

## **CC-GATE015-03**

### **AMENDMENT NO. 5**

**This Amendment No.5 to CC-GATE015-03 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 or his designee (hereinafter referred to as the "Director"), and ARKLOW-FBF, LLC, a limited liability company organized and existing under the laws of the State of Delaware (hereinafter referred to as the "Concessioner"):**

#### **WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner's predecessor entered into Concession Contract No. CC-GATE015-03 (hereinafter "Contract"), effective April 15, 2003, as amended by Amendment No. 1 dated February 27, 2006, Amendment No. 2 dated July 13, 2006, Amendment No. 3 dated December 31, 2008; and Amendment No. 4 dated December 3, 2010 for the purposes of granting the Concessioner the limited privilege of providing required and authorized visitor services and related operations within Gateway National Recreation Area (hereinafter "Area") as set forth in the Contract; and

**WHEREAS**, through this Amendment, the Concessioner and the Director acknowledge the ownership by the United States of names and images associated with the Area and features therein, including but not limited to the names of the Concession Facilities; and,

**WHEREAS**, the Concessioner has requested financial relief in order to continue operating and that absent the requested financial relief, the Concessioner represents that it will no longer be able to operate the concession, resulting in an interruption to visitor services; and,

**WHEREAS**, the Director has considered the request and obtained an independent, confidential, proprietary, financial analysis that supports the Concessioner's claim; and the Director supports continuation of visitor services under the Contract and will undertake action to avoid interruption in service; and,

**WHEREAS**, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services; and,

**WHEREAS**, the Concessioner has requested financial relief from obligations under the Contract and the Director has considered the probable value of the Contract based on a reasonable opportunity for net profit in relation to capital invested and obligations of the Contract, and the

Director has determined that revenue considerations are subordinate to the objectives of protecting and preserving park areas and of providing appropriate and necessary visitor services; and,

**WHEREAS**, the Contract may be amended to authorize the Concessioner to provide minor additional services that are a reasonable extension of the existing services and the Director wishes to permit the Concessioner to provide minor additional services similar to those currently offered by the Concessioner; and,

**WHEREAS**, the Director wishes to revise Exhibit D to incorporate the land and real property improvements associated with the additional services provided in this Amendment, including the Flatbush Avenue golf driving range, Jacob Riis Park Pitch and Putt, and use of the historic runways at Floyd Bennett Field on which events, which were previously authorized under a Special Use Permit, are now to be authorized for Concessioner's non-exclusive use at the discretion of the Director; and,

**WHEREAS**, Director and Concessioner desire to provide a continuation of visitor services and otherwise amend such Contract to the mutual benefit of the parties; and,

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual promises and covenants contained in this Amendment, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Director and the Concessioner hereby agree as follows:

**1. Section 3(a) of the Contract is deleted in its entirety and replaced with the following:**

**(1) Required Visitor Services.** The Concessioner is required to operate a sports and event center anchored by an ice rink on a year-round basis to include:

**Floyd Bennett Field (Aviator Road) Location:**

- Sports-related programming both indoor and outdoor,
- Food and beverage,
- Vending services.

**Flatbush Avenue Location:**

- Operation of golf driving range including miniature golf.

**Jacob Riis Park:**

- Operation of par 3, 18 hole pitch and putt course.

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

**Floyd Bennett Field (Aviator Road) Location:**

- Retail service in support of sports center,
- Instructional recreation services,
- Sports physical therapy,
- School, community, and private events, fee based event parking - See Exhibit D
- Runway activities - See Exhibit D
- Any appropriate activity approved in advance in writing by NPS.

**Flatbush Avenue Location:**

- Food and beverage,
- Vending services,
- Instructional golf services,
- Sports center related retail services,
- Any appropriate activity approved in writing by NPS

**Jacob Riis Park:**

- Limited food and beverage,
- Instructional golf services,
- Any appropriate activity approved in advance in writing by NPS

**3. Section 8 (i) of the Contract is deleted in its entirety and replaced with the following:**

The Director may choose to fund contributions towards the Concessioner's cost of utilities. Contributions shall be made on a calendar year basis, shall not exceed \$650,000 annually, and shall be prorated for the portions of calendar years 2017 and 2024 during which this Amendment to the Contract is in effect. In the event the Director pays any third party for the cost of Concessioner utility expenses, and such contributions to Concessioner's utility expenses exceed \$650,000 per calendar year, the Director shall reduce or cease the amount of any funds allocated by the Service as described in Paragraph 4(a)(2) below toward any facility improvements or upgrades.

**4. Section 9(a) of the Contract is deleted in its entirety and replaced with the following:**

**(a) Construction of Real Property Improvements**

(1) The Concessioner may construct or install upon lands assigned to the Concessioner under

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

(2) The Director may elect to fund Capital Improvements, Major Rehabilitations, and other facility upgrades, as defined in this Contract. The total amount of the above facility improvements or upgrades undertaken by NPS at the request of the Concessioner shall not exceed \$1,500,000.00. The limit on the total value of facility improvements or upgrades undertaken by NPS shall be calculated based on actual costs incurred by NPS. In the event the Service elects to undertake procurement and replacement of turf fields identified as part of the current land assignment, such investments shall be included as part of the \$1,500,000.00 for facility improvements or upgrades mentioned above.

**5. Section 9(d)(2) of the Contract is removed in its entirety.**

**6. Section 10(c)(3) of the Contract is removed in its entirety and replaced with the following:**

The Concessioner is not required to establish a Repair and Maintenance Reserve.

**7. Section 11(a)(1) of the Contract is removed in its entirety and replaced with the following:**

As of the effective date of this Amendment, the Concessioner shall pay to the Director for the privileges granted by this CONTRACT a base franchise fee equal to zero percent (0%), except that in any year where the Concessioner's gross receipts exceed Fourteen Million Dollars (\$14,000,000), the Concessioner is obligated for payment of Franchise Fees in the amount of Two percent (2%) of all gross receipts.

In addition, and the above notwithstanding and Paragraph 11(b) of the Contract notwithstanding, the Concessioner shall pay to the Director and the United States Treasury, as applicable, outstanding debts and obligations as more fully described in Attachment A. The Concessioner is required to provide the Director with proof of any payment made at the time the payment is made. In the event the Concessioner does not establish an NPS approved payment plan with the

NPS Accounting Operations Center (AOC) within 90 days of the execution of this Amendment, the Concessioner shall be considered to be in breach of the Contract terms and conditions and NPS shall take action accordingly. The Concessioner agrees a failure to make timely payments under the payment plan will be considered a material breach of the Contract, which may be terminated in accordance with Section 16(b)(3) of the Contract.

**8. The following language shall be inserted as a new paragraph 20 of the Contract:**

**Sec. 20. INTELLECTUAL PROPERTY LICENSE.**

The Concessioner and Director agree that, except with the written authorization of the Director of the National Park Service, Concessioner shall not assert any legal claim that the Concessioner or any related entity holds a trademark, tradename, servicemark or other ownership interest in the words "National Park Service", the initials "NPS", or official name of any unit or part thereof, including but not limited to the name of any Concession Facilities, or any logo, distinctive natural, archaeological, cultural, or historic site, within the National Park System, or any colorable likeness thereof, or the likeness of a National Park Service official uniform, badge, logo, or insignia.

**9. Exhibit B Operating Plan to the Contract is deleted and replaced with a revised Exhibit B which is attached to this Amendment No. 5.**

**10. Exhibit D Land Assignment to the Contract is deleted and replaced with a revised Exhibit D which is attached to this Amendment No. 5.**

**11. Exhibit H Maintenance Plan to the Contract is deleted and replaced with a revised Exhibit H which is attached to this Amendment No. 5.**

**12. The Concessioner and Director agree and assert that the modifications set forth in this Amendment are unique to the special circumstances presented by Concession Contract No. CC-GATE015-03 and are not intended to, nor should they be construed as, precedent for any other concession contracts or agreements entered into by the Director or the U.S. Department of the Interior on matters of a similar type or subject matter.**

**13. To the extent that any provisions of this Amendment are considered to be in conflict with the terms and conditions of the Contract, any extensions or continuations thereof, or other obligations or agreements of the parties to the Contract, the Concessioner and Director agree that the provisions of this Amendment shall modify or supersede such terms and conditions to the extent necessary for the effectuation of this Amendment.**

14. Except as expressly amended herein, the Contract remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment, which shall be effective as of the last date of execution below

CONCESSIONER:

By [Signature]  
Brian O'Donoghue  
Managing Member  
ARKLOW-FBF, LLC

Date: 07/20/17 [Signature]



~~ATTEST:~~

By SABEEN HASSAN  
Name: [Signature]  
Title: [Signature]

UNITED STATES OF AMERICA

UNITED STATES OF AMERICA

By [Signature]  
Joshua Laird  
Commissioner  
National Parks of New York Harbor  
NATIONAL PARK SERVICE

By [Signature]  
Cynthia MacLeod  
Acting Regional Director  
Northeast Region  
NATIONAL PARK SERVICE

Date: 7/17/17

Date: July 27, 2017

### Amendment #5 - Attachment A

Vendor Number	Amount	To be paid to:	Fed Debt ID Number/ <b>Bill Number</b>
<b>3000007862</b> <b>AVIATOR SPORTS AND RECREATION</b>	Contract Treasury (contact information below)	Department of Treasury	1600007349A 1600060965A 1600076927A 1500164922A 1500268249A
<b>3000022153 AVIATOR SPORTS AND EVENTS</b>	Contact Treasury (contact information below)	Department of Treasury	1600437612 1600387824 1600192776A.
<b>3000022153 AVIATOR SPORTS AND EVENTS</b>	(b) (4)	AOC (likely to move to Treasury within the next 30 days)	Bill #1801400460
<b>3000022153 AVIATOR SPORTS AND EVENTS</b>	2014 AFR (b) (4) 2014 FF D (b) (4) 2015 AFR (b) (4) 2015 FF D (b) (4)	AOC - 2014 Outstanding Franchise Fees 2015 Outstanding Franchise Fees	NPS billing underway
<b>3000022153 AVIATOR SPORTS AND EVENTS</b>	NPS requires Gross Receipts for 2016. To date, we have the following identified (b) (4) through August 2016.  <b>AFR due May 1, 2017</b>	AOC - 2016 Outstanding Franchise Fees and 2017 Franchise Fees due to date	NPS Bill of Collection forthcoming

*\*The amounts identified in the above table may not include interest or other fees incurred or accrued to date.*

Concessioner must make payments due to US Treasury to:  
US Department of the Treasury-FMS  
Debt Management Services  
Attn: FedDebt Financial Team  
PO Box 979101  
St. Louis, MO 63197

Concessioner must make payments due to AOC directly to NPS at the address on the bill. Each bill may have a different address.

**OPERATING PLAN**  
  
**ARKLOW-FBF, LLC**  
**Providing Family-Orientated Sports Activities**  
**Within**  
**GATEWAY NATIONAL RECREATION AREA**

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## **Introduction**

This Operating Plan between Arklow-FBF, LLC, assignee of Aviator Development Company, LLC and Aviator Sports and Recreation, LLC, and commonly known as Aviator, (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service," the "Park," or "NPS") will serve as a supplement to the Concession Contract CCGATE015-03, as amended, referred to as the "Contract." It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract.

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

This plan will be reviewed annually by the Service in consultation with the Concessioner and revised as determined necessary by the Service.

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

## **I. Required and Authorized Services**

### **A. Required Services per Sec. 3 (a) (1) of the Contract:**

In accord with the above objectives and as required by the Contract, services are centered on a family-oriented sports center. Ice sports and hockey are the primary sport activities offered through the sports center with golf services at Riis Park and a driving range on Flatbush Avenue.

The following stipulations apply to required services:

1. Ice hockey must be accommodated on a regulation-size rink. The Concessioner must provide ice time by a reservation system that meets the approval of the Service.
2. Public ice skating (open skating) must be accommodated on a rink of comparable size.
3. Ice time allocations will be reviewed by the Service and are subject to revision by the Service after consultation with the Concessioner.
4. The Aviator sports complex includes support facilities and services reasonably expected in such a facility, such as locker rooms.
5. Operation of the pro shops includes authorization for associated retail sales and rental of sports equipment.

6. Food and beverage services includes a restaurant and lounge area at the Aviator complex.
7. The U.S. Public Health Service conducts health and sanitation inspections.
8. The Concessioner must provide a health and wellness program.
9. Gateway National Recreation Area may work with the Concessioner to produce informational and interpretive media to inform and educate users.
10. Smoking policies must conform to NPS policies.
11. Special Event activities must take place within the concession land assignments, unless otherwise specified in writing by the Superintendent. Advance written notice of all Special Event activities must be given to the Jamaica Bay Unit Coordinator and the Superintendent of Gateway National Recreation Area. NPS review and approval of Special Events is addressed in Section III. Concessions Operations, Paragraph C. Special Events, and in Section XI. Protection and Security, Paragraph D. Special Events, below.  
  
All Special Events must be consistent with the objectives and purposes of the Concession. NPS, NPS permittees, and the Concessioner will coordinate with each other sufficiently in advance of planned special events that may create impacts to the Concessioner, NPS Jamaica Bay Unit, or its permittees.

#### **B. Authorized Services per Sec. 3 (a) (2) of the Contract**

Annually, or more often, the Concessioner must meet with the Service to review and program appropriate activities from the list of services that were offered by the Concessioner. Activity programming must serve a wide range of the population.

1. Authorized activities (permitted) include, but are not limited to, court sports, gymnastics, rock climbing, soccer, football, lacrosse, physical conditioning, spectator events, and a video game arcade and related prize redemption facilities at the Aviator complex. Authorized services at the golf facilities are stated in the contract.
2. Camper Support: Authorized activities include shower facilities for permitted camping at Floyd Bennett Field subject to a Concessioner developed schedule and Service approved rates. The Concessioner must post rates, rules, and regulations applicable to the use of showers.
3. Authorized activities are not to be scheduled or publicized until they are approved in writing by the Service. Requests for approval of authorized activities must include

4. Proposed rates, security measures, dates, beginning and ending times, space requirements and any other relevant conditions.
5. The Concessioner must comply with applicable Federal, state and local laws. Federal, state and local entities may enforce alcohol beverage control laws and ordinances. Alcoholic beverage may be sold to the public, however, no promotional activities will center on alcoholic beverages (i.e. happy hours, two-for-one sales, etc.)

## **II. Management, Organization and Responsibilities**

### **A. Concessioner**

The Concessioner manages visitor services, facility development, maintenance, administration and other functions in accordance with the terms of this Contract. The Concessioner must employ a staff, in sufficient numbers and with appropriate expertise, to carry out all services required and/or authorized under this Contract. This organization will be operated by one or more managers and supervisors. In addition:

1. Lead Manager. The Concessioner must identify one manager who will be responsible for carrying out the terms of this Contract. The lead manager must also function as the primary representative of the Concessioner in communication with the Service and have full authority to act in day to day management of the Contract.
2. Physical Security Specialist. The Concessioner must employ a physical security specialist to coordinate security matters with the Service including the United States Park Police.
3. Managers and Supervisors. The Concessioner must furnish the Service with a list of key management and supervisory personnel along with job titles, brief descriptions of responsibilities, and contact information. This list must be promptly updated as staffing changes occur.
4. Communication and Meetings. The Concessioner must foster effective communications within its own organization and with Service personnel. Timely and complete exchange of information must be accomplished through use of electronic media, correspondence, meetings and telephone calls. The Concessioner must be available for regular meetings with representatives of the Gateway Business Office and with representatives of the Unit Coordinator.

### **B. National Park Service**

The Concessioner operates within the Jamaica Bay Unit of Gateway National Recreation Area.

Key positions and/or offices with responsibilities relative to the concession include:

1. Superintendent. The Superintendent manages all activity within Gateway National Recreation Area, including the Jamaica Bay Unit, in accordance with applicable laws, policies and directives. The Superintendent reviews and approves rates, schedules, activities, construction and other activities in accordance with the terms of the Contract. Representatives of the Superintendent oversee concession operations for conformance with the Contract.
2. Jamaica Bay Unit Coordinator. The Unit Coordinator oversees the operational logistics, resource management, and fire management of the Jamaica Bay Unit. The Unit Coordinator makes recommendations to the Superintendent on all aspects of the concession operation. The Unit Coordinator has delegated authority from the Superintendent to make field decisions that pertain to concessions operations.
3. Business Management Office. The Business Management Office manages development, negotiations, and administration of concession contracts and leases for Gateway NRA. The Business Management Office coordinates concession activity with other Gateway Divisions and Units. The Business Management Office is the primary contact for all matters related to the administration of the Contract and is the first point of contact for any questions regarding the Contract.

The Business Management Office will review and/or coordinate the Concessioner's operational and maintenance responsibilities, including but not limited to: periodic inspections, public health program, rate approvals, quality of visitor services, schedule changes; advertisements; annual financial reports; insurance coverage; construction and any other Contract requirements.

The Business Management Office must be copied on all correspondence sent to Superintendent and/or Unit Coordinator by the concessioner.

4. Safety and Environmental Management. The Park Safety Officer and the Environmental Management Specialist will coordinate with other Park staff to review and evaluate the Concessioner's Risk Management Program and Environmental Management Program as required under this Contract.
5. U.S. Public Health Program. The U.S. Public Health Service will inspect food and beverage services, water, and waste water systems, in accordance with applicable laws and regulations including without limitation, compliance with public health standards.
6. United States Park Police (USPP). The USPP provides law enforcement services for the Park in accordance with management direction from the Superintendent. The USPP initiate, review, supervise, and coordinate the activities of personnel who

provide law enforcement, and physical security. The Concessioner's Physical Security Specialist must communicate directly with USPP officers on matters related to law enforcement, search and rescue, emergency medical services, emergency management operations, and security.

7. Facility Manager. The Facility Manager is responsible for all utilities, roads, and facilities within Gateway National Recreation Area including the Jamaica Bay Unit. As part of those duties, all issues in regards to shared roads facilities and utilities should be referred to that office.
8. Administrative Officer. The Gateway National Recreation Area Administrative Officer manages matters related to concession activities, including but not limited to billing and receiving utilities payments.

