or covered with material that is smooth, cleanable and non-absorbent.	6 mos.
*39	Install electric exhaust fan in windowless restroom. Must vent to outside. Interwire to turn on with light switch.	1 year

\*NPS is responsible for items 31, 37, 39 (6 demerits)  
Concessioner is responsible for all other items.

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EXHIBIT 1

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SAMPLE - SUMMARY OF PERIODIC FOOD SERVICE SANITATION RATING SCORES

FORM 10-622  
(Rev. 6/82)

UNITED STATES DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

SUMMARY OF PERIODIC  
FOOD SERVICE SANITATION  
RATING SCORES

YEAR

Establishment/  
Operation  
Concessioner

*Blue Sky Inn*  
*U.S. Concessions, Inc.*

Region  
Park

*R.M.P.*  
*Anywhere NP*

PERIODIC FOOD SERVICE  
SANITATION RATING SCORES (Do not use Reinspection  
or Followup Inspections)

DATE

PERIODIC FOOD SERVICE SANITATION RATING SCORES	DATE
1. <u>79</u>	<u>1-1-82</u>
2. <u>95</u>	<u>4-5-82</u>
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____

174  
87 TOTAL

Average Periodic Rating Score (APRS) - (Total score divided by the number of comprehensive inspections). Transfer this APRS to the Concession Operational Performance Report (Form 10-629)

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Concessioner Review Program - Operational Performance Standards

EXHIBIT 2  
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Std. No. II

SAFETY AND OCCUPATIONAL HEALTH - STD. No. II

NOTE: THE SAFETY AND OCCUPATIONAL HEALTH STANDARD (STANDARD NO. II) HAS BEEN REVISED AND RENAMED CONCESSIONS LOSS CONTROL PROGRAM. IT HAS BEEN PUBLISHED SEPARATELY IN CHAPTER 34 BUT, IS TO REMAIN AS A PART OF THE OPERATIONAL PERFORMANCE REVIEW.

Concessioner Review Program-Operational Performance Standards

OPERATING STANDARDS FOR FOOD AND BEVERAGE SERVICE (INCLUDING EMPLOYEE OPERATION) - No. III

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2 (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard Element No. 4 (A)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. Exclude dining rooms from this section. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. Refer to General Standard, Element No. 11. (B)
12. Staffing. Refer to General Standard, Element No. 12. (A)

D. RATES

13. Menus. Menus should be clean, attractive and be appropriate for the facility and services provided. A sufficient number of menus shall be available to accommodate the customers. The menu should provide a reasonable variety and sufficient number of moderately priced items or entrees for the type of facility. Handwritten changes on the menu are to be kept to a minimum and are only acceptable if the corrections are neatly made. Menu boards for cafeterias and snackbars should be posted and arranged so that they are easily seen. However, in cafeteria operations in lieu of a menu board, individual prices may be provided at the various stations (salad, dessert, beverage, hot food, etc.). Reduced portions and appropriately priced food items should be provided for children where complete meal service is offered. (B)
14. Authorized Rates. Refer to General Standard Element No. 13. (A)

E. FOOD AND BEVERAGE SERVICE

15. Food Availability. The items listed on the menu or menu board (for cafeterias and snackbars) should be available during the entire serving period. "Running Out" of certain food items may occur occasionally but should be kept at a minimum. Substitutions are to be comparable to the original item. (B)
16. Availability of Condiments. Where table service is utilized, condiments should either be located on the table or the usual condiments provided when the food is served. For cafeteria and snackbar operations, the condiments should be convenient and so located as not to impede the speed of service. The condiment area should be kept clean and replenished as necessary. (B)
17. Customer Attention. Where table service is provided, customers should be seated and provided a menu within a reasonable period of time upon entering the facility and be seated on a first come basis as much as possible

If reservations are accepted they are to be so scheduled, so that customers are seated at the time of their appointed reservation. High chairs or other suitable chair lifts for children shall be available and provided immediately when requested. (B)

18. Food Temperatures. Food should be served at appropriate temperatures. The evaluator should use reasonable judgment in determining this requirement. (B)

19. Food Prepared to Order. For table service operations, entrees which are customarily cooked to order, should be prepared in accordance with the diner's wishes. (B)

20. Merchandising. Foods should be attractively presented, free of discoloration and arranged on plates so that they are not intermingled. Garnish should be used as is customary and should be attractive and have a fresh appearance. Plate rims should be free of food, juices and drippings. Special attention should be given to attractively displaying food on cafeteria counters and counter tops should be appropriately decorated and clean. Glass fronts should be clean and free of condensation. (C)

21. Table Appearance. Tables should be properly set, linens and/or place mats clean and unturned. Tables should have salt, pepper, sugar, ash tray and napkins neatly and uniformly arranged. If table decorations are provided, they should have a fresh appearance and be neatly arranged. (B)

22. Tableware. Dishes, flatware and glasses are to be clean unspotted, free of discoloration, chips and cracks. (A)

23. Guest Checks. At table service restaurants, checks should be presented upon completion of the meal. They should clearly state the cost of each meal or item and be accurately totaled. Individual checks should be provided on request. (C)

24. Furniture Arrangement and Condition. Tables should be arranged so that diners are not crowded, have a feeling of privacy and can be seated without disturbing other guests. All furniture is to be clean and well maintained. Cardboard, napkins or other material used to stabilize tables and chairs is unacceptable. (C)

25. Floors, Walls, Ceilings and Windows(Dining Room). Floors and floor coverings must be clean, free of litter stains and be well maintained. Vinyl floor coverings must be reasonably polished, free of breaks, chips or worn places. Masonry tile or flagstone grouting must be in good repair and clean. Wood floors are to be waxed or otherwise sealed. Carpeting must be clean and free of stains. Walls, ceilings and windows are to be clean and free of cracks, breaks and stains, and have a fresh appearance. (B)

26. Environment. Food and beverage seating areas are to be well ventilated, free of unpleasant odors, properly decorated and illuminated for the type of facility. (B)

27. Employee Meal Hours. Employees, while on duty, should be assigned periods to eat or take coffee breaks that do not interfere with serving the public. A specific location is to be designated for this purpose. (C)

F. BEVERAGES

28. Beverages. Serving of drinks and other beverages shall be in accordance with what has been approved by the Superintendent. (B)

29. Drink Presentation. The proper type of glass and garnishment (lemon, lime, celery stick, etc.), is to be used as is customary in the industry. (C)

30. Liquor Laws. All applicable Federal, State and county laws concerning liquor service shall be observed. (A)

31. Vending. Refer to General Standard Element No. 16. (B)

32. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



OPERATING STANDARDS FOR OVERNIGHT ACCOMMODATIONS - STD. NO. IV

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (A)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. This does not apply to specific lodging rooms. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Reservations and Deposit Refunds. Reservation cancellation and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled and be contained in appropriate advertising material, rate schedule and/or operative agreement as approved by the

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Superintendent, and in conformance with Chapter 29. (B)

12. Identification of Area. Each lodging facility must have an adequate and easily identifiable area for registration and check-out purposes. (C)

13. Operating Hours. In addition to General Standard, Element No. 11, the following will apply. When closed, instructions are to be conspicuously posted, illuminated and provide information as to contacting the management and procedures to follow in event of emergencies. (B)

14. Staffing. Refer to General Standard, Element No. 12. (A)

15. Room Availability. Rooms shall be made available to guest within a reasonable period. Guests should not be required to wait in excess of 2 hours from the established check-out time for the facility and should never be later than 4:00 p.m. If space permits, security shall be provided for visitors' luggage until their rooms become available. (B)

16. Informational Material. The registration area shall have general park and concession information available such as operating hours for park and concessioner services and activities. (C)

D. RATES

17. Authorized Rates. Refer to General Standard, Element No. 13. (A)

18. Posting of Rates. In addition to General Standard, Element No. 14, the following will apply. Rates will be posted in individual rooms or be conspicuously posted at the registration area. (B)

E. ROOM HOUSEKEEPING AND SERVICES PROVIDED

19. Room Organization. Rooms must contain adequate space for guests to move about comfortably, yet

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not contain unnecessary furniture or oversized furniture that result in a congested appearance.

Furniture should be so placed as not to impede free movement within the room and result in a well organized unit.

(C)

20. Furniture and Furnishings.

Each guest room is to be adequately furnished and equipped with accessories to meet visitor needs. This includes a sufficient number of chairs, tables, waste basket(s), ash tray(s), coat hangers and luggage racks. All furniture and accessories are to be clean, free of dust and stains and in good condition. All room elements should be color coordinated.

(B)

21. Window Coverings. All window coverings including draperies, blinds and shades, must be cleanable and designed to provide for the guests' privacy. Such coverings must effectively shut out annoying light from outside sources.

(B)

22. Floor, Walls, Ceilings and Windows. Floors and floor coverings must be clean, untorn, free of litter, stains and in good repair. Vinyl floor coverings must be highly polished, free of cracks, chips or otherwise worn, masonry tile grouting must be in good repair and clean; wood floors are to be polished or otherwise sealed. Area rugs must be treated to prevent slippage. Walls, ceilings and windows must be clean, free of defects such as cracks, breaks, torn coverings, stains, etc.

(B)

23. Bedding. Each bed must be made-up with two sheets, one mattress pad, pillow(s) and pillow case(s), blanket and bedspread. All bedding must be clean, untorn and free of stains, and of the proper size for the mattress. Depending on location and climatic conditions, a second blanket for each bed should be available, preferably in the room but at a minimum, obtainable at the registration desk.

(A)

24. Bed Condition. Mattresses are to be clean, orderless, non-sagging, free of lumps and protruding tufts, and sized to fit the bed frame or springs. Springs are to be non-protruding, quiet and

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unbroken. Frames are to be dust free and in good repair. (A)

25. Illumination. Sufficient lamps must be provided to properly illuminate the room. Lamps for reading or writing purposes must be provided and the bulbs be at least 75 watts. However, the bulb wattage is not to exceed the specification printed on the specific light fixture. (C)

26. Environment. Guest rooms are to be well ventilated, odorless, and free of insects and rodents or evidence thereof. Doors and windows including screens are to be sufficiently tight to preclude the entry of rodents and insects. (B)

27. Security. All doors and windows accessible to the room must have adequate, operable locking devices and changed as necessary to preclude key duplication and theft problems. Doors must have a double locking system from the inside. Entry doorways must be sufficiently illuminated to allow easy access. (A)

28. Utilities and Appliances. Heaters, air conditioners and other appliances (stoves, refrigerators, cooking and eating utensils, etc.) must be in good condition, operable, adequate, clean and reasonably quiet and available as required by the Superintendent. (B)

29. Vending. Refer to General Standard, Element No. 16. (B)

30. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

F. BATHROOM

31. Linen. Quality, clean linens, in good condition, shall be provided in each bathroom. There shall be one large bath size towel, one hand towel and one face cloth per person. Each bathroom shall also have one bath mat of adequate size. In the event baths are used in common (one bath shared by several rooms), linens are to be placed in the guest room. (A)

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- one face cloth per person. Each bathroom shall also have one bath mat of adequate size. In the event baths are used in common (one bath shared by several rooms), linens are to be placed in the guest room. (A)
32. Soap. There shall be at least one individually wrapped soap bar per person. In the event bathrooms are used in common (one bath shared by several rooms), the requirement remains the same and supplies shall be placed in the guest room. (B)
33. Toilet and Facial Tissue. Toilet and facial tissue must be of good quality and conveniently located. One roll or package of toilet tissue must be held in reserve and conveniently located. Facial tissue shall be provided in each unit bathroom. Toilet facilities used in common with a number of rooms must have a supply of toilet tissue in reserve and be conveniently located. (B)
34. Drinking Containers. For each person there must be one sanitized, wrapped drinking glass or single service cup. Where single service cups are used, they must be stored in a clean, properly sized enclosed dispenser that is designed for that purpose, if not wrapped. When ice is available, then each room is to contain a clean ice bucket. (B)
35. Wastebaskets. Each bathroom shall contain one clean wastebasket that is in good repair. (C)
36. Shower Enclosures. Shower or tub curtains must be untoned, clean and free of mildew. They shall be of sufficient length and width to prevent water from flowing onto the floor. Other types of enclosures (hinged and sliding doors), must meet the above criteria and, in addition, be easily moveable and free of breaks. Sliding-door tracks must be clean and in good repair. (B)
37. Tub/Shower. Showers and bath tubs shall be clean, unspotted, reasonably free of stains, inside and out, and in good condition. Tubs and showers must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are tightly secured, clean and free of mildew and untoned. (A)

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38. Fixtures. Toilets, sinks, faucets, tissue dispensers, mirrors, towel racks, light fixtures, etc., shall be clean, unpitted and free of cracks. (A)
39. Environment. Bathroom areas shall be clean, well ventilated, free of litter and offensive odors, and well maintained. Floors, walls, ceiling, doors, and windows, are to be clean and mildew free. (A)

2006 PROSPECTUS - FOR REFERENCE USE

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UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE <b>PERIODIC CONCESSION EVALUATION REPORT</b> (Overnight Accommodational) Standard No. IV		Form 10-604 (Rev. 6/82)	
		REGION	PARK
		NAME OF CONCESSIONER	FACILITY/SERVICE

**NOTICE TO CONCESSIONER:** The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

**ELEMENTS/CLASSIFICATION**  
(Circle applicable element numbers and (✓) in space provided those which are deficient)

<b>A. FACILITY EXTERIOR</b> 1. Structure Condition (B) _____ 2. Grounds (B) _____ 3. Public Signs (C) _____ 4. Garbage and Trash (A) _____ <b>B. FACILITY INTERIOR</b> 5. Public Restrooms (A) _____ 6. Public Signs (C) _____ 7. Public & Other Areas (B) _____ <b>C. OPERATIONAL</b> 8. Employee Performance (A) _____ 9. Employee Attitude (A) _____ 10. Employee Appearance (A) _____ 11. Reservation & Deposit Refunds (B) _____ 12. Identification of Area (C) _____ 13. Operating Hours (B) _____	<b>C. (CONT'D)</b> 14. Staffing (A) _____ 15. Room Availability (B) _____ 16. Informational Material (C) _____ <b>D. RATES</b> 17. Authorized Rates (A) _____ 18. Posting of Rates (B) _____ <b>ROOM HOUSEKEEPING AND</b> <b>E. SERVICES PROVIDED</b> 19. Room Organization (C) _____ 20. Furniture & Furnishings (B) _____ 21. Window Coverings (B) _____ 22. Floors, Walls, Ceilings & Windows (B) _____ 23. Bedding (A) _____ 24. Bed Condition (A) _____ 25. Illumination (B) _____	<b>E. (CONT'D)</b> 26. Environment (B) _____ 27. Security (A) _____ 28. Utilities & Appliances (B) _____ 29. Vending (C) _____ 30. Beverage Container Guidelines (B) _____ <b>F. BATHROOM</b> 31. Linen (A) _____ 32. Soap (B) _____ 33. Toilet & Facial Tissue (B) _____ 34. Drinking Containers (B) _____ 35. Wastebaskets (C) _____ 36. Shower Enclosures (B) _____ 37. Tub/Shower (A) _____ 38. Fixtures (A) _____ 39. Environment (A) _____
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ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					(Signature)	(Signature)	
FOLLOW-UP					(Signature)	(Signature)	

