

**CATEGORY I CONTRACT**

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**NATIONAL PARK SERVICE**

Gateway National Recreation Area

Gateway Marina

Marina Services

**CONCESSION CONTRACT NO. TC-GATE017-16**

JEN Marine Development, LLC

3260 Flatbush Avenue  
Brooklyn, NY 11234  
(718) 252-8761

Doing Business as Gateway Marina

Covering the Period May 1, 2016 through April 14, 2018



**CONCESSION CONTRACT  
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#### EXHIBITS

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EXHIBIT B:	Operating Plan
EXHIBIT C:	Nondiscrimination
EXHIBIT D:	Assigned Land, Real Property Improvements
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EXHIBIT F:	Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures
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**IDENTIFICATION OF THE PARTIES**

**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 JEN Marine Development LLC, a Limited Liability Company organized and existing under the laws of the State of New York, (hereinafter referred to as the "Concessioner");

**WITNESSETH:**

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

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

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

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

**NOW, THEREFORE**, pursuant to the authority contained in the Acts of August 25, 1916 (54 U.S.C. §§ 100101 et seq.), and November 13, 1998 (Pub. L. 105-391 54 U.S.C. §§ 101911 et seq.), 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. TC-GATE017-16 ("Contract") shall be effective as of May 1, 2016, and shall be for the term of one (1) year and eleven (11) months and fourteen (14) days until its expiration on April 14, 2018.

**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; and
- (11) Receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

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

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

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

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

(m) "Major Rehabilitation" shall have the meaning set forth in Exhibit A to this Contract.

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

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

(p) "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.

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

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

### SEC. 3. SERVICES AND OPERATIONS

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

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

(1) Required Visitor Services. The Concessioner is required to provide the following visitor services during the term of this Contract:

	Service	Location
i.	Boat slip rentals	Gateway Marina, Jamaica Bay Unit
ii.	Boat dry storage	

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

	Service	Location
i.	Boat repair service	Gateway Marina, Jamaica Bay Unit
ii.	Portable waste pump-out	
iii.	Sales of boat-related equipment and accessories	
iv.	Watercraft rentals	
v.	Food and beverage service limited to pre-packaged items	
vii.	Meeting rooms for rent	

#### (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.

**(b) Employee Housing and Recreation**

- (1) If the Concessioner is required to provide employee housing under this Contract, the Concessioner's charges to its employees for this housing must be reasonable.
- (2) If the visitor services required and/or authorized under this Contract are located in a remote or isolated area, the Concessioner shall provide appropriate employee recreational activities.

**SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE****(a) Legal, Regulatory and Policy Compliance**

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

**(b) Notice**

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

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

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

Superintendent  
Gateway National Recreation Area  
210 New York Avenue  
Staten Island, NY 10305  
Attention: Business Services Division

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

JEN Marine Development, LLC  
3260 Flatbush Avenue  
Brooklyn, New York 11234

**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 Area planning documents, mission statements and/or interpretive prospectuses.

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

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

**(b) Director Review of Content**

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

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

**(a) Assignment of Concession Facilities**

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

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

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

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

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

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

(1) The withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

#### **(c) Effect of Withdrawal**

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

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

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

#### **(e) Personal Property**

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

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

shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

**(f) Condition of Concession Facilities**

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

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

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

**(h) Utilities Not Provided by the Director**

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

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

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

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

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

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

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

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

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

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

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

**(c) Leasehold Surrender Interest**

(1) This Contract hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of this Contract and Exhibit A, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this Contract, including, but not limited to, those Capital Improvements constructed as part of the Concession Facilities Improvement Program and those Capital Improvements which result from the Major Rehabilitation of an existing real property improvement. Upon completion of a Major Rehabilitation by the Concessioner, an existing real property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation shall be considered as a Capital Improvement for all purposes of this Contract.

(2) This Contract may provide the Concessioner a Leasehold Surrender Interest in real property improvements resulting from Leasehold Surrender Interest obtained under the terms of the prior Leasehold Surrender Interest contract. Exhibit G describes the real property improvements, if any, in which the Concessioner has such a Leasehold Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this Contract.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this Contract except as may be provided in Exhibit A and Exhibit F. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance Reserve described in this Contract, and this Contract does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

**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**

No Repair and Maintenance Reserve is included in this Contract.

**SEC. 11. FEES****(a) Franchise Fee**

(1) For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a franchise fee equal to Five and eight-tenths percent (5.8%) of the Concessioner's gross receipts for the preceding year or portion of a year.

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

**(b) Payments Due**

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

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

(3) All franchise fee payments 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 Fee**

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

(2) The Concessioner or the Director must make a request for consideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this Contract.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.

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

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

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

### **(a) Indemnification**

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

### **(b) Insurance in General**

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent 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, unless the damage exceeds \$1,000,000. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no

ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the 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.

### **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 \$500,000, and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Statements on Standards for

Accounting and Review Services (SSARS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$500,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

**(c) Other Financial Reports**

(1) Balance Sheet. Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. 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. No Repair and Maintenance Reserve is included in this Contract.

**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.

(4) 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.

## **SEC. 17. COMPENSATION**

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

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

### **(b) Compensation for Contract Expiration or Termination**

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

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

At any time during the term of this Contract, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this Contract. In the event that such negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in

accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this Contract, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

**(d) Compensation for Personal Property**

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

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

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

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

**SEC. 19. GENERAL PROVISIONS**

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

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

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

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

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

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

(g) This Contract is subject to the provisions of 2 C.F.R. Part 1400, 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, nor of any other term of the Contract. The subsequent acceptance of any payment of money or other performance required by this Contract shall not be deemed to be a waiver of any preceding breach of any term of the Contract.

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

(m) Nothing contained in this Contract shall be construed as binding the Director to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Contract, or to involve the Director in any contract or other obligation for the future expenditure of money in excess of such appropriations.

## **SEC. 20. INTELLECTUAL PROPERTY LICENSE**

### **(a) License Grant**

As used in this Contract, including all Exhibits, "Marks" means all trademarks, service marks and logos and brand identification and indicia, used to identify or describe the National Park Service and/or the Area and associated properties or features located therein, whether registered or not.

The Director hereby grants to Concessioner and Concessioner accepts a revocable, nonexclusive world-wide, royalty-free license to use the Marks described and depicted in attachments hereto during the term of the Contract, for use solely in connection with carrying out the Contract requirements, and only in the form described and depicted in Exhibit K to this Contract. Fanciful uses or use in combination with other devices (such as a logo) of the Marks listed herein must be reviewed and approved by the Director prior to use. All uses may be reviewed and approved in advance or as otherwise mutually agreed to in cases of administrative burden. This license does not constitute a compensable interest to the Concessioner. This license shall cease upon termination or expiration of the Contract, or as otherwise determined by the Director or by applicable laws.

The Director may amend this Contract to include additional Marks. The license to use the Marks does not include the right to use or to incorporate the Marks in any manner unconnected with the services provided under the Contract, including collateral marketing, outreach or advertising, or as trade names or internet domain names. The Marks may not be combined or altered in any way that may affect the integrity of the Mark.

### **(b) Quality Control and Goodwill**

The Director and the Concessioner acknowledge that maintaining the distinctiveness of the Marks and high quality of the services, materials, products and merchandise produced, sold or otherwise prepared for public

dissemination are material conditions of this Contract in order to preserve the associated goodwill generated by the Parties in furtherance of meeting the National Park Service mission. All uses of Marks by the Concessioner, including all goodwill arising from the Marks, shall inure solely to the benefit of the National Park Service. The Concessioner shall not by any act or omission use the Marks in any manner that disparages or reflects adversely on the National Park Service or its reputation. The Concessioner shall immediately cease use of any Mark used in association with the services provided under this Contract upon request of the Director, whether listed in this Contract or not.