### **III. Concession Operations**

#### **A. Operational Evaluations**

As called for in this Contract, inspections and evaluations of the Concessioner's facilities and services will be conducted in conformance with Applicable Laws, policies and guidelines. The purpose of such inspections and evaluations is to:

1. Ensure public health and safety
2. Ensure that satisfactory services are provided
3. Ensure that employee working conditions are satisfactory
4. Ensure that buildings and equipment are well maintained

Concession operations will be periodically evaluated. . Evaluations will use NPS standards and forms. Follow-up visits will be made to ensure that deficiencies identified in evaluations have been addressed.

#### **B. Rates**

The objective of the NPS rate approval program is to assure that Concessioner rates are comparable to similar services and facilities provided by the private sector. Rates will be approved or disapproved based on current comparability studies or applicable guidelines. Any rate which is to be charged to a park visitor must be approved in writing by the Service before being instituted. In addition:

1. Rates must be approved by the Service prior to implementation. Periodic requests for rate changes must be submitted within forty-five (45) days, but no less than thirty

- (30) days prior to the requested effective date. The rate request letter should be addressed to the Superintendent with a copy to the Chief of the Business Management Office. The Concessioner must supply comparability data to support proposed rates at the time approval is requested; however, rates will be determined per a competitive market rate declaration which will be reviewed on an annual basis. Within 30 days of the submittal of a rate request, the Service will inform the Concessioner in writing whether the proposed rates were approved or disapproved.
2. Requests must include pertinent information about the product or service for which a rate is proposed. For food service, requests must identify which items are part of the Core Menu.
  3. The Concessioner must prominently post all rates for goods and services provided to the visiting public.

### **C. Schedule of Operation**

**Recreation Complex:** The Concession must operate on a year-round basis. Closing on Christmas and New Year's Day will be permitted. Hours of operation for all venues must be approved by the Service on an annual basis. Temporary changes in operating hours may be approved on a case-by-case basis.

**Golf Services:** The primary operating season is from Memorial Day through September 30<sup>th</sup>; however, services may be provided outside of this time period. The hours of operation are currently from 7:00 a.m. to 12 midnight, seven (7) days a week. The Concessioner must annually submit a written schedule of proposed opening and closing dates and operating hours for all concession facilities for the Services's approval prior to implementation.

### **D. Concessioner Personnel**

1. When on duty, Concessioner employees must be easily identifiable by a uniform or name badge approved by the Service. Employees must provide courteous and efficient service.
2. If requested, the Concessioner must provide the Service with names of all permanent and seasonal employees and indicate their organizational responsibilities.

### **E. National Park Service Employees and Families**

The Concessioner must not employ a Service employee, the spouse of a Service employee, or minor children of Service employees without prior written approval from the Superintendent. Requests for such approval must be submitted, in writing, by the proposed employee to the Superintendent prior to employment.

## **F. Training Program**

1. All employees of the Concessioner must be trained to conduct business in a friendly, helpful and professional manner. Training procedures must assure personnel at all levels are focused on customer service, customer relations, sanitation, and employee and customer safety.
2. The Concessioner must provide employee orientation and training and must inform employees of park regulations and requirements which affect their employment and activities while working in Gateway National Recreation Area. Employees must also be provided with training about the National Park Service, Gateway National Recreation Area, the Jamaica Bay Unit, and Floyd Bennett Field. Emphasis must be placed on mission, resources and visitor opportunities. A Service representative may be available to assist in scheduled orientation sessions.
3. The Service may provide the Concessioner with an orientation to the Concessioner Review Program and other NPS Concession Programs.
4. Concessioner managers and employees may participate in any appropriate training offered by the National Park Service subject to the Services approval.

## **G. Lost and Found**

1. The Concessioner manages an accountable Lost-and-Found program. Written procedures for handling such items and for reclaiming them must be provided to the Service, be posted prominently, and be distributed to all employees.
2. All found items must be tagged by the Concessioner's designated personnel. The tag must identify the item, date, location and name of finder. The Concessioner must establish and maintain a central repository. A log book must be maintained at the lost-and-found repository. Any item not claimed within thirty (30) days must be turned over to the Jamaica Bay Unit Coordinator's designated staff. The lost-and-found log must identify items turned over to the Service. A found item may not be claimed by an employee of the Service or Concessioner.
3. Found items that are expensive in nature -- such as cameras, wallets and jewelry -- must be stored in a safe or equally secure facility.

## **IV. Scope and Quality of Services**

All services are to be provided in a consistent, quality manner. The Concessioner is responsible for monitoring their operations to assure that quality services are provided.



All vehicular equipment used by the Concessioner must be properly licensed and maintained in a safe operating condition and in compliance with All Applicable Laws. The Concessioner must park such equipment, when not in use, in an orderly fashion in an area approved by the Service.

#### **A. Merchandise**

The Concessioner may sell merchandise that: (a) enables visitors to participate in park activities, (b) allow visitors to purchase mementos of the park, and (c) serves as an extension of the Park interpretive program. Where possible, merchandise must contribute to appreciation of the park and its resources, understanding of preservation values, and support for conservation activity. Merchandise may also support understanding of the role recreation can play in personal development, support for cultural traditions, and pursuit of health.

In addition to these general provisions, the following stipulations also apply:

1. Shops must exemplify quality and professionalism.
2. The Concessioner must, to the greatest extent possible, offer gifts and souvenirs that have an identifiable relationship to the National Park Service, historical and natural resources associated with the Jamaica Bay Unit, and recreational opportunities offered within Gateway NRA. Retail services at the golf facilities must include equipment and apparel typically found in golf pro shops.
3. The Concessioner must promote the sale of handicrafts made in the United States and related to the cultural, historical, natural and geographic characteristics of Gateway NRA when possible and when relevant to the Concessioner's services.
4. The NPS Merchandising Standards must be followed. The standards include but are not limited to:
  - a. Supporting products made in the United States whenever possible.
  - b. Merchandise that offends normal standards of taste must not be displayed or sold.
  - c. The sale of original prehistoric or historic archeological specimens is prohibited. Replicas may be sold if they are clearly labeled as replicas.
  - d. Merchandise representative of items found in the park, but not originating from the park, must be labeled and identified so as to indicate the origin.
  - e. Plant material or other natural materials originating in the park cannot be sold.
  - f. Merchandise conflicting with National Park Service policies and regulations must not be sold.

- g. The selling price of all items must be individually marked or designated on each display.

## **B. Food and Beverage Service**

The menu must offer a price range and variety of food services that accommodate the general range of park visitors. Vending machines for food and beverages may be located on the premises.

## **C. Special Events**

Notification of all Special Event activities is required in writing to the Superintendent and the Jamaica Bay Unit Coordinator no less than thirty (30) days prior to the date of the event. All Special Event activities must take place within the Concessioner's land assignment or within the area identified for non-exclusive use by the Concessioner as depicted in Exhibit D to the Contract, unless the Concessioner obtains the written approval of the Superintendent prior to any Special Event which will exceed, or is expected to exceed the boundaries of the land assignment or within the area identified for non-exclusive use by the Concessioner as depicted in Exhibit D to the Contract.

All Special Event activities must be consistent with the objectives and purposes of the Concession. Special Event activities requiring the Superintendent's written approval will be subject to the requirements of Section III.B.1. and the following considerations:

1. The proposed event must be consistent with the objectives and purpose of the Concession.
2. Health and safety concerns can be adequately addressed.
3. The event must not unduly displace other visitors to the park -- including the sports center visitors -- for significant periods.
4. All approved and permitted Special Events must be in accordance with the Park's Compendium and limit the total number of public attendees to no more than 5,500 between Memorial Day to Labor Day, and no more than 10,000 the rest of the year.
  - a. The Concessioner must provide the Service with all media and publications related to its Special Events for approval in prior to distribution.
  - b. Security provisions and costs must be agreed upon by the Service prior to Special Events. For related information, see Section XI. Protection and Security, Paragraph D. Special Events.

c. Rates for Special Events must be reviewed and approved in advance by the Service.

d. Tickets to Special Events may be sold.

#### **D. Interpretive Services**

1. **Non-Personal Interpretive Services:** The Concessioner must explore a wide array of avenues for conveying interpretive messages to visitors on park-related themes and topics such as resource protection, appreciation of park values, and Service goals.
2. **Interpretive Assistance:** The Division of Interpretation is available to advise and assist the Concessioner in the development of interpretive programs.

#### **V. Reports**

##### **A. Administrative Reports:**

In accordance with the term of this Contract, the Concessioner must submit the following reports on or before the indicated deadline:

- |                                  |                                       |
|----------------------------------|---------------------------------------|
| 1. Annual Financial Report       | March 1 each year                     |
| 2. Certificate of Insurance      | March 1 each year & if policy changes |
| 3. Statement of Insurance        | March 1 each year & if policy changes |
| 4. Risk Management Program       | Review and update annually            |
| 5. Gift Mission Statement        | Review and update annually            |
| 6. Environmental Management Plan | Review and update annually            |
| 7. Security Plan                 | Review and update annually            |

##### **B. Case Specific Reports:**

- a. **Incident Reports:** The Concessioner must immediately contact the U.S. Park Police regarding any incident involving personal injury that requires more than basic first aid, property damage greater than \$500, any fire, all motor vehicle accidents, any incident that damages the park's resources, and any known or suspected violations of the law. Follow-up reports in writing may be required.

- b. **Human Illness Reports:** Based on protocols established by the U.S. Public Health Service, the park must maintain illness records for food service workers that will be available for inspection and be notified regarding any serious illness contracted by employees or visitors. This information will be used to identify public health issues, such as food or water contamination, and to develop appropriate corrective measures.
- c. **Management Information System**{tc \13 "Field result goes here Management Information System}: To document visitor use impact, the Concessioner must provide the Service a monthly report on numbers of visitors

## **VI. Utility Responsibility**

Refer to the Contract. Utility rates for any services provided by the National Park Service will be based on actual operating costs (including capital investments) or comparability to surrounding areas (including those used in establishing visitor rates), whichever is greater. The Concessioner will be billed for actual usage each month.

Other, non-Service provided utility services must be established directly with utility vendors.

## **VII. Risk Management Program**

As stipulated in this Contract, the Concessioner must provide a safe and healthy environment for its employees and visitors.

### **A. Risk Management**

The Concessioner must develop a Risk Management Plan that meets All Applicable Laws. The Risk Management Plan must be submitted to the Service for review and acceptance. The plan must be reviewed by the Concessioner on an annual basis. Mandatory components of the program include:

1. A Management Policy Statement regarding program objectives, roles and responsibilities and program administration
2. Inspection and abatement protocols
3. Accident investigation and reporting protocols
4. Composition, responsibilities and operation of a Health & Safety Committee
5. Training standards
6. Emergency procedures

## **B. First Aid:**

The Concessioner must establish a First-Aid station within the facilities.

1. First Aid kits and blood-borne pathogen kits must be maintained as part of emergency equipment/supplies.
2. One First Aid Kit is required for each venue.
3. Each First Aid Kit must be commercially manufactured and stocked at a minimum in accordance with standards set by the American Red Cross or the National Safety Council. The U.S. Public Health Service Officer and Park Safety Officer may be consulted regarding the supplies that are required for these kits.
4. Any incident requiring medical care beyond first aid or requiring transportation by ambulance must be reported to the U.S. Park Police and the Gateway NRA Business Management Office.

## **VIII. Integrated Pest Management Including Herbicides**

The control of pests by chemical and other means is subject to park approval. Specific problems can be referred to the park's Integrated Pest Management Coordinator. Refer to the Maintenance Plan for additional information.

## **IX. Complaints**

A copy of all complaints regarding the Concessioner's operations must be sent to the Service along with the Concessioner's response to the complaint. The Concessioner must address requests for information regarding complaints in a prompt and professional manner. Copies of any Service responses to complaining parties may be forwarded to the Concessioner.

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

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

Please address comments to:

Gateway National Recreation Area - Northeast Region - National Park Service

Gateway National Recreation Area  
Attn: Business Services Office  
120 New York Avenue  
Staten Island, New York 10305

## **X. Advertisements & Public Information**

All promotional material must be approved by the Service prior to publication, distribution, broadcast, etc. In addition, the following stipulations apply:

1. Advertisements, including sets of advertisements, must include a statement that the Concessioner is authorized by the Department of the Interior, National Park Service, to serve the public in Gateway National Recreation Area.
2. Advertising that would offend normal standards of taste will not be approved.
3. Brochures and menu text changes and layout must be submitted to the Service for review at least 30 days prior to the date that approval is needed. The Concessioner should contact the Service well in advance of its internal deadlines to establish specific time frames for each project.
4. Advertisements for employment must contain a statement that the company is an equal opportunity employer.

## **XI. Protection and Security**

### **A. Fire Emergency**

The Concessioner must call 911 in the event of fire. The Concessioner is responsible for reimbursement of any New York City Fire Department charges resulting from incidents.

### **B. Security Plan**

1. The Concessioner must submit a written Security Plan to the Service for approval. The Plan must be updated and reviewed on an annual basis. The plan must address year-round operations, seasonal operations and special events.
2. As the law enforcement arm of the NPS within the Park, the U.S. Park Police serve as the primary investigators for all significant incidents that occur within the land assignment of the Concessioner.
3. The U.S. Park Police may assist the Concessioner with security planning and

evaluation.

4. All security personnel, whether contracted by the Concessioner or employed by a contracted and bonded security company, must not be armed.

### **C. Accidents and Incidents**

The Concessioner must address all aspects of personal safety and protection of property in accordance with the following provisions:

1. Major accidents and incidents must be immediately reported to the U.S. Park Police and the Service.
2. Concession-operated facilities must be patrolled 7 days per week and 24 hours per day either by Concession employees or bonded guard service in order to protect government, concessioner and visitor property from theft, vandalism and fire.
3. Any concerns detected by U.S. Park Police during non-operational hours may be reported to the Concessioner at an agreed upon emergency number. Back-up contact information must be provided to the U.S. Park Police in the event that the designated representative is not available to receive the emergency call.
4. All security measures and procedures are subject to coordination with and approval by the U.S. Park Police and the Service.

### **D. Special Events**

As part of the approval process, security requirements for Special Events must be identified by the Concessioner in consultation with the Service. The Concessioner must inform the Service of all final security requirements and provisions no less than ten (10) business days prior to Special Events. The Concessioner may be required to reimburse the Service for the cost of US Park Police officers assigned to cover the event.

USPP Commanders will advise the Service on the number of supplemental USPP officers required to provide adequate law enforcement during a proposed Special Event. The following charts approximate the number of supplemental USPP officers required at indoor and outdoor events based on the number of expected spectators:

#### **Indoor Event**

<b>Number Spectators</b>	<b>of</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>
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Recommended# USPP Officers	1	2	3	4
Recommended # USPP Supervisor	0	0	0	1

### **Outdoor Event**

<b>Number of Spectators</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>	<b>2001 to 3000*</b>	<b>3001 to 4000*</b>	<b>4000 to 6000*</b>
Recommended # Police Officers	0	1	2	3	4	5	6
Recommended # Police Supervisors	0	0	0	1	1	1	1

\*Some events may require more or fewer officers based on the complexity of the event, type of event and other relevant factors. A meeting between USPP and may occur to determine the number of additional USPP required. The cost of the additional USPP must be borne by the Concessioner.

Following the Special Event, the USPP Budget Officer will issue a Bill of Collection to the Concessioner for reimbursement of law enforcement expenses related to the event. Names of officers who worked the event, specific hours worked, and any related miscellaneous law enforcement expenses will be provided to the Concessioner in a written document. The Concessioner must reimburse the USPP for these expenses within 10 days of receipt of a Bill of Collection.

### **E. Lost Children**

Lost children must be taken to the U.S. Park Police Offices located in Floyd Bennett Field.

### **XII. Hazardous Waste Program**

Please see Part C of the Maintenance Plan for additional information.

### **XIII. Environmental Management**



The Concessioner must manage its operation in accordance with an approved Environmental Management Plan (EMP). Please see Part C of the Maintenance Plan for additional information.

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

The Concessioner must allow its employees to participate in the NPS Volunteers in the Park (VIP) program.

#### **XV. Emergencies**

In the event of an emergency, the Concessioner must call the following number:

United States Park Police (718) 338-3988 or 3993

#### **XVI. Utility Accounts**

<u>(1). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Electric	National Park Service	(b) (5)	N/A
<u>(2). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Water & Sewer	NYC Water Board	(b) (4), (b) (6)	N/A
Gas	Keyspan/National Grid	(b) (5)	General Account
Gas	Keyspan/National Grid	(b) (5)	Tran General Account
Gas	Keyspan/National Grid	(b) (5)	Co-Gen Account


#### **XVII. 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:

1. Agreement refers to Concession Contract No. CC-GATE015-03, effective April 15, 2003, expiring April 14, 2023, and any amendments thereto.
2. 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.

3. 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).
4. Incidental Spill or Release refers to the 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.
5. Spectator or Special Events are any events outside of normal recreational activities that (a) are designed or have the propensity to draw at least 500 spectators, (b) are usually advertised, (c) may be free or require an admission fee, and (d) must be approved in advance by the Service.