REMARKS:

SUPERINTENDENT'S COPY

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OPERATING STANDARDS FOR MERCHANDISING OPERATIONS - NO. V

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Display/Sales and Other Areas. In addition to General Standard, Element No. 7, the following shall apply. Display areas and aisles shall not be cluttered or crowded. Shelving and other display fixtures may be rustic, if appropriate but must be of high quality, good taste and appearance, and be suitably finished as to be easily cleaned and maintained. Professionally manufactured display equipment is recommended. Hanging or displaying of a variety of merchandise from rafters, ceilings ropes, chains, over windows, in doorways or in the aisles, etc., is not acceptable, unless normally hung that way in ordinary use. Overall, the shops shall have an uncluttered appearance. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)

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9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. Refer to General Standard, Element No. 11. (B)
12. Staffing. Refer to General Standard, Element No. 12. (A)

D. RATES

13. Authorized Rates and Labeling. In addition to General Standard, Elements No. 13 & 14, the following shall apply. All merchandise must be properly tagged as to selling price. Use of stickers, grease pencils, or stringed price tags are acceptable. Identical items may be marked by display area, rather than on each item. Pricing labels however, shall not conceal point of origin (if foreign made) or other identification. \*Merchandise fabricated from animal skins must be labeled to indicate that skins were obtained from legally authorized sources and are not from threatened and/or endangered species. The manufacturer of such merchandise must certify in writing to the concessioner that their products meet these requirements.\* Articles sold as genuine Indian/Eskimo handcraft shall be so labeled. Such items can be identified by display provided the display is exclusively native handcraft. The authenticity of each item shall be clearly stated, so as to distinguish from commercial or machine-made Indian/Eskimo merchandise. Intermingling of other items of different origin is not permissible. Such handcraft items shall be physically separated from manufactured facsimiles, from novelty items, from foreign imports, etc., to reduce purchaser confusion. Handcraft merchandise shall be clearly visible to attract visitors and promote sales. Additionally, producers or associations of producers of genuine handcraft articles must certify in writing to the concessioner that their products are produced according to production standards outlined in the Handcraft and Merchandise policy. (See Chapter 28) (A)
14. Sales Verification. Refer to General Standard, Element No. 15. (OC)

E. MERCHANDISE

15. Authentic United States Handcrafts and Indian/Eskimo Handcraft. Such merchandise shall be checked to see if it is given preferred treatment in the selection, display, and sales promotion and meets the following production standards. (A)
- a. Is predominately handmade
  - b. Is predominately individually produced under conditions not resembling an assembly line of the factory system; and
  - c. Is produced by using only such devices or machines that allow the manual skill of the maker or makers to condition the overall shape and design of each individual product.
16. Other Preferred Merchandise. Articles or items associated with or in interpretive of the area or geographical regions in which the concession shop is located. (B)
17. Other Acceptable Merchandise. The sales of these items is permitted under the following conditions: (B)
- a. Commercially or machine manufactured Indian type merchandise, including articles which copy in design handmade jewelry and craft items, which must be labeled individually or collectively.
  - b. Foreign imports must be properly labeled to indicate the origin of manufacture. They should not, however, be handled in such quantity as to exclude other merchandise.
  - c. Natural merchandise symbolic or representative of those found in the area but not originating in National Park Service areas must be labeled and identified so as to indicate their origin. Plant materials or other natural materials originating in National Park Service areas cannot be sold.

- d. Animal skins, fabricated into such items as leather gloves, skirts, or jackets, mukluks, etc., may be sold provided they are \* obtained from legally authorized sources and are not from threatened and/or endangered species.\*
- e. Souvenir or novelty articles which identify the park by simple area, name, decal or by picture of the area or popular feature, such as pennants, sweatshirts, T-shirts, linens, etc.
- \* f. Outdated merchandise such as film and other items where spoilage is not a problem may be sold at a discount rate provided that it is properly labelled as being outdated, and is displayed separately from merchandise which has not exceeded the manufacturers "Do not sell after" date.\*

18. Unacceptable Merchandise. Souvenirs or other merchandise may be sold with the exception of the following: (A)

- a. All articles which persons of normal sensitivity might consider obscene, sexually oriented, suggestive, indecent, blasphemous, profane, vulgar, or in ridicule of established institutions, persons or customs. Also, merchandise that is harmful or hazardous.
- b. Archeological specimens or objects of American Indian origin, such as pottery or arrowheads more than 100 years old, regardless of the place of origin.
- c. Plant materials or natural plants and animals and products therefrom, including animal skins, taxidermal specimens, imported and domestic skins or parts of animals, etc., except as permitted in 17(d) above.
- d. Merchandise \* which is subject to spoilage and has \* exceeded the producer's specific "Do not sell after" date.

F. OTHER

- 19. Vending. Refer to General Standard, Element No. 16. (B)
- 20. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



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OPERATING STANDARDS FOR AUTOMOBILE SERVICE STATIONS - NO. VI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. In addition to General Standard, Element No. 2, the following shall apply. Oil and gas spills are to be cleaned immediately. Waste receptacles must be conveniently located at the gas pumps and be well maintained and emptied as needed. If curbs are painted they shall be repainted as necessary to be maintained in a satisfactory condition. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)

B. FACILITY INTERIOR

4. Public Restrooms. Refer to General Standard, Element No. 5. (A)
5. Public Signs. Refer to General Standard, Element No. 6. (C)
6. Public and Other Areas. In addition to General Standard, Element No. 7, all tools, auto lifts compressors and other equipment shall be clean and well maintained. (B)

C. OPERATIONAL

7. Employee Performance. Refer to General Standard, Element No. 8. (A)
8. Employee Attitude. Refer to General Standard, Element No. 9. (A)
9. Employee Appearance. Refer to General Standard, Element No. 10. (A)
10. Operating Hours. Refer to General Standard, Element No. 11. (B)
11. Staffing. Refer to General Standard, Element No. 12. (A)

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D. RATES

12. Authorized Rates. In addition to General Standard, Element No. 13, gasoline pumps must have evidence of having been calibrated by an appropriate regulatory authority. (A)
13. Posting of Rates. Refer to General Standard, Element No. 14. (B)

E. AUTOMOBILE MAINTENANCE

14. Preventative Car Care. Except for self-service gasoline sales, each vehicle sold gasoline must have its windshield cleaned, the attendant must offer to check the oil and battery fluid levels, and upon request, tire pressure, radiator water and/or coolant, automatic transmission fluid levels and other checking services are to be performed. Attendant should be alert and tell the customer when tires appear to be low, headlights are burned out or other items noticed that the customer should be aware of. (B)
15. Required Supplies. Automotive supplies should be available that are customary for the industry such as fuses, headlamps, flares, approved loaner gas cans, oil, battery fluid, radiator water and/or coolant, transmission fluid, pressurized air, radiator hoses, fan belts, etc. If these supplies are not immediately available, then the concessioner should assist the visitor in obtaining them. (B)

F. SERVICE

16. Informational Material. The service station should have general information material available. Park maps (as available) as well as state road maps as appropriate, must be available. (C)
17. Products Sold (GAS). Each service station must have available leaded and unleaded gasoline. (A)
18. Vending. Refer To General Standard, Element No. 16. (B)
19. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



OPERATING STANDARDS FOR TRANSPORTATION SYSTEMS - NO. VIIA. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. In addition to General Standard, Element No. 11, the concessioner is to abide by approved operating schedules that include, (1) departure times, (2) stops, (3) arrival times; and (4) designated routes. (B)
12. Staffing. Refer to General Standard, Element No. 12. (A)

D. RATES

13. Authorized Rates. Refer to General Standard, Element No. 13. (A)
14. Posting of Rates. Refer to General Standard, Element No. 14. (B)

E. VEHICLES AND VESSELS

15. Maintenance. Vehicles must have an overall well maintained and clean appearance. Interior and exterior must be in good physical condition. Vehicles must be reasonably free of rust, chipped or discolored paint. Preventive maintenance must be performed on each vehicle or vessel on a regularly scheduled basis. (B)
16. Regulations. All applicable regulations related to the operation of vehicles and vessels must be followed, i.e., ICC, Coast Guard, CFR Title 36, Parts 3 and 4. (A)
17. Interpretation. Employees that are providing interpretive service in conjunction with transportation must be sufficiently trained to interpret attractions, comment on resources of the area and be knowledgeable of area regulations. Interpretation must be accurate, pertinent and complete. Concessioner should consult with park staff in developing training (see NPS, Chapter 2, Item 19 of Interpretation and Visitor Services Guidelines). (B)

F. OTHER

18. Beverage Container Program. Refer to General Standard, Element No. 17. (B)



OPERATING STANDARDS FOR MARINA FACILITIES  
STD. NO. VIII

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1 (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

4. Public Restrooms. Refer to General Standard, Element No. 5. (A)
5. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

6. Employee Performance. In addition to General Standard, Element No. 8, concessioner employees working around fuel docks should demonstrate knowledge of handling emergency equipment and procedures for oil or fuel spills. (A)
7. Employee Attitude. Refer to General Standard, Element No. 9. (A)
8. Employee Appearance. Refer to General Standard, Element No. 10. (A)
9. Operating Hours. Refer to General Standard, Element No. 11. (B)
10. Staffing. Refer to General Standard, Element No. 12. (A)

D. RATES

11. Authorized Rates. In addition to General Standard, Element No. 13, all space renters are to be given 30 days notice after a rate increase approval before new rates are made effective. (A)
12. Posting of Rates. Refer to General Standard, Element No. 14. (B)
13. Sales Verification. Refer to General Standard, Element No. 15. (C)

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14. Reservation Deposit and Refund Policy. Reservations, cancellations and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled and be contained in appropriate advertising material, rate schedule and/or operating agreement as approved by the superintendent and in conformance with NPS-48, Chapter 29. (B)

E. SLIP RENTALS

15. Rental Registers. Separate up to date registers shall be kept for short-term and long-term renters of slips, moorings and dry boat storage spaces. These registers shall be available for examination by authorized representatives of the Government. The registers shall include those items specified by the superintendent and may include the name of visitor, date of rental period, registration number of boat (state and local), description of the boat and space number assigned. (B)
16. Order of Rental. The concessioner shall maintain a waiting list on a first-come, first served basis for the rental of buoys, slips, and dry boat storage spaces. (A)
17. Rental Agreements. Written rental agreements, conforming to applicable legal requirements, shall be executed for each slip rental. The rental form must be approved by the superintendent prior to adoption or use. (A)
18. Authorized Types of Rentals. The concessioner will not rent slips or moorings that are used or reserved by any persons for purposes of promotional display or sale of boats or boat accessories. (A)

F. DOCK OPERATIONS

19. Identification. Each slip and mooring must be numbered uniformly and be clearly marked by a number permanently installed. Marking of rental buoys must conform to applicable uniform state waterway marking systems. (B)
20. Dock and Ramp Maintenance. The dock surface, flotation and ramps must be in good repair, properly positioned and secured. Docks must be sturdy, free of large cracks, uneven or broken planks, etc. Railings, where required, are to be in good repair and sturdy enough to support visitor use. (A)
21. Dock Accessories. Cleats are to be properly placed and secured for use at each slip area. There shall be no loose

or missing cleats. If required, bumper material must be available and in good condition. Other accessory items required in the contract/permit or operating plan or rate schedule must be available and well-maintained. (B)

22. Courtesy Docks. Unless otherwise provided for in the authorized rate schedule, space on courtesy docks shall not be rented. They must be conveniently located to the entire operation and equipped with adequate, well-maintained cleats and access ladders. The concessioner will ensure that use of such docks will not exceed the time limits specified in the contract/permit or operating plan. (A)

23. Dock Carts. If required, dock carts must be in good condition and in reasonable quantity to handle normal peak season demands. (C)

24. Boat Sewage Pump Out. Sewage pump out stations, if required must be available, clean, well-maintained and emptied on a regular basis. (B)

25. Storage Lockers. Storage lockers, if provided must have adequate ventilation, be kept clean, painted, be of sturdy construction, uniform in size and not exceed maximum size as determined by the superintendent. (C)

26. Transportation. If transportation services are provided in conjunction with dry boat storage operations, vehicles used to transport visitors must be clean, well-maintained and safe. (B)

G. SAFETY

27. Fuel Dock. Fuel docks, if provided, must be kept clean and free of debris. Safety equipment required by the contract/permit, operating plan or as outlined in the NFPA standards is available and well-maintained. The concessioner shall have a documented written procedure for handling oil or fuel spills and any fuel spills shall be promptly reported to local NPS personnel as required by regulation. (A)

28. Utility Lines. If utilities are provided, all utility lines and connections are maintained in good operable condition. (A)

29. Security and Lighting. There shall be adequate outside lighting throughout the marina complex for the ramps, docks, slips and other public areas for night time operations. After scheduled hours, lighting is to be reduced to only

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provide security in the marina complex. The slip rental area of the marina should have locked, controlled security and only be accessible by from land by slip renters. Dry boat storage areas are to be properly secured as approved by the superintendent. Security personnel shall be provided as required to protect visitor and concessioner property. (B)

H. OTHER

30. Public Signs. In addition to General Standard, Element No. 3, No Smoking signs and fueling regulations must be conspicuously located around refueling areas and the concessioner will post emergency telephone numbers around fuel dock areas. (B)
31. Vending. Refer to General Standard, Element No. 16. (B)
32. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



OPERATING STANDARDS FOR HORSE AND MULE OPERATIONS - IX

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. In addition to the General Standard, Element No. 2, pay particular attention to the presence and condition of hosebib vacuum breakers (anti-siphoning devices). The grounds near public access food or overnight accommodation areas or as may be designated in the operating plan, shall be cleared of manure daily and the manure removed from the area at least a minimum of once a week. Other areas, not designated above shall be cleared of manure according to the schedule in the contract/ permit or operating plan. The concessioner shall maintain areas around water troughs to prevent excess erosion or build up of mud and/or water and will move stock to dry corrals if necessary. Water troughs will be cleaned to prevent the build-up of mold, algae and debris. (B)
3. Garbage and Trash. Refer to General Standard, Element No. 3. (A)