**(c) Rights and Ownership**

(1) The Concessioner acknowledges and agrees that the National Park Service owns, or otherwise has the right to use and to license, these Marks.

(2) The Concessioner acknowledges it shall not acquire any right, title, or interest in the Marks by virtue of this Contract other than the license granted hereunder, and disclaims any such right, title, interest, or ownership. The Concessioner shall not contest, dispute, challenge, oppose or seek to cancel the government's right, title, and interest in any Mark owned by the National Park Service or the validity of the license granted under this Contract, or any rights or ownership otherwise stated herein. The Concessioner shall not prosecute any application for registration or seek to register a Mark as a domain name or part of any domain name of any Mark that identifies the National Park Service or the Area, or that may otherwise cause confusion in the public as between the Concessioner and the National Park Service. Any term, name or device used for the purpose of describing the Area or goods, services or property located within the Area, including Concession Facilities, should be referred to as identified on the attachment. Any deviation or use outside of a nominative context must be approved by the Director.

(3) The Concessioner will not sublicense, assign, pledge, grant or otherwise encumber to any third party all or any part of its rights or duties under this Contract in whole or in part without the prior written consent from the Director, which consent the Director may grant or withhold in its sole and absolute discretion. Any purported transfer without such consent is hereby void.

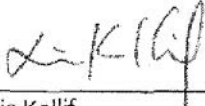
**(d) Notice and Assistance Regarding Intellectual Property Infringement**

(1) The Concessioner shall report to the Director promptly, in writing, and in reasonable detail, each notice or claim of intellectual property infringement based on the performance of this Contract of which the Concessioner has knowledge.

(2) In the event of any claim or suit against the United States on account of any alleged intellectual property infringement arising out of performance of this Contract, the Concessioner shall furnish the Director, when requested, all evidence and information in the Concessioner's possession pertaining to such claim or suit.


IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Contract on the dates shown below.

## CONCESSIONER

By   
Louis Kallif  
Managing Member  
JEN Marine Development LLC

DATE: 3/18, 2016

## UNITED STATES OF AMERICA

By   
Michael A Caldwell  
Regional Director, Northeast Region  
National Park Service

DATE: 4/12, 2016

1

WITNESSES:



NAME Arkhilesh Krishna  
[Name of signer]

ADDRESS 127-21 Liberty Ave Richmond Hill, NY

DATE: March 18, 2016

NAME \_\_\_\_\_  
[Name of signer]

ADDRESS \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_\_\_

**EXHIBIT A****LEASEHOLD SURRENDER INTEREST**

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

**SEC. 1. DEFINITIONS**

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

(b) 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.

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

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

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

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

(g) "Eligible indirect costs" means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service

charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

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

(i) "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.

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

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

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

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

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

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

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

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

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

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

## **SEC. 2. OBTAINING A LEASEHOLD SURRENDER INTEREST**

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

## **SEC. 3. AUTHORIZING THE CONSTRUCTION OF A CAPITAL IMPROVEMENT**

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

## **SEC. 4. REQUIREMENTS FOR BEGINNING TO CONSTRUCT A CAPITAL IMPROVEMENT**

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

## **SEC. 5. REQUIREMENTS AFTER SUBSTANTIAL COMPLETION OF A CAPITAL IMPROVEMENT**

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

**SEC. 6. DETERMINING CONSTRUCTION COST FOR PURPOSES OF LEASEHOLD SURRENDER INTEREST VALUE**

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

**SEC. 7. ARBITRATING THE CONSTRUCTION COST OF A CAPITAL IMPROVEMENT**

If the Concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Section 6 of this Exhibit A. The arbitration procedures are described in Section 1 of this Exhibit A. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

**SEC. 8. ACTIONS THE CONCESSIONER MAY OR MUST TAKE REGARDING LEASEHOLD SURRENDER INTEREST**

The Concessioner:

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

**SEC. 9. EXTINGUISHMENT OF A LEASEHOLD SURRENDER INTEREST**

(a) 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.

(b) The Director at any time during the term of this Contract or after its termination or expiration may in his discretion pay the Concessioner the then applicable Leasehold Surrender Interest Value in all or portions of the related capital improvements in which the Concessioner holds a Leasehold Surrender Interest under the terms of this Contract. Upon receipt of such payment by the Concessioner, the applicable Leasehold Surrender Interest shall be extinguished or reduced, as applicable, for all purposes of this Contract and Applicable Laws. In the event of a dispute between the Director and the Concessioner as to the appropriate amount of such payment under the terms of this Contract, the dispute shall be resolved through binding arbitration as defined above.

**SEC. 10. LEASEHOLD SURRENDER INTEREST UNDER A NEW CONCESSION CONTRACT**

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

#### **SEC. 11. PAYMENT FOR LEASEHOLD SURRENDER INTEREST IF THE CONCESSIONER IS NOT AWARDED A NEW CONCESSION CONTRACT**

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this Contract, or, the Concessioner, prior to such termination or expiration, ceases to utilize under the terms of this Contract capital improvements in which the Concessioner has a leasehold surrender interest, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this Contract or the date the Concessioner ceases to utilize related capital improvements under the terms of this Contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of this Contract, or, if applicable, the date the Concessioner ceases to utilize the capital improvements under the terms this Contract.

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

#### **SEC. 12. PROCESS FOR DETERMINING LEASEHOLD SURRENDER INTEREST VALUE**

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

#### **SEC. 13. PAYMENT OF LEASEHOLD SURRENDER INTEREST BY A NEW CONCESSIONER**

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

#### **SEC. 14. OBTAINING ADDITIONAL LEASEHOLD SURRENDER INTEREST BY UNDERTAKING A MAJOR REHABILITATION OR ADDING TO A STRUCTURE IN WHICH THE CONCESSIONER HAS A LEASEHOLD SURRENDER INTEREST**

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the

major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this Contract.

**SEC. 15. OBTAINING ADDITIONAL LEASEHOLD SURRENDER INTEREST BY REPLACING A FIXTURE IN WHICH THE CONCESSIONER HAS A LEASEHOLD SURRENDER INTEREST**

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

**SEC. 16. OBTAINING A LEASEHOLD SURRENDER INTEREST IN EXISTING REAL PROPERTY IMPROVEMENTS IN WHICH NO LEASEHOLD SURRENDER INTEREST EXISTS**

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

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

**SEC. 17. NO LEASEHOLD SURRENDER INTEREST RESULTS FROM REPAIR AND MAINTENANCE OF REAL PROPERTY IMPROVEMENTS**

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

**EXHIBIT B  
OPERATING PLAN**

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**INTRODUCTION**

This Operating Plan between JEN Marine Development, LLC (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area (hereinafter referred to as the "Area") that 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 amendments, will prevail.

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

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

**1) Management Responsibilities****A) Concessioner**

- (1) To achieve an effective and efficient working relationship between the Concessioner and the Service, the Concessioner must designate an on-site general manager who:
  - (a) Has the authority and the managerial experience to operate the Concession Facilities and required and authorized services within the Area;
  - (b) Employs a staff with the expertise and training to operate all services required and authorized under the Contract;
  - (c) Has full authority to act as a liaison in all concession administrative and operational matters within the Area; and
  - (d) Has the responsibility for implementing the policies and directives of the Service.
- (2) In the absence of the general manager, the Concessioner must designate an acting on-site general manager.