Approved by NPS, effective July 27, 2017

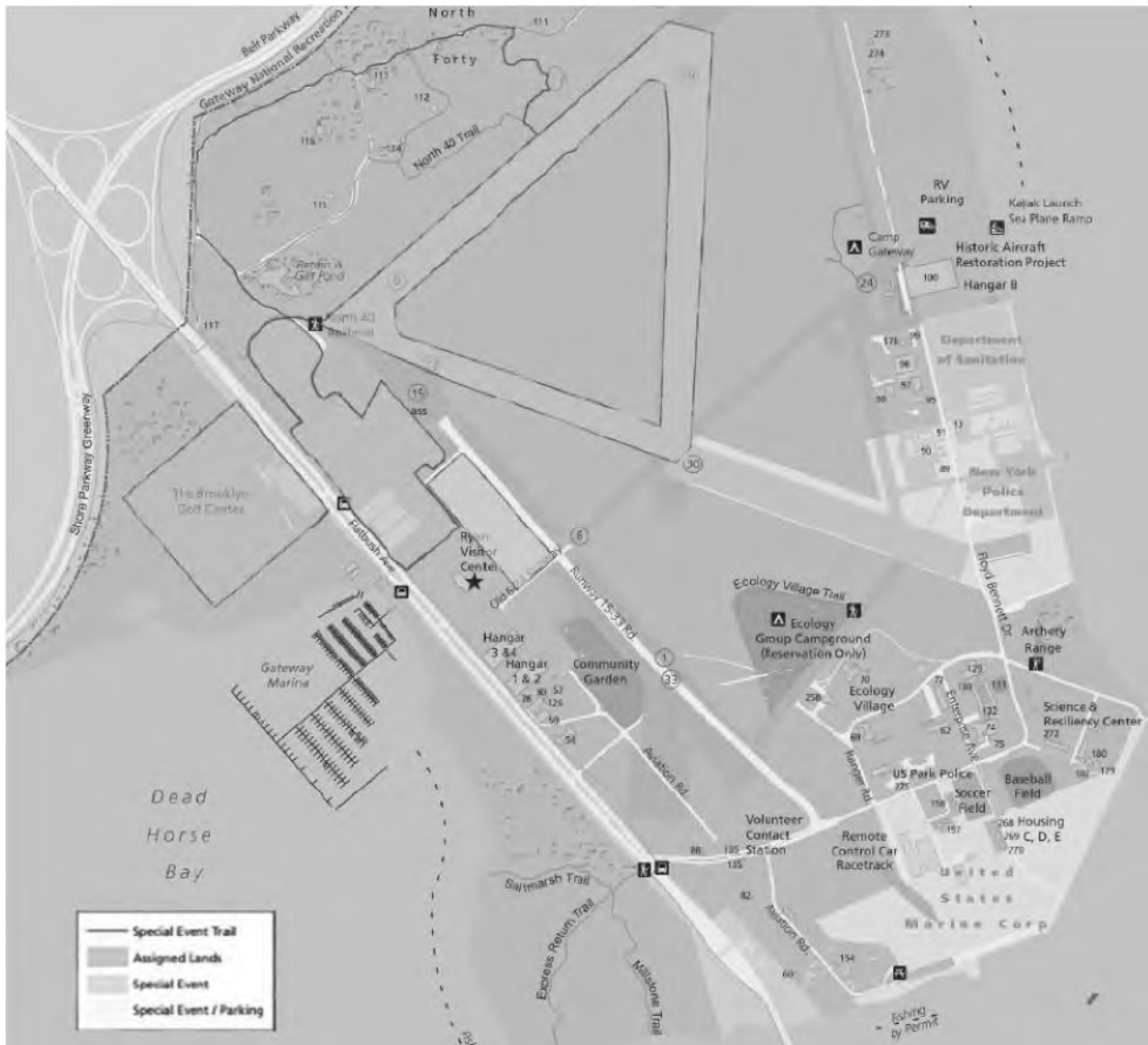
By:   
Jennifer Nersesian, Gateway National Recreation Area

**EXHIBIT D**

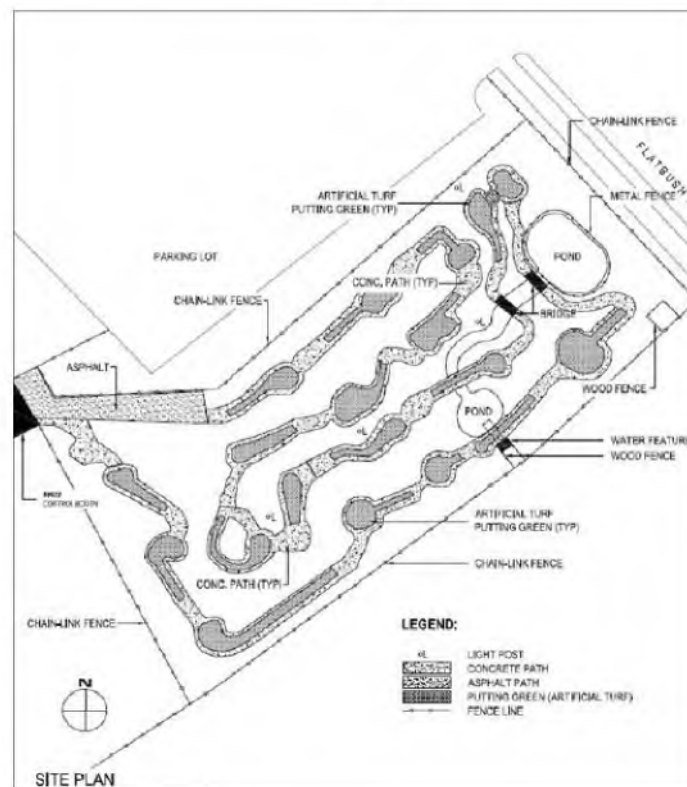
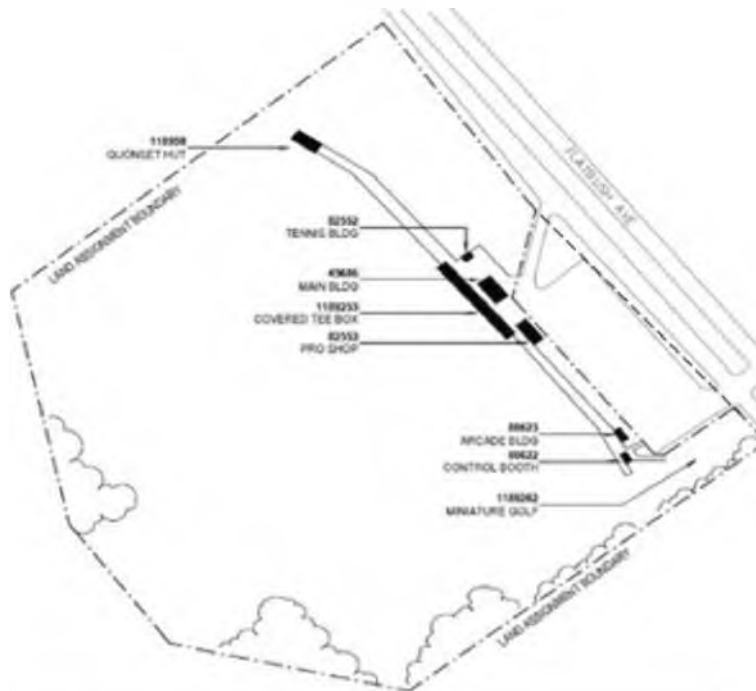
**ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)**

**Land Assigned**

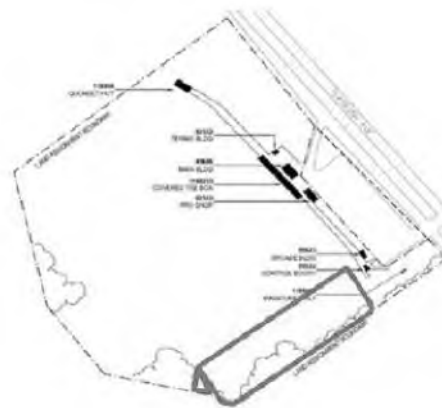
Land is assigned in accordance with the boundaries shown on the following map[s]:



# Flatbush Avenue Driving Range



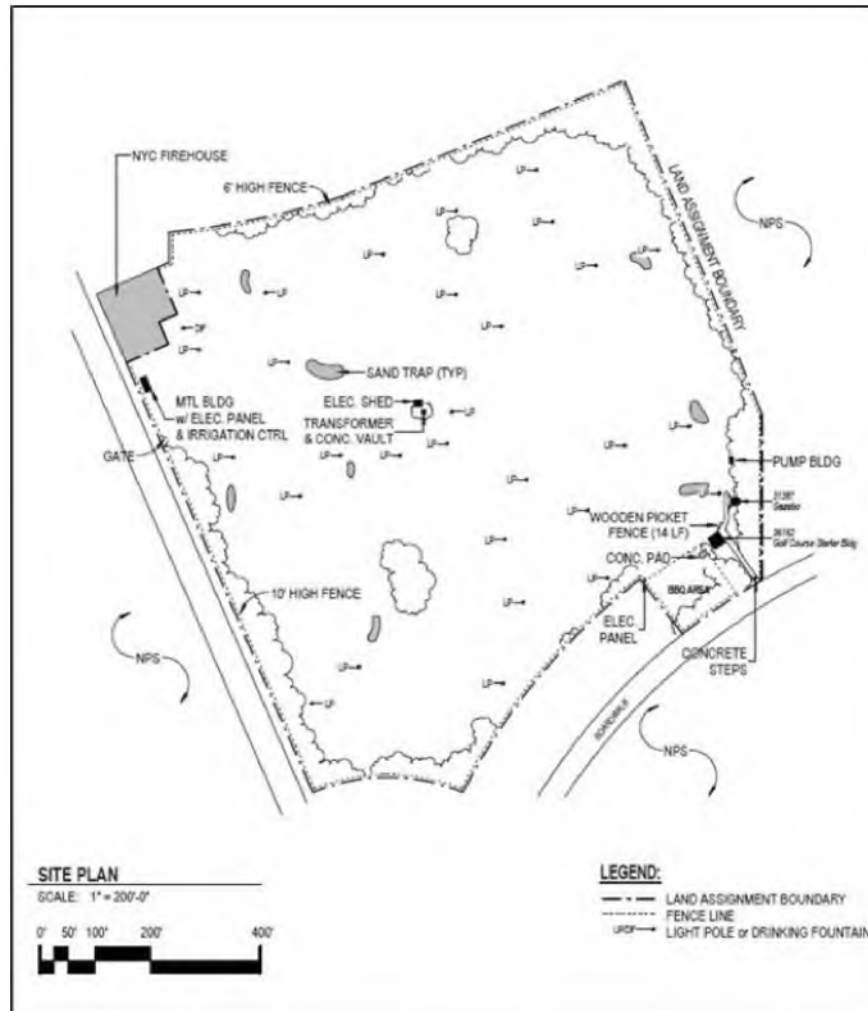
The site is located south of the Belt Parkway, Exit 11S, on Flatbush Avenue, across from Floyd Bennett Field, abutting Gateway Marina. The dimensions are: northern boundary 1,239'; southern boundary 1,200'; eastern boundary 1,200'; western boundary 1,200' subject to the reservation by NPS of an area approximately 100' wide, adjacent to the mini-golf facilities and the boundary adjacent to the marina, depicted in the map below, which the Concessioner may utilize at NPS discretion, until such time as NPS determines it is to be utilized for park purposes. The southern boundary begins at the existing fence which separates Gateway Marina from the driving range. Additional land may be assigned if necessary and approved by the Superintendent. *Bridge and waterfall are personal property.*



Area depicted in red is reserved for NPS use as described herein.

# **Riis Park Pitch and Putt**

The site is located southeast of the Marine Parkway Bridge, Belt Parkway, Exit 11S. The western edge of the course abuts Beach 169<sup>th</sup> Street and the boardwalk in Riis Park. Additional land may be assigned if necessary and approved by the Superintendent. Approximate assignment boundary indicated with dash-dot style lines.



**Real Property Improvements Assigned**

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

	Asset Code	Asset Description	Asset Type	Unit of Measure	Date Built or Installed	Historic (Y or N)	Insurance Replacement Value
Floyd Bennett Field	42333	JABA BU-NSFB-H-C Hangars 5 & 6	4100	49,283	1931	Y	\$15,848,296
	42337	JABA BU-NSFB-H-C Hangars 7 & 8	4100	52,591	1931	Y	\$13,965,362
	42343	JABA BU-NSFB-H-C29 Fire Pump House	4100	645	1936	Y	\$43,253
	42353	JABA BU-NSFB-H-C120 Transformer Bldg (Field Pump House)	4100	656	1936	Y	\$260,326
	111657	JABA BU-NSFB-C Aviator Sports Connector	4100	51,457	2006	N	\$22,225,873
	113656	JABA BU-NSFB-C Co-Gen Building	4100	2,663	2006	N	\$227,202
	227314	JABA BU-NSFB-C Aviator Sports Locker Room-Eastside	4100	991	2006	N	\$337,683
	227317	JABA BU-NSFB-C Aviator Sports Locker Room-Westside	4100	991	2006	N	\$179,589
	113657	JABA UT-NSFB-C Aviator Light Tower	5400	1	1957	Y	N/A
	42823	JABA BU-NSFB-98 Maintenance Facility/Warehouse	4100	3200	1941	Y	Shared Storage space
Jacob Riis Park	31387	Riis Par 3 Gazebo	4100	225	2009	N	\$15,114
	<b>36162</b>	JABA BU-BPRP-H-C603B Golf Course (Starter Building)	4100	221	1937	Y	\$50,013
Flatbush Avenue Driving Range	45686	JABA BU-NSFB-C Golf Driving Range Main Bldg	4100	951	1968	N	\$196,752
	82552	JABA BU-NSFB-C Golf Driving Range/Tennis Bldg	4100	152	1968	N	\$8,024
	<b>82553</b>	JABA BU-NSFB-C Golf Driving Range/Pro Shop	4100	1000	1968	N	\$212,653
	<b>88622</b>	JABA BU-NSFB-C Golf Driving Range/Control Booth	4100	287	1968	N	\$8,061
	88623	JABA-BU-NSFB-C Golf Driving Range/Arcade Bldg	4100	496	1968	N	\$19,410
	118925 3	Driving Range Covered Tee Box	4100	4331	2006	N	\$88,200

CC-GATE015-03 Exhibit D: Assigned Land & Real Property Page D-6

	118925 8	Driving Range Quonset Hut	4100	1469	2006	N	\$80,941
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*\* Please note: The lack of value for an asset in the column for Insurance Replacement Value does not relieve the Concessioner of its obligation to insure the asset according to the terms of this Contract.*

Approved, effective July 28, 2017

By: Cynthia MacLeod  
Cynthia MacLeod  
Acting Regional Director, Northeast Region



## **CC-GATE015-03**

### **AMENDMENT NO. 4**

**THIS AMENDMENT NO. 4 to CCGATE015-03 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 or his designee (hereinafter referred to as the "Director"), and ARKLOW-FBF, LLC, a limited liability company organized and existing under the laws of the State of Delaware (hereinafter referred to as the "Concessioner"):**

#### **WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner's predecessors as applicable entered into Concession Contract No. CC-GATE015-03, effective April 15, 2003, as amended by Amendment No. 1 dated February 27, 2006, Amendment No. 2 dated July 13, 2006, and Amendment No. 3 dated December 31, 2008, (as amended, the "Previously Amended Contract"), which Previously Amended Contract authorizes the provision of accommodations, facilities and services for the public within Gateway National Recreation Area during the period April 15, 2003, until its expiration on April 14, 2023; and

**WHEREAS**, the Previously Amended Contract was duly assigned to the Concessioner effective as of December 31, 2008; and

**WHEREAS**, the Director and Concessioner desire to provide for the early payment of compensation to the Concessioner for its Leasehold Surrender Interest as described in the Previously Amended Contract and otherwise amend such contract to the mutual benefit of the parties.

**NOW THEREFORE**, the Director and the Concessioner, in consideration of the mutual covenants set forth herein and for other good consideration, hereto covenant and agree as follows:

#### **1. Section 8(i) of the Previously Amended Contract is amended to read as follows:**

##### **(i) Special Provision related to Utility Charges and Costs for the Period January 1, 2009, through December 31, 2013**

**(1) For the period January 1, 2009, through December 31, 2013, notwithstanding the terms of Subsections 8(g) and 8(h) to the contrary and subject to the conditions and limitations set forth in this subsection, the Director:**

**(a) will not charge the Concessioner for the utilities provided by the Director under Subsection 8(g) (referred to herein as "unassessed utility charges" as that term is defined in Subsection 8(i)(2) below) and as further described in Section XVI (1) of Exhibit B; and**

**(b) will provide to the Concessioner the utilities set forth in Section XVI (2) of Exhibit B by paying the utility costs (as that term is defined in Subsection 8 (i)(2) below) that would otherwise be paid by the Concessioner under Subsection 8(h).**

(2) "Unassessed utility charges" for purposes of this Subsection 8(i) are the amounts of money the Director would have charged the Concessioner for utilities provided by the Director under Subsection 8(g) but for the terms of this Subsection 8(i). "Utility costs" for purposes of this Subsection 8(i) means invoiced charges for services rendered by public utility companies for electricity, water, sewage and natural gas. Without limitation, utility costs do not include telephone or other communication services and do not include repair, maintenance, purchase or replacement of any fixtures or equipment.

(3) Notwithstanding Subsection 8(i)(1) above, the Concessioner shall pay the Director for utilities in accordance with Subsection 8(g) above and shall pay all utility costs in accordance with Subsection 8(h) above after any time in any of the calendar years set forth below when the total of the unassessed utility charges under Subsection 8(i)(1)(a) above and the utility costs paid by the Director under Subsection 8(i)(1)(b) above exceed the amounts set forth below:

2009: \$900,000  
2010: \$925,000  
2011: \$950,000  
2012: \$725,000  
2013: \$400,000

(4) The Director's obligations under this Subsection 8(i) shall immediately terminate upon an assignment or encumbrance of this Contract, other than assignments and encumbrances existing as of this date.

**2. Section 9(c)(1) of the Previously Amended Contract is amended to read as follows:**

(1) As soon as possible after the effective date of Amendment No. 4 to this Contract, the Director shall pay by electronic transfer (as directed by the Concessioner pursuant to the Direction Letter currently in effect) to the Concessioner's assignee, Great – West Life and Annuity Insurance Company to the account set forth on Schedule A attached hereto below, the sum of \$12.75 million in full settlement of all of the Concessioner's rights to compensation for Leasehold Surrender Interest, Leasehold Surrender Interest Value, or any other compensable interests in real property improvements provided to the Concessioner by this Contract or Applicable Laws. In consideration of such early payment and other good and valid consideration, as of the effective date of Amendment No. 4 to this Contract all rights, title and interests of Concessioner for Leasehold Surrender Interest or any other compensable interests of any nature in real property improvements in the Park that exist as of the effective date of this Agreement or are hereafter installed or constructed shall without further action be deemed to have been irrevocably waived and relinquished by the Concessioner, notwithstanding any terms and conditions of the Concession Contract or Applicable Laws to the contrary. In addition, the Concessioner, for itself, its heirs, legal representatives, successors, and assigns (as applicable) hereby releases, acquits and forever discharges the United States, its representatives, successors, and assigns, to the maximum extent permitted by law, of and from any and all claims, rights, demands, liabilities or causes of action at law or in equity whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that Concessioner now has or that may arise in the future because of or in any way growing out of or connected with any Leasehold Surrender Interest, Leasehold Surrender Interest Value or other compensable interests in real property improvements under the terms of the Concession Contract, Applicable Laws, or otherwise. Concessioner further

expressly waives its rights under any provision of Applicable Laws that may provide that a general release does not extend to claims or rights that the releasing party does not know or suspects to exist in its favor at the time of executing the release, which, if known by the releasing party, may have materially affected its agreement to release the United States. For the purposes of this Contract, the terms "Leasehold Surrender Interest," "Leasehold Surrender Interest Value," "Real Property Improvements," "Capital Improvements," and "Related Capital Improvements" (whether or not capitalized) shall be defined as set forth in Part 51 of Volume 36 of the Code of Federal Regulations as of the effective date of Amendment No. 4 to this Contract.