B. FACILITY INTERIOR

4. Public Restrooms. Refer to General Standard, Element No.4. (A)
5. Public and Other Areas. In addition to General Standard, Element No. 5, non-public areas such as tackrooms, barns, storerooms, ticket booths, etc., shall be maintained in such a manner as to be hazard free. Adequate maintenance shall be performed on the walls, ceilings and floors to prevent deterioration of the structure. Doors and windows shall be intact and fully functional. Floors shall be sufficiently clean to avoid a tripping or slipping hazard to employees working there. Trash shall not accumulate. All applicable fire safety guidelines (NFPA) will be followed. Hazardous conditions such as broken glass, exposed wiring, precipitously stacked objects will be eliminated. (B)

C. OPERATIONAL

6. Employee Training. The skill and competency levels of each wrangler, guide, etc., is commensurate with the services they are responsible for. Active introductory

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training and orientation programs for new and experienced employees shall be conducted on an ongoing basis for the development and/or advancement of the necessary skills and techniques for the job. These sessions shall stress work performance, safety and first aid, employee attitudes, and knowledge of park resources, rules and regulations. All wranglers shall be sufficiently trained to describe attractions, comment on resources of the area and be knowledgeable of area regulations and in the purposes of the park in which they are riding. The concessioner's personnel (wranglers, guides, etc.) must meet the qualification requirements, including first aid, stock handling and park regulations, as established in the contract/permit or operating plan. (A)

7. Employee Attitude. Refer to General Standard, Element No. 7. (A)
8. Employee Appearance. Refer to General Standard, Element No. 8. (A)
9. Operating Hours. Refer to General Standard, Element No. 9. (B)
10. Staffing. Refer to General Standard, Element No. 10. (A)

D. RATES

11. Authorized Rates. Refer to General Standard, Element No. 11. (A)
12. Posting of Rates. Refer to General Standard, Element No. 12. (B)
13. Reservation and Deposit Refunds. Reservation, cancellation and deposit refund policies shall be reasonable, efficiently handled and be approved by the Superintendent. (B)

E. STOCK CARE

14. Treatment of Stock. Stock must be properly cared for to assure good feeding and stable and shelter conditions. A timetable for cleaning stables and shelters and changing bedding must be adhered to, as established in the contract/permit or operating plan. Stock must be fed daily. Hay pellets and grain/corn is to be stored in covered, rodent-proof containers, but bales of hay may be stored in the open. Stock must be treated properly by the staff and visitors. Cruelty will not be condoned. Shoes must be inspected frequently to ensure that the stock is properly shod and the hoof is in good condition. Stock may not be used when they have sores or are sick or are not otherwise ready for riding. (A)

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15. Stock Examination. All stock should be examined by a licensed veterinarian each year prior to the start of operations, if required by state and/or county law; not only stock stabled in the park year round but all stock brought into the park for commercial use. Stock must meet state/county regulations concerning immunizations, including Equine Infectious Anemia. Such examinations and testing reports, if required, are to be documented. (A)
16. Quantity of Stock. Sufficient stock shall be available as advertised and approved. (B)
17. Quality of Stock. Cleaning and trimming requirements must be adhered to, as established in the contract/permit or operating plan. Stock must be available to accommodate the inexperienced rider and operators should know their stock to determine the practicality of sound, but spirited horses for knowledgeable riders. All stock must be capable of safely handling the types of terrain and obstacles to be encountered, including water crossings, bridges, logs and bushes, uphill and downhill climbing, altitude and climate. A timetable for establishing stock familiarity with terrain must be adhered to, as established in the contract/permit or operating plan. (A)

F. EQUIPMENT

18. Tack Condition. Saddle bags, blankets, bridle and other equipment used by the visitor while riding shall be in good and safe condition, clean and well maintained. All equipment shall be periodically inspected to ensure adherence to this standard; any defective equipment shall be immediately repaired, removed or replaced. (A)
19. Adequacy. All equipment supplied by the concessioner shall be of the type and quantity suitable to the guiding situations experienced within each respective park area. All other equipment needed will be adhered to, as established in the contract/permit or operational plan. (B)

G. SAFETY

20. First Aid Kit. The availability and type of first aid equipment, if required by the contract/permit or operating plan, including snakebite kits, shall be provided. (A)
21. Communication Equipment. Two-way radio or other communication devices, if required by the contract/permit or operating plan shall be provided. (A)

H. SERVICES

22. Trail Operation. Client/guide ratios, including any party size limitations, as advertised by the concessioner shall be adhered to, as specified in the contract/permit or operating plan. Guides shall position riders where best suited, with emphasis placed on the safety of inexperienced riders. The reins must be tied together instead of hanging separately, except where the Superintendent determines otherwise and where local customs dictate the use of split reins.

(B)

23. Food Services. All food provided by the concessioner on the ride shall consist of sufficient quantity and good quality to sustain visitors for the duration of the trip. Sanitary food and water handling, and storage practices must be utilized to prevent food borne illnesses.

(A)

I. INTERPRETATION/ORIENTATION

24. Visitor Safety Orientation. The wrangler must brief all riders on the proper and safe procedures such as how to control the horse prior to mounting, and inform the riders how and when to dismount and how to pass the word for help (rider by rider) to the wrangler. Wranglers shall inform visitors of the nature and/or demands of the trip, including but not limited to route, time frame, hazards to be encountered, restroom facilities, water and procedures for removing excess clothing and for taking pictures. The wrangler should be available to aid the riders in mounting and assist the riders on securing carry-on articles, including raincoats.

(A)

25. Pre and Post Trip Activities. As required by the operating plan, prior to the ride, an interpretive session which includes introducing wranglers and their company, welcoming park and identifying the park as part of the National Park System may be conducted. The interpretive session should highlight the scenic, geologic, historic, cultural and wildlife resources that might be observed on the trip. After the ride, a summary session may be held, reiterating the specific features that were seen on the trip, asking visitors for further comments or questions and thanking them for their participation on behalf of the concessioner and the National Park Service.

(B)

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26. Program Content. Information presented on a guided ride must be accurate, complete, appropriate to the audience, organized logically and be related to park themes. Concessioners should consult with park's staff in developing programs (refer to NPS 6, Interpretation and Visitor Services Guidelines, Chapter 7). (B)

27. Program Delivery. Wranglers shall demonstrate their ability to speak clearly, possess good eye contact with the visitor during pre and post trip activities, project good voice volume, and stimulate questions and/or comments from visitors. (B)

J. OTHER

28. Public Signs. Refer to General Standard, Element No. 14. (C)

29. Vending Machines. Refer to General Standard, Element No. 15. (B)

30. Beverage Container Guidelines. Refer to General Standard, Element No. 16. (B)

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OPERATING STANDARDS FOR SKI TOWS AND LIFTS - NO. X

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. In addition to General Standard, Element No. 3, the following also applies. Public information signs related to ski lift, tramway or tow operations including advance information signs alerting skiers as to the direction of and the type of slope, i.e., intermediate, etc., must be properly located where they can be easily read by all persons using the facilities, and must be consistent and equivalent with American National Standards Institute Safety Requirements for Aerial Passenger Tramway (ANSI-B77.1 standards (2.1.12)). (B)
4. Ski Storage. Adequate facilities for ski and pole lean-tos are to be provided near warm-up shacks and service areas. (B)
5. Garbage and Trash. Refer to General Standard, Element No. 4. (B)
6. Boundaries. The boundaries for all ski runs must be clearly marked and identified. (B)

B. FACILITY INTERIOR

7. Public Restrooms. Refer to General Standard, Element No. 5. (A)
8. Public Signs. Refer to General Standard, Element No. 6. (C)
9. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

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C. OPERATIONAL

10. Employee Performance. In addition to General Standard, Element No. 8, the concessioner's employees shall be knowledgeable of the ANSI B-77.1 standards (3.2.3). The lift operators and lift attendants must possess a current first aid card or equivalent. The lift operators and attendants must always stay in the immediate vicinity (within 10 feet) of their assigned posts while the lift or tow is in passenger operation. The operators and attendants must be diligent in performing their tasks and address their complete concentration to their tasks while the lift or tow is in operation. The attendant must assure that the skiers are being properly situated on the lift apparatus. (A)
11. Employee Attitude. Refer to General Standard, Element No. 9. (A)
12. Employee Appearance. Refer to General Standard, Element No. 10. (A)
13. Operating Hours. Refer to General Standard, Element No. 11. (B)
14. Staffing. In addition to General Standard, Element No. 12, lift operators and lift attendants shall be so scheduled so that their positions are always covered during operations. (A)

D. RATES

15. Authorized Rates. Refer to General Standard, Element No. 13. (A)
16. Posting of Rates. Refer to General Standard, Element No. 14. (B)
17. Sales Verification. Refer to General Standard, Element No. 15. (C)

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E. TOW AND LIFT OPERATIONS

18. Evaluations and Maintenance. The facility shall be examined visibly and audibly daily by the concessioner, to determine that the structures, equipment tension and drive terminals, line towers, cable clearances and other lift line conditions are safe. Also, on a daily basis, the concessioner is to evaluate the safety circuits, communication system, automatic brakes, backstops, and manual brakes prior to opening the operation to skiers. These evaluations are to be in accordance with ANSI B-77.1 (3.3). Additionally, the concessioner shall maintain a daily operational log and a maintenance log to record maintenance work completed. (A)
19. Plans and Standards. The concessioner shall retain in file at least one copy of the American National Standards for Aerial Passenger Tramways (ANSI B-77.1), as well as a copy of the concessioner's Safety and Operational Plan, a copy of the concessioner's Avalanche Rescue Plan, Lift Evaluation Plan, and Structural Fire Plan. These standards must also be known by all those employees responsible for these areas and used as their basic standards. (B)
20. Ski Instructions. Ski instructions shall be performed during the authorized and posted hours and all levels of ski instruction (i.e., beginner, intermediate, advanced and expert) shall be taught provided the appropriate ski runs are available. Ski instructors will be properly certified and shall be tested for competence and knowledge of the standards as well as thoroughly knowledgeable in and properly certified in first aid. (A)
21. Ski Patrol. The ski patrol shall be adequately staffed to cover all ski runs. The ski patrol shall be certified and shall be tested by the concessioner for competence. The ski patrol shall be thoroughly knowledgeable and properly certified in first aid, first aid equipment and rescue operations. The ski patrol should carry radios to expedite first aid and rescue operations. (A)

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22. Slope and Lift Maintenance. The ski slopes shall be marked for dangerous obstructions, degree of difficulty and shall be free of debris. Closed slopes and/or areas of slopes closed shall be marked and shown on maps at the lift areas. The slopes shall be checked daily for safety and grooming. The lift areas shall be well maintained and the waiting line shall be regulated. The lift and tow line speed and capacity shall comply with or be equivalent to ANSI B-77.1 (2.1.5). (A)
23. Equipment Maintenance. All tools, lift chairs, T-bars, tramcars and other equipment shall be clean and well-maintained. All towers and other equipment shall be properly protected or guarded to prevent injury. (B)
24. Equipment Rental. Rental skis, bindings, boots and poles shall be operational and well-maintained. (B)
25. First Aid Shelter. The equipment (i.e., communications, first aid, toboggans, rescue/avalanche) shall be adequate and maintained in an orderly manner. (A)
26. Auxiliary Power. All ski lifts and tramways shall be equipped with a standby auxiliary power source which can be used to unload the line in the event of failure of the primary power source. The auxiliary power unit shall not, however, be used until the ANSI B-77.1 standards (2.2.1.2) or equivalent are complied with. (A)
27. Vending. Refer to General Standard, Element No. 16. (B)
28. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



OPERATING STANDARDS FOR SUPPLEMENTARY INTERPRETIVE SERVICES - NO. XI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. Also, the formal training program is to include park regulations and management policies, interpretive skills, communication skills, awareness of the park visitor as an individual, understanding of the park resources and familiarity with interpretive techniques used in the park. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)

D. RATES

11. Authorized Rates. Refer to General Standard, Element No. 13. (A)

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E. INTERPRETIVE OPERATIONS

12. Program Content. Format and documents must be approved by the Superintendent to ensure the activity fosters public understanding of park resources and values; conforms to the central park theme; has a minimum adverse environmental impact; and accurately describes program objectives as intended for the audience. (Refer to NPS Interpretation Guide-line). (B)
13. Program Presentation. Program/activity must convey major interpretive theme as approved by the Superintendent. Judging performance should be based on knowledge obtained from current or most recent research and free of avoidable religious, cultural, and ethnic biases. (B)
14. Advertising. Demonstrations, talks, etc., should be presented as depicted in brochures, etc. Date, locations, duration, physical requirements, and learning experience should correspond with publication matter. Also refer to General Standard, Element No. 11. (B)
15. Public Safety. All program/activities should be designed to ensure the safety and health of the public and staff in compliance with the Occupational Safety and Health Act, U.S. Public Health Service (FDA) protection recommendations, Federal Regulations and Safety Management guidelines. Safety considerations and precaution information should be communicated to the visitor at the onset of, and during the activity. (A)
16. Attendance. The ratio between interpreter and number of visitors must be kept at a level that allows an activity to accomplish its goals. Each group should be limited to a size which would prevent an adverse impact upon area resources. (B)

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F. MEDIA

17. Exhibits. An appropriate, routine maintenance schedule should be followed to keep exhibits clean and in good repair. Each permanent exhibit should be inspected routinely to determine whether its content remains accurate and appropriate, and whether its physical condition is satisfactory. (B)
18. Audiovisual Program and Equipment. All AV programs and their equipment should be of acceptable technical quality, and shall be kept clean and the content current. (B)
19. Publications. Concessioner produced publications should be kept accurate, up-to-date, and available in sufficient quantities to meet visitor demand. All publications (advertising matter) should depict the interpretive theme presented and meet established policies (Refer to CFR, Title 36, Sec. 5.1). (B)
20. Media and Content. The program media is to be relevant, effective, and shall adhere to approved plans and servicewide guidelines for interpretation. (B)
21. Communicating Effectively. Presentations should be organized and planned to smoothly and logically convey approved program material. Interpreter(s) should possess public speaking skills and exercise judgment and skill in such areas as the pretalk summary, the talk itself, question/answers, and in giving announcements. (B)
22. Culture or Role Presentation. Demonstrators or costumed interpreters should display activities or roles appropriate to the accurate portrayal of the skills, cultural attitudes, and values of the locality, person, and period being interpreted. (B)
23. Costuming. All historic period costumes or dress used for interpretive presentations must be reproductions that meet standards of authenticity approved by the Superintendent. (C)

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G. OTHER

24. Vending. Refer to General Standard, Element  
No.16. (B)
25. Beverage Container Guidelines. Refer to General  
Standard, Element No. 17. (B)

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OPERATING STANDARDS FOR GROUP EMPLOYEE - HOUSING - EMPLOYEE STD. NO. XII

INTRODUCTION

The following standard element applies to concessioner group employee housing including dormitories, tents, cabins, trailers, etc. However, many of these may not apply to all employee housing areas. Use only those that apply. They also do not apply to single family dwellings. Safety evaluations will be conducted on all employee housing under the applicable safety standards.