**B) Gateway National Recreation Area**

The Superintendent of the Area is responsible for oversight of all Service operations, including concession operations. The Superintendent carries out the policies and directives of the Service, including concession contract management. Directly, or through designated representatives, the Superintendent reviews, directs, and coordinates concessioner activities relating to the Area. This includes:

- (1) Evaluation of concessioner services and facility;
- (2) Review and approval of rates charged for all commercial services and products;
- (3) Review and approval of changes to services, advertisements, and other items outlined in the operating and maintenance plans; and
- (4) Review and approval of repair and maintenance plans, construction projects, and all improvements or changes to Concession Facilities.

**2) General Operating Standards and Requirements****A) Scope and Quality of Service**

The Concessioner must provide all services in a consistent, environmentally sensitive and high quality manner and must operate in accordance with the operating standards as defined by the Service.

**B) Authorized Services**

For any authorized but not required services, the Concessioner must submit a written plan and receive written approval from the Service before commencing operations.

**C) Schedule of Operation**

- (1) The Concessioner must provide the required services for Area visitors on a year-round basis.
- (2) The Concessioner must display office hours prominently at the site so as to be easily visible to the public.
- (3) The Concessioner may extend the hours of operation beyond the minimums but may not reduce the minimum hours without prior written approval from the Service, except in the case of an emergency closure. The Concessioner must submit annual operating season requests by January 15. Additional requests for changes to hours of operation may be submitted with 30-day's notice.
- (4) The Service will provide the Concessioner reasonable notice of any schedule changes the Service may initiate.
- (5) Minimum hours of operation are as follows:

DATE	TIME	FREQUENCY
April 1st through May 14th	At minimum 8 am to 5 pm	5 days/week must include weekend days
May 15th through September 15th	At minimum 8 am to 6 pm	7 days/week must include weekend days
September 16th through October 31st	At minimum 8 am to 5 pm	5 days/week must include weekend days
November 1st through December 23 <sup>rd</sup> and February 1 <sup>st</sup> through March 31st	At minimum 4 hours/day	5 days/week must include weekend days
December 24 <sup>th</sup> through January 31 <sup>st</sup>	Marina offices may be closed, however, Concessioner must respond to emails, mail and phone calls from customers on a daily basis and customers must have access to their boats and other personal property during this time.	

***On Sundays, Holidays, and at all other times, the Concessioner must have a member of the staff or guard service on duty.***

**D) Rate Determination and Approval Process**

- (1) Rate Determination. The Service ensures that the Concessioner's rates and charges to the public are commensurate with the level of services and the facility provided, and are reasonable, justified, and comparable with similar facilities and services provided by the private sector. The Service determines reasonableness of rates based upon current concession management guidelines. The Service's rate approval methods are subject to change.
- (2) The following specified rate approval method has the same meaning as identified in the most recent *Service Concession Management Rate Administration Guide* ("Rate Administration Guide") as it may be amended, supplemented, or superseded throughout the Contract.
- (3) The Service will manage rates for this Contract based on the Competitive Market Declaration method, as defined in the *NPS Concession Management Rate Administration Guide* (July 2010).
- (4) Visitor services offered under this Contract are offered in a competitive market. The Concessioner must compete with other businesses, which ensures market pricing. In

- consideration of these factors, the Service declares that rates charged by the Concessioner are comparable and approved. The Concessioner may price services and merchandise competitively without further approval from the Service. The Concessioner's rates remain subject to review to ensure that they remain reasonable in comparison to similar services offered outside the park.
- (5) The Service will review this Competitive Market Declaration annually and may rescind the use of this method at its discretion.
- (6) *Request Submittal for Annual Rate Changes*
- (a) The Concessioner must submit written annual requests for rate changes at least 60 days prior to the anticipated implementation date.
  - (b) The Concessioner must include with its written request comparability data to support proposed rate increases; however, the final determination lies with the Service. All requests for rate changes must provide information to substantiate the requested rates in sufficient detail for the Service to replicate results using the methodology specified in the *Rate Administration Guide*.
  - (c) Rate requests must include pertinent information about the rate and product or service proposed. This includes but is not limited to length of service, amenities provided, etc.
  - (d) For so long as the Concessioner pays its employees at least the minimum wage required by Executive Order 13658 (February 12, 2014), which established parameters for a minimum wage for federal contractors, and for so long as the minimum wage required by that Executive Order exceeds the minimum wages otherwise required by applicable local, state or federal law, the rates requested by the Concessioner and approved by the Service may reflect the increased expenses attributable to such higher wages as compared to the wages for employees comparable facilities and services considered in determining appropriate rates.
  - (e) If the Concessioner does not request a rate change, approved rates from the prior season must remain in effect.
- (7) *Rate Approval*
- (a) *Approval Timing.* The Service approves, disapproves, or adjusts rates and informs the Concessioner of the reason for any disapproval or adjustment within 60 calendar days of the rate request submittal, if the Concessioner submits its request for a rate change pursuant to the timeframes set forth above. The Concessioner may request an expedited review. Requests for expedited review, however, must not be routine practice, and although the Service may attempt to accommodate these requests, the Service cannot guarantee a quicker response. If the Service requires a longer response period than 60 days, the Service and the Concessioner will confer on an agreed response date. Longer review periods may apply to requests made at times other than those listed above or if the submittal does not include all required information. The Concessioner may propose mid-season pricing changes for consideration by the Service. The Concessioner must accompany these requests with appropriate justification for such pricing change.
  - (b) *Approved Rate Posting.* The Concessioner must provide all approved rates for goods and services to the public within 30 days after approval and must prominently display all rates for goods and services.
  - (c) *Approved Rate Effective Period.* Approved rates must remain in effect until superseded by changes approved in writing by the Service.
  - (d) *Reduced Rates for Federal Government Employees.* The Concessioner must not provide services to government employees (unless on official business) or their families without charge or at a reduced rate except as are available to the general public.
  - (e) *Rate Compliance.* The Service checks rate compliance during periodic operational evaluations and throughout the year.
  - (f) *Exceptional Conditions.* In exceptional circumstances when the Concessioner must offer an item or service at less than the optimum condition because of unavailable elements or amenities or because of poor service or other conditions (such as a power outage), the Concessioner must discount the item or service.

**E) Purchasing**

- (1) *Competitive Purchasing.* The Concessioner may purchase products from an entity operated or owned by the Concessioner or its affiliates, provided the product is comparable in quality and price to similar products from other sources.
- (2) *Discounts.* The Concessioner must take advantage of all available trade, cash, and quantity discounts and rebates. Depending on the method of rate approval, the Concessioner must pass these savings through to the consumer.
- (3) *Environmentally Friendly Products.* The Concessioner must purchase and use environmentally friendly products whenever available and feasible.
- (4) *Prompt Payment.* The Concessioner must promptly pay its financial obligations to contractors, vendors, utility providers, the Service, employees or others.
- (5) *Local Purchasing.* The Service encourages purchasing of local products, where feasible.