**3. Section 9(d)(2) of the Previously Amended Contract is amended to read as follows:**

(2) The Concessioner, within two years from the effective date of Amendment No. 4 to this CONTRACT, shall undertake and complete (at a cost of not less than \$50,000 and not more than \$150,000 ) the following CFIP projects:

Rehabilitation and adaptation of Building 29 and the historic light tower in accordance with the standards set forth in the Memorandum of Agreement between the Director and the New York State Historic Preservation Officer (which Memorandum of Agreement is hereby attached to this CONTRACT as Exhibit K).

**4. Sections 10(c)(5) and (6) of the Previously Amended Contract are amended to read as follows:**

(5) Repair and Maintenance Reserve funds may be used to construct capital improvements as that term is defined in this CONTRACT. The Concessioner shall obtain no ownership or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be paid to the Director by the Concessioner as an additional franchise within fifteen (15) days of such termination or expiration.

**5. Section 11 of the Previously Amended Contract is amended by adding a subsection (e) as follows:**

**(e) Special Adjustment of Franchise Fees and Repair and Maintenance Reserve Debits**

Notwithstanding any terms of this Contract or Applicable Laws to the contrary, the Director by written notice to the Concessioner may request within 730 days of the effective date of Amendment No. 4 to this Contract an increase in the franchise fee amounts and /or repair and maintenance reserve debits called for by this Contract. Unless the Concessioner by written notice objects to such requested increase(s) within thirty(30) days of request, such increase(s) shall take effect without further action thirty (30) days from the date of request. If the Concessioner timely objects to such increase(s), such requested increases shall be negotiated, and, if negotiations fail, shall be determined by binding arbitration in accordance with the standards and procedures set forth above with respect to possible franchise fee adjustments as described in Section 11(d)(1) above. The decision resulting from such arbitration shall limited to the increase, if any, in such franchise fee amounts and/or repair and

maintenance reserve debits based upon the probable value of the privileges granted by this Contract as of the time of the arbitration. Such decision shall not result in a decrease to existing franchise fee amounts, repair and maintenance reserve debits. The Concessioner agrees that the early payment of Leasehold Surrender Interest compensation as called for by Amendment No. 4 to this Contract constitutes an extraordinary, unanticipated change within the meaning of Section 11(d) above, which change warrants possible consideration of an increase (not decrease) in franchise fee amounts and/or repair and maintenance reserve debits as described in this subsection.

**6. Section 13(b) of the Previously Amended Contract is amended to read as follows:**

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.

**7. Section 17(b) of the Previously Amended Contract is amended to read as follows:**

**(b) Compensation for CONTRACT expiration or termination**

No compensation of any nature is due the Concessioner upon the termination or expiration of this Contract.

**8. Section 17(c) of the Previously Amended Contract is deleted in its entirety and Section 17(d) is relabeled as Section 17(c).**

**9. Exhibit A to the Previously Amended Contract is deleted in its entirety.**

**10. Exhibit D2 to the Previously Amended Contract is deleted and replaced by a revised Exhibit D2 which is attached to this Amendment No. 4 as Attachment A.**


**11. Exhibit H-1 to the Previously Amended Contract is amended by deleting its Section B)4)(c) in its entirety.**

**12. This Agreement contains the entire agreement of NPS and Concessioner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written. No modification of this Agreement shall be binding unless in writing and signed by the party to be bound.**

**13. NPS and the Concessioner agree and assert that the decisions reflected in this Agreement are unique to the special circumstances presented by this matter and are not intended to, nor should they be construed as, precedent for any other agreement by the NPS or the U.S. Department of the Interior on matters of a similar type or subject matter.**

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment No. 4 effective as of the last date set forth below.

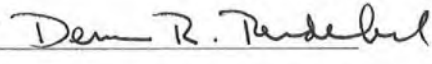
CONCESSIONER

BY   
Title: MANAGING MEMBER

ARKLOW-FBF, LLC

Date: 12/2/2010

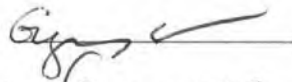
UNITED STATES OF AMERICA

BY   
Title: NER Regional Director

National Park Service

Date: 12/3/2010

ATTEST:

BY:   
Title: SECRETARY  
Date: 12/2/2010

SCHEDULE A

NAME AND ADDRESS OF ASSIGNEE OF CONCESSIONER

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY  
8515 EAST ORCHARD ROAD, 3T2  
GREENWOOD VILLAGE, CO 80111  
ATTN: INVESTMENTS DIVISION  
Fax: (303)737-6193

Payments

All payments on or in respect to the assigned Leasehold Surrender Interest to be by bank wire transfer of Federal or other immediately available funds to:

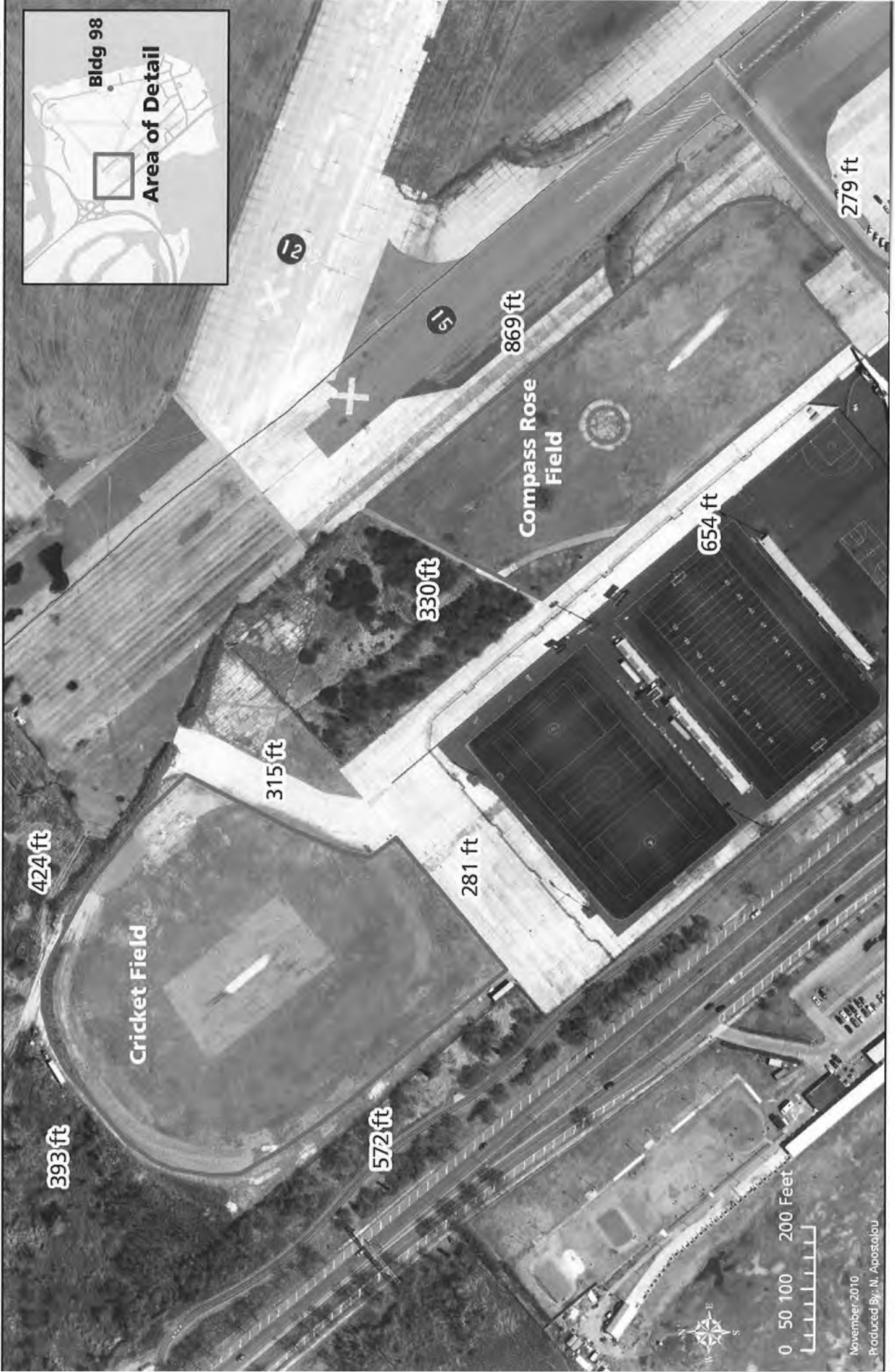
The Bank of New York  
ABA No.: 021-000-018  
BNF Account No.: IOC566  
Further Credit To: Great-West Life/Acct No. 640935

Reference: Aviator Development Company/Arklow FBF LLC

Taxpayer I.D. Number: 84-0467907

CONCESSIONS CONTRACT NO. CCGATE015-03

EXHIBIT D2 - ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT-ADDITIONAL FIELD ASSIGNMENT - COMPASS ROSE FIELD AND CRICKET FIELD



## **CC-GATE015-03**

### **Assignment and Acceptance**

**This Assignment and Acceptance** ("Assignment and Acceptance") is made and entered into by and among AVIATOR SPORTS AND RECREATION, LLC and AVIATOR DEVELOPMENT COMPANY, LLC, (New York limited liability companies collectively referred to hereafter as "Aviator" or "Assignor") and ARKLOW-FBF, LLC, a Delaware limited liability company ("Arklow" or "Assignee"). In accordance with 36 CFR Part 51, this Assignment and Acceptance is subject to approval by the United States of America acting through the Director of the National Park Service ("NPS"). Such approval ("NPS Approval") is deemed as granted when executed by NPS where indicated below.

#### **Witnesseth That:**

**Whereas**, Aviator is the Concessioner under the terms of NPS Concession Contract No. CC-GATE015-03, as amended (the "Concession Contract"), which contract authorizes and requires the Concessioner to provide certain visitor facilities and services within the Gateway National Recreation Area (the "Area"); and

**Whereas**, Aviator wishes to assign all of its rights, title and interest in and under the Concession Contract to Arklow.

**Now, Therefore**, Aviator and Arklow hereby agree as follows in consideration of the mutual premises of this Assignment and Acceptance, subject to execution of the NPS Approval.

**1. Assignment.** Aviator hereby assigns, subject to execution of the NPS Approval, the Concession Contract to Arklow, such action being subject to the representations and conditions set forth below and the terms of the Approval. Effective immediately upon execution of the NPS Approval, Arklow shall become the Concessioner under the Concession Contract for all purposes. Aviator and their officers, employees and agents, hereby irrevocably waive and relinquish all rights, claims and/or causes of action of any nature that they may have individually or collectively against NPS and/or its officers, agents and employees in or related to or arising from this Assignment and Acceptance, the Concession Contract, or any circumstances and events related thereto. Aviator understands and agrees that neither this Assignment and Acceptance nor the Approval shall be construed in any manner as relieving them, joint or severally, of any liability to NPS that may exist as a result of any breach of the Concession Contract that may have occurred prior to the execution of the NPS Approval or of any failure to comply with Applicable Laws as defined in the Concession Contract. Notwithstanding this Assignment and Acceptance or the NPS Approval, Aviator also agrees that they shall comply with all applicable terms of the NPS Approval and that they shall remain liable to NPS with respect to all claims and liabilities based on or resulting from actions, events, or circumstances occurring prior to the effective date of the NPS Approval.

2. **Acceptance.** Arklow hereby accepts the foregoing Assignment and agrees to carry out fully and perform as the Concessioner all of the obligations imposed upon the Concessioner by the terms and conditions of the Concession Contract and to assume all obligations of the Concession Contract incurred by Aviator Development and/or Aviator Sports prior to the execution date of the Assignment and Acceptance if Aviator Development or Aviator Sports fails to perform them. Arklow also agrees to all conditions of the Approval as set forth below.

3. **Transition.** Assignor, Assignee and the NPS all agree and concur that Exhibit J of the Concession Contract does not apply to the transaction contemplated by this Assignment and Acceptance.

Executed on December 30, 2008.

**AVIATOR DEVELOPMENT COMPANY, LLC, ASSIGNOR**

By: Kristy C. Cuchel  
Title CEO

Attest: A Susan Pasini  
By: SUSAN PASINI  
Title SECRETARY

**AVIATOR SPORTS AND RECREATION, LLC, ASSIGNOR**

By: Kristy C. Cuchel  
Title CEO

Attest: A Susan Pasini  
By: SUSAN PASINI  
Title SECRETARY



**ARKLOW-FBF LLC, ASSIGNEE**

By: Brian O'Donoghue

Title Managing Member

Attest: Gregory Shrock

By: Gregory Shrock

Title Secretary

**NPS APPROVAL**

NPS hereby approves the Assignment and Acceptance set forth above, effective as of execution of this Approval by NPS, in accordance with the requirements of 36 CFR Part 51 and under and subject to the following terms and conditions:

- A. The purchase price paid to Aviator by Arklow, any debt to be incurred by the Arklow in connection with the Assignment and Acceptance, and/or any facts and circumstances related to the Concession Contract that existed prior to NPS Approval will not be used at any time by Arklow or any related party as justification for: an increase in rates charged to the public under the terms of the Concession Contract; a waiver or reduction of franchise fees or other Concession Contract requirements; or any claim that the terms of the Concession Contract do not provide the Arklow a reasonable opportunity for profit. Arklow and its officers, employees or agents, hereby irrevocably waive and relinquish all rights, claims and/or causes of action of any nature that they may have against NPS and/or its officers, agents and employees in or related to or arising from the Concession Contract or any circumstances and events related thereto that occurred thereto prior to the date of this Approval.
- B. Within thirty (30) day of the execution of this Approval, Arklow will submit for the approval of NPS a balance sheet, as of the execution date of the Approval, together with a Schedule of Arklow's Assets with the description of each asset.
- C. NPS, when developing the requirements of any subsequent concession contract for the facilities and services provided under the Concession Contract, will not take into account the purchase price or any outstanding debt resulting from the Assignment and Acceptance or related transactions. NPS will establish franchise fees and other contract obligations for a subsequent concession contract based on the probable value to a concessioner of the authorization as required by law and as determined by NPS.
- D. Neither NPS nor any successor concessioner bears any liability for any debt incurred by

Aviator or Arklow in connection with this Assignment and Acceptance, the Concession Contract, or otherwise.

- E. Arklow represents that it has not been advised by the NPS that the NPS or other federal government official considers the terms of the Assignment and Acceptance to be reasonable or that Arklow may expect to earn a profit under the terms of the Concession Contract.
- F. This Approval in no manner implies the existence of or grants any preferential right to the award of any subsequent concession contract. Arklow hereby waives any right to assert any preferential right or other benefit based on the Approval or otherwise.
- G. Neither Aviator or Arklow will utilize the Approval in any form or manner, including, but not limited to, any litigation, proceeding, or hearing, involving the NPS, as evidence of any fact or matter other than that the NPS approved the Assignment and Acceptance in accordance with 36 CFR Part 51.
- H. Notwithstanding any representations made by Aviator or other persons to Arklow as to the value of the Concession Contract, if any, or as to any other matters related to this Assignment and Acceptance, NPS, in approving the Assignment and Acceptance, expressly is not agreeing to, approving or concurring in any such representations. NPS reserves the right to challenge any representations made by Aviator or other persons in any future matters concerning the Concession Contract, this Assignment and Acceptance, or circumstances related thereto.
- I. That, to the extent that Aviator may have been allocated by NPS user days or other access privileges to the Area for the purposes of the Concession Contract, such allocations are subject to change or elimination by NPS. The Concession Contract does not grant such allocations as a matter of right to the Concessioner or any subsequent concessioner.
- J. Arklow and its officers, employees and agents, in consideration of the benefits derived by this Approval, hereby accept all terms of the Concession Contract and knowingly waive and relinquish any claims or rights they may have under Applicable Laws as defined in the Concession Contract or otherwise regarding the terms of the Concession Contract, including, without limitation, all terms and conditions of the Concession Contract relating to Leasehold Surrender Interest as defined and described therein.
- K. No one may construe the Approval by NPS of this Assignment and Acceptance as, in any manner, as amending, altering, or waiving any terms and conditions of the Concession Contract.
- L. The Approval by NPS of this Assignment and Acceptance does not in and of itself constitute approval of any financial transaction or encumbrance associated with this Assignment and Acceptance. If NPS must, by law,

approve such financial transaction or encumbrance, NPS will provide such approval, if granted, of any such associated financial transaction or encumbrance, if granted, in a separate document.

**APPROVED BY:**

**THE UNITED STATES OF AMERICA**

By: Walter W. Brown

for Director, National Park Service (or her designee)

Date: DEC 31 2000

**In Consideration of the Following Findings and Determinations**

Under regulations governing the assignment of concession contracts at 36 C.F.R. Part 51, the Director must make certain findings before approving such assignment. In compliance with those requirements, I have determined the following:

1. The assignment does not purport to assign assets that are not owned by the Assignor, including, without limitation, Area entrance, user day, or similar use allocations made by the National Park Service.
2. The Assignee is a qualified person as defined in 36 C.F.R. Part 51.
3. The assignment would not have an adverse impact on the protection, conservation, or preservation of resources within Gateway National Recreation Area.
4. The assignment would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges.
5. The terms of the assignment are not likely, directly or indirectly, to reduce the opportunity of the Assignee to earn a reasonable profit over the remaining term of the Concession Contract, to affect adversely the quality of facilities and services provided by the Assignor, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

## **CC\_GATE-015-03**

### **AMENDMENT NO. 3**

**THIS AMENDMENT NO. 3** to CC-GATE015-003 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 or her designee (hereinafter referred to as the "Director"), and AVIATOR SPORTS AND RECREATION, LLC and AVIATOR DEVELOPMENT COMPANY, LLC, limited liability companies organized and existing under the laws of the State of New York (hereinafter referred to collectively as the "Concessioner"):

#### **WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner entered into Concession Contract No. CC-GATE015-03, effective April 15, 2003, and amended the Concession Contract by Amendment No. 1 dated February 27, 2006, and Amendment No. 2 dated July 13, 2006, (as amended, the "PREVIOUSLY AMENDED CONTRACT"), which PREVIOUSLY AMENDED CONTRACT authorizes the provision of accommodations, facilities and services for the public within Gateway National Recreation Area during the period April 15, 2003, until its expiration on April 14, 2023; and

**WHEREAS**, the Director and Concessioner desire to further amend the PREVIOUSLY AMENDED CONTRACT to the mutual benefit of the parties, including, without limitation, deletion of its Exhibit G, addition of Exhibit H-1, addition of Exhibit J, further specification of Leasehold Surrender Interest Value, and agreement to the waiver and release of claims and rights to certain Leasehold Surrender Interest; and

**WHEREAS**, the Director and the Concessioner for the sake of clarity wish to restate the PREVIOUSLY AMENDED CONTRACT as amended by the terms of this Amendment No. 3; and

**WHEREAS**, immediately prior to the execution of this Amendment No. 3, the Director, in accordance with the instructions of the Concessioner, paid seventeen million five hundred thousand dollars (\$17,500,000) which sum by the agreement of the Director and the Concessioner reduced the Leasehold Surrender Interest Value (as defined in the PREVIOUSLY AMENDED CONTRACT) by the equivalent sum of money such that the Leasehold Surrender Interest Value equals \$12.75 million as of the time of and after giving effect to such payment.