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2 (B)
3. Public Signs. In addition to General Standard, Element No. 3, a bulletin board shall be provided for employee/managerial use. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (A)

B. FACILITY INTERIOR

5. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

6. Staff Responsibilities. The concessioner shall be responsible to designate a specific individual(s) to insure that the employee housing facilities are in compliance with NPS standards. (B)

D. ROOM HOUSEKEEPING

7. Room Organization. Rooms must contain adequate space to move about and not contain unnecessary furniture or furniture sized out of proportion with the room size that results in a congested appearance. Furniture should be situated so that a good traffic flow

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- or furniture sized out of proportion with the room size that results in a congested appearance. Furniture should be situated so that a good traffic flow is realized and lends itself to a well organized unit. (C)
8. Furniture and Furnishings. Each room is to be equipped with adequate furnishings (i.e., chair, table, desk, ash trays) as appropriate, to accommodate the occupants and yet avoid a congested appearance. All furniture and furnishings are to be clean, and in good condition. (B)
9. Window Coverings. All window coverings including draperies, blinds, and shades must be cleanable and designed to provide for privacy. (B)
10. Floors, Walls, Ceilings and Windows. Floors and floor coverings must be clean, untornd, free of litter, stains and in good repair. Vinyl floor coverings must be highly polished, free of cracks, chips or otherwise worn, masonry tile grouting must be in good repair and clean; wood floors are to be polished or otherwise sealed. Area rugs must be treated to prevent slippage. Walls, ceilings and windows must be clean, free of defects such as cracks, breaks, torn coverings, stains, etc. (B)
11. Bedding. All bedding must be clean, untornd and free of soil or stains, and must be of the proper size for the mattress. (A)
12. Bed Condition. Mattresses are to be clean, odorless, non-sagging, free of lumps and protruding tufts, and sized to fit the bed frame or springs. Springs are to be non-protruding, quiet and unbroken. Frames are to be in good repair. (A)
13. Illumination. Sufficient lighting must be provided to properly illuminate the room. Lamps for reading or writing purposes must be provided and the bulbs must be at least 75 watts. However, the bulb wattage is not to exceed the specification printed on the specific light fixture. (C)

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14. Environment. Rooms are to be well ventilated, odorless and free of insects and rodents or evidence thereof. Doors and windows including screens are to be sufficiently tight to preclude the entry of rodents and insects. (B)
15. Security. All doors and windows accessible to the room must have adequate, operable locking devices. These devices should be changed as necessary to preclude key duplication and theft problems. Doors must have a double locking system from the inside. Entry doorways must be sufficiently illuminated to allow easy access. (A)
16. Utilities and Appliances. Heaters, air conditioners and other appliances (stoves, refrigerators, etc.) must be approved for use, (by NPS), be in good condition, operable, adequate, clean and reasonably quiet. (A)
17. Vending. Refer to General Standard, Element No. 16. (B)
18. Beverage Container Guidelines. Refer to General Standard Element No. 17. (B)

E. BATHROOM

19. Linen. If provided by the concessioner, each employee must have available high quality, clean linen in good condition. (A)
20. Toilet Tissue. Toilet tissue must be of good quality and conveniently located. One roll or package must be held in reserve and conveniently located. Toilet facilities used in common with a number of rooms must have a supply in reserve and be conveniently located. (B)
21. Wastebaskets. Each bathroom shall contain one clean wastebasket that is in good repair. Cardboard boxes are unacceptable. (C)
22. Shower Enclosure. Shower or tub curtains must be unorn, clean and free of mildew. They shall be of sufficient length and width to prevent water from flowing onto the floor. Other types of enclosures

(hinged and sliding doors), must meet the above criteria and, in addition, be easily moveable and free of breaks. Sliding door tracks must be clean and in good repair. (B)

23. Tub/Shower. Showers and bath tubs shall be clean, unspotted, reasonably free of stains, inside and out, and be in good condition. Tubs and showers must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are tightly secured, clean and free of mildew. (A)

24. Fixtures. Toilets, sinks, faucets, tissue dispensers, mirrors, towel racks, light fixtures, etc., must be unpitted, free of stains and in good condition. Mirrors must be clean and free of cracks. (A)

25. Environment. Bathroom areas shall be clean, well ventilated, free of litter and offensive odors, and well maintained. Floors, walls, ceilings, doors, and windows are to be clean, mildew free. (A)

F. OTHER

26. Storage. Adequate storage areas, shelving, etc., is provided so that all employee possessions and personal equipment are properly stored. (C)

27. Parking. Employee's vehicles, are parked in designated areas. Parking of additional vehicles, boats, trailers, and other heavy equipment is to be parked in areas approved by the Superintendent. (C)

28. Pets. The keeping of pets must be in accordance with park rules and regulations. (B)



OPERATING STANDARDS FOR  
PUBLIC SHOWERS/LAUNDRIES - STD. NO. XIII

A. Facility Exterior

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. Facility Interior

4. Public Restrooms. Refer to General Standard, Element No. 5. (A)
5. Public and Other Areas. In addition to General Standard, Element No. 5, the open laundry area must be equipped with chairs commensurate with the size of the area and number of machines provided. Tables or other suitable surfaces will also be available for patrons to sort and fold clean laundry. Ash trays and waste receptacles of non-combustable materials are also to be provided. (B)

C. Operational

6. Employee Performance. Refer to General Standard, Element No. 8. (A)
7. Employee Attitude. Refer to General Standard, Element No. 9. (A)
8. Employee Appearance. Refer to General Standard, Element No. 10. (A)
9. Operating Hours. Refer to General Standard, Element No. 11. (B)

D. Rates

10. Authorized Rates. Refer to General Standard, Element No. 13. (A)

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11. Posting of Rates. All rates shall be prominently posted for clothes washers, dryers and showers. The length of time allotted for that rate shall be prominently posted for clothes dryers and timed showers. (B)

E. Public Showers

12. Shower Enclosure. Shower curtains or appropriate enclosure must be of sufficient length and width to fit the enclosure and to prevent water from flowing on to outer areas as well as to assure privacy to the occupant. The enclosure must be clean, free of mildew, untorn or broken and, otherwise in good condition. (A)
13. Shower Stall. Shower stalls, including floors, walls, ceilings, doors, and attachments must be clean, well-maintained, ventilated, and free of litter, mildew and offensive odors. Shower floors must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are securely fastened. (A)
14. Water Supply. Water pressure and temperature should remain constant and be comfortable. Extreme fluctuations should not occur. If faucets are provided, they must be accurately marked and operational. (A)
15. Dressing Area and Clothes Storage. Either lockers or clothes hooks are to be provided and located in close proximity to the shower stall. A dressing area is to be provided and contain adequate seating as appropriate. (B)
16. Security. Arrangements for the safekeeping of patron's valuables should be provided or signs shall be conspicuously posted stating that the management is not responsible for patron's valuables. (B)
17. Soap and Towels. If required in the contract/permit or operating plan, towels are to be of large bath size, good quality, good condition, and clean. Soap shall be individually wrapped or obtained from a soap dispenser. (A)

F. Laundry Facilities

18. Vending. In addition to General Standard, Element No. 16, all washers, dryers, and other vending equipment must be clean, well-maintained, reasonably free of rust and unspotted. Any equipment that is out of order must have a sign so stating and be returned to service within a reasonable period of time. (B)

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19. Laundry Supplies and Change. Soap, bleach and change must be available in close proximity to the facility. (B)

G. Other

20. Public Signs. In addition to General Standard, Element No. 6, operating instructions for timed showers and laundry equipment must be prominently posted in the shower or laundry area. Operating instructions for laundry equipment may be posted on the machines themselves. (B)
21. Timing. Mechanical or electrical timing devices used for showers and laundry equipment, if provided, must operate within a 10-20 second degree of accuracy or as otherwise approved by the superintendent to ensure the minimum time period identified in the rate schedule. (B)
22. Interpretation. If required in the contract/permit or operating plan, the shower/laundry waiting areas will have informational/interpretive media for visitors' optional use during their waiting time. If the concessioner provides interpretive material, all content and media will be approved by the superintendent prior to use and will be appropriate for the site. If required, the concessioner will keep any such interpretive media (bulletin board, display case, etc.) clean and in good repair. (B)
23. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



OPERATING STANDARDS FOR TRAILER VILLAGES (SHORT-TERM)  
AND CONCESSIONER OPERATED CAMPGROUNDS - STD. NO. XIV

INTRODUCTION

The following standards shall govern the management of transient or short-term trailer villages and of concessioner operated campgrounds. The concessioner is responsible for enforcing compliance by the site occupants. The concessioner shall inform site occupants that violation of any of these standards may be grounds for the termination of their occupancy by the concessioner. The National Park Service should provide assistance as needed.

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds/Site Maintenance. In addition to the General Standard, Element No. 2, it is the responsibility of the concessioner and the tenant to maintain the site in a clean, neat and sanitary manner at all times. No debris, refuse or litter shall be allowed on any site or in any space beneath a trailer. Tables, grills and fire containing devices, if provided, shall be reasonably free of vandalism and/or graffiti and repaired as necessary to assure proper function. Hookups, if provided, will be repaired as necessary to assure safe operation. (B)
3. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

4. Public Restrooms. Refer to General Standard, Element No. 5.
5. Shower Areas. If provided, shower stalls, including floors, walls, ceilings, doors and attachments must be clean, well maintained, ventilated and illuminated, free of litter, mildew and offensive odors. Shower curtains or an appropriate enclosure must be of sufficient length and width to prevent water from flowing to outer areas as well as to ensure privacy. Water must be of sufficient temperature to be comfortable and faucets must be accurately marked and operational. (B)

6. Public & Other Areas. In addition to General Standard, Element No. 7, at least one public telephone with unrestricted 24-hour access will be provided in the transient area, with emergency numbers clearly posted. (B)

C. OPERATIONAL

7. Employee Performance. Refer to General Standard, Element No. 8. In addition, employees will provide timely, accurate and complete information about activities, facilities, and services available to the visitor. Employees are to be knowledgeable of all programs, policies and regulations and be able to explain them to the visitor in a clear concise manner. Employees shall provide a basic level of visitor services as outlined in the contract/permit or operating plan. (A)
8. Employee Attitude. Refer to General Standard, Element No. 9. (A)
9. Employee Appearance. Refer to General Standard, Element No. 10. (A)
10. Operating Hours/Quiet Hours. Refer to General Standard, Element No. 11. Quiet hours shall be maintained between the hours of 10 p.m. & 6 a.m., as outlined in 36CFR 2.10. These hours shall be prominently displayed to the public. (B)
11. Staffing. Refer to General Standard, Element No. 12. (A)
12. Public and Emergency Information. Informational material such as local area maps, park regulations and campground regulations shall be provided to all visitors at no charge when these items are available free to the concessioner. Other approved material may be sold at the registration desk. Promotional material for commercial enterprises may be displayed only upon prior approval by the superintendent. Materials being sold are to be displayed separately from those items which are free.

A bulletin board or other informational method of display shall be accurate and complete and provide timely information about park activities and facilities, as well as services available. References and

directions to lost and found area, public telephone, as well as to local facilities, such as store, service stations and hospital for non-emergency care shall be provided. Provisions shall be made for delivering emergency messages to guests in a timely, effective manner. Routine messages for guests shall be prominently displayed.

(B)

D. RATES

13. Authorized Rates. Refer to General Standard, Element No. 13.

(A)

14. Sales Verification. Refer to General Standard, Element No. 15. Site assignment stubs or tickets may be substituted for sales receipt.

(C)

E. SITE RENTAL OPERATION

15. Rental Agreements. Written rental agreements, conforming to applicable legal requirements, shall be executed for each site rental. The rental form must be approved by the superintendent prior to adoption and use. It must include a requirement that the occupant as a condition of rental will abide by these standards as well as the campground or trailer village rules. At the time of rental, the tenant shall be advised of where a copy of the current concessioner rules are posted. The check-out time as outlined in the contract/permit or operating plan shall be included in the rental agreement for transient sites.

(B)

16. Authorized Number and Types of Rentals. Group size, duration of stay, number of actual sites and number of tents per site shall not exceed the number and times approved in the contract/permit or operating plan.

Additionally, the concessioner will not rent sites that are used, or reserved in any way by any persons for the purposes of promotional display, advertising or sale of trailers or trailer accessories or any other type of business or commercial use.

(A)

17. Order of Rental. The concessioner will maintain a waiting list on a first-come, first-served basis, or in a manner established by the superintendent.

(A)

18. Site Registers. The concessioner shall maintain accurate, up-to-date registers of site occupants. These are to be available for examination by authorized representatives of the Government. The register list shall include those items requested by the superintendent and may include information such as name of guest, date of rental period, space number, license, number of vehicles in the party and, if a trailer rental, make, model, year, overall length and state of registration of the trailer. (B)
19. NPS Passports. If required by the contract, the concessioner shall honor NPS Golden Age and Golden Access Passports. (A)

F. TRAILER VILLAGE/CAMPGROUND OPERATIONS

20. Employee Residential Area. Transient sites shall not be occupied by concessioner employees. (B)
21. Site Boundaries, Site Numbers. All sites are to be adequately and clearly marked by the placement of permanent markers or other identifiable means at each lot corner, and each site shall be designated by number permanently installed on the site. The site markers are to be established and maintained by the concessioner, subject to approval by the superintendent concerning size, design and readability of numbers from the roadway going through the trailer village/campground. (B)
22. Trailer Size Requirements. No trailer in excess of 8 feet in width or 35 feet in length will be located on a transient site, unless permitted by the superintendent. (A)
23. Vehicles and Boats. No vehicle shall be parked in such a way as to interfere with normal flow of traffic within the trailer or campground area. Overflow parking, if any will be allowed only in approved designated areas. Only the maximum number of vehicles authorized by the superintendent will be permitted per site. (B)
24. Landscaping. Planting or landscaping by the concessioner is permitted provided it is done according to a landscape plan approved by the superintendent. (B)

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25. Pets. The concessioner will have in place a program for managing pets and enforcing pet rules. The concessioner is responsible for assuring that all pets are leashed and do not make unreasonable noise that disturbs other park visitors or that frightens wildlife by barking, howling, or making other noise. The concessioner must also assure compliance with pet excrement disposal requirements, as established by the superintendent. The concessioner is required to remove any such troublesome pet. (B)

26. Mechanical Repairs. The concessioner will not allow major mechanical work to be performed on any vehicles within the trailer village/campground. (B)

27. Dumping Station. If required, the concessioner will establish an area for purposes of discarding sewage. If provided, this site must be approved by the superintendent and be located away from rental campsites in order for it not to be offensive to the camper. The concessioner will keep the site clean and will be responsible for following any State and/or county codes which are applicable. (A)

28. Open Fires. There shall be no open fires outside of approved fire-containing devices. (B)

G. OTHER

29. Public Signs. In addition to General Standard, Element No. 3, the concessioner shall post the following notices in a conspicuous area:

- a. A copy of concessioner's rules approved by the National Park Service and Park regulations, including fire safety rules;
- b. Approved rates;
- c. Emergency and law enforcement telephone numbers; and
- d. Information on park facilities and services. (B)

30. Vending. Refer to General Standard, Element No. 16. (B)

31. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



OPERATING STANDARDS FOR TRAILER VILLAGES (LONG TERM) - STD. NO. XV

INTRODUCTION

The following standards are for the management of long-term trailer villages. The concessioner is responsible for requiring trailer site occupants to comply and shall inform occupants that violation of any of the elements in this standard may be grounds for the termination of their occupancy by the concessioner. Concessioners may own trailers and rent them to employees. Concessioner employees living in a long-term section of a trailer village must abide by the same standards as other trailer village occupants. It is incumbent upon the concessioner to develop specific procedures for enforcing the standard and to incorporate them into trailer village occupant's space rental agreements. This standard applies to single family use of trailers. Long-term trailer sites used as concessioner dormitories should be evaluated using the Group Employee Housing Standard, No. XII.