**F) Evaluations and Inspections**

- (1) *Standards.* The Concessioner must ensure the protection of resources, compliance with environmental, public health and risk management requirements, and provide satisfactory services for the Area visitors within the Concession Facilities. The Concessioner's operation of the services and facility authorized by the Contract must conform to the evaluation standards set forth in the current Service Concessioner Review Program, Service Concessions Management Guidelines, and in hospitality industry practices.
- (2) The Service and the Concessioner must separately evaluate and monitor Concession Facilities and services with respect to:
  - (a) Conformance with Service policy
  - (b) Conformance with Service applicable standards
  - (c) Authorized rates
  - (d) Risk management
  - (e) Public health
  - (f) Fire safety
  - (g) Impacts on cultural and natural resources
  - (h) Correction of operating and maintenance deficiencies
  - (i) Conformance with Service Integrated pest management policies
  - (j) Responsiveness to visitor comments
  - (k) Environmental Management Program
  - (l) Implementation of applicable sustainable practices
  - (m) Conformance with maintenance programs
  - (n) Compliance with the Contract including Exhibits
  - (o) Interpretive programs and information
- (3) *Operation Evaluations*
  - (a) The Service conducts both announced and unannounced evaluations of Concession Facilities and concession activities to ensure conformance to Applicable Laws, and standards. The Service shall contact the Concessioner so a representative of the Concessioner may accompany the evaluator.
  - (b) The Service uses informal walkthroughs and visitor comments to identify areas of concern between formal evaluations. The Service uses such observations and comments to focus its attention during formal evaluations.
  - (c) The Service forwards evaluation results to the Concessioner in a timely manner. The Concessioner must correct deficiencies and prepare abatement plans within the periods set by the Service. The Concessioner must address all periodic evaluation findings to the

- satisfaction of the Service. Delayed implementation or failure to correct may result in a lowered periodic evaluation rating.
- (d) For deficiencies the Concessioner cannot correct by the assigned due date, generally within two weeks of the deficiency finding, the Concessioner must propose for Service approval its schedule for the correction of deficiencies or its proposed improvement program to address any required changes prompted by deficiency findings.
- (4) *Annual Overall Rating.* As part of the Concessioner Review Program, the Service determines and generally provides the Concessioner with an Annual Overall Rating (AOR) by March 15th for the preceding calendar year.
- (a) *Contract Compliance Report.* As part of the AOR, the Service completes a Contract Compliance Report and rating, which considers such items as timely submission of the annual financial report, timely and accurate submission of franchise fees, and timely submission of proof of insurance.
  - (b) *Operational Compliance Report.* As part of the AOR, the Service completes an Operational Compliance Report and rating, which considers such elements as the evaluation of the Concessioner's Risk Management Program, Public Health Rating, provision of visitor comments to the Service, Periodic Operational Evaluations Ratings, and Risk Management (Safety) Inspections.
- (5) *Safety Evaluations and Inspections*
- (a) *Concessioner Safety Inspections.* The Concessioner must at a minimum annually conduct interior and exterior safety inspections of all Concession Facilities, in accordance with its documented risk management program. The Concessioner must ensure employee compliance with health, fire, and safety code regulations as well as Service policies and guidelines.
  - (b) *Service Safety Evaluations.* The Service's periodic evaluations include risk management (safety) elements. The Service annually determines and provides the Concessioner with a risk management rating based on the Concessioner's implementation of its documented risk management program. The Service incorporates this rating into the AOR. The Service may conduct safety inspections at its discretion including scheduled or unannounced on-site reviews of reports, plans, facilities, equipment, and inspection records.
- (6) *Public Health Inspections*
- (a) The Concessioner must meet current regulations and requirements of the most current Food and Drug Administration (FDA) Food Code as applicable to the food and beverage services authorized under this Contract.
  - (b) The Service conducts periodic food service evaluations without prior notice, which result in providing the Concessioner, the Service, and the Director of the NPS Office of Public Health a written record of these inspections and the resulting rating. The Service incorporates this rating into the AOR.
  - (c) The Service also may conduct spot checks of key public health indicators as part of its periodic evaluation process.
- (7) *Visitor Satisfaction Monitoring.* The Concessioner must maintain a visitor satisfaction program to measure service and quality standards, product mix, pricing, and overall Area experience.
- (a) The Concessioner must provide Service-approved comment cards to visitors in order to measure service and quality standards, product mix, pricing, and overall Area experience. The Concessioner must provide an adequate inventory of comment cards by the cash register. The Concessioner must forward to the Service a summary of the preceding month's comments and complaints received on comment cards or any other form of documentation. The Concessioner also must provide the full text of any narrative comments received.
  - (b) The Concessioner must investigate and respond to all visitor complaints regarding the Concession Facilities and its services. The Concessioner must promptly provide to the Service visitor comments that allege misconduct by Concession or Service employees, pertain to the

safety of visitors or Concessioner or Service employees, or concern the protection of Area resources.

- (c) The Service forwards to the Concessioner any comments and complaints the Service receives regarding Concession Facilities or services.
  - (d) The Concessioner must investigate and respond to visitor complaints within two weeks of receipt. The Concessioner must provide the Service with copies of its response to complaints within five days after the Concessioner has issued the response. The Service will provide the Concessioner with copies of its responses to any comments or complaints regarding the Concessioner.
- (8) *Environmental Evaluations and Inspections*
- (a) Concessioner Environmental Self-Inspections. The Concessioner periodically must conduct interior and exterior environmental inspections of all Concession Facilities, in accordance with its documented Environmental Management Program (EMP).
  - (b) Concessioner Environmental Self-Evaluations. The Concessioner must self-assess its performance under its EMP at least annually per Section 6(b) of the Contract, and provide a summary of EMP performance to the Service annually by February 1. The Concessioner must ensure employee compliance with environmental laws and regulations, as well as Service policies and guidelines.
  - (c) Evaluations. The Service's periodic evaluations include environmental management elements. The Service annually determines and provides the Concessioner with an environmental management rating based on the Concessioner's implementation of its documented environmental management program. The Service incorporates this rating into the Concessioner's Annual Overall Rating.
  - (d) Environmental Audit. The Service periodically may conduct a comprehensive environmental audit of all operations and facilities in addition to its review of the Concessioner's and concession operations with respect to environmental compliance, conformance with the EMP. The Service environmental audit program evaluates the Concession Facilities Concessioner's EMP, and best management practices criteria required of the Concessioner and contained within the current Service environmental audit program operating guidelines.
  - (e) The Concessioner must cooperate with the Service in scheduling environmental audits, accompany Service staff on audits and evaluations if requested, and provide full access to Concession Facilities, documentation and other resources necessary for the Service to conduct audits or evaluations.
  - (f) The Concessioner must correct deficiencies by the established due dates or establish abatement plans to correct deficiencies. The Service approves abatement plans.

**G) General Policies**

- (1) *Facilities Use*. The Concessioner may use Concession Facilities only for activities or services that directly and exclusively support the visitor services required or authorized by the Contract unless it receives prior written permission from the Service for other activities and services.
- (2) *External Regulatory Agencies*. The Concessioner must submit to the Service any notices of violation, requests for corrective action, or any other type of performance or non-performance notices from external regulatory agencies as soon as possible, but not later than ten days of receipt by the Concessioner. External regulatory agencies are any agencies having authority over any facet of the Concessioner's operations or facilities in the Area.
- (3) *Firearms and Weapons*  
On-duty employees may not carry or use weapons or firearms. The Superintendent, in his or her sole discretion, may grant exceptions to this prohibition upon consideration of a written request from the Concessioner with a thorough explanation of the basis of the request. The Concessioner must have written approval from the Superintendent before implementing any exceptions to this policy.
- (4) *Special Events*