**NOW THEREFORE**, the Director and the Concessioner, in consideration of the mutual covenants set forth herein and for other good consideration, hereto covenant and agree that:

**The PREVIOUSLY AMENDED CONTRACT is further amended and restated, effective as of the last date set forth below, by this Amendment No. 3, the terms of which are incorporated in the document attached hereto as Exhibit A. Exhibit A restates the PREVIOUSLY AMENDED CONTRACT, as amended by this Amendment No. 3, in its entirety effective as of the last date set forth below and Exhibit A henceforth shall constitute Concession Contract CC-GATE015-03 as**

amended for all purposes. In the event of any inconsistency between the  
PREVIOUSLY AMENDED CONTRACT and Exhibit A, Exhibit A shall control.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this  
Amendment No. 3 effective as of the last date set forth below.

**CONCESSIONER**

**UNITED STATES OF AMERICA**

BY [Signature]

Title: CEO --

Aviator Development Company, LLC

BY [Signature]

Title: A/D Business Services

National Park Service

Date: December 30, 2008

Date: DEC 31 2008

**ATTEST:**

BY: [Signature]

Title: SECRETARY

Date: December 30, 2008

BY [Signature]

Title: CEO --

Aviator Sports and Recreation, LLC

Date: December 30, 2008

**ATTEST:**

BY: [Signature]

Title: SECRETARY

Date: December 30, 2008

## **EXHIBIT A to Amendment No. 3: Concession Contract CC – GATE015-03**

### **CONCESSION CONTRACT CC- GATE015-03 RESTATED AS AMENDED BY AMENDMENTS No. 1, 2, AND 3.**

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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 THE AVIATOR DEVELOPMENT COMPANY, LLC, and AVIATOR SPORTS AND RECREATION, LLC, limited liability companies organized and existing under the laws of the State of New York (hereinafter referred to collectively as the "Concessioner"):

**WITNESSETH:**

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

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

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

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

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

**SEC. 1. TERM OF CONTRACT**

This Concession Contract No. CC-GATE015-03 ("CONTRACT") shall be effective as of April 15, 2003, and shall be for the term of twenty (20) years until its expiration on April 14, 2023.

**SEC. 2. DEFINITIONS**

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

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

- (b) "Area" means the property within the boundaries of Gateway national Recreation Area.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced 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) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.
- (f) "Days" shall mean calendar days.
- (g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.
- (h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.
- (i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:
- (1) intracompany earnings on account of charges to other departments of the operation (such as laundry);
  - (2) charges for employees' meals, lodgings, and transportation;
  - (3) cash discounts on purchases;
  - (4) cash discounts on sales;
  - (5) returned sales and allowances;
  - (6) interest on money loaned or in bank accounts;
  - (7) income from investments;
  - (8) income from subsidiary companies outside of the Area;
  - (9) sale of property other than that purchased in the regular course of business for the purpose of resale;
  - (10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
  - (11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the

Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

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

(k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.

(m) "Possessory Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(n) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.

(o) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

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

(q) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this CONTRACT.

### **SEC. 3. SERVICES AND OPERATIONS**

#### **(a) Required and Authorized Visitor Services**

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

##### **(1) Required Visitor Services**

The Concessioner is required to operate a family-oriented sports center, on a year-round basis to include:

Ice sports as the core activity and anchor for the sports center with support activities and services

Pro shop,

Food and Beverage Service,

and

Provide exhibits and informational media that inform and educate users of the national significance of the historic hangars.

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

Interpretive material (books, postcards, posters, photographs),

Limited apparel,

Souvenirs tied to the interpretive theme(s) of Gateway National Recreation Area,

Teaching professional services,

Sports physical therapy, and

Community events

**(b) Operation and Quality of Operation**

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

**(c) Operating Plan**

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

**(d) Merchandise and Services**

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

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this

CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

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

**(e) Rates**

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

**(f) 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 C.

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

(3) 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) Employees**

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

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

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

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

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

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

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

## **SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

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

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

### **(b) Notice**

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

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

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

General Superintendent  
Gateway National Recreation Area  
Attention: Chief, Business Management Division  
Headquarters Building 69  
Floyd Bennett Field  
Brooklyn, New York 11234

Notices sent to the Concessioner shall be sent to an address designated in writing by the Concessioner.

**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 12 of this

CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and 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 the Comprehensive Interpretive Plan, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

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

**(b) Director Review of Content**

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

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

### **(a) Assignment of Concession Facilities**

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

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and

(ii) certain real property improvements as described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.

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

### **(b) Concession Facilities Withdrawals**

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

(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 considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as termination of this CONTRACT pursuant to Section 16. Other withdrawals of assigned Concession Facilities shall not be considered as a termination of this CONTRACT.

### **(d) Right of Entry**

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

**(e) Personal Property**

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

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

**(f) Condition of Concession Facilities**

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

**(g) Utilities Provided by the Director.**

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

**(h) Utilities not provided by the Director**

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

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

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in

writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

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

**(i) Special Provision related to Utility Charges and Costs for the Period January , 2009, through December , 2015**

(1) For the period January 1, 2009, through December 31, 2015, notwithstanding the terms of Subsections 8(g) and 8(h) to the contrary and subject to the conditions and limitations set forth in this subsection, the Director:

(a) will not charge the Concessioner for the utilities provided by the Director under Subsection 8(g) (referred to herein as “unassessed utility charges” as that term is defined in Subsection 8(i)(2) below) and as further described in Section XVI(1) of Exhibit B; and

(b) will provide to the Concessioner the utilities set forth in Section XVI(2) of Exhibit B by paying the utility costs (as that term is defined in Subsection 8(i)(2) below) that would otherwise be paid by the Concessioner under Subsection 8(h).

(2) “Unassessed utility charges” for purposes of this Subsection (i) are the amounts of money the Director would have charged the Concessioner for utilities provided by the Director under Subsection 8(g) but for the terms of this Subsection (i). “Utility costs” for purposes of this Subsection (i) means invoiced charges for services rendered by public utility companies for electricity, water, sewage and natural gas. Without limitation, utility costs do not include telephone or other communication services and do not include repair, maintenance, purchase or replacement of any fixtures or equipment.

(3) Notwithstanding Subsection 8(i)(1) above, the Concessioner shall pay the Director for utilities in accordance with Subsection 8(g) above and shall pay all utility costs in accordance with Subsection 8(h) above after any time in any of the calendar years set forth below when the total of the unassessed utility charges under Subsection 8(i)(1)(a) above and the utility costs paid by the Director under Subsection 8(i)(1)(b) above exceed the amounts set forth below:

2009: \$900,000

2010: \$925,000

2011: \$950,000

(4) In addition to the limitations set forth in Subsection 8(i)(3) above, the Director’s obligations under this Subsection 8(i) will terminate if, at any time during the period January 1, 2009 – December 31, 2015: (a) the unassessed utility charges under Subsection 8(g) and the applicable Subsection 8(h) utility costs paid by the Director cumulatively total seven million dollars (\$7 million) or more; or, (b) the cumulative fiscal year gross receipts of the Concessioner for any particular fiscal year (gross receipts based on a fiscal year period commencing January 1 and ending on December 31) exceed fourteen million dollars (\$14 million). With respect to termination for the latter reason, the Director’s obligations under Subsection 8(i) will cease in the month immediately following the month in which cumulative fiscal year gross receipts exceed \$14 million. For example, if cumulative gross receipts for the fiscal year beginning on January 1, 2012 and ending on December 31, 2012 exceed \$14 million dollars in September, 2012, the

Director's obligations under Subsection 8(i) will cease effective as of October 1, 2012. The Director will make the determination to terminate these obligations in his sole discretion, after consultation with the Concessioner.

(5) Upon request, the Concessioner will promptly provide the Director with monthly gross receipt reports to track cumulative gross receipts.

## **SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

### **(a) Construction of Real Property Improvements**

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

### **(b) Removal of Real Property Improvements**

(1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

### **(c) Leasehold Surrender Interest**

(1) This CONTRACT hereby provides the Concessioner, subject to the limitations set forth in Section 17 of this CONTRACT and subject to all applicable definitions, requirements and limitations of this CONTRACT a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT.

### **(d) Concession Facilities Improvement Program**

(1) The Concessioner has undertaken an improvement program (hereinafter a "Concession Facilities Improvement Program" or "CFIP") generally consisting of the stabilization, rehabilitation and adaptation of historic hangars into a family sports center. The CFIP, with the exception of the projects described in Subsection 9(d) (2) below, was substantially completed to the satisfaction of the Director and the facility

opened to the public as of September 15, 2006.

(2) The Concessioner, within one year from the effective date of Amendment No. 3 to this CONTRACT, shall undertake and complete (at a cost of not less than \$50,000 and not more than \$150,000 ) the following CFIP projects:

Rehabilitation and adaptation of Building 29 and the historic light tower in accordance with the standards set forth in the Memorandum of Agreement between the Director and the New York State Historic Preservation Officer (which Memorandum of Agreement is hereby attached to this CONTRACT as Exhibit K).

(3) Notwithstanding any provision of this CONTRACT or Applicable Laws to the contrary, the Director and the Concessioner agree that the Gas Co-Generation facility that provides electricity to the Concession Facilities constructed by the Concessioner as part of the CFIP is deemed to be a real property improvement (and not personal property) as defined by this CONTRACT for all purposes of this CONTRACT.

## **SEC. 10. MAINTENANCE**

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

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

### **(b) Maintenance Plan**

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

### **(c) Repair and Maintenance Reserve**

(1) Commencing on January 1, 2014, the Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall reasonably direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2)

Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this CONTRACT from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: four(4%) percent of the Concessioner's gross receipts for the previous month, up to an accumulated maximum of \$1,000,000.00. The Repair and Maintenance Reserve shall be replenished, as necessary, in the manner provided in this Section 10(c) (3) to maintain the maximum amount provided above. If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this CONTRACT for default, after written notice and an opportunity to cure, or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation reasonably satisfactory to the Director. Failure to expend Repair and Maintenance Reserve Funds when directed by the Director shall be considered as a material breach of this CONTRACT for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this CONTRACT, after written notice and an opportunity to cure.

(5) Repair and Maintenance Reserve funds shall not be used to construct capital improvements as that term is defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner.

## **SEC. 11. FEES**

### **(a) Franchise Fees**

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted by this CONTRACT a base franchise fee and an additional franchise fee as set forth below:

(i) The base franchise fee shall be equal to two percent (2.0%) of the Concessioner's gross



receipts for the preceding year or portion of a year; provided that, for the period January 1, 2009 through December 31, 2013, the base fee shall be equal to zero percent (0%); and

(ii) The additional franchise fee shall be equal to eight percent (8%) of the Concessioner's gross receipts in excess of fourteen million dollars (\$14 million) 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 franchise fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

(1) The franchise fees 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 fees 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 in accordance with Applicable Laws.

**(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 Fees**

(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 fees 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 fees.

(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 fees within this period, the franchise fees 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 fees within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fees 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 adjusted franchises fees (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 fees resulting from this Section shall be prospective only.

(9) Any adjustment to the franchise fees will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

## **SEC. 12. INDEMNIFICATION AND INSURANCE**

### **(a) Indemnification**

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

**(b) Insurance in General**

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent 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 I. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit I.

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

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

**(d) Property Insurance**

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

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

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

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

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

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

### **SEC. 13. BONDS AND LIENS**

#### **(a) Bonds**

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

#### **(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner, provided however, that the Director agrees that the Leasehold Surrender Interest Value shall, when due, be payable without any deduction or set-off other than such deduction or set-off reflecting any amount then claimed by the Government for payment of: (1) Franchise Fees then due and unpaid to the Government pursuant to Section 11 of this CONTRACT; (2) claims for damage to or failure to maintain the Concession Facilities (as defined herein); (3) claims arising from Concessioner's discharge or release as described in Section 6 of this CONTRACT, within the Area of hazardous materials, petroleum products, and/or pollutants on, under or from the Concession Facilities; (4) damages arising from third-party claims alleging personal injury, death, and/or property damage which occurred at or in connection with the Concessioner's Operations hereunder or Concession. Facilities and not covered by casualty or liability insurance; (5) claims of subcontractors and/or service or material suppliers for improvements or services contracted for by, or otherwise performed on behalf of, Concessioner in connection with the Concession Facilities which have

not been paid or bonded; and (6) claims for payment of any utility service supplied by the Director to Concessioner in connection with the Concession Facilities (subject to the special terms of Section 8(i) hereof).

## **SEC. 14. ACCOUNTING RECORDS AND REPORTS**

### **(a) Accounting System**

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

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

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

### **(b) Annual Financial Report**

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

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

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

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

### **(c) Other Financial Reports**

(1) **Balance Sheet.** Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the

Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.

(2) Statements of Reserve Activity. Commencing in 2014, the Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

## **SEC. 15. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this CONTRACT:

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

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

### **(b) Environmental Reporting**

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

### **(c) Miscellaneous Reports and Data**

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

## **SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Suspension**

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

### **(b) Termination**

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

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement

to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

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

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

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

**(c) Notice of Bankruptcy or Insolvency**

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

**(d) Requirements in the Event of Termination or Expiration**

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

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

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

## **SEC. 17. COMPENSATION**

### **(a) Just Compensation**

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

### **(b) Compensation for CONTRACT expiration or termination**

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

### **(c) Leasehold Surrender Interest Value.**

The Concessioner, notwithstanding any provision of Applicable Laws or this CONTRACT to the contrary, hereby waives and relinquishes any and all Leasehold Surrender Interest or Leasehold Surrender Interest Value that it may now have or otherwise would obtain in the future under the terms of this CONTRACT or otherwise in the Concession Facilities specified in Exhibit D to this CONTRACT, or in any other property, in excess of \$12.75 million, and hereby waives any right to payment for Leasehold Surrender Interest Value except as expressly provided under the terms of this



CONTRACT. The Director and the Concessioner agree that the Leasehold Surrender Interest Value for all purposes of this CONTRACT, notwithstanding any provision of Applicable Laws or this CONTRACT to the contrary, shall be \$12.75 million.

**(d) Compensation for Personal Property**

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

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

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

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

**SEC. 19. GENERAL PROVISIONS**

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

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

(c) Subconcession or other third party agreements, including management agreements for the provision of visitor services required and/or authorized under this CONTRACT are not permitted; provided, however, that the Concessioner may provide food and beverage services through a wholly owned subsidiary subject to prior written approval by the Director.

(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, as applicable, 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, or 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.

(m) 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 J to this CONTRACT, "Transition to New Concessioner." This Section and Exhibit J shall survive the expiration or termination of this CONTRACT. Exhibit H-1 to this CONTRACT establishes procedures for expenditure of Repair and Maintenance Reserve Funds.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this CONTRACT. (Original CONTRACT effective as of April 15, 2003; Amendment No.1 effective as of February 27, 2006; Amendment No. 2 effective as of July 13, 2006; Amendment No. 3 effective as of December 31, 2008 [date to be inserted after execution of Amendment No. 3].

**CONCESSIONER**

**UNITED STATES OF AMERICA**

AVIATOR DEVELOPMENT COMPANY, LLC

BY Katya Gulich  
TITLE: CEO

BY Matthew Green  
for Director,  
National Park Service

ATTEST:

DEC 31 2008

BY: Anna Pash  
TITLE: SECRETARY

AVIATOR SPORTS AND RECREATION, LLC

BY Katya Gulich  
TITLE: CEO

ATTEST:

BY: Anna Pash  
TITLE: SECRETARY

**CC-GATE015-03**

**EXHIBIT A**

**LEASEHOLD SURRENDER INTEREST**

This Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of leasehold surrender interest.

**Section 1. Definitions**

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

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

"Leasehold surrender interest value" means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this CONTRACT

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

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

**Section 2. Actions the Concessioner May or Must Take Regarding Leasehold Surrender Interest**

The Concessioner:

(a) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT;

(b) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and

(c) May waive or relinquish a leasehold surrender interest.

### **Section 3. Extinguishment of a Leasehold Surrender Interest**

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

### **Section 4. Leasehold Surrender Interest Under a New Concession Contract**

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

### **Section 5. Payment for Leasehold Surrender Interest if the Concessioner is not Awarded a New Concession Contract**

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT. The Director is under no obligation under this CONTRACT to make leasehold surrender interest value payments at any other time and the Concessioner hereby waives any rights under Applicable law to the contrary.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this CONTRACT.

**Section 6. Payment of Leasehold Surrender Interest by a New Concessioner**

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

Approved by NPS, effective December 31, 2008\_\_

By: Walter J. Stuenkel

Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective \_\_\_\_\_, 2008\_\_

By: [Signature]

Aviator Development Company, LLC

Aviator Sports and Recreation, LLC

Attest: By [Signature]  
SECRETARY

# **OPERATING PLAN**

## **AVIATOR DEVELOPMENT COMPANY, LLC AND AVIATOR SPORTS AND RECREATION, LLC**

### **Providing Family-Orientated Sports Activities Within GATEWAY NATIONAL RECREATION AREA**

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## **Introduction**

This Operating Plan between Aviator Development Company and Aviator Sports and Recreation, LLC (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service," the "Park," or "NPS") will serve as a supplement to the Concession Contract CCGATE015-03, as amended, referred to as the "Contract." It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract.