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds/Site Maintenance. In addition to the General Standard, Element No. 2, it is the responsibility of the concessioner and the tenant to maintain the trailer site in a clean, neat and sanitary manner at all times. No debris or refuse shall be allowed on any trailer site or in any space beneath a trailer. (B)
3. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

4. Public Restrooms. Refer to General Standard, Element No. 5. (A)
5. Public and Other Areas. In addition to General Standard, Element No. 7, the concessioner shall provide at least one public telephone with unrestricted 24-hour access, with emergency numbers clearly posted. (B)

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C. OPERATIONAL

6. Employee Performance. Refer to General Standard, Element No. 8. In addition, employees shall provide timely, accurate and complete information about activities, facilities, and services available to the visitor. Employees are to be knowledgeable of programs, policies and regulations and be able to explain them to the visitor in a clear, concise manner. Employees shall provide a basic level of visitor services as specified in the park operating plan. (A)
7. Employee Attitude. Refer to General Standard, Element No. 9. (A)
8. Employee Appearance. Refer to General Standard, Element No. 10. (A)
9. Operating Hours. Refer to General Standard, Element No. 11. (B)

D. RATES

10. Authorized Rates. In addition to General Standard, Element No. 13, the following will apply. When a rate increase for site rental has been authorized, the concessioner shall give all long-term trailer village space renters a minimum of 30 days advance notice before the new rates are effective. (A)
11. Sales Verification. Refer to General Standard, Element No. 15. (C)

D. SITE RENTAL OPERATIONS

12. Rental Agreements. Written rental agreements, conforming to applicable legal requirements, shall be executed for each trailer site rental. The rental form must be approved by the superintendent prior to adoption and use. It must include provisions that the occupant will abide by this standard as well as the trailer village rules as a condition of rental. At the time of rental execution, the tenant shall receive from the concessioner a copy of the trailer village rules and other park regulations. (B)

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13. Authorized Number and Types of Rentals. The number of actual trailer sites, including those rented to employees, shall not exceed the total number approved in the contract. Only one trailer is allowed per site and only one trailer site may be rented to any one individual. No trailer site may be rented to any person whose trailer is not in conformance with this standard and the concessioner's rules. Sites may be rented for a maximum number of days as designated by the superintendent.

No concessioner shall accept for occupancy or accept as a replacement for an existing unit, any double-wide or tip-out trailer. Existing double-wide and tip-out or expanded trailers will be phased out upon termination or transfer of site rental lease. Triple-wide trailers and modular homes are not permitted. Additionally, trailer sites shall not be rented, used, or reserved in any way by any persons for purposes of promotional display, sale of trailers or trailer accessories, or any other on-site commercial enterprises. Subletting or renting to a second party is prohibited. (A)

14. Site Registers. The concessioner will maintain accurate up-to-date registers of site occupants. These are to be available for examination by authorized representatives of the Government. The register list shall include those items required by the superintendent and may include information such as name and address of guest, date of rental period, space number, and make, model, year, overall length and State of registration of the trailer. (B)

15. Order of Rental. The concessioner will maintain a waiting list on a first-come, first-served basis, or in a manner established by the superintendent. (B)

16. Termination of Lease. When a lease is terminated, the trailer must be removed by the renter from the trailer village except in areas where on-site resale is permitted by the superintendent. (B)

17. Sale of Trailers. The sale of any tenant's trailer is prohibited while in the trailer village, except with the concurrence of the superintendent in areas where resale has previously been allowed. (A)

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F. TRAILER VILLAGE OPERATIONS

18. Site Boundaries, Site Numbers. All trailer site lot lines are to be adequately and clearly marked by the placement of permanent markers at the corner of each lot, and each trailer site shall itself be designated by a number permanently installed on the site. Such boundary and site markers are to be established and maintained by the concessioner, subject to approval by the superintendent as to size, design and readability of numbers from the roadway going through the trailer village. (B)
19. Trailer Spacing and Size Requirements. The concessioner will not allow trailers to be placed on any site where there is less than 20 feet between each trailer, including any additions thereto, and any other trailer, including additions to it. Awnings and eaves, however, may intrude into a required separation more than 2 feet. At least 5 feet shall be maintained between each trailer and any property line and/or roadway adjacent to it. The trailer and accessory/building, if present, shall not occupy more than 75 percent of the designated site area. (A)
20. Trailer Additions and Expansions. The concessioner will not allow expansions or additions to trailers, such as cabanas, ramadas, or expando units. (B)
21. Storage Space. The concessioner will not provide space within a trailer village for the storage of unoccupied trailers, travel trailers, motor homes, and recreational vehicles. (B)
22. Vehicles and Boats. The concessioner will allow no vehicle to be parked in such a way as to interfere with normal flow of traffic within the trailer village or to infringe upon neighbors rights (blocking view, etc.) All vehicles, including boats and boat trailers (boat and trailer is considered one vehicle) located within a trailer village must display a current registration. Two other vehicles may be parked on the site, if space permits, beside the trailer when such vehicles are used for transportation or recreation while the trailer occupant is in residence. Recreational vehicles parked on a site beside a trailer shall not be connected to either the trailer or to the trailer site electrical, gas, water or sewage lines. (B)

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23. Condition of Trailer. The concessioner is responsible for seeing that the exterior of all units are kept in good repair, have a neat appearance, and meet all State, county or local electrical, mechanical safety and public health codes. (B)

24. Landscaping. Planting or landscaping by the concessioner is permitted provided it is approved by the superintendent. Tenant planting must be approved by the concessioner in writing and must meet the following criteria:

- a. Planting or landscaping shall not be done in front of a trailer if doing so hinders or prevents the attachment of trucks, tractors, or other towing vehicles to its hitching device, and obstructs the trailer's ready removal from the trailer site.
- b. Screen or intersection planting shall not create hazards for vehicle movement within the trailer village.
- c. Anything permanently planted on a trailer site shall not be removed without the prior written approval of the concessioner.
- d. Planting or landscaping shall not alter the natural terrain of a trailer site, including any impediment to its normal drainage.
- e. Rock gardens, pools, or other landscape features shall not be erected on any trailer site if such features cannot be easily removed by hand by the tenant (without using heavy equipment) within 24 hours upon demand for its removal by the concessioner. (B)

25. Walks, Walkways, Patio Slabs, Retaining Walls and Fences. Any retaining walls and/or terracing of sites necessary for flood control shall be constructed by the concessioner, not the tenant, in accordance with the park planning process. No walls or fences between trailer sites shall be constructed. Existing fences shall be removed when the tenant vacates the property, or sooner if desired by the concessioner.

Walkways and patio slab extensions are permitted provided that they do not create drainage problems, do not interfere with any utilities, and work has

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been approved by the concessioner in writing. The concessioner will require the tenant to remove walkways and patio slab extensions at the tenant's expense at the time of termination of the site rental lease. (B)

26. Foundations. No permanent foundations shall be erected for trailers on any existing trailer site within the trailer village. A foundation shall be considered to be any wall or pier block constructed of bricks, stones, woodblocks, or any combination thereof, intended to support a trailer. All tie downs shall be constructed to conform to applicable Federal, State and local regulations. (B)
27. Storage Facilities. Each site may have placed upon it only ONE (1) outside storage compartment. Any such storage compartment shall be of a commercially manufactured prefabricated type or professionally made, having a capacity of not more than 640 cubic feet and not in excess of 10 linear feet in any dimension. Any storage compartment placed on a trailer site may rest on a concrete pad, but must be easily removed from the trailer site. (B)
28. Porches, Awnings and Shade Structures. The concessioner may allow porches to be installed on trailer sites, but any porch shall be capable of being easily removable from the trailer site, and shall not be enclosed with any material, including permanently installed screening. Roll-up sun shades are permitted. If awnings are present, the concessioner will require that they be securely anchored and be made of demountable metal, plastic, cloth or fiberglass manufactured type which can be easily removed. Small window awnings are permitted provided that they protrude not more than 4 feet from the trailer and are fully supported by the trailer. Patio awnings shall not be enclosed. No shade structures from the trailer are permitted. (B)
29. Skirting. Skirting is required on all trailers in long-term sites. Skirting material of light metal, wood, plastic or fiberglass shall be neat, attractive, and securely installed and well maintained. (B)
30. Outdoor Showers. The concessioner will allow no outdoor showers to be installed at individual trailer sites. (C)

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31. Appliances and Yard Furniture. With the exception of water softeners and air conditioners, no appliances of any kind shall be installed, or stored outside of any trailer unless they are within an approved storage compartment. Only furniture designed and constructed for exterior use is permitted outdoors. (B)
32. Radio and Television Antennas. The concessioner is responsible for seeing that individual radio and TV antennas are attached directly to trailers within the boundaries of the sites rented and without wires to the ground. Radio systems which interfere with or disrupt radio or television reception for other tenants are not permitted. Antennas shall be erected so as not to come in contact with power lines, should they fall; and be installed with a minimum 10 foot vertical and horizontal clearance from power lines. All antennas shall also be within the Federal Communication Commission's height restrictions. Satellite dishes may be installed only at the discretion of the superintendent. (B)
33. Pets. The concessioner will have in place a program for managing pets and enforcing pet rules. The concessioner is responsible for assuring that all pets are leashed and do not make unreasonable noise that disturbs other park visitors or that frightens wildlife by barking, howling, or making other noise. The concessioner must also assure compliance with pet excrement disposal requirements as established by the superintendent. The concessioner is required to the any such troublesome pet. (B)
34. Mechanical Repairs. The concessioner will not allow major mechanical work to be performed on any vehicles within the trailer village. (B)
35. Liquid Propane Gas Tanks. L.P.G. storage tanks shall not exceed 125 gallons at each trailer site and will be mounted, installed and maintained in such fashion as to meet all applicable safety code provisions. (A)
36. Fuel Oil Tanks. Fuel oil tanks will be of the type manufactured for the purpose or storing fuel oil. Fifty-five gallon barrels are not considered an adequate type to meet these standards. Fifty-five gallons of fuel oil shall be the maximum amount stored at each trailer site. (B)

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G. OTHER

37. Public Signs. In addition to General Standard, Element No. 3, the concessioner shall post the following notices:
- a. Fire safety rules;
  - b. Approved rates; and
  - c. Emergency and law enforcement telephone numbers. (B)
38. Vending. Refer to General Standard, Element No. 16. (B)
39. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

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UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE <b>PERIODIC CONCESSION EVALUATION REPORT</b> Trailer Villages (Long Term Rentals)		Form 10-815 (Rev. 3/87)	
		REGION _____ NAME OF CONCESSIONER _____	PARK _____ FACILITY/SERVICE _____
Standard No. XV			
<p><b>NOTICE TO CONCESSIONER:</b> The element(s) checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.</p>			
<b>ELEMENTS/CLASSIFICATION</b> (Circle applicable element numbers and (✓) in space provided those which are deficient)			
Item No.	Element	Item No.	Element
	<b>A. FACILITY EXTERIOR</b>		<b>E. SITE RENTAL OPERATIONS</b>
1.	Structure Condition (B) _____	12.	Rental Agreements (B) _____
2.	Grounds/Site Maint. (B) _____	13.	Auth. Nr./Types of Rentals (A) _____
3.	Garbage and Trash (B) _____	14.	Site Registers (B) _____
	<b>B. FACILITY INTERIOR</b>	15.	Order of Rental (B) _____
4.	Public Restrooms (A) _____	16.	Termination of Lease (B) _____
5.	Public and Other Areas (B) _____	17.	Sale of Trailers (A) _____
	<b>C. OPERATIONAL</b>		<b>F. TRAILER VILLAGE OPERATIONS</b>
6.	Employee Performance (A) _____	18.	Site Boundaries/Numbers (B) _____
7.	Employee Attitude (A) _____	19.	Trailer Spacing and Size Requirements (A) _____
8.	Employee Appearance (A) _____	20.	Trailer Additions and Expansions (B) _____
9.	Operating Hours (B) _____	21.	Storage Space (B) _____
	<b>D. RATES</b>	22.	Vehicles & Boats (B) _____
10.	Authorized Rates (A) _____	23.	Condition of Trailer (B) _____
11.	Sales Verification (C) _____	24.	Landscaping (B) _____
		25.	Walks, Walkways, Patio Slabs, Ret. Walls & Fences (B) _____
		26.	Foundations (B) _____
			<b>F. (CONT'D)</b>
		27.	Storage Facilities (B) _____
		28.	Porches, Awnings and Shade Structures (B) _____
		29.	Skirting (B) _____
		30.	Outdoor Showers (C) _____
		31.	Appliances & Yard Furniture (B) _____
		32.	Radio & Television Antennas (B) _____
		33.	Pets (B) _____
		34.	Mechanical Repairs (B) _____
		35.	Liquid Propane Gas Tanks (A) _____
		36.	Fuel Oil Tanks (B) _____
			<b>G. OTHER</b>
		37.	Public Signs (B) _____
		38.	Vending (B) _____
		39.	Beverage Container Guidelines (B) _____

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR (Signature)	CONCESSIONER (Signature)
		(A)	(B)	(C)			
INITIAL					(_____) PRELIMINARY		
FOLLOW-UP					(_____) FINAL		

REMARKS:

SUPERINTENDENT'S COPY

OPERATING STANDARDS FOR THERMAL WATER BATHHOUSES - NO. XVI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2, and Bathhouse Maintenance Agreements. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Certification. The employment of Bathhouse personnel is subject to the written approval of the Superintendent. Employee engaged as physical therapist, physical therapy technician, physical therapy aid, masseur, masseuse, or bath attendant must be properly licensed or certified in accordance with 36 C.F.R. 21.8. (A)
9. Employee Health Examination. Employees who come in direct personal contact with bathers or pool users must have current health examinations in accordance with 36 C.F.R. 21.7. (A)

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10. Report of Bathhouse Employment. Bathhouse managers are required to submit a monthly employment report to the Superintendent listing all employees by name and position. This is to ensure that all bathhouse employees are properly certified and have current health examinations. (B)
11. Employee Performance. Refer to General Standard, Element No. 8. (A)
12. Employee Attitude. Refer to General Standard, Element No. 9 (A)
13. Employee Appearance. Refer to General Standard, Element No. 10. (A)
14. Operating Hours. Refer to General Standard, Element No. 11 (B)
15. Application and Certificate for Baths. Bathhouses must use an approved application form that complies with the requirements of 16 U.S. Code 374. An example of an acceptable form is included in the appendix of the Bathhouse Operations Manual. (A)
16. Approved Bath Directions. Bathhouse employees must administer baths for persons who are not undergoing medical treatment, or who lack specific bathing directions prescribed by a registered physician in accordance with the approved bath directions listed on page C-2 of the Bathhouse Operations Manual. (A)
17. Bath Tickets. Bathhouses must provide bath tickets of a type approved by the Superintendent. Multiple bath tickets must be bound in ticket books. Both ticket books and punch-card type bath tickets must display a serial number, the name of the bathhouse, the number of baths, the total price and redemption values, a statement that the tickets are good for use without limit from date of sale, and a statement that the tickets are good for redemption one year from date of sale. (A)
18. Floors. Water splashed or spilled from tubs and showers must be mopped up as soon as possible. Standing water on floors must not be allowed to create a slipping hazard. (A)

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D. RATES

19. Authorized Rates. Refer to General Standard, Element No. 13. (A)
20. Posting of Rates. Refer to General Standard, Element No. 14. (B)
21. Sales Verification. Refer to General Standard, Element No. 15. (C)

E. EQUIPMENT

22. Bath Tubs. Tubs must be cleaned and disinfected after each use. Stains must be prevented, if possible, or removed as major build-up occurs (A)
23. Vapor Cabinets. Heavy encrustations or discolorations on floors must be prevented, if possible, or removed as major build-up occurs. (C)
24. Hydrotherapy Pools - PMC. Pools must be chlorinated at 0.5 ppm for a minimum of 30 minutes prior to discharge in accordance with the instructions of the Department of Health. Pools must be thoroughly cleaned and disinfected after discharge of thermal water. (A)
25. Thermometers. Thermometers of a type that accurately records water temperature must be provided for each bath tub. Thermometers must be maintained and periodically checked for accuracy. (A)
26. Bath Mitts. Used mitts must be marked for identification by the bath attendant, and must be stored in such a way that they do not come in contact with other mitts. Abandoned mitts must be disposed of as refuse. (A)
27. Clocks. A sufficient number of clocks must be provided in bath halls, pack rooms, and massage rooms so bath attendants and bathers can check on the length of time spent in these areas. (A)

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28. Linens. Bathhouses must furnish a sufficient number of sheets and towels for bathers. Bath attendants and helpers must remove all used sheets and towels from bath halls, pack and cooling rooms immediately after use. Sheets and towels must be laundered before being reused. (A)

29. Shower Curtains. Curtains must be of sufficient length and width to prevent water from flowing out of the shower area. The curtain must be clean, free of encrustations and mildew, and in good condition. (B)

30. Shower Stalls. Shower stalls including floor, wall, ceiling, and attachments shall be clean, well maintained, ventilated, and adequately illuminated, free of litter, mildew, and offensive odors. (B)

31. Soap. Soap used in bath halls must be furnished in unbreakable containers, except for special soap that may be prescribed for a bather by a registered physician. (B)

F. OTHER

32. Vending. Refer to General Standard, Element No. 16. (B)

33. Beverage Container Guidelines. Refer to General Standard, Element No. 17 (B)



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OPERATING STANDARDS FOR WATER GUIDE SERVICES-NO. XVII

The following elements have been devised for concessioner operated river-running and fishing guide services. In these services, the concessioner employee and/or guide takes visitors on a trip and operates the vessel. If applicable, the Employee and/or Guide Training Program element should be evaluated only once per season, preferably near the beginning of the season.

A. OPERATIONAL

1. Employee and/or Guide Training Programs. If required, the concessioner, in cooperation with the National Park Service holds active training and orientation sessions for new and experienced employees and/or guides which are conducted on an on going basis for the development and/or advancement of the necessary skills and techniques for the job. (Evaluate Annually) (B)
2. Employee and/or Guide Performance. Employees and/or guides are attentive to passengers; knowledgeable of the job regarding loading and unloading, operating the watercraft, emergency procedures, and first aid, and are aware of areas of the river that change which could create obstacles. Additionally, employees and/or guides are cognizant of park rules and regulations, and if required, are knowledgeable in proper helicopter and/or boat evacuation procedures. If interpretation is a requirement, employees and/or guides are knowledgeable of park attractions, resources, and purposes of the park in which the concessioner operates. (A)
3. Employee and/or Guide Attitude. Refer to General Standard, Element No. 9. (A)
4. Employee and/or Guide Appearance. Employees and/or guides are clean and well groomed; clothes are whole, decent and clean. The concessioner may be required to have its employees and/or guides who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the representative of the concessioner. (C)
5. Staffing. Refer to General Standard, Element No. 12. (A)

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6. Qualification Requirements. All employees and/or guides must meet the qualifications and licensing requirements, including those for first aid and operation of transportation and boat equipment, as established by the contract/permit, operating plan or State or local requirements. (A)

B. RATES

7. Authorized Rates. Refer to General Standard, Element No. 13. (A)
8. Reservation and Deposit Refunds. Reservation, cancellation and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled and contained in appropriate advertising material, rate schedule and/or operating plan. (B)

C. EQUIPMENT

9. Watercraft. All watercraft requirements, including the type of watercraft, vessel occupancy, equipment, gear or other requirements are met. The watercraft shall be identified and registered as per Federal, State or local laws. The watercraft shall be safe, fully inflated, and adequately rigged. If required, the company name and logo shall be painted on the watercraft. (A)
10. Emergency Equipment. All emergency equipment shall be appropriate to the type or raft of boat being used and the guiding situations experienced within each respective park area. All safety equipment such as fire extinguishers, air pumps, signaling devices, motor repair kits, patch kits, maps, spare propulsion equipment, bail buckets or other safety equipment, as required by the contract/permit or operating plan are provided in good serviceable conditions. (A)
11. First Aid Kit. The availability and type of first aid equipment, including major and minor first aid kits, if required, shall be provided in good serviceable condition. (A)
12. Personal Flotation Devices. Personal flotation devices and types, as required by Federal, State or local

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laws, regulations or policies and/or the contract/  
permit or operating plan shall be provided in good  
serviceable condition. (A)

13. Transportation Equipment. Where provided and within  
the area of jurisdiction, all vehicles used to  
transport passengers shall be safe, clean, well-  
maintained, and in good physical condition. (A)

14. Other Equipment. The concessioner will provide and  
maintain in good condition any other equipment,  
including food service equipment required in the  
contract/permit or operating plan. (B)

D. SERVICES

15. Food Service Sanitation. If provided, food service  
preparation/cleanup will be provided in accordance  
with applicable public health requirements. (A)

16. Food and Water Quality and Quantity. If provided,  
food shall be of good quality and sufficient quantity  
to meet the level indicated in the concessioner's  
brochure and approved by the National Park Service.  
If required, sufficient water for drinking and for  
food preparation shall be available in suitable con-  
tainers for all passengers during the entire trip. If  
needed, drinking water treatment is available. (A)

17. Safety. All appropriate safety procedures and prac-  
tices as required by regulations and/or the contract/  
permit or operating plan are adhered to. (A)

E. ENVIRONMENTAL PROTECTION.

18. Litter and Trash. If required, trash containers are  
available for use by passengers. Campsites, if pro-  
vided are clean, and refuse is picked up after use.  
No trash is buried, toilet paper is contained, and all  
cigarette butts, bottles, cans, and bottle caps are  
packed out of the site. (A)

19. Sanitation/Human Waste. When required by the permit or  
regulations, the concessioner will provide an adequate  
human waste carry-out system to be set up in private  
areas. Toilet paper, plastic bags, liners and disin-

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fectant are within reach and handwashing facilities are available. All public health sanitation requirements are met. (A)

20. Fire Pans and Fuel. If open fires are permitted, a fire pan or other approved device shall be used at all times to hold all residue. Fire residue shall be disposed of according to regulation. Fuel burned shall be consistent with all requirements. (A)

21. Restricted Areas. All restricted areas and activity requirements and regulations are observed. (A)

22. Other Requirements. Other specific regulations, contract/permit and/or operating plan requirements regarding environmental concerns are met, (B)

F. ORIENTATION/INTERPRETATION

23. Visitor Safety Orientation. As required at appropriate times during the beginning of the trip, the guides must brief all visitors on hazards to be encountered, weather conditions which may be expected, time frame and proper seating and standing requirements while in the craft. Other items such as the nature and demands of the trip, restroom facilities, litter and sanitation requirements may be given at appropriate times during the trip. Employees and/or guides shall assure proper fit and use of personal flotation devices, if required to be worn, as well as procedures to follow in case a person falls into the water. (A)

24. Trip Activities. If required by the operating plan prior to the trip, an interpretive session which includes introducing employees and/or guides and their company, welcoming visitors to the park and identifying the park as part of the National Park System will be conducted. While on the the trip, interpretive sessions may be conducted which highlight the scenic, geologic, historic, cultural and wildlife resources that are observed on the trip. After the trip, a post-launch talk may be given to all passengers regarding travel arrangements, answering questions and soliciting comments regarding the trip. (B)

25. Program Content. Information presented on the guided trip must be accurate, complete, appropriate to the

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audience, organized logically and be related to park themes. Concessioners have consulted with park interpretive staffs in developing programs, (refer to NPS-6, Interpretation and Visitor Services Guidelines, Chapter 7).

(B)

26. Program Delivery. Employees and/or guides shall demonstrate their ability to speak clearly, project good voice volume, and stimulate questions and/or comments from visitors.

(B)

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UNITED STATES DEPARTMENT OF THE INTERIOR NATIONAL PARK SERVICE <b>PERIODIC CONCESSION EVALUATION REPORT</b> Water Guide Services Standard No. XVII		NPS Form 10-617 Revised 10/87			
		REGION _____ PARK _____ NAME OF CONCESSIONER _____ FACILITY/SERVICE _____			
<p><b>NOTICE TO CONCESSIONER:</b> The element(s) checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.</p>					
<p><b>ELEMENTS/CLASSIFICATION</b>                  (Circle applicable element numbers and (✓) in space provided those which are deficient)</p>					
<p><b>A. OPERATIONAL</b></p> 1. Employee and/or Guide Training Prgms. (B) _____ 2. Employee and/or Guide Performance (A) _____ 3. Employee and/or Guide Attitude (A) _____ 4. Employee and/or Guide Appearance (C) _____ 5. Staffing (A) _____ 6. Qualification Requirements (A) _____  <b>B. RATES</b> 7. Authorized Rates (A) _____ 8. Reservation and Deposit Refunds (B) _____	<p><b>C. EQUIPMENT</b></p> 9. Watercraft (A) _____ 10. Emergency Equipment (A) _____ 11. First Aid Kit (A) _____ 12. Personal Flotation Devices (A) _____ 13. Transportation Equipment (A) _____ 14. Other Equipment (B) _____  <b>D. SERVICES</b> 15. Food Service Sanitation (A) _____ 16. Food and Water Quality and Quantity (A) _____ 17. Safety (A) _____	<p><b>E. ENVIRONMENTAL PROTECTION</b></p> 18. Litter and Trash (A) _____ 19. Sanitation/Human Waste (A) _____ 20. Fire Pans and Fuel (A) _____ 21. Restricted Areas (A) _____ 22. Other Requirements (B) _____  <b>F. ORIENTATION/INTERPRETATION</b> 23. Visitor Safety Orient. (A) _____ 24. Trip Activities (B) _____ 25. Program Content (B) _____ 26. Program Delivery (B) _____			
<b>ITEM NO.</b>	<b>EVALUATION OBSERVATIONS</b>	<b>CORRECT BY (Date)</b>	<b>DATE CORRECTED</b>		
<b>EVALUATION</b>	<b>DATE</b>	<b>NO. OF OBSERVATIONS BY CLASSIFICATION</b>	<b>NUMERIC PERIODIC RATING</b>	<b>NPS EVALUATOR</b>	<b>CONCESSIONER</b>
		(A) (B) (C)	( ) PRELIMINARY	(Signature)	(Signature)
INITIAL			( ) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP			( ) FINAL	(Signature)	(Signature)
REMARKS:					

SUPERINTENDENT'S COPY

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OPERATING STANDARDS FOR BOAT RENTAL OPERATIONS - NO. XVIII

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

4. Public Restrooms. Refer to General Standard, Element No. 5. (A)
5. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

6. Employee Performance. In addition to General Standard, Element No. 8, individuals driving transportation vehicles must be properly licensed. (A)
7. Employee Attitude. Refer to General Standard, Element No. 9. (A)
8. Employee Appearance. Refer to General Standard, Element No. 10. (A)
9. Operating Hours. Refer to General Standard, Element No. 11. (B)
10. Staffing. Refer to General Standard, Element No. 12. (A)

D. RATES

11. Authorized Rates. Refer to General Standard, Element No. 13. (A)
12. Posting of Rates. Refer to General Standard, Element No. 14. (B)
13. Reservation and Deposit Refunds. Reservation, cancellation and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled, and be contained in appropriate advertising material, rate schedule and/or operating

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agreement as approved by the superintendent and in conformance with NPS-48, Chapter 29. (B)

E. RENTAL SERVICES

14. Rental Agreements. Written rental agreements, conforming to applicable legal requirements shall be executed for each boat rental. The rental form must be approved by the superintendent prior to adoption and use. (B)
15. Order of Rental. The concessioner will maintain a waiting list on a first come, first served basis, in a manner established by the superintendent. (A)
16. Rental Registers. The concessioner shall maintain accurate, up-to-date registers of boat renters. These are to be available for examination by authorized representatives of the Government. The register list shall include those items required by the superintendent and may include information such as name of renter, date of rental period, description of boat and boat number. (B)
17. Authorized Rentals. The number and type of rental vessels shall meet the specifications in the contract/permit, and be consistent with services approved by the superintendent. (A)