- (a) Requests for Weddings or Commercial Activities. Most group or commercial activities in the Area require a separate permit or agreement with the Service. The Concessioner must inform the following groups of these additional requirements as an initial part of the reservation process:
  - Weddings in the Area require a permit from the Service if any activities are to take place outside of the buildings assigned to the Concessioner.
  - Commercially guided classes, workshops, tour groups, and other outdoor activities must obtain a Commercial Use Authorization from the Service.
- (b) Concessioner Sponsored Special Events. All special events must support Area themes and purposes.
  - The Concessioner must seek Service approval for special events it proposes to offer the Concession Facilities. By December 15th of each year, the Concessioner must submit for the Service's review and approval the types of special events the Concessioner plans to offer during the following year.
  - The Concessioner may not set aside Concession Facilities for exclusive use by special groups if this practice interferes with the public's use and enjoyment of the Area or facility.
- (c) Service Sponsored Events. The Concessioner must cooperate with the Service in planning and implementing Service-sponsored special events.
- (5) Smoke Free Policy. Smoking is prohibited in all Concessions Facilities. The Concessioner must prohibit smoking within a 25-foot radius of exterior entries and windows. The Concessioner must post notices in all public buildings as necessary.
- (6) *Accepted Forms of Payment*. The Concessioner must accept, at a minimum, cash, American Express, MasterCard, Visa, and Discover credit cards, and debit cards.
- (7) *Lost and Found*. The Concessioner, at its own expense, must develop a plan for handling lost and found or unattended property in the Concession Facilities and present it to the Service for review and approval within 90 days following the effective date of the Contract. The Concessioner must submit all changes to the plan to the Service for review and approval prior to implementation.
  - (a) Procedures for the handling of lost and found property must conform to Directors Order (DO) 44 and 41 C.F.R. Part 102.41.
  - (b) The Concessioner must work closely with the Area's Law Enforcement Division when handling lost, found, or unattended property in Concession Facilities.
  - (c) The Concessioner must assist any visitor who has lost property by providing the phone number for the United States Park Police: 718-338-3988.
  - (d) The Concessioner may take found items turned in by a visitor or instruct persons who find items outside of the Concession Facilities to take such items to the Visitor Center.
  - (e) The Concessioner must bring cash and portable electronic equipment to the Service for disposition. Portable electronic equipment includes hand-held electronic devices such as cell phones, tablets, MP3 players, e-readers, and digital cameras.
  - (f) Items not claimed by the owner within 60 days are considered abandoned to the United States and may be disposed of in accordance with Applicable Law. Current regulations do not permit the return of found items to finders.

#### H) **Human Resources Management**

- (1) *Employee Identification*. The Concessioner must issue each employee an employee photo identification card that includes, at a minimum, his or her name, an expiration date, and identifies the individual as an employee of the Concessioner. The Concessioner must collect these identification cards upon termination of employment.
- (2) *Employee Appearance and Attitude*. Employees must be neat and clean in appearance and must project a hospitable, positive, friendly and helpful attitude. Employees in direct contact with the

public must wear uniforms or standardized clothing with their personal nametags. All employees must be capable of and willing to answer visitor's questions about the Concessioner and general Area information.

- (3) *Employee Conduct.* The Concessioner must review the conduct of any of its employees whose actions or activities are considered by the Service or Concessioner to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors. The Concessioner must take all actions needed to correct fully any such situation. The Concessioner must clearly document in writing its expectation of employees.
- (4) *Employee List.* The Concessioner must submit to the Service a list of the names, job titles, and contact information for all managers within 60 days following the effective date of the Contract, and update it as needed. The Concessioner must provide a list of after-hours contacts and phone numbers for emergencies and provide updates when necessary.
- (5) *Employee Qualifications.* All employees must understand the requirements and procedures of their jobs as well as specific Area regulations and the purposes for these regulations. All information provided by staff to visitors must be accurate. This basic understanding must include knowledge about the Area's purpose and significance, familiarity with the layout of the Area and key features.
- (6) *Employee Hiring Procedures*
  - (a) *Staffing Requirements.* The Concessioner must hire a sufficient number of employees to ensure high-quality visitor services and facility maintenance throughout the year.
  - (b) *Work Schedule.* Prior to employment, the Concessioner must inform employees of salary, schedules, holiday pay, overtime requirements, and any possibility that less-than-full-time employment may occur during slow periods.
  - (c) *Drug-free Awareness.* The Concessioner must provide its employees with a statement of its policies regarding drug and alcohol abuse. The Concessioner must maintain, to the greatest extent possible, a drug-free workplace environment.
  - (d) *Background Checks.* The Concessioner must establish hiring policies that include appropriate background reviews of applicants for employment.
    - The Concessioner must not hire prospective employees if they have any active warrants or warrants (current fugitive from justice).
    - If the Concessioner learns that an employee is the subject of an active warrant, the Concessioner must immediately notify the United States Park Police Office. The Concessioner must immediately notify the Service law enforcement office if a background check shows an employee is required to register as a sexual or violent offender.
  - (e) *Employment of Service Employees or their Family Members*
    - The Concessioner may not employ in any status a Service employee, his/her spouse, or his/her dependent child without prior written approval from the Superintendent. Potential employees who meet this description must submit a written request to the Service. If approval is given, the Concessioner must retain the approved request as part of the employee's personnel file.
    - The Concessioner may not employ in any status the following or their spouses or dependent children: the Superintendent, Concession and Leasing Management staff, Administrative Officer, or Public Health Service Consultant or Facility Manager.
- (7) *Training.* The Concessioner must provide appropriate formal and ongoing job training to each employee prior to duty assignments.
  - (a) *Service Operational Performance Program.* The Concessioner must orient its employees, especially managers, to the Concessioner Review Program and other Service evaluation, oversight, and rate programs, emphasizing the operational review program to managers on an annual basis. The Concessioner may request Service assistance.
  - (b) *Job Training.* Training must include the following in addition to job-specific skills:

- Customer Service. The Concessioner must provide customer service training for employees who have direct public contact.
  - Service Informational and Interpretive Skills Training. The Service may provide skills training for concession employees who provide interpretation, information, or safety orientation to visitors. If provided, the Concessioner must require such staff to attend this training.
  - Safety Training. The Concessioner must train its employees regarding safety according to the training requirements in its Risk Management Plan.
  - Environmental Training. The Concessioner must provide environmental training to all employees according to its Environmental Management Program.
  - Maintenance Training. The Concessioner must provide periodic skills training for its maintenance staff.
  - Retail Employee Training. The Concessioner must provide training for its retail employees, as well as training on property-specific merchandise and Area resources.
- (8) *Volunteers in the Park (VIP) Program.* Employees may participate in the Service's Volunteers in Parks (VIP) program. More information on the VIP program is available at <http://www.nps.gov/volunteer>.

**i) Risk Management (Safety)**

- (1) The Concessioner must provide a safe and healthful environment for its employees and the public. The Concessioner must develop, maintain, and fully implement a Risk Management Plan in accordance with Service Policy, the Occupational Safety and Health Act (OSHA), and Director's Order #50B, Occupational Safety and Health Program. The Concessioner must submit its Risk Management Plan for Service acceptance within 120 days following the effective date of the Contract. The Concessioner must review and update the plan as appropriate by December 31 of each year and submit it to the Service. The program must include, at a minimum, the following components:
- (a) How the Concessioner will make the policy available to its staff.
  - (b) The name of the Concessioner's local safety and health official.
  - (c) How the Concessioner will hold its management team and staff accountable for carrying out the risk management program.
  - (d) How the Concessioner will ensure that adequate funding is available to support the program.
  - (e) An annual update of the Concessioner's risk management goals and objectives.
  - (f) Annual inspection schedules and the method for ensuring employees conduct the inspections.
  - (g) The Concessioner's method for ensuring that qualified individuals are capable of recognizing and evaluating hazards.
  - (h) The Concessioner's records management plan for risk management (e.g., training, inspection and accident/injury records).
  - (i) How the Concessioner will classify deficiencies (including examples) and the hazard abatement schedule for deficiencies classified as:
    - Imminent danger
    - Serious hazard
    - Non-serious hazard
  - (j) The Concessioner's procedures for recording, reporting, and investigating employee and visitors injuries.
  - (k) How the Concessioner will promote safety awareness for visitors.