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

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent.

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

### **Objectives for the Concession to Satisfy are:**

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

## **I. Required and Authorized Services**

### **A. Required Services per Sec. 3 (a) (1) of the Contract:**

In accord with the above objectives and as required by the parameters of the prospectus to which the Concessioner responded and proposed, and as memorialized in the Contract, a family-oriented sports center shall be developed. Ice sports and hockey are the primary sport activities offered through the sports center.

The following stipulations shall apply to required services:

1. Ice hockey shall be accommodated on a regulation-size rink. The Concessioner shall provide ice time by a reservation system that meets the approval of the Superintendent.
2. Public ice skating (open skating) shall be accommodated on a rink of comparable size as noted in #1 above.
3. Ice time allocations will be reviewed by the Superintendent and shall be subject to revision by the Superintendent after consultation with the Concessioner. In doing so the Superintendent shall exercise due consideration for public use and financial feasibility of the Concession operation.
4. The family sports center shall include support facilities and services that may reasonably be expected in such a facility, such as locker rooms.
5. Operation of the required pro shop includes authorization for associated retail sales and rental of sports equipment.
6. The requirement to provide food and beverage services may include a restaurant and lounge area that may be developed pursuant to plans and theme approved in advance by the Superintendent.
7. The Service has contracted with the U.S. Public Health Service to accomplish health and sanitation inspections.
8. The concessioner shall provide space to accommodate a health and wellness program.
9. Gateway National Recreation Area will work with the Concessioner to produce informational and interpretive media to inform and educate users of the family sports center. Gateway National Recreation Area has an inventory of historic photos and memorabilia that it will share with the Concessioner for this purpose.
10. All indoor facilities will be designated as non-smoking.
11. All Special Event activities will take place within the concession land assignments and will not require advance Jamaica Bay Unit Superintendent review and approval and shall be consistent with the objectives and purposes of the Concession. NPS, NPS permittees (Cricket Field), and the concessioner shall inform each other and coordinate sufficiently in advance of planned special events that may create impacts to the concessioner, NPS Jamaica Bay Unit, or its permittees.

## **B. Authorized Services per Sec. 3 (a) (2) of the Contract**

As required by the parameters of the prospectus to which the Concessioner responded, a family-oriented sports center shall be developed. To this end, annually, or more often, the Concessioner shall meet with the Superintendent to review and program appropriate activities from the list of services that were offered by the Concessioner in response to the prospectus. In doing so, the review and programming process by the Concessioner and the Superintendent shall be guided by the above annotated "Objectives for the Concession to Satisfy." Activity programming shall serve as wide a range of the population as possible while maintaining financial viability of the concession.

Authorized activities (permitted) include, but are not limited to, court sports, gymnastics, rock climbing, soccer, football, lacrosse, physical conditioning, and spectator events. Authorized activities are not to be scheduled or publicized until they are approved in writing by the Superintendent. Requests for approval of authorized activities shall include proposed rates, security measures, dates, timeframes, space requirements and any other relevant conditions.

Meetings regarding authorized services may be initiated by the Concessioner or the Superintendent. Decisions regarding authorized activities may be formalized by amendment to this Operating Plan or other appropriate legal instruments.

## **II. Management, Organization and Responsibilities**

### **A. Concessioner**

The Concessioner is responsible for visitor services, facility development and maintenance, administration and other functions in accordance with the terms of this Contract. To accomplish this purpose, the Concessioner will employ a staff, in sufficient numbers and with appropriate expertise, to carry out all services required and/or authorized under this Contract. This organization will be operated by one or more managers and supervisors. In addition:

1. Lead Manager. The Concessioner shall identify one manager who will be responsible for carrying out the terms of this Contract. The lead manager shall also function as the primary representative of the Concessioner in communication with the Service and have full authority to act as a liaison with the Service in all matters related to this Contract.
2. Physical Security Specialist. The Concessionaire will employ a physical security specialist to coordinate security matters with the United States Park Police.
3. Managers and Supervisors. The Concessionaire will furnish the Service with a list of key management and supervisory personnel along with job titles, brief descriptions of

responsibilities, and contact information. This list will be promptly updated as changes occur.

4. Communication and Meetings. The Concessionaire will foster effective communications within its own organization and with Service personnel. In broad terms, communication is intended to: (a) advance the four objectives of this concession and (b) meet specific requirements of this contract and operating plan. Timely and complete exchange of information will be accomplished through use of electronic media, correspondence, meetings and telephone calls. The Concessioner will hold regular meetings with representatives of the Gateway Business Office and with representatives of the Unit Superintendent.

## **B. National Park Service**

The Concessioner operates within the Jamaica Bay Unit of Gateway National Recreation Area. Key positions and/or offices with responsibilities relative to the concession include:

1. Superintendent. The Superintendent manages all activity within the Jamaica Bay Unit, including concession operations, in accordance with applicable laws, policies and directives. The Superintendent must review and approve rates, schedules, activities, construction and other activities in accordance with the terms of the contract. Representatives of the Superintendent oversee concession operations for conformance with the contract and approved proposals.
2. Assistant Superintendent. The Assistant Superintendent makes recommendations to the Superintendent on all aspects of the concession operation. The Assistant Superintendent has authority from the Superintendent to make field decisions that pertain to the concessions operation, and acts as liaison between the Concessionaire and Superintendent. The Assistant Superintendent ensures necessary evaluations and inspections are performed, including those required by the NPS Public Health Program, Park Safety Officer, fire inspectors, and the Concession review program.
3. Business Management Office. The Business Management Office is responsible for developing, negotiating, and administering concession contracts and leases for Gateway NRA. The Business Management Office coordinates concession activity with other Gateway Divisions. The Business Management Office is the primary contact for all matters related to the administration of the Contract and shall be the first point of contact for any questions regarding the Contract.

The Business Management Office will 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; construction and any other Contract

requirements.

The Business Management Office will be copied on all correspondence sent to Superintendent by the concessioner and all correspondence sent by the Superintendent to the concessioner.

4. Safety and Environmental Management. The Park Safety Officer and the Environmental Management Specialist will coordinate with other Park staff to review and evaluate the Concessioner's Risk Management Program and Environmental Management Program as required under this Contract.
5. U.S. Public Health Program. The U.S. Public Health Service Officer stationed at Gateway NRA will inspect food and beverage services, water, and waste water systems, in accordance with applicable laws and regulations including without limitation, compliance with public health standards.
6. U.S. Park Police. The U.S. Park Police (USPP) provides law enforcement services for the Park in accordance with management direction from the Superintendent. The USPP initiate, review, supervise, and coordinate the activities of personnel who provide public safety functions (law enforcement, and physical security). The Concessioner's Physical Security Specialist will communicate directly with USPP officers on matters related to law enforcement, search and rescue, emergency medical services, emergency management operations, and security.
7. Facility Manager. The Facility Manager is responsible for all utilities, roads, and facilities within the Jamaica Bay Unit. As part of those duties, all issues in regards to shared roads facilities and utilities should be referred to that office. In cases where there are power losses and road issues, contact will be made with the facility manager. In cases of planned power shutdowns within the NPS facilities, the Concessioner will advise the facility manager at least 48 hours prior so arrangements may be accommodated.
8. District Ranger. The Supervisory Ranger for the North Shore District of the Jamaica Bay Unit will assist the Concessioner in matters pertaining to interpretation, operational logistics, resource management and fire management. The District Ranger -- in coordination with the Superintendent and the Business Management Office -- will monitor and evaluates concession activities, and reviews interpretive materials prepared for distribution by the Concessioner. The District Ranger and other rangers, as needed, will assist with concession evaluations, emergencies, and daily operational issues.
9. Administrative Officer. The Administrative Officer of the Jamaica Bay Unit is responsible for certain matters related to concession activities, including but not

limited to billing and receiving utilities payments.

### **III. Concession Operations**

#### **A. Operational Evaluations**

As called for in this Contract, inspections and evaluations of the Concessioner's facilities and services will be conducted in conformance with applicable laws, policies and guidelines. The purpose of such inspections and evaluations is to:

1. Ensure public health and safety
2. Ensure that satisfactory services are provided
3. Ensure that employee working conditions are satisfactory
4. Ensure that buildings and equipment are well maintained

Concession operations will be evaluated once each quarter and at the end of the calendar year. Quarterly evaluations will include observation and rating of all elements related to required and authorized services -- including their rates. The annual evaluation will be comprehensive in nature and serve to alert both the Superintendent and the Concessioner of any outstanding deficiencies. Evaluations will use NPS standards and forms.

Periodic inspections will be made of the Concession operation to ensure compliance with all applicable laws, standards and guidelines regarding public health and safety.

Follow-up visits will be made to ensure that deficiencies identified in evaluations or inspections are properly addressed.

#### **B. Rates**

The objective of the NPS rate approval program is to assure that Concessioner rates are comparable to similar services and facilities provided by the private sector. Rates will be approved or disapproved based on current comparability studies or applicable guidelines. Any rate which is to be charged to a park visitor must be approved in writing by the Superintendent before being instituted. In addition:

1. The Concessioner shall provide visitor services at rates approved by the Superintendent. Periodic requests for rate changes shall be submitted within forty-five (45) days, but no less than thirty (30) days prior to the requested effective date.

The rate request letter should be addressed to the Superintendent with a copy to the Chief of the Business Management Office. The Concessioner shall supply comparability data to support proposed rates at the time approval is requested.

2. Requests shall include pertinent information about the product or service for which a rate is proposed. For food service, requests will identify which items will be served regularly and which will be offered on a special or limited basis.
3. Within 30 days of the submittal of a rate request, the Superintendent will inform the Concessioner in writing whether the proposed rates were approved or disapproved. If the Concessioner would like a response in a shorter time period, the Service will attempt to accommodate this request as an exception to normal procedures. If the Superintendent needs a longer period for review of the proposal, the Concessioner will be contacted in order to negotiate a response date.
4. The Concessioner will prominently post all rates for goods and services provided to the visiting public. The Concessioner will charge the approved maximum rates for services unless and until new rates are approved by the Superintendent.

#### **C. Schedule of Operation**

As stipulated in this Contract, the Concession will operate on a year-round basis. Closing on Christmas and New Year's Day will be permitted upon written approval of the Superintendent. Hours of operation for all venues must be approved by the Superintendent on an annual basis. Temporary changes in operating hours may be approved on a case-by-case basis.

#### **D. Concessioner Personnel**

1. When on duty, Concessioner employees will be easily identifiable by a uniform or badge approved by the Superintendent. Employees will provide courteous and efficient service in keeping with the image of the National Park Service.
2. If requested, the Concessioner will provide the Superintendent with names and dates of birth of all permanent and seasonal employees and indicate their organizational responsibilities.
3. Work cards or Social Security cards will be a condition of employment.
4. Employees will be encouraged to act in compliance with applicable laws, policies and regulations when outside of the concessioner's land assignment but inside the park boundary.

#### **E. National Park Service Employees and Families**



The Concessioner shall not employ a Service employee, the spouse of a Service employee, or minor children of Service employees without prior written approval from the Superintendent. Requests for such approval must be submitted in writing by the employee to the Superintendent.

#### **F. Training Program**

1. All employees of the Concessioner will be trained to conduct business in a friendly, helpful and professional manner. Training procedures will assure personnel at all levels will focus on customer service, customer relations, sanitation and employee and customer safety.
2. The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements which affect their employment and activities while working in Gateway National Recreation Area. Employees will also be provided with information about the National Park Service, Gateway National Recreation Area, the Jamaica Bay Unit, and Floyd Bennett Field. Emphasis will be placed on mission, resources and visitor opportunities. A Service representative may participate in scheduled orientation sessions.
3. The Service will provide employees and managers with an orientation to the Concessioner Review Program and other NPS Concession Programs, as needed.
4. Concessioner managers and employees may participate in any appropriate training offered by the National Park Service.

#### **G. Lost and Found**

1. The Concessioner will manage a Lost-and-Found program in a responsible and accountable manner. Written procedures for handling such items and for reclaiming them are to be distributed to all employees and prominently posted.
2. All found items are to be turned over Concession managers and tagged by designated personnel. The tag will identify the item, date, location and name of finder. The Concessioner shall establish and maintain a central repository, familiar to all employees. A log book will be maintained at the lost-and-found repository. Any item not claimed within thirty (30) days must be turned over to the District Ranger in accordance with NPS regulations. The lost-and-found log will identify items turned over to the Service.
3. Found items that are expensive in nature -- such as cameras, wallets and jewelry -- will be stored in a safe or equally secure facility.

#### **IV. Scope and Quality of Services**

All services are to be provided in a consistent, quality manner. Service standards provided by the NPS Operational Performance Program are considered service minimums. The Concessioner is expected to make every effort to exceed these standards. The Concessioner shall be responsible for monitoring their operations to assure that quality standards are met.

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

##### **A. Merchandise**

The Concessioner may sell merchandise that: (a) enables visitors to participate in park activities, (b) allow visitors to purchase mementos of the park, and (c) serves as an extension of the Park interpretive program. Where possible, merchandise will contribute to appreciation of the park and its resources, understanding of preservation values, and support for conservation activity. Merchandise may also support understanding of the role recreation can play in personal development, support for cultural traditions, and pursuit of life-long health.

In addition to these general provisions, the following stipulations will also apply:

1. The image and unique identity of the Park will be reflected in the design of retail sales areas. Shops will exemplify quality and professionalism.
2. The Concessioner will, to the greatest extent possible, offer gifts and souvenirs that have an identifiable relationship to the National Park Service, historical and natural resources associated with the Jamaica Bay Unit, and recreational opportunities offered within Gateway NRA.
3. The Concessioner will cooperate with the National Park Service in promoting the sale of handicrafts made in the United States and related to the cultural, historical, natural and geographic characteristics of Gateway NRA.
4. The NPS Merchandising Standards will be followed. The standards include but are not limited to:
  - a. Foreign-made merchandise is not prohibited but should not dominate gift shops.
  - b. Merchandise that offends normal standards of taste will not be sold.

- c. The sale of original prehistoric or historic archeological specimens is prohibited. Replicas may be sold if they are clearly labeled as replicas.
- d. Merchandise representative of items found in the park, but not originating from the park, must be labeled and identified so as to indicate the origin.
- e. Plant material or other natural materials originating in the park cannot be sold. (Animal skins fabricated into such items as leather gloves, belts, jackets, purses, etc., are acceptable if the Concessioner obtains a statement from the manufacturer stating the skins were obtained from legally authorized sources and not from threatened or endangered species.)
- f. Merchandise conflicting with National Park Service policies and regulations will not be sold.
- g. The selling price of all items must be individually marked or designated on each display.

#### **B. Food and Beverage Service**

The menu will maintain a price range and variety of food services that will accommodate the general range of park visitors.

#### **C. Special Events**

All Special Event activities that are contained within the concession land assignments will not require Superintendent advance approval and shall be consistent with the objectives and purposes of the Concession. Special Events that exceed the concession land assignments require Superintendent advance review and approval and may be authorized on a case-by case-basis subject to Section III.B.1. and the following considerations:

- 1. The proposed event must be consistent with the purpose of the concession, as outlined above.
- 2. Health and safety concerns can be adequately addressed.
- 3. The event will not unduly displace other visitors to the park -- including the sports center visitors-- for significant periods.
- 4. All approved and permitted Special Events shall be in accordance with the Park's Compendium and limit the total number of public attendees to 5500 during summer months Memorial Day to Labor Day, and 10,000 fall, winter and spring

months.

Superintendent will review and approve in advance all media and publications related to Special Events. Security provisions and costs must be agreed upon prior to Special Events. For related information, see Section XI.D.

All Special Events may be offered free to the public or require paid admission at rates that are reviewed and approved in advance by the Superintendent. Only the Concessioner is authorized to sell tickets to Special Events.

#### **D. Interpretive Services**

1. **Non-Personal Interpretive Services:** In addition to providing general interpretive training to employees, the Concessioner will actively pursue a non-personal interpretive program. The Concessioner will explore a wide array of avenues for conveying interpretive messages to visitors on park-related themes and topics such as resource protection, appreciation of park values, and Service goals. The Concessioner will develop the use of story boards and kiosks located in strategic areas of the facilities and make printed materials available to the public.
2. **Interpretive Assistance:** The Division of Interpretation is available to advise/assist the Concessioner in the development of an interpretive program which encompasses all of these efforts.

#### **V. Reports**

##### **A. Administrative Reports:**

In accordance with the term of this Contract, the Concessioner will submit the following reports on or before the indicated deadline:

- |                                  |                            |
|----------------------------------|----------------------------|
| 1. Annual Financial Report       | May 1 each year            |
| 2. Certificate of Insurance      | March 1 each year          |
| 3. Statement of Insurance        | March 1 each year          |
| 4. Risk Management Program       | Review and update annually |
| 5. Gift Mission Statement        | Review and update annually |
| 6. Environmental Management Plan | Review and update annually |

7. Security Plan

Review and update annually

**B. Case Specific Reports:**

- a. Incident Reports: The Concessioner shall immediately contact the U.S. Park Police regarding any incident involving personal injury and/or property damage; any fire; all motor vehicle accidents; any incident that affects the park's resources; and any known or suspected violations of the law. Follow-up reports in writing may be required.
- b. Human Illness Reports: Based on protocols established by the U.S. Public Health Officer and approved by the Superintendent, the park will be notified regarding any serious illness contacted by employees or visitors. This information will be used to identify public health issues—such as food or water contamination--and to develop appropriate corrective measures.

**VI. Utility Responsibility**

The Concessioner shall be billed for and will pay for all utilities provided by the Park.

**VII. Risk Management Program**

As stipulated in this Contract, the Concessioner will provide a safe and healthy environment for its employees and visitors.

**A. Risk Management**

The Concessioner will develop a Risk Management Plan that meets regulations mandated by the Occupational Safety and Health Act (OSHA) and guidelines issued by the National Park Service. The Risk Management Plan will be submitted to the Superintendent for review and approval. The plan will be reviewed on an annual basis. Mandatory components of the program include:

1. A Management Policy Statement regarding program objectives, roles and responsibilities and program administration
2. Inspection and abatement protocols
3. Accident investigation and reporting protocols
4. Composition, responsibilities and operation of a Health & Safety Committee
5. Training standards

6. Emergency procedures

B. First Aid:

Aviator will establish a First-Aid station within the facilities and prominently display directions to the public for its use.