F. RENTAL EQUIPMENT

18. Maintenance. Rental vessels shall be in good operating condition, and have a clean, well-maintained appearance. The interior and exterior of the vessel shall be free of rust, chipped or peeling paint, or excessively worn seating or benches. A preventive maintenance program shall be established and followed for each rental vessel. Motors and paddles must be inspected, cleaned and serviced prior to being rented. (A)
19. Sanitation Equipment. If a vessel is equipped with sanitation equipment such as waste water and sewage holding tanks, such equipment shall be of sufficient capacity and in good working order to prevent discharge of water directly into National Park Service administered waters, as required in 36CFR, Section 2.14. (A)
20. Other Equipment. Other equipment, appliances and supplies as specified in the contract/permit or operating plan shall be available, well-maintained and in good working order. (A)

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G. SAFETY

21. Safety Equipment. All vessels rented to visitors shall have appropriate safety equipment, including life jackets in sufficient numbers as required by United States Coast Guard and National Park Service regulations. Any defective equipment must be immediately repaired, removed or replaced. (A)
22. Vessel Identification. Identification of all rental vessels shall be in accordance with U.S. Coast Guard, State and local regulations. For emergency identification in an area patrolled by aircraft, identification numbers shall be maintained on the top deck, to assist in identifying disabled vessels. (B)
23. Chase Boats. Emergency chase boats, if required, shall be maintained in sufficient numbers for responsive, efficient emergency operation. (A)

H. ORIENTATION/INTERPRETATION

24. Visitor Safety Orientation. The concessioner is responsible for ensuring that the renting operator is capable of handling the boat being rented. Prior to releasing the vessel to the visitor, specific written and verbal operating instructions must be given to the operator to assure that they are aware of any problems which may arise while the vessel is being rented. Instructions and information may include emergency procedures and equipment, navigational "rules of the road," regulations and permit requirements concerning restricted areas, river closings and access areas, weather conditions as well as proper disposal of garbage and trash.
- If required in the contact/permit or operating plan, loading/off-loading and operational instructions for more specialized vessels (i.e., sailboats, houseboats) shall be accomplished in an area separate from launching/haul-out areas for visitors with their own vessels, and away from authorized tour vessel operations. (A)
25. Interpretation. If required in the contract/permit or operating plan, informational/interpretive material will be given to visitors prior to the rental. If the concessioner provides interpretive material, all content and media will be approved by the superintendent prior to the use. (B)

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I. OTHER

26. Transportation. If pickup or drop-off transportation services are provided, the concessioner shall provide timely and adequate service. Vehicles used to transport visitors shall be safe, well-maintained, in good physical condition and have a clean appearance. (A)
27. Storage Lockers. Storage lockers, if provided must have adequate ventilation, be kept clean, painted, be of sturdy construction, uniform in size and not exceed maximum size as determined by the superintendent. (C)
28. Public Signs. Refer to General Standard, Element No. 3. (C)
29. Vending. Refer to General Standard, Element No. 16. (B)
30. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



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OPERATING STANDARDS FOR PRIMITIVE/RUSTIC LODGING - NO. XIX

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. This does not apply to specific lodging rooms or tents. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)
11. Operating Hours. In addition to General Standard, Element No. 11, the following shall apply: When closed, instructions shall be conspicuously posted,

illuminated, and provide information as to contacting the management and procedures to follow in event of emergencies. (B)

12. Staffing. Refer to General Standard, Element No. 12. (A)

13. Reservations and Deposit Refunds. Reservation, cancellation and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled, and contained in appropriate advertising material rate schedule and/or Operating Agreement as approved by the Superintendent. (B)

14. Accommodation Availability. Accommodations shall be made available to guests within a reasonable period. Guest should not be required to wait in excess of 2 hours from the established check-out time for the facility and should never be later than 4:00 p.m. Security shall be provided for visitors' luggage until their accommodations become available. (B)

15. Identification of Area. Each lodging facility must have an adequate and easily identifiable area for registration and check-out purposes. (C)

16. Informational Material. The registration area shall have general park and concession information available, such as operating hours for park and concessioner services and activities. (C)

D. RATES.

17. Authorized Rates. Refer to General Standard, Element No. 13. (A)

18. Posting of Rates. In addition to General Standard, Element No. 14, the following will apply: Rates will be posted in accommodations or will be conspicuously posted at the registration area. (B)

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E. ACCOMMODATIONS

19. Unit Organization. Accommodations must contain adequate space for guests to move about comfortably, yet not contain unnecessary furniture or oversized furniture that results in a congested appearance. Furniture should be so placed as to not impede free movement within the accommodation and to result in a well organized unit. (C)
20. Furniture and Furnishings. Each unit shall be adequately furnished and equipped to meet visitor needs. This includes a sufficient number of chairs, tables, wastebasket(s), ash tray(s), and coat hangers. All furniture and accessories are to be clean, free of dust and stains, and in good condition. Cooking utensils, flatware and dishes shall be clean when provided. Clearance of wood and oil stoves to combustible materials, including partitions and walls constructed with wood studs, shall not be less than that recommended by Underwriters Laboratories, Inc. Fireproof pads shall be placed under wood burning stoves to prevent fire. (B)
21. Window Coverings. All window coverings including draperies, blinds, and shades must be cleanable and designed to provide for the guests' privacy. Such coverings must effectively shut out light from outside sources. (B)
22. Floors, Walls, Ceilings, and Windows. Floors and floor coverings must be clean, unorn, and free of litter. Wood floors shall be either painted or well sealed. Area rugs must be treated to prevent slippage. Walls, ceilings, and windows shall be clean. (B)
23. Bedding. All bedding provided must be clean, unorn, free of stains and of the proper size for the mattress. Depending on location and climatic conditions, a second blanket for each bed should be available, preferably in the room, but at a minimum obtainable at the registration area. (A)

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24. Bed Condition. Mattresses are to be clean, odorless, non-sagging, free of lumps and protruding tufts, and sized to fit the bed frame or springs. Springs are to be non-protruding, quiet and unbroken. Frames are to be clean and in good condition. All cots provided in furnished units (i.e., tents) shall be durable, clean, odorless, and in good condition. Sagging is to be minimal and consistent with the normal expectation of a camping experience. (A)
25. Illumination. Sufficient lamps must be provided to properly illuminate the room. Lamps for reading or writing purposes must be provided and the bulbs must be at least 75 watts. However, the bulb wattage is not to exceed the specification printed on the specific light fixture. (C)
- Tents or Other Facility without Electrification. At least one L.P. lantern per furnished tent shall be provided. (B)
26. Environment. All units are to be well ventilated, odorless, and free of insects and rodents or evidence thereof. Doors and windows, including screens, are to be sufficiently tight to preclude the entry of rodents and insects. (B)
27. Security. All doors and windows accessible to the unit must have adequate, operable locking devices and must be changed as necessary to preclude theft problems. Doors shall have a double locking system from the inside. Canvas-sided buildings are excluded from the double locking requirement, with the stipulation that other means of providing security for visitors' valuables is available. (A)
28. Utilities and Appliances. Heaters, air conditioners, and other appliances (stoves, refrigerators, etc.) must be in good condition, operable, adequate, clean and reasonably quiet, and available as required by the Superintendent. Clear instructions concerning their use must be provided and conspicuously located. Handles

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for wood stoves shall be provided for the removable plates. Spark arresters and stove flues must be cleaned regularly and must be in good condition. (A)

F. BATHROOMS (individual or central)

29. Linen. Where required, quality, clean linens, in good condition, shall be provided. There shall be one large bath-sized towel and one face cloth per person. In the event baths are used in common, linens are to be placed in the unit. (A)

30. Soap. There shall be at least one individually wrapped soap bar per person. In the event bathrooms are used in common, the requirement remains the same and supplies shall be placed in the unit. (B)

31. Toilet Tissue. Toilet tissue must be of good quality and conveniently located. One roll or package must be held in reserve and conveniently located. (B)

32. Wastebaskets. Each bathroom shall contain one clean wastebasket that is in good repair. In the event bathrooms are used in common, the waste container in the women's restrooms shall be covered. (C)

33. Drinking Containers. Where required, for each person there must be one sanitized, wrapped drinking glass or single service cup. Where single service cups are used, they must be stored in a clean, properly sized, enclosed dispenser that is designed for that purpose, if not wrapped. When ice is available, each unit is to contain a clean ice bucket. (B)

34. Shower Enclosures. Shower or tub curtains must be untear, clean, and free of mildew. They shall be of sufficient length and width to prevent water from flowing onto the floor. Other types of enclosures (hinged and sliding doors) must meet the above criteria and, in addition, be easily moveable and free of breaks. Sliding door tracks must be clean and in good repair. (B)

35. Tub/Shower. Shower and bath tubs shall be clean, unspotted, reasonably free of stains, inside and out, and in

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good condition. Tubs and showers must be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are tightly secured, clean, free of mildew, and unturned. (A)

36. Fixtures. Toilets, sinks, faucets, tissue dispensers, mirrors, towel racks, light fixtures, etc., shall be clean, unpitted, and free of cracks. (A)

37. Environment. Bathroom areas shall be clean, well ventilated, free of litter and offensive odors, and well maintained. Floors, walls, ceiling, doors and windows are to be clean and mildew free. (A)

G. OTHER

38. Vending. Refer to General Standard, Element No. 16. (B)

39. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)

2006 PROSPECTUS - FOR REFERENCE USE

Concessioner Review Program-Operational Performance  
Standards PERIODIC CONCESSION EVALUATION REPORT - FORM 10-619

Form 10-619  
(8/82)

UNITED STATES DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
PERIODIC CONCESSION EVALUATION REPORT  
Primitive/Rustic Lodging  
Standard No. XIX

REGION	PARK
NAME OF CONCESSIONER	FACILITY/SERVICE

**NOTICE TO CONCESSIONER:** The elements checked (✓) below were found deficient this date and must be corrected by the date(s) specified below. Failure to make correction(s) within the date(s) specified will result in downgrading the initial rating and may result in an unsatisfactory rating which may affect your contract/permit. Follow-up evaluations will be conducted to determine corrective action taken.

ELEMENTS/CLASSIFICATION

(Circle applicable element numbers and (✓) in space provided those which are deficient)

Item No.	Element	Item No.	Element	Item No.	Element
<b>A. FACILITY EXTERIOR</b>		<b>C. (CONT'D)</b>		<b>E. (CONT'D)</b>	
1.	Structure Condition (B) _____	14.	Accommodation Availability (B) _____	27.	Security (A) _____
2.	Grounds (B) _____	15.	Identification of Area (C) _____	28.	Utilities and Appliances (A) _____
3.	Public Signs (C) _____	16.	Informational Material (C) _____	<b>F. BATHROOMS</b>	
4.	Garbage and Trash (B) _____	<b>D. RATES</b>		29.	Linen (A) _____
<b>B. FACILITY INTERIOR</b>		17.	Authorized Rates (A) _____	30.	Shop (B) _____
5.	Public Restrooms (A) _____	18.	Posting of Rates (B) _____	31.	Toilet Tissue (B) _____
6.	Public Signs (C) _____	<b>E. ACCOMMODATIONS</b>		32.	Wastebaskets (C) _____
7.	Public and Other Areas (B) _____	19.	Unit Organization (C) _____	33.	Drinking Containers (B) _____
<b>C. OPERATIONAL</b>		20.	Furniture and Furnishings (B) _____	34.	Shower Enclosures (B) _____
8.	Employee Performance (A) _____	21.	Window Coverings (B) _____	35.	Tub/Shower (A) _____
9.	Employee Attitude (A) _____	22.	Floors, Walls, Ceilings and Windows (B) _____	36.	Fixtures (A) _____
10.	Employee Appearance (A) _____	23.	Bedding (A) _____	37.	Environment (A) _____
11.	Operating Hours (B) _____	24.	Bed Condition (A) _____	<b>G. OTHER</b>	
12.	Staffing (A) _____	25.	Illumination (C) (B) _____	38.	Vending (B) _____
13.	Reservation and Deposit Refund (B) _____	26.	Environment (B) _____	39.	Beverage Container Guidelines (B) _____

ITEM NO.	EVALUATION OBSERVATIONS	CORRECT BY (Date)	DATE CORRECTED

EVALUATION	DATE	NO. OF OBSERVATIONS BY CLASSIFICATION			NUMERIC PERIODIC RATING	NPS EVALUATOR	CONCESSIONER
		(A)	(B)	(C)			
INITIAL					(_____) PRELIMINARY	(Signature)	(Signature)
FOLLOW-UP					(_____) FINAL	(Signature)	(Signature)

REMARKS:

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OPERATING STANDARDS FOR GOLF COURSES - STD. NO. XX

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5 (A)
6. Public Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. Refer to General Standard, Element No. 8. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10 (A)
11. Operating Hours. Refer to General Standard, Element No. 11. (B)
12. Staffing. In addition to General Standard, Element No 12 if lessons are offered, a qualified P.G.A.

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teaching professional or equivalent shall be available. Also the service of a qualified golf course superintendent shall be available at all times. (A)

D. RATES

13. Authorized Rates. Refer to General Standard, Element No. 13. (A)

14. Posting of Rates. Refer to General Standard, Element No. 14. (B)

15. Sale Verification. Refer to General Standard, Element No. 15. (C)

16. Rain Check and Deposit Refunds. Rain check, cancellation, and deposit refund policies shall be reasonable, not overly restrictive, efficiently handled, and be contained in an appropriate advertising material, rate schedule and/or Operating Agreement as approved by the Superintendent and in conformance with Chapter 29. (B)

17. Rental Service Verification. All equipment rentals shall be accurately and legibly recorded. Receipts shall be given for all equipment rental transactions. (C)

E. EQUIPMENT AND SERVICES

18. Authorized Equipment. The number and type of rental equipment meet the specifications of the contract or permit, park planning documents, and be consistent with services determined necessary and appropriate by the Superintendent. (A)

19. Maintenance. Rental equipment shall be in good operating condition, and have a clean, well-maintained appearance. Interior and exterior shall be free of rust, chipped or peeling paint, or excessively worn seating/benches. A preventive maintenance program shall be established and followed for each rental vehicle. (A)

20. Equipment. All vehicles rented to visitors shall have the appropriate safety equipment.

21. Visitor Orientation/Instruction. The clubhouse (sales area) shall be arranged and signed to guide the visiting player to the course or driving range with minimum congestion.

Each group of players shall be provided with a score card typical of the industry which includes a map or diagram of the course, the rules of golf which apply, both general and specific, and appropriate safety instructions (lighting, etc.)

(C)

22. Order of Rental and Starting. The concessioner shall rent equipment, sell tickets and assign starting times to eligible visitors on a first come, first served basis.