- (l) Emergency procedures the Concessioner has in place. This includes identifying probable occurrences, coordinating with plans developed by the Service for the Area, and identifying how the Concessioner will train its staff to implement the plans.
- (2) *Employee Accident/Injury Analysis*. The Concessioner must provide the Service with an annual summary listing injury/accident types and employee lost days. The summary may include additional information as required by the Service. The summary must compare the present year to the same data from the previous year. This report is due by January 5th each year.
- (3) *Emergency Action Plan*
  - (a) As part of its Risk Management Program, the Concessioner must include in its "Emergency Action Plan" the steps it will take in the event of an emergency. These must include, but are not limited to, scenarios in the event of structural fire, and wildland fire, and must be location specific. The Plan must include evacuation procedures for visitors and employees, as well as procedures for safeguarding valuables. The Concessioner must have a plan in place for chain of communication in the event of an emergency or accident (e.g., first notify the Service's Law Enforcement Division, etc.).
  - (b) Emergency Evacuation Plans. The Concessioner must develop and maintain written Emergency Evacuation and Fire Prevention Plans in accordance with Applicable Law and the National Fire Prevention Act 101. The Concessioner must train staff on the execution of the plan. The Concessioner must post a fire or emergency exit plan in its building.
- (4) *Emergency Response to Hazardous Materials Spills*
  - (a) The Concessioner must provide plans and procedures, equipment, and training to employees to respond effectively to releases of hazardous substances for stopping, containing, and cleaning up the release in accordance with Applicable Laws. These may include, as appropriate, a section in its Emergency Action Plan, an Emergency Response Plan, and Spill Prevention Control and Countermeasure Plan. Within 90 days following the effective date of the Contract, the Concessioner must provide these plans to the Service for review for consistency and integration with Service emergency response plans.
  - (b) The Concessioner must provide training and emergency response equipment as appropriate and must maintain equipment in good condition.

### **3) Utilities**

#### **A) Concessioner**

- (1) The Concessioner must encourage conservation of energy, water, and other resources through policies, programs, and goals. The Concessioner must participate in energy audits and incentives if offered by its power provider.
- (2) The Concessioner must contract with independent suppliers to provide utility services not provided by the Service, including electricity, phone, internet, propane, solid waste and recyclables removal. The Concessioner must promptly pay for these services.

#### **B) Service Provided Utilities**

- (1) For NPS-provided utilities, if any, the Concessioner must comply with current Service policy.
- (2) The Service reviews its operating costs for utility systems and services annually and notified the Concessioner in writing of the rates 90 days prior to implementation of any change.
- (3) The Service may cease to provide a particular utility service if such service is commercially available and the Service decides to switch to a commercial utility.

### **4) Protection and Security**

#### **A) Concessioner Responsibilities**

- (1) *Management Responsibilities*. The Concessioner must properly manage all cash, merchandise, and equipment, in a manner that minimizes the risk of theft. The Concessioner must protect from unauthorized use customers' financial and privacy information. Management practices

could include safes, alarms, video surveillance, proper cash handling procedures, auditing procedures, and ensuring proper technology security protocols are in place.

- (2) *Reporting of Criminal Violation.* The Concessioner must implement standard operating procedures that report to the Service Communication Center suspected or known criminal violations. The Concessioner must report incidents including, but not limited to, property damage, possession of drugs and drug paraphernalia, minors in possession of alcohol, vandalism, and other violations of law.

(a) *Concessioner Personnel*

- Concessioner-employed security personnel have no authority to take law enforcement action or to carry firearms while on duty.
- The Concessioner must secure buildings, equipment, and facilities under its control.
- The Concessioner must immediately report to the Service any observed violations of the law.

**B) Service Responsibilities**

- (1) *Authority.* The Service has concurrent jurisdiction within the Area, including law enforcement, public, health and search and rescue. Emergency medical services and structural fire response are provided by the Service, the US Park Police, and local emergency first responders as needed.
- (2) *Contact Information and Personnel.* The Service will provide telephone contacts for the Concessioner to communicate emergencies to Area staff.

**C) Emergency Contact Procedures**

- (1) *Contact Information.* The Concessioner must first contact the USPP Dispatch for any emergency, including medical, fire, criminal, etc. The Concessioner should then call 911 as follows:
- **First point of contact - USPP Dispatch: 718-338-3988**
  - **Second point of contact: 911**

**D) Emergency Medical Procedures**

- (1) *Emergency Medical Care.* The City of New York and United States Park Police (USPP), Jamaica Bay Unit, will provide emergency medical care to all individuals visiting the Area. Concession employees respond as Good Samaritans only and may only provide non-medical physical assistance at an emergency scene, at the direction of EMS Care Providers present.
- (2) *Automated External Defibrillator.* The Concessioner must provide and maintain automated external defibrillators (AEDs). At a minimum, the Concessioner must locate one AED within close proximity to the elevator on the first floor. The Concessioner must train its personnel in use of the AED.
- (3) *Training.* Concessioner personnel must maintain Basic First Aid, CPR, and AED certification.
- (4) *First Aid Supplies.* The Concessioner must maintain basic first aid supplies at all Concession Facilities. The Concessioner must make available an employee certified in Standard First Aid during operating hours.
- (5) *Emergency Reporting Procedures.* The Concessioner must train all employees in proper emergency medical reporting procedures, including the essential information to provide (e.g., a call-back number at the location). The Service investigates all visitor and employee accidents which require medical attention. Reporting phone numbers are:
- (6) The Service handles violations of federal laws.

**E) Fire Protection**

- (1) Fire prevention, protection, and suppression are primary considerations at all facilities. FDNY Engine #329 located at 402 Beach 169th Street, Breezy Point, NY 11697 is the nearest municipal fire station. The Concessioner must report all fires to the Service immediately.
- (2) *Concessioner*
- (a) *General.* The Concessioner is responsible for fire prevention within its assigned Concession Facilities, as outlined in the Maintenance Plan.

- (b) Facilities. Concession Facilities, including support equipment therein, such as fire escapes and exits, must meet or exceed the National Fire Protection Association (NFPA) National Fire Codes, including NFPA Life Safety Code and Uniform Fire Code, as adopted by the State of New York, unless the Superintendent approves a specific variance in writing.
- (c) At all times, the Concessioner must maintain in good operating condition its fire detection, initiating alarm and notification systems and equipment, and its fixed and portable fire suppression systems and equipment. The Concessioner must arrange for verification of function and condition through documented inspections by qualified personnel. Within 10 days of each inspection, the Concessioner must forward copies of required annual inspection reports to the Concessions Management staff.
- (d) Fire Prevention Program. The Concessioner must implement a fire prevention program to maintain its operations and the Concession Facilities in a manner that minimizes the risk of fire.
  - The Concessioner must employ a "no tolerance" policy and immediately terminate any employee found to have tampered with smoke or heat detectors, fire suppression systems, or fire extinguishers.
  - The Concessioner must respond to all fire system alarms in the Concession Facilities and cooperate with the Service in providing security in the event that instances of vandalism, damage, theft, or unlawful entry occur frequently or are likely to occur.
  - The Concessioner must test its battery-powered fire alarms, egress lighting, and smoke detectors monthly and replace batteries as recommended by the manufacturers.
- (e) Post Fire Alarm Reporting
  - The Concessioner must analyze multiple alarm events at a specific location. The Concessioner must develop and implement solutions to mitigate these events.
  - The Concessioner must report any alarm system that has more than three unfounded activations in a 24-hour period. The Concessioner must report such incidents to the Concessions and Leasing Management staff's office via email within one working day.
  - By January 10th of each year, the Concessioner must report to the Service information regarding the previous year's fire alarms and their disposition. This report must break the alarm activity down by type, location, cause, and response time.
- (f) Fire Drills and Joint Training. The Concessioner must periodically conduct fire drills to ensure competency of all personnel with specific fire protection and emergency situation duties and responsibilities. The Concessioner, with input from the Service as necessary, will determine the types and frequency of such training.