1. First Aid kits and blood-borne pathogen kits will be maintained as part of emergency equipment/supplies.
2. One First Aid Kit is required for each venue.
3. Each First Aid Kit will be commercially manufactured and stocked in accordance with national standards set by the American Red Cross.(The U.S. Public Health Officer and Park Safety Officer may be consulted regarding the supplies that are required for these kits.)
4. Any incident of major consequence must be reported to the U.S. Park Police.

**VIII. Integrated Pest Management**

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

**IX. Complaints**

All complaints regarding the Concessioner will be sent to the Superintendent for response. The Concessioner will address requests for information regarding complaints in a prompt and professional manner. A copy of the Service's response to the complaining party will be forwarded to the Concessioner.

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

This service is operated by Aviator Development Company, LLC and Aviator Sports and Recreation LLC, a Concessioner under Contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. The reasonableness of prices is based on comparability. Prices are approved by the National Park Service based upon prices charged by similar private enterprises

outside the Park for similar services with due consideration for appropriate differences in operating conditions.

Please address comments to:

Gateway National Recreation Area  
Attn: Jamaica Bay Unit Supervisor  
Floyd Bennett Field  
Brooklyn, New York 11234

## **X. Advertisements & Public Information**

All promotional material must be approved by the Superintendent prior to publication, distribution, broadcast, etc. In addition, the following stipulations will apply:

1. Advertisements, including sets of advertisements, must include a statement that the Concessioner is authorized by the Department of the Interior, National Park Service, to serve the public in Gateway National Recreation Area.
2. Layout, content and overall appearance of advertisements should support the objectives of this Contract as outlined above.
3. Advertising that would offend normal standards of taste will not be approved.
4. Brochures and menu text changes and layout should be submitted to the Superintendent for review at least 30 days prior to the date that approval is needed. The Superintendent will make every effort to respond to minor changes to brochure and menu texts within 15 days. Longer periods may be required for major projects or where National Park Service assistance is required to help develop the product. The Concessioner should contact park staff well in advance of their internal deadlines to establish specific time frames for each project.
5. Advertisements for employment must contain a statement that the company is an equal opportunity employer.

## **XI. Protection and Security**

### **A. Fire Emergency**

The Concessioner shall call "911" in the event of fire. Only limited fire support can be provided by the Park. If there is a charge involved as a result of New York City Fire Department involvement, the Concessioner shall be responsible for reimbursement.

## **B. Security Plan**

The Superintendent has sole authority to determine whether or not the Concessioner has provided adequate measures to protect visitors and park resources, and to comply with life safety, building and safety building codes.

1. The Concessioner will submit a written Security Plan to the Superintendent for approval. The Plan shall be updated and reviewed on an annual basis. The plan will address year-round operations as well as occasional activities and events.
2. As the law enforcement arm of the NPS within the Park, the US Park Police possesses concurrent jurisdiction on Federal Parklands and shall investigate all significant incidents that occur within the land assignment of the Concessioner.
3. The US Park Police may assist the Concessioner with security planning and evaluation.
4. All security personnel whether contracted by the Concessioner or employed by a contracted and bonded security company shall be unarmed.

## **C. Accidents and Incidents**

The Concessioner will address all aspects of personal safety and protection of property in accordance with the following provisions:

1. Major accidents and incidents will be immediately reported to the U.S. Park Police and the Superintendent.
2. Concession-operated facilities will be patrolled 7 days per week and 24 hours per day either by Concession employees or bonded guard service in order to secure government, concessioner and visitor property from theft, vandalism and fire.
3. Any problems detected by U.S. Park Police during non-operational hours will be reported to the concessioner at an agreed upon emergency number. Other phone numbers will be provided to the U.S. Park Police in the event that the designated representative is not available to receive the emergency call.
4. All security measures and procedures are subject to coordination with and approval by the U.S. Park Police and the Superintendent.

## **D. Special Events**



Security requirements for Special Events will be identified by the Concessioner in consultation with the Superintendent prior to Special Events, either permitted or requiring advance approval. The Concessioner will inform the Superintendent of all final security requirements and provisions prior to Special Events. The Concessioner may be required to reimburse the Service for the cost of US Park Police officers assigned to cover the event.

USPP Commanders will advise the Superintendent on the number of supplemental USPP officers needed to provide adequate law enforcement during a proposed Special Event. The following charts approximate the number of supplemental USPP officers required at indoor and outdoor events based on the number of expected spectators:

**Indoor Event**

<b>Number of Spectators</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>
Recommended # USPP Officers	1	2	3	4
Recommended # USPP Supervisor	0	0	0	1

**Outdoor Event**

<b>Number of Spectators</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>	<b>2001 to 3000*</b>	<b>3001 to 4000*</b>	<b>4000 to 6000*</b>
Recommended # Police Officers	0	1	2	3	4	5	6
Recommended Police Supervisors	0	0	0	1	1	1	1

\*Some events may require more or fewer officers based on the complexity of the event, type of event and other relevant factors. A meeting between USPP and Aviator will occur to discuss final assessment.

Following the event the USPP Budget Officer will issue a Bill of Collection to the Concessioner for reimbursement of law enforcement expenses related to the event. Names of officers who worked the event, specific hours worked, and any related miscellaneous law enforcement expenses will be provided to the Concessioner in a written document. The Concessioner will reimburse the USPP for these expenses within 10 days of receipt of a Bill of Collection.

#### **E. Firearms**

The Code of Federal Regulations, Part 36, chapter 1, prohibits the use of armed guards or off-duty city/state police officers on land administered by the NPS.

#### **F. Lost Children**

Lost children will be taken to the U.S. Park Police Offices located in Floyd Bennett Field.

### **XII. Hazardous Waste Program**

The Concessioner will develop and submit a Hazardous Materials Plan to the Service for approval. The Concessioner will review and update the Plan on an annual basis. In addition:

1. The Concessioner must comply with all federal, state and local regulations regarding hazardous waste.
2. The Concessioner will properly clean, mitigate, and remediate all unauthorized discharges of hazardous materials or non-hazardous chemical and biological products released from fleet and public service vehicles and/or stationary sources. Response shall be consistent with guidelines established within applicable Federal, state, and local regulations. When a spill, leak, or other release occurs, the Concessioner shall notify the Superintendent as soon as possible without impeding cleanup.
3. When a release of hazardous or non-hazardous chemical or biological product occurs, proper corrective, cleanup, and safety actions must be implemented immediately.

### **XIII. Environmental Management**

The Concessioner will manage its operation in accordance with an approved Environmental Management Plan (EMP). The EMP will, at a minimum, address the following:

1. Source Reduction: The Concessioner will minimize use of disposable products. Reusable and recyclable products are preferred over "throwaways." Where disposable products are the only available option, products will be used which have the least impact on the environment. For example, polystyrene and plastics will be used as

little as possible; if polystyrene is used, it will not contain chlorofluorocarbons. The use of post-consumer recycled products will be used whenever possible.

2. Recycling and Beverage Container Programs: The Concessioner shall implement and actively support a recycling program. Products to be recycled include but are not limited to paper, newsprint, cardboard, metals, plastics, aluminum, glass, waste oil, antifreeze, and batteries. All recycling is to conform to applicable standards and procedures.

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

The Concessioner will allow its employees to participate in the NPS Volunteers in the Park (VIP) program.

#### **XV. Emergencies**

In the event of an emergency, the Concessioner will call the following numbers:

United States Park Police	(718) 338-3988
Jamaica Bay Unit (District Ranger)	(718) 338-3827

#### **XVI. Utility Accounts**

<u>(1). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Electric	National Park Service	(b) (4)	N/A

<u>(2). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Water & Sewer	NYC Water Board	(b) (4), (b) (6)	N/A
Gas	Keyspan/National Grid	(b) (4)	General Account
Gas	Keyspan/National Grid	(b) (4)	Tran General Account
Gas	Keyspan/National Grid	(b) (4)	Co-Gen Account

#### **XVII. Definitions**

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

1. 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.
2. 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).
3. Incidental Spill or Release refers to the 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.
4. Spectator or Special Events are any events outside of normal recreational activities that (a) are designed or have the propensity to draw at least 500 spectators, (b) are usually advertised, (c) may be free or require an admission fee, and (d) must be approved in advance by the Superintendent.

Approved by NPS, effective December 31, 2008\_\_

By: Walter H. Sreen  
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008\_\_

By: [Signature]  
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By [Signature]

**EXHIBIT C**  
**NONDISCRIMINATION**

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

**A. Employment**

During the performance of this CONTRACT the Concessioner agrees as follows:

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

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

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

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

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

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

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

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

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

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

#### **C. Facilities**

(1) Definitions: As used herein:

- (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 handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

### **A. Discrimination Prohibited**

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

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

### **B. Existing Facilities**

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

Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.



**CC-GATE-015-03**

**EXHIBIT D**

**ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)**

**LAND ASSIGNED:**

Land is assigned as depicted as (1) the "NEW ASSIGNMENT AREA" in Exhibit D1 and (2) the "ADDITIONAL FIELD ASSIGNMENT" in Exhibit D2.

**REAL PROPERTY IMPROVEMENTS ASSIGNED:**

The following real property improvements included within the "NEW ASSIGNMENT AREA" are assigned to the Concessioner for use in conducting its operations under this CONTRACT.

Building Name	Square Footage
Hangar 5	16,820
Hangar 5 lean-to	3,944
Hangar 6	16,820
Hangar 6 lean-to	3,944
Enclosed space between hangars 5 & 6	6,528
Hangar 7	16,820
Hangar 7 lean-to	3,944
Hangar 8	16,820
Hangar 8 lean-to	3,944
Enclosed space between hangars 7 & 8	6,528
Enclosed space & Mezzanine between the two pairs of hangars	52,500 (Enclosed space), Approximately 8,000 (Mezzanine)
Field Pump House	678
Co-Gen Building	5,612
Pump House (Building 29)	913
Storage Shed (Building 266)	240
Light Tower (JV145)	196
Warehouse space (Southeast corner of Building 89) with use of loading dock	3,200

**REAL PROPERTY IMPROVEMENTS REMOVED FROM ASSIGNED REAL PROPERTY IMPROVEMENTS:**

The following real property improvement is no longer an assigned real property improvement.

Building Name	Square Footage
Former "Job Corps" kitchen and serving area (Building 129)	8,760

Approved, effective December 31, 2008

By: Walter W. Streen

Director, ~~Northeast Region~~

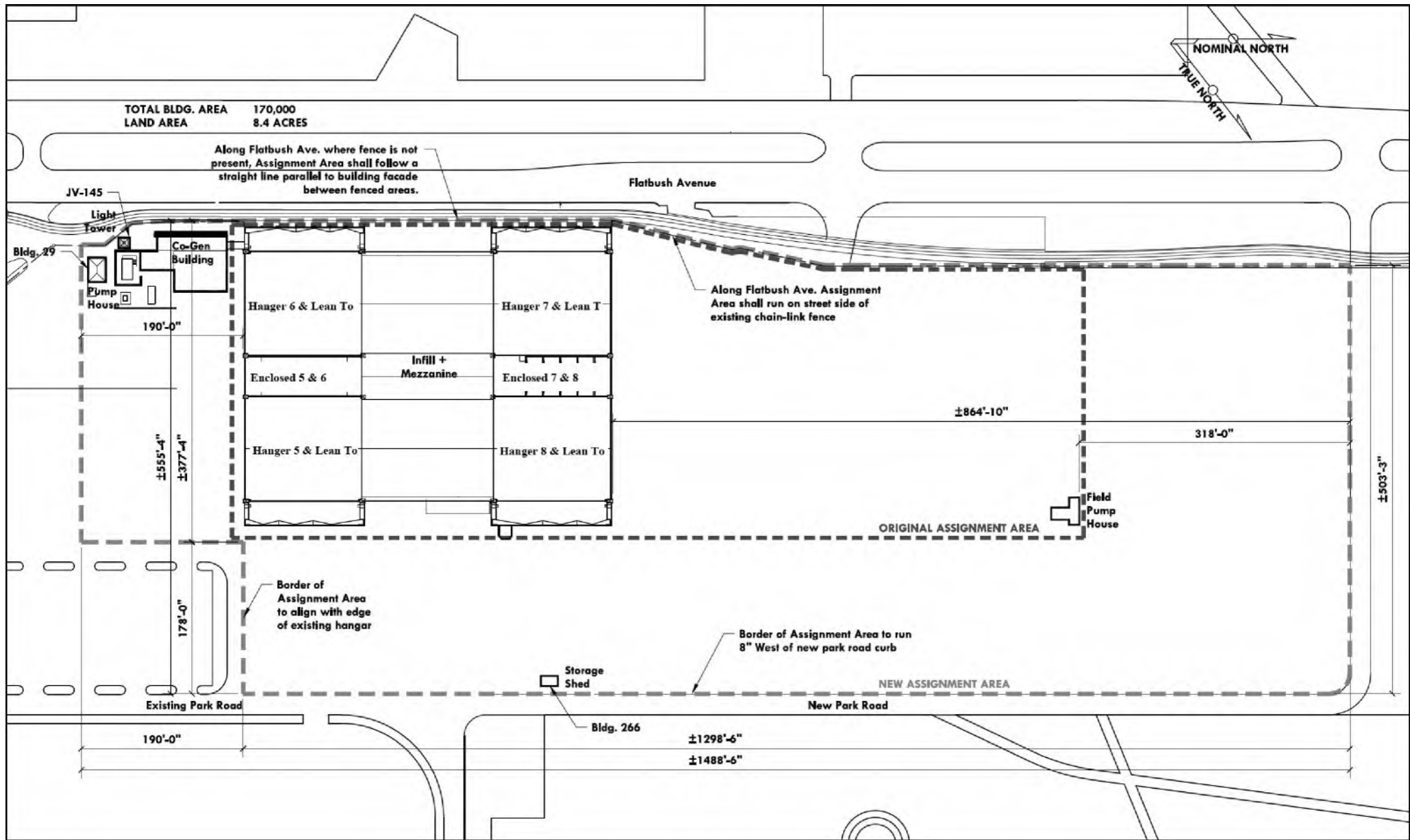
ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: [Signature]

Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By [Signature]





CONCESSIONS CONTRACT NO. CCGATE015-03

EXHIBIT D2 - ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT - COMPASS ROSE FIELD



0 100 200 Feet

Compass Rose Field Area



CONCESSIONS CONTRACT NO. CCGATE015-03  
EXHIBIT D3 - ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT - BUILDING 98



**EXHIBIT E**

**ASSIGNED GOVERNMENT PERSONAL PROPERTY**

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

NONE

## **EXHIBIT F**

### **CONCESSIONER CONSTRUCTION AND REPAIR AND MAINTENANCE PROJECT PROCEDURES**

#### **A. INTRODUCTION**

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

The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and Concessioner in future planning and facility appraisal.

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

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

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

#### **B. DEFINITION OF TERMS**

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

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

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

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

**“Construction Supervisor”:** A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and Service and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

**“Conventional Design-Bid-Build Methods”:** Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

**“Contact Person”:** A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

**“Facilitator”:** A Concessioner employee designated to have the role of providing structure and agendas for meetings with Service and who records meeting discussions and outcomes.

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

**“Licensed Contractor”:** An entity performing construction certified or licensed by the State to perform construction services within that State.

**“Project Coordinator”:** A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

**“Project Statement” (PS):** An agreement between Service and the Concessioner approved by the park Superintendent that authorizes the development and implementation of individual projects identified in a CMP.

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

**“Substantially Complete”:** (Defined in the CONTRACT).

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



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

### C. PROJECT PLANNING AND DESIGN

- 1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any project is granted by Service, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP shall include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with Service staff.
- 2) Notify Service of Intent-to-Proceed. The Concessioner must notify the Service in writing before commencing any facility design or construction process. The project must be identified in the CMP the calendar year before to assist the Service in sequencing and scheduling necessary support staff. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the park Superintendent are included in the project scope before the project is funded.
- 3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person shall have the authority to obligate project expenditures and hire and direct consultants and contractors, and Concessioner support staff.
- 4) Prepare a Proposed Project Statement. (PS) Arrange and facilitate a project planning conference with Service staff and prepare a proposed PS to be submitted to the park Superintendent for review. The conference shall be performed on the proposed project site, if needed.
  - (a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference shall be an approved PS prepared by the Concessioner resulting from collaboration between the Concessioner and the park Superintendent.
  - (b) Project Statement Content. The PS shall include the following as a minimum: Project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated Total Project Price; proposed schedule; milestones of Service design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.
  - (c) Professional Services and Construction. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals

to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the park Superintendent.

- (d) Service Operations. Any aspect of the proposed project where the scope of work interfaces with Service operations such as utility service connections or road maintenance operations must be clearly identified in the PS.
- 5) Submit Project Statement for Service Review. The proposed PS shall be submitted in written correspondence from the Concessioner to the park Superintendent requesting review. A PS signed by the park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.
- 6) Establish a Project File. A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and Service acceptance. Each project shall be identified with a unique project number assigned by the park. All documents entered into the file shall have the project identification number clearly displayed on it as part of document identity.
- (a) Typical Project File. The organization of a typical project file is presented in the following sections:
- Section A. Project Statement. The approved PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the park Superintendent shall be filed in this section.
- Section B. Planning. This section shall contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section shall be any concept design, preliminary design, or schematic design correspondence and documents. When the park Superintendent grants approval for any of the above stages of project development, correspondence from the park Superintendent shall be filed in this section.
- Section C. Assessment. This section shall contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, shall be filed in this section. Any other existing site or facility investigative reports and all quality assurance documents such as third party project inspection, testing and certification shall also be filed in this section.
- Section D. Design. This section shall contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the park Superintendent providing design approval shall be in this section.

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

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications shall be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., shall be kept to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos shall be filed with the documents they support.