(A)

F. GOLF COURSE PROPER.

23. Accessories.

Markers. At least one pair of tee markers shall be provided at each tee. Additional pairs may be provided to indicate tee-off position for different levels of skill. Markers should be color coded according to accepted golfing practice.

Ball Washers. Ball washers shall be provided as specified in the contract. Any ball washers on the course shall be in good repair with an adequate level of clean washing solution and one or more towels.

Benches. Benches shall be maintained in a safe and usable condition.

Flags. Greens shall be marked with standard numbered flags; when the course is designed so that two or more sets of similar number exist, they shall be differentiated by color, shape or other easily recognizable means.

(A)

24. Maintenance of Golf Course. The various features of the golf course; i.e., tees, greens, fairways, roughs, traps, etc., will be maintained in accordance with current standard for golf course and turfgrass management.

(A)

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G. OTHER

25. Informational Material. The registration area shall have general park and concession information available such as operating hours for park and concessioner services and activities. (C)
26. Practice Facilities. Practice greens and driving ranges shall be maintained in a condition such that they serve their intended use in a safe and pleasing manner. (A)
27. Vending. Refer to General Standard, Element No. 16 (B)
28. Beverage Container Guidelines. Refer to General Standard, Element No. 17. (B)



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OPERATING STANDARDS FOR SWIMMING POOL FACILITIES -NO. XXI

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard, Element No. 1. (B)
2. Grounds. Refer to General Standard, Element No. 2, except that all pools shall be enclosed with a fence at least 6 feet high. The fencing should be of a type that cannot be easily climbed. (B)
3. Public Signs. Refer to General Standard, Element No. 3. (C)
4. Garbage and Trash. Refer to General Standard, Element No. 4. (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard, Element No. 5. (A)
6. Public Notices and Signs. Refer to General Standard, Element No. 6. (C)
7. Public and Other Areas. Refer to General Standard, Element No. 7. (B)

C. OPERATIONAL

8. Employee Performance. In addition to General Standard, Element No. 8, the concessioner's employees (lifeguards) shall possess a current First Aid Card or equivalent. Lifeguards (where required) must always stay in the immediate vicinity of their assigned posts while pool is in operation. (A)
9. Employee Attitude. Refer to General Standard, Element No. 9. (A)
10. Employee Appearance. Refer to General Standard, Element No. 10. (A)

11. Operating Hours. Refer to General Standard, Element No. 11. (B)

12. Staffing. A qualified lifeguard shall be on duty during all bathing hours. When a lifeguard is not provided, a warning sign to that effect shall be placed in plain view and the pool shall neither be used by children without an adult attendant nor by adults swimming along. (A)

D. BATHHOUSE

13. Shower Stalls. Shower stalls including floor, walls, ceiling, doors, and attachments shall be clean, well maintained, ventilated, and adequately illuminated, free from litter, mildew, and offensive odors. (B)

14. Flooring. Flooring shall be equipped with either a non-slip mat or constructed with non-skid surfaces or strips that are securely fastened. (A)

15. Dressing Area and Clothes Storage. Either lockers or clothes hooks are to be provided and conveniently located. (B)

16. Security. Arrangements for the safekeeping of guests valuables should be provided or sign shall be conspicuously posted stating that the management is not responsible for guest valuables. (B)

E. SWIMMING POOL AND POOL AREA

17. Walls (sides) and Floors. Pool walls and floor surfaces shall be clean, smooth, impervious, and free of algae. Overflow gutters shall be clean, unblocked, and in good working order. (A)

18. Apron Area. Pool shall be surrounded by an impervious apron extending at least 4 feet from the edge of the pool. Apron and coping shall be kept clean and free of cracks. (B)

19. Depth Markings. Depth markings of 4 inches minimum height shall be placed at regular intervals along the pool periphery and spaced at not more than 25

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foot increments. Small pools shall have markings at the deep end and shallow ends and at the 5 foot point.

(B)

20. Ladders. A means of egress shall be provided at end of the pool and also at the shallow end if the distance from the apron is greater than 2 feet. One mode of egress shall be provided for each 75 feet of pool perimeter, but in no case less than two separate models shall be provided. Ladders shall have a clearance of not more than 6 inches, nor less than 3 inches between ladder and pool wall, shall be equipped with handrails and non-slip surfacing.

(B)

21. Water Quality and Filtration System. Water shall be clean and free of algae and all State and/or local standards shall be followed.

(A)

F. SAFETY

22. First Aid Kit. A standard 24-unit first aid kit shall be kept filled and readily accessible for emergency use.

(A)

23. Reaching Poles and Buoys. One or more light poles, no less than 12 feet long, shall be available for making reaching assists. One or more buoys in good condition not more than 15 inches in diameter shall be available at strategic points adjacent to the pool.

(A)

G. OTHER

24. Vending. Refer to General Standard, Element No. 16.

(B)

25. Beverage Container Guidelines. Refer to General Standard, Element No. 17.

(B)



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OPERATING STANDARDS FOR CONCESSIONER OPERATED CAMPGROUNDS - NO. XXII

A. FACILITY EXTERIOR

1. Structure Condition. Refer to General Standard Element No. 1. Picnic tables are also to be included in this element. (B)
2. Grounds. Grounds shall be well maintained in accordance with approved maintenance agreement regarding mowing, pruning, and other grounds maintenance activities. Grounds are to be uncluttered and free of litter. This will include campground entrance, campsites, parking areas, trails/paths and other areas for which the concessioner is responsible or as outlined in the land assignment. The campground assignment will be regularly checked to locate and properly remove litter and property abandoned more than 24 hours. (B) or (C)
3. Public Signs. Refer to General Standard Element NO. 3. (B)
4. Garbage & Trash. Refer to General Standard Element No. 4. (A) or (B)

B. FACILITY INTERIOR

5. Public Restrooms. Refer to General Standard Element No. 5. (A)
6. Shower Areas. Shower curtains or an appropriate enclosure must be of sufficient length and width to prevent water from flowing to outer areas as well as to assure privacy. Maintenance frequency shall be in accordance with the maintenance agreement. (B)
7. Water Supply. Water should be of sufficient temperature to be comfortable. If faucets are provided they must be accurately marked and operational. (A)
8. Public & Other Areas. The check-in area, offices, reception area and other areas shall be clean, properly illuminated, well maintained and have a fresh appearance. (B)
9. Public Signs. Refer to General Standard Element NO. 6. (C)

C. OPERATIONAL

10. Employee Performance. Refer to General Standard Element No 8. In addition, employees shall provide timely, accurate and complete information about activities, facilities and services available to the visitor in deciding which area would be suitable for their needs. Employees are to be knowledgeable of all programs, policies and regulations and be able to explain them to the visitor in a clear concise manner. Employees shall provide a basic level of visitor services as specified in the park operating plan. Performance should be indicative of good training. (A)
11. Employee Attitude. Refer to General Standard Element No. 9. (A)
12. Employee Appearance. Refer to General Standard Element No. 10. (A)
13. Operating Hours/Quiet Hours. Refer to General Standard Element No. 11. Quiet hours shall be maintained between hours of 10 p.m. & 6 a.m. and prominently displayed and easily visible to the public. (C)
14. Staffing. Refer to General Standard Element No. 12. (A)
15. Bulletin Board. Informational material such as local area maps, park regulations and campground regulations shall be provided to all visitors at no charge. Other approved material may be sold at the registration desk. Promotional material for commercial enterprises may be displayed only upon prior approval by the Superintendent. Material being sold is to be separately displayed from those items which are free. (A)

Bulletin board shall display timely, accurate and complete information about park activities and facilities, as well as services available, references and directions to lost and found area, public telephone, as well as to local facilities, i.e., store, service stations and hospital for non emergency care. Provisions are made for delivering emergency messages to guests in a timely effective manner. Routine messages for guests shall be displayed on the board in a designated area. (B)

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D. RATES

16. Authorized Rates. Refer to General Standard No. 13. (A)
17. Posting of Rates. Refer to General Standard No. 14. (B)
18. Sales Verification. Refer to General Standard Element No. 15. Site assignment stubs or tickets may be substituted for sales receipt. (C)
19. Reservations. Where reservation systems are implemented the system must be (1) in accordance with the park operating plan, and (2) be approved by the Superintendent. (A)

E. SITE RENTAL OPERATION

20. Order of Rental. At those campgrounds not on a reservation system, rental rental shall be on a first come, first served basis. (C)
21. Registers. An accurate up-to-date register shall be kept on all site rentals. The register shall include name, date of rental, and license number of vehicle(s) of the party. Rental agreements shall conform to applicable legal requirements and be approved by the Superintendent prior to adoption and use. Agreement shall include (1) provision that the occupant will abide by campsite rules as a condition of rental, (2) check-out time, which shall be reasonable and consistent with campground industry and (3) Prohibition statement on subletting or renting to a second party. (B)
22. Authorized Rentals. Campsites may only be rented to parties whose camping equipment and/or recreational vehicle is suitable to the site to be occupied. Group size, duration of stay, and number of vehicles or tents per site shall not exceed the number approved in the operating plan. Additionally, campsites shall not be rented, used or reserved in any way by any persons for the purpose of promotional display or sale of campground accessories, on-site advertising of any nature or for any type of business or commercial enterprise. (A)
23. Parking. Parking in campgrounds will be allowed only in designated areas approved by the Superintendent. Only the maximum number of vehicles authorized by the Superintendent will be permitted per site. (B)

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24. Passports. Concessioner shall honor all NPS Golden Age and Golden Access Passports. (A)

25. Length of Stay. Maximum length of stay must be enforced fairly and evenly whenever campground reaches capacity. (C)

F. CAMPGROUND OPERATIONS

26. Maintenance of Campground Sites. Individual sites will be maintained in accordance with approved maintenance agreement. All hook-ups will be repaired as necessary to ensure safe operation. Tables and fire grates shall be reasonably free of vandalism and/or graffiti and repaired as necessary to assure proper function. (A)

27. Park Regulations. Campground Regulations will be provided and explained to each camper upon registration. Park Officials are to be informed promptly of violators who do not comply with these regulations. (A)

28. Search Service. All search incidents are to be reported and coordinated with park officials. Incident reports are to be provided immediately to appropriate park officials, with detail description and information concerning the individual(s). (A)

29. Fire Control. Concessioner shall report all fires to park officials, and assist in the initial attack of fires originating from the campground areas to the extent required under the approved operating plan. (A)

30. Dumping Station. A designated area, approved by the Superintendent, shall be established for the purpose of discarding sewage. This site is to be located away from rental campsites in order for it not to be offensive to the camper. Concessioner will be responsible for following any State and/or County codes which are applicable. (A)

31. Pets. Pets must be kept confined or leashed at all times. (B)

32. Mechanical Repairs. No major mechanical work may be performed on any vehicles within the campground site. (C)

G. Other

33. Vending. Refer to General Standard Element No. 16. (C)



OPERATING STANDARDS FOR MOUNTAINEERING GUIDE SERVICES, NO XXIII

A. OPERATIONAL

1. Employee Performance. The skill and competency levels of each guide is commensurate with the climbing and guiding services that he/she is responsible for. At no time will the concessioner allow guides to provide services that exceed the skills, experience or competency level of the employee. Active introductory training programs for new employees and retraining programs for experienced employees shall be conducted on an ongoing basis for the development and/or advancement of the necessary skills and techniques for the job. These sessions shall stress work performance, safety and first aid, climbing ethics, employee attitudes, NPS philosophy and policy and knowledge of park rules and regulations. All employees, especially guides must meet the qualification requirements, including first aid, as established in the contract/permit or operational plan. (A)
2. Employee Attitude. Refer to General Standard, Element No. 9. (A)
3. Employee Appearance. Refer to General Standard, Element No. 10. (A)
4. Operating Hours. Refer to General Standard, Element No. 11. (B)
5. Staffing. Refer to General Standard, Element No. 12. (A)
6. Client/Guide Ratio. Client/Guide ratios, including any party size limitations as advertised by the concessioner, shall be adhered to, as specified in the contract/permit or operational plan. (A)
7. Backcountry Registration. The concessioner shall be responsible for complying with any and all registration requirements, as specified in the contract/permit or operational plan. (A)

B. RATES

8. Authorized Rates. Refer to General Standard, Element No. 13. (A)

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9. Posting of Rates. Refer to General Standard, Element No. 14. (B)

10. Reservation and Deposit Refunds. Reservation, cancellation and deposit refund policies shall be reasonable, efficiently handled and be contained in appropriate advertising material, rate schedule and/or operating plan as approved by the Superintendent, and in conformance with Chapter 29 of NPS-48. (B)

C. EQUIPMENT

11. Condition. All mountaineering related equipment, including but not limited to climbing ropes, hardware, protective clothing equipment and boots, either supplied or rented by the concessioner, is to be in good repair for its intended use. All equipment should be periodically inspected to ensure adherence to this standard, any defective equipment shall be immediately repaired, removed or replaced. (A)

12. Adequacy. All mountaineering equipment supplied or rented by the concessioner shall be of the type and quantity suitable to the climbing and guiding situations experienced within each respective park area. (A)

D. SAFETY

13. Client Orientation. The concessioner, or his/her representative, shall inform visitors prior to, and during the climb or hike, of the nature and/or demands of the particular service the client is requesting. This orientation should include any inherent dangers associated with the trip, physical requirements, trip length, personal equipment needed and any other information pertinent to the overall experience. (A)

14. Safety. The concessioner shall ensure all clients are adequately prepared or supplied with any equipment needed for a safe climb or guiding tour. The concessioner shall require the use of all safety equipment while engaged in any climbing or guided activity. All guides shall carry adequate first aid supplies while engaged in climbing and will monitor clients' physical and mental condition. (A)

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E. ENVIRONMENTAL PROTECTION

15. Camping/Sanitation. All contract/permit or operating plan requirements for camping, either designated or bivouac, are closely adhered to. In addition, all sanitation disposal, including human waste disposal and garbage and trash, are followed according to the procedures approved by the Superintendent. (B)

16. Climbing Ethics. Concessioners shall encourage the practice of clean climbing and minimum impact camping, both on the mountain and on the lower elevation approaches. (C)

F. SERVICES

17. Interpretation. All guides must be trained to describe attractions, comment on resources of the area and inform patrons of area regulations and the purposes behind the establishment of the park in which they are climbing. Information must be accurate, pertinent and complete. Concessioners should consult with park's staff in developing training (see NPS 6, Chapter 7, page 2 of Interpretation and Visitor Services Guidelines). (B)

18. Food Services. All food provided by the concessioner shall consist of sufficient quantity and good quality to sustain party members for the duration of the climb. Sanitary food handling and storage practices are utilized to prevent food borne illnesses. (A)

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