## **5) Public Relations**

### **A) Required Notices**

- (1) The Concessioner must prominently post the following notice at all Concessioner cash registers and payment areas:

This service is operated by (Concessioner's name), 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. Please address comments to:

Superintendent  
C/O Business Services Division  
210 New York Ave.  
Staten Island, NY 10305

### **B) Media Inquiries**

The Concessioner must forward all Area related media inquiries to the Superintendent's Office.

### **C) Advertisements and Promotional Material**

(1) *Promotional Material*

- (a) Approval. The Concessioner must submit any new or updated press releases or promotional material, including websites, radio, television or other media, to the Service for review and approval, at least 30 days prior to publication, distribution, broadcast, etc. The Concessioner must contact the Service well in advance to establish specific timeframes for more complex projects.
- (b) Publications must be accurate and up to date.
- (c) The Service may require the Concessioner to remove any unapproved promotional material.
- (d) Promotional material distributed apart from National Park Service facilities must promote only services and facilities within the Area, unless the Service approves exceptions in writing.
- (e) Use of names or logos owned by the National Park Service are permitted to the extent necessary to convey information and to carry out the terms and conditions of this contract upon approval of the Superintendent or designee. Express written approval by the Superintendent must be obtained for development of new intellectual property for identifying National Park Service property and services. Such intellectual property is hereby deemed property of the National Park Service. The Concessioner may use the Authorized Concessioner Mark.

(2) *Use of National Park Service Authorized Concessioner Mark (Mark)*

- (a) The Service has an approved Mark it allows concessioners to use to advertise the official relationship between the Service and the Concessioner. The Mark consists of the official NPS Arrowhead and the words "Authorized Concessioner."
  - (b) Authorized Users. The Concessioner is authorized to use the Mark at the start of the Contract in accordance with the approval procedures below. The Concessioner must have received a satisfactory or marginal rating in the previous Annual Overall Review to use the Mark following the first year of the Contract.
  - (c) Authorized Uses of the Mark. The Concessioner may use the Mark in publications, written advertising, brochures, web-based information, interpretive materials, broadcasts (television, film or other audio/visual), associated with required or authorized services; facility signs designed, constructed, or commissioned for official Concessioner functions or purposes; and signs placed on visitor transportation systems, vessels and aircraft.
  - (d) Prohibited Uses of the Mark. The Concessioner may not use the Mark on merchandise, souvenirs and clothing presented for sale to the public; Concessioner employee uniforms; or Concessioner equipment and transportation equipment not specifically providing required or authorized visitor services.
  - (e) Artwork, Layout and Use. The Concessioner must use official artwork provided by the Service. Layout and use must be in accordance with the Authorized Concessioner Mark Guidelines available on the NPS Commercial Services web site under the Concessioner Tools tab.
  - (f) Approval Procedures. The Concessioner must submit a written request to the Service for approval to use the Mark. The submittal must include proposed applications and sample layouts. The Concessioner may not use the Mark until the Service has approved the request and the Concessioner's proposed layouts in writing.
- (3) The Service reviews any new signs and changes to existing signs. The Concessioner must professionally produce signage, and overall must keep signage to a minimum.
- (4) *Statements in Promotional Materials*
- (a) Authorization. Advertisements for the Concessioner must include either the Mark or a statement that the National Park Service and the Department of the Interior authorize the Concessioner to serve the public in Gateway National Recreation Area.
  - (b) Equal Opportunity. Advertisements for employment must state that the Concessioner is an equal opportunity employer.

- (5) *Social Media.* The Concessioner may use Facebook, Twitter or other social media outlets. The Concessioner must provide the layout and general content of the social media site for approval two weeks prior to making the site accessible to the public. The Concessioner must use the following Service-approved language in the description of the Concessioner on social media sites.

*(Company Name) is an authorized Concessioner of the National Park Service, Department of the Interior. (Company Name) is authorized to provide (list service types) within (park name).*

- (a) Postings, Comments, Photos and Other Social Media Content. Content must be accurate, professional, and relevant to the concession operation or Area. Content containing general information about the Area, Concessioner or the nearby communities does not require pre-approval by the Service. The Concessioner must monitor content and comments posted by visitors to the page and remove any content that is inaccurate, offensive or irrelevant. All social media content is subject to review by the Service and the Concessioner must remove postings upon request of the Service.
- (b) The Service must approve advertising and promotional content for social media sites if different than previously approved for other media.

## **6) Specific Operating Standards And Requirements**

Visitor service-specific operating standards and requirements are defined in this section. These include Service-wide requirements and, where applicable, requirements by Service classification. These augment those applicable requirements defined under the Service Operational Performance Program as provided in NPS-48.

### **A) Marina Service Standards**

- (1) See Exhibit B-1 for General Marina Service Standards for all Service concession facilities. These Marina Service Standards are consistent throughout the National Park Service Concessions Program and some standards do not apply to this Contract. In the event of any conflict between the terms of the Contract, this Operating Plan, and Exhibit B-1, the terms of the Contract, including its designations and amendments, will prevail.

### **B) General Management**

- (1) The Concessioner's general manager serves as the primary strategic business leader of the operations. This includes responsibility for leading all aspects of the entire concession operation, including visitor and employee satisfaction, financial performance, and sales and revenue generation.

### **C) Marina Operations**

#### *(1) Rental Agreements and General Operating Rules*

- (a) The Concessioner must submit its proposed boat storage agreements, slip rental agreements, and operating rules to the Superintendent for review and approval prior to implementation or use.
- (b) The Concessioner must post rules and regulations prominently within the marina.
- (c) The Concessioner must ensure that all boats within the Concession Facilities are authorized to be on the premises subject to a current boat storage agreement or slip rental agreement; or that boats within the marina land assignment are otherwise owned by the Concessioner.
- (d) Boat Storage Agreements, Slip Rental Agreements, and Potential Lottery. The Concessioner must publish a date by which initial applications for boat storage and slip rental agreements are due. In the event that the number of applications exceeds the capacity of the boat storage area or the number of slips available, the Concessioner must select customers by lottery with each individual who submitted an application having equal chance. If the number of applications is less than the capacity, the Concessioner must award boat storage agreements to all eligible applicants and, thereafter, award space on a first come, first served basis.

- (e) The Concessioner must require the following as conditions of the boat storage and/or slip rental agreement:
- Customers must maintain their boats in overall good condition.
  - Customers must maintain current insurance on vessels stored within the Concession Facilities.
  - Customers must abide by all applicable federal, state, county and local laws, National Park Service regulations, and other requirements.
  - Customers must, upon request of the Concessioner, submit a copy of a recent certified marine survey from National Association of Marine Surveyors (NAMS) or equivalent organization.

(2) *Locations of Marina Operations within the Land Assignment*

- (a) The Concessioner must provide space for trailer storage within the Concession Facilities land assignment.
- (b) The Concessioner may allow normal and routine boat maintenance work; however, the Concessioner must not allow extensive repairs, beyond normal maintenance procedures. Such extensive repairs will require the boat to be relocated outside the concession or redirected to a separate area within the Concession Facilities land assignment identified by the Concessioner in which repairs may take place.
- (c) The Concessioner must ensure that all public areas, including the docks and land areas adjacent to the slips, as well as general ingress and egress, are well maintained and kept clear of customers' personal property and other safety hazards (such as trash, equipment, paint, and fuel containers).
- (d) The Concessioner must reserve six (6) wet slips and six (6) dry storage slips for National Park Service use at no cost.

**D) Construction and Other Considerations**

In the event that the Service undertakes a construction project or requires access to marina facilities in order to implement park programming during the term of this Contract, the Service may require shared use of lands assigned as Concession Facilities. The Concessioner must cooperate with this process to the greatest extent practicable.

**7) Reporting Requirements**

**A) Concessioner Operational Reports**

The Concessioner must provide the Service the following reports. The Concessioner must allow the Service to inspect supporting documentation for all operational reports upon request. The Concessioner must provide data electronically in Microsoft Office Word or Excel.