- 7) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of Service staff early in project planning to assure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.
  - (a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking affecting property listed shall be performed in accordance with The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings. The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

- (b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them: "Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Shall Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Shall the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the contract."
  - (c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the Service. The Service shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the Service is unable to provide the expertise.
  - (d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the Service early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on park resources usually require a "categorical exclusion" determination--a process that may require sufficient extended lead-time from submittal of review documents. Projects having a significant effect on park resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.
- 8) Submit Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

- 9) Submit a Project Estimate and Schedule. An estimate of the Total Project Price and completion schedule shall be submitted to the Superintendent before work begins. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

#### **D. PROJECT MANAGEMENT PROCEDURES**

- 1) Identify a Project Supervisor. A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The Service will direct its communication concerning the nature and progress of day-to-day project activity to this person. This person shall have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The Service shall not take any responsibility for projects until Project Close-out and Acceptance when the Service receives certification of completed work performed in compliance with Project Documents and all specified codes.
- 2) Notice-to-Proceed with a Project. A "Notice-to-Proceed" with a project will be issued when all submittals requested by the park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.
- 3) Hold a Pre-Project Conference attended by the Contractor and the Service. The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the Service with the Contractor. The purpose of the conference is to provide the Service the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the Service. Any questions the Contractor may have regarding any matter of the project or anything about Area access, rules and regulations may also be discussed.
- 4) Submit Project Activity Reports (As Required). A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of PDs for park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.
  - (a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs (See discussion below for review and approval of change orders and contract modifications.)
  - (b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to PDs will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance

inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

- 5) **Submit Requests for Changes in Approved Project Documents.** The Superintendent's approval will be required before any significant changes are made to the project scope during the completion of projects, as identified in the approved PDs. The Concessioner shall provide the Service with written notification immediately upon identifying the need for a change in project scope that affects any of the items listed below. The written notification shall include a request for change in the approved PDs complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the approved PDs shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:
  - (a) Changes affecting natural, cultural and/or historic resources;
  - (b) Changes in designated visual appearance;
  - (c) Changes in the interface with Service utility and/or road facility maintenance operations;
  - (d) Changes in project scope as required for facility improvement projects;
  - (e) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.
- 6) **Service Project Inspection.** The project will be inspected periodically by a representative of the park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.
- 7) **Project Supervision Documents.** Project drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required by professional Architects and/or Engineers must also be kept on the project site with the PDs for periodic inspection by Service staff.
- 8) **Substantial Completion Inspection and Occupancy.** Joint inspection by the Service and the Concessioner will occur upon notification that the project is substantially complete. A "punch list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the park Superintendent.
- 9) **Project Completion Report.** Upon completion of any project, the Concessioner shall submit a Project Completion Report to the Service. The completion report shall include the Total Project Cost; before-and-after photo documentation; warranties; operation and maintenance

manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item section C(13) below). The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

- 10) "As-Constructed Drawings. The "as constructed" drawings included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with Service management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided.
- 11) Request Project Acceptance and Closeout by the Superintendent. The Concessioner shall request project acceptance by the park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the Service. Until receiving formal written project acceptance and closeout from the park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work.

Approved by NPS, effective December 31, 2008\_\_

By: Walter J. Stew  
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008\_\_

By: Kathryn  
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By Susan Passi

**MAINTENANCE PLAN**

**FAMILY SPORTS CENTER**  
**GATEWAY NATIONAL RECREATION AREA**

**SIGNED:** /s/Billy G. Garrett **DATED:** 5/1/03  
**General Superintendent**



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## **INTRODUCTION**

This Maintenance Plan between The Aviator Development Co., LLC (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service") will serve as a supplement to the Concession Contract CC-GATE015-03 (herein referred to as the "Contract"). The plan describes specific maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract

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

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of Gateway National Recreation Area. Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT. Revisions must be reasonable and in furtherance of the purposes of this CONTRACT.

### **Assigned Areas**

The Concessioner is responsible for all maintenance within areas assigned to it. Lands assigned under Exhibit D of the Contract are, with the exception of the former Job Corps building, are depicted on the aerial photograph of that Exhibit. The former Job Corps building is assigned in the text of Exhibit D. Areas of responsibility, which are not well defined by a sidewalk or road, are to be a minimum of 50-feet from buildings and 10-feet on either side of paths, walkways, and trails unless otherwise specified on the maps. If a sidewalk is the defining boundary, the assignment will include up to the roadside edge of the gutter. Any modification of concession-assigned areas or buildings will be reflected by corresponding changes on the land assignment maps.

### **Access to Concession Facilities**

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

### **General Maintenance Standards for Concession Facilities**

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

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

### **General Concessioner Responsibilities**

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

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

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

#### **A. Buildings**

1. **Buildings:** Any changes in the architecture, building interior or exterior, including color and material must be approved in advance by the NPS. Preservation maintenance, routine maintenance and repair on all structures must be consistent with NPS standards and guidelines.
2. **Radon:** When requested to do so, the concessioner will monitor radon levels in work places and provide mitigation where federally accepted levels are exceeded in accordance with Director's Order (DO)-76.
3. **Asbestos:** The concessioner will develop a schedule for identifying and abating asbestos in accordance with OSHA 29 CFR 1926.58, Environmental Protection Agency (EPA), 40 CFR 61.M, 763.E and G, and NPS-76.
4. **Lead-Based Paint:** The concessioner will develop a program to identify and mitigate hazardous lead-based paint in accordance with the Lead Poisoning Prevention Act of 1971, Public Law 91-695, as amended in 1987 and 1988; and NPS Housing Design and Rehabilitation Guidelines (DO-76). Lead levels must be detected before renovating any building constructed prior to 1977.
5. **Building Codes:** The concessioner will comply with all applicable federal, state, and local codes, including, but not limited to, the National Fire Protection Association's (NFPA) and applicable OSHA standards.
6. **Interior Systems:** The concessioner will develop and implement preventive maintenance guidelines for building systems to ensure efficient operations. The concessioner will clean and inspect all interior systems prior to each operating season, including but not limited to, chimneys, fireplaces, stoves, etc.
7. **Utility Systems:** The concessioner will operate, repair and replace all interior and exterior utility systems within their land assignments as described in this plan or shown and described on land assignment maps.
8. **Food Service Equipment:** All equipment used in food service operations, including but not limited to, dishwashers refrigerators, freezers, coolers, serving tables, etc., will comply with safety, public health, and sanitation codes.

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

#### **B. Grounds and Landscaping**

1. All landscaping changes will be approved in advance by the NPS. All chemicals, including but not limited to, fertilizers, pesticides, and herbicides require NPS approval prior to use.
2. The concessioner will work with the NPS to identify resource-related problems in their assigned areas. The NPS will recommend and approve correction methods. The concessioner is responsible for ensuring that necessary work is accomplished.
3. The concessioner is responsible for litter-control in assigned areas.
4. The concessioner is responsible for exotic weed management in their assigned areas:
  - The NPS will survey the concessioner's land assignments to identify exotic weeds and provide the concessioner with the survey results. The concessioner will work with the NPS to ensure early detection.
  - The concessioner will be responsible for manual removal of high-priority species. Weeds that cannot be controlled manually will be chemically sprayed by the NPS. The concessioner will be billed for associated costs.
5. The Concessioner is responsible for grass mowing and trimming shrubs and trees.

#### **C. Accessways**

##### Parking Areas

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

Sidewalks, Walkways, Trails, Steps, Foot Bridges

1. The Concessioner is responsible for maintaining and replacing sidewalks, established trails, and steps in their assigned areas including sweeping, surface repair, erosion control, and lighting.
2. The Concessioner will provide safety railings on steps and hazardous walkways.
3. The Concessioner is responsible for complying with the Uniform Federal Accessibility Standards (UFAS) in their assigned areas. All designs must meet NPS and UFAS standards. Ramps must not interfere with plowing and street-sweeping by extending into the roadways or parking lots.

**D. Utilities**

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

Solid Waste

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

Water

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

needed to repair a line. The Concessioner will replace topsoil and vegetation due to any ground disturbance caused by repairs. The Concessioner will disinfect repaired lines in accordance with NPS procedures.

6. The Concessioner will provide the NPS with facility occupancy dates for activation or deactivation of systems when opening and closing dates are submitted for approval.
7. The Concessioner is responsible for the following procedures prior to opening any facility that has been closed:
  - Water lines will be superchlorinated before initial use.
  - In cases where superchlorination is not possible, lines will be thoroughly flushed with potable water. After lines are flushed, a steady stream of water must flow from spigots until demand creates a constant flow.
8. The NPS and the USPHS will conduct annual water/sewer surveys in the Concessioner's facilities.
9. The NPS is responsible for replacing and maintaining and painting fire hydrants.

#### Sewer

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

#### Electrical

The Concessioner will obtain electrical service from the local provider.

1. Maintaining, repairing and replacing all interior wiring and electrical supply lines from exterior transformers into concession facilities are Concessioner responsibilities.
2. The Concessioner will provide all utility line drawings to the NPS to reflect any changes including new installations, repair or relocation.
3. The Concessioner is responsible for obtaining new or additional power lines within assigned areas.
4. The Concessioner is responsible for electricity and fixtures in assigned parking lots that serve only their facilities.

#### Telephones

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

#### **E. Fuel Tanks**

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

#### **F. Hazardous Materials**

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

- The Concessioner will follow all RCRA, OSHA and 29 CFR, 1910 and 1926 regulations.
- Haz-Mat requirements will be part of the Concessioner's Risk Management Program.
- Spill kits, specified by the NPS, will be available at all of the concessioner's fueling stations, Haz-Mat storage areas and in maintenance vehicles.
- Spills will be reported immediately to the NPS Concessions Management Office.

#### **G. Environmental**

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

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

1. The concessioner may independently recycle (any independent recycling program must be approved in advance by the NPS) or participate in the park's recycling program as follows:
  - The NPS will provide a sufficient number of marked recycling receptacles throughout the park for employees and visitors
  - The concessioner will provide a sufficient number of marked recycling receptacles in its areas of operation
  - The NPS will collect recyclables from NPS offices and residential areas and haul them to Amfac's recycling center.
  - The concessioner will collect recyclables from their assigned areas and haul to designated recycling centers.
  - The concessioner will store recyclables in appropriate secure storage containers to protect against odors that could attract animals.
  - Revenues generated from the sale of recycled materials will be documented and used to offset the cost of the program.

#### **H. Snow Removal**

1. The concessioner is responsible for snow removal from concession facilities' roofs, entrances, porches and walkways. Ice buildup on walkways will be sanded or removed for safety. Spring snow removal will be coordinated with NPS District Maintenance Managers.
2. Any chemical used for removing ice must be approved in advance by the NPS.



3. All winter keeping of concession facilities is the concessioner's responsibility. **page 10 of 10**
4. The concessioner is responsible for marking fire hydrants with snow stakes and for removing snow from around hydrants in assigned areas.

#### **F. Public Signs**

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

- The concessioner is responsible for maintaining and replacing all interior and exterior signs within their land assignments that relate to their operations and services
- The NPS will provide roadside directional, traffic and regulatory signs
- The NPS will provide signs for accessibility to be installed by the concessioner

#### **G. Pest Control**

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

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CCGATE015-03

EXHIBIT H-1

REPAIR AND MAINTENANCE RESERVE PROJECT PROCEDURES

**A) INTRODUCTION**

This Supplement presents systematic procedures for the administration of projects funded out of the Repair and Maintenance Reserve within the Park. The Contract defines the purpose and scope of the Reserve Fund as well as the type and nature of eligible projects in Section 9(c) of the Contract.

Note that certain projects may require review under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act (NHPA) of 1966, as amended. The Concessioner must ensure that all projects comply with codes and building requirements adopted by the Director, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and National Park Service Management Policies.

**B) PROCEDURES**

- 1) Roles and Responsibilities. The Concessioner will conduct all aspects of its project development and implementation. The Service will provide direction, authorization, and oversight via the Superintendent.
- 2) Multiyear Repair and Maintenance Reserve Plan Approval. The Concessioner must provide the Service at least annually with a Multiyear Repair and Maintenance Reserve Plan per Exhibit E. The Concessioner must obtain Repair and Maintenance Reserve Plan approval by the Superintendent prior to submitting any specific project for approval.
- 3) Project Approval. The Concessioner must provide formal written notice to the Superintendent of the intent to proceed with the planning and design of any project at least one year prior to the intended commencement date. The Concessioner must not proceed prior to receiving written approval from the Superintendent.
- 4) Project Planning and Design Approval. The Concessioner must submit a set of project Plans and Designs to the Superintendent for review and approval. The Concessioner must not execute any aspect of the project or contract for the execution of any aspect of the project prior to receiving written approval from the Superintendent. Project Plans and Designs must include, at a minimum:
  - (a) *Project Statement*: A copy of the project Approval, the designated Concessioner project supervisor, a description of the work, and the justification for the work.
  - (b) *Planning*: Documents as applicable such as those produced for NEPA and Section 106 compliance, concept design, preliminary design, or schematic design and related correspondence and documents.
  - (c) *Design*: Documents produced and decisions made during the design phase of the project such as drawings, renderings, schematics, or descriptions.
  - (d) *Project Estimate and Schedule*: An estimate of the Total Project Price and completion schedule before work begins based on the best information available identified during project planning and design.
  - (e) *Certification of No Capital Improvement*: An analysis of the proposed project to ensure that no element of the project would qualify as a Capital Improvement, as that term is defined in

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36 C.F.R. Part 51, Subpart G, eligible for Leasehold Surrender Interest. The Concessioner must certify that the project does not include the construction or installation of a Capital Improvement. The Service must review this certification to confirm that the project does not include any element that may be eligible for Leasehold Surrender Interest. The parties will resolve any concerns before the Superintendent approves the project. The Superintendent is not authorized to allow the Concessioner to construct or install any Capital Improvement to Concession Facilities.

- 5) Project Management. The Concessioner designated project supervisor must oversee the project and its completion. The Concessioner must submit to the Superintendent periodic activity reports, at a frequency to be agreed upon by the Concessioner and Superintendent prior to project commencement. A periodic activity report must, at a minimum:
  - (a) Summarize project activity by recording observations and decisions
  - (b) Identify project expenditures to date
  - (c) List any changes to the approved project Plans and Designs
  - (d) List any changes in Schedule and Total Project Price
- 6) Project Change Approval. Changes during the work that require review and approval of the Superintendent include, without limitation, the following:
  - (a) Changes affecting natural, cultural, or historic resources
  - (b) Changes in designated visual appearance
  - (c) Changes in the interface with utility, road, or facility maintenance operations
  - (d) Changes in project scope
- 7) Substantial Completion Inspection. The Concessioner must notify the Superintendent that the project is substantially complete and request a joint inspection. The Concessioner and Service will develop a punch list of work items required to "close-out" the project. The Concessioner must not use the structure or structure area affected by the project until all punch list items are resolved.
- 8) Project Completion Report Approval. Upon completion of any project, the Concessioner must submit a project Completion Report to the Superintendent. The project Completion Report must include the Total project Cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; as-constructed drawings, and other documents as requested by the Superintendent. Until receiving formal written project Completion Report Approval from the Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work.

Approved by NPS, effective \_\_\_\_\_, 2008\_\_

By: William S. Strem

Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008\_\_

By: K. G. G. G. G. G.

Aviator Development Company, LLC

Aviator Sports and Recreation, LLC

Attest: By William Strem

## EXHIBIT I

### INSURANCE REQUIREMENTS

#### I. INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT. Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

#### II. LIABILITY INSURANCE

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

##### A. Commercial General Liability

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

Bodily Injury and Property Damage Limit –	\$25,000,000
Products/Completed Operations Limit -	\$25,000,000
Personal Injury & Advertising Injury Limit –	\$25,000,000
General Aggregate -	\$25,000,000
Fire Damage Legal Liability "per fire" -	\$5,000,000

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

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

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

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

##### B. Automobile Liability

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto."

Each Accident Limit - \$1,000,000 or greater amount if required by the state or the terms of the excess liability policy.

**Aggregate Limit: \$25,000,000**

#### C. Liquor Liability

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

Each Common Cause Limit - \$ 6,000,000

#### D. Excess Liability or Excess "Umbrella" Liability

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

#### E. Environmental Impairment Liability

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

**Policy Limit: \$3,000,000**

#### 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.

#### G. Self-Insured Retentions

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

#### H. Workers Compensation & Employers' Liability

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

### III. PROPERTY INSURANCE

#### A. Building(s) and/or Contents Coverage

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
5. Coverage is to be provided on a blanket basis.
6. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

#### B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities.
2. The policy shall provide for loss recovery on a Replacement Cost basis.
3. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
5. Coverage is to be provided on a blanket basis.
6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
7. Ordinance or Law Coverage shall be maintained.

#### C. Builders Risk Coverage

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while

such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6. Any occupancy restriction must be eliminated.
7. Any collapse exclusion must be eliminated.
8. Any exclusion for loss caused by faulty workmanship must be eliminated.

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

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

#### E. Deductibles

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

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000.
2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

#### F. Required Clauses

1. Loss Payable Clause:

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

"In accordance with Concession Contract No. CC-GATE015-03 dated April 10, 2003, between the United States of America and the Concessioner, payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed



directly to the Concessioner without requiring endorsement by the United States of America."

2. The United States Department of the Interior, National Park Service will be named as additional insured on certificates with respect to damage to National Park Service property. The United States of America shall be the named insured for General Liability Insurance.

#### IV. CONSTRUCTION PROJECT INSURANCE

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

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

#### V. INSURANCE COMPANY MINIMUM STANDARDS

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

1. All insurers for all coverage must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
2. All insurers for all coverage must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
3. All insurers must be admitted (licensed) in the state in which the concessioner is operating.

#### VI. CERTIFICATES OF INSURANCE

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


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

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


## VII. STATUTORY LIMITS

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

Approved by NPS, effective December 31, 2008

By:   
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By:   
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By 

**CC-GATE015-03****EXHIBIT J  
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 expiration or 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) Inventory.** Provide the New Concessioner with a complete, detailed and well-organized list of physical inventory, supplies, and other personal property owned or leased by the Concessioner in connection with its operations under the CONTRACT (including a list of such items that are on-order). The list shall be provided to the New Concessioner within thirty (30) days following receipt of the notification of the selection of the New Concessioner, shall be updated monthly thereafter, and shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of its operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

**(f) Sale of Inventory and Other Personal Property.** In addition to inventory that may be sold to the New Concessioner in accordance with Section 16(d)(3), the Concessioner, upon the request of the New Concessioner, shall sell to the New Concessioner at book value such other property listed on the inventory described above as the New Concessioner may request.

**(g) 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.

**(h) 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.

Approved by NPS, effective December 31, 2008

By: Matthew W. Brown

Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: Kristen Luhl

Aviator Development Company, LLC

Aviator Sports and Recreation, LLC

Attest: By Monica Parni