- (1) *Incident Reports.* The Concessioner must immediately report to law enforcement ranger or to the Service Dispatch Center (or 911) the following:
- Any incident resulting in personal injury (requiring more than minor first aid treatment) or property damage above \$500 as soon as possible; and
  - Other incidents that may affect Area resources (e.g., fires, hazardous material spills) or are a violation of state and/or federal law.
- (2) *Visitor Use Reports.* The Concessioner must maintain a management information system documenting visitor use patterns and provide information from this system to the Service upon request. The Service may provide information from this system to the public.
- *Operational Performance Report.* The Concessioner must provide a monthly operational performance report to the Service by the 15th day of each following month, and an annual summary report prior to April 30 of the following year. The Concessioner must present the data electronically in a concise Excel spreadsheet. The report must include operational statistics and financial information for each activity noted below:

- ◆ Number of new or renewed boat slip or storage agreements during the previous month
- ◆ Number of boats in wet slips during the previous month
- ◆ Number of boats in dry storage during the previous month
- ◆ Gross receipts by service type (as listed in the Contract for all required and authorized services provided) for the previous month

#### **B) Concessioner Financial Reports**

*Monthly Franchise Fee Report.* In addition to the annual financial report (AFR) required in the Contract, the Concessioner must submit a monthly franchise report within fifteen (15) days of the last day of each month. For the previous month, this report shall contain the following information: the total revenue collected for the month, date the franchise fee was transmitted, and the amount of franchise fee paid.

#### **C) Permit, License and Inspection Reports**

- (1) The Concessioner must provide a copy of all operating permits, licenses, and certifications at the time they are obtained and renewed, within fourteen (14) calendar days.
- (2) The Concessioner must submit any inspection reports conducted by outside agencies (i.e., fire department, OSHA) to the Service within fourteen (14) calendar days.

#### **D) Summary of Initial and Recurring Due Dates**

The following page summarizes the preceding reporting requirements and details other reports, plans, payments, and inspections that are the responsibility of the Concessioner.

<b>Schedule of Initial and Recurring Due Dates</b>		
<b>Title</b>	<b>Schedule</b>	<b>Due Date</b>
Balance Sheet	Initial	Within 90 days of Contract effective date
Lost and Found Plan	Initial and as Updated	Within 90 days of Contract effective date, and then on an annual basis by November 15, and prior to implementation if changes occur
Environmental Self-Evaluation Summary	Initial/ Annually	On an annual basis by February 1,
Opening and Closing Dates & Hours of Operation	Annually	By January 15
Risk Management Plan	Initial and annually if updated	Within 60 days of Contract effective date, and as updated by January 1
Management Listing	Annually and as updated	March 1
Annual Rate Change	Annually	60 days prior to anticipated implementation date
Visitor Use Reports	Monthly	15 <sup>th</sup> day of each month reporting prior month's visitor

Schedule of Initial and Recurring Due Dates		
Title	Schedule	Due Date
		use and gross receipts by service type
Annual Financial Report	Annually	Not later than 120 days after the last day of the Concessioner's fiscal year
Franchise Fee	Monthly	Within 15 days of remittance
Visitor Comments	Monthly	By the end of the month
Permits, Licenses and Certifications	As required	Within 14 days of receipt by Concessioner
Inspection Reports by Agencies other than National Park Service	As required	Within 14 days of receipt by Concessioner
Miscellaneous Reports and Data	As required	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

## FULL SERVICE MARINA STANDARDS

**Description** - This category of marinas offers a full range of services for the boating public including, but not limited to: wet and/or dry slip storage, dock facilities and courtesy docks, sewage pump-out services, and fuel docks. Full-service marinas may provide other services such as mechanical boat repair, boat towing and chase services and boat rental services. Many full service marinas offer 24 - hour access to slips, round the clock security and provide additional retail, and full- or limited food and beverage services.

	<b>FACILITY STANDARDS</b>	<b>A, B, C Ranking</b>	<b>Primary Focus Area</b>
<b>Standard Number</b>	<b>A. In-Park Slip Rental Registration Facility – Exterior</b>		
<b>1</b>	<b><u>Building Structure</u></b> - Building exteriors are maintained in good condition and in a good state of repair at all times. Exterior surfaces are painted or treated to protect against deterioration. Painted surfaces are free of peeling paint, soil, and obvious cracks in masonry, and present an attractive appearance. Roofs are maintained with no missing tiles or shingles. Gutters and downspouts are maintained and cleaned to prevent overflow, especially at building entrances. Rooftop ventilation and other systems are in good repair.	<b>B</b>	<b>CC</b>
<b>2</b>	<b><u>Landscaping/Grounds</u></b> - Landscaping conforms to park standards. Noxious weeds and invasive plants are removed in coordination with the designated NPS integrated pest management coordinator and in accordance with an approved landscape plan. Grounds are continuously monitored to remove debris and trash from exterior structure areas and from shrubbery and planted areas. Appropriate drainage is maintained to keep water from collecting against buildings.	<b>B</b>	<b>CC</b>
<b>3</b>	<b><u>Parking</u></b> - Adequate parking spaces for automobiles, bicycles, etc., are provided. The parking area is paved and well-marked with stripes or other clearly visible method of designating spaces. Gravel and/or dirt parking areas are acceptable and are adequately graded to remove drainage ruts and holes. Accessible spaces are prominently designated, clean, and free of refuse and obstructions. All parking areas, curbing, concrete bumpers, and driveways are well-maintained and free of excessive cracking, crumbling, holes, or unsightly repairs.	<b>B</b>	<b>CC</b>

4	<b><u>Trailer Lot Parking</u></b> - Any provided designated trailer lot parking areas are clean and free of refuse and obstructions. Designated areas are preferably located further from the marina than guest parking. All parking areas, curbing, concrete bumpers and driveways are in a good state of repair and free of excessive cracking, crumbling, holes or unsightly repairs.	B	CC
5	<b><u>Pathways, Sidewalks, Ramps, Steps and Stairs</u></b> - All pathways, sidewalks, ramps, steps and stairs are unobstructed and free of debris, obstructions, snow, and ice. These surfaces are maintained in good repair, free of excessive cracking, crumbling, holes, or tripping hazards, with well-maintained hand railings.	A	LS
6	<b><u>Lighting/Illumination</u></b> -Lighting is provided and maintained to indicate the entrance to the property and illuminate facades or signage so that guests can identify the building and safely navigate to it. Lighting is consistent with the NPS Night Sky requirements. Down-lighting is preferred on tall structures or post lights. Energy efficient bulbs are used in all fixtures, if feasible.	A	LS
7	<b><u>Public Signs</u></b> - Public signs for which the concessioner is responsible are appropriately located, accurate, attractive and well-maintained. Permanent signs are professionally designed and produced, consistent with NPS standards, and appropriate for the purpose they serve. The Superintendent has approved signs prior to installation. Temporary signs are computer-generated, framed or laminated, and professional in appearance.	B	VS
8	<b><u>Site Utilities, Equipment and Delivery Area</u></b> - All service areas and equipment, such as above ground tanks and HVAC systems are adequately marked and maintained in a neat and orderly manner. All service areas are well-kept with litter and debris removed. Fencing or screening is preferred, however, all service areas not fenced or screened are well-kept and litter and debris removed. Utility lines are well organized and hidden from guests view as much as possible. Fluctuating water levels may result in slack utility infrastructure; this slack is professionally managed and organized. Ramps or other protection devices are maintained to protect utility lines located in prominent motor vehicle pathways from damage or puncture.	B	CC

9	<b><u>Garbage and Trash/Recycling/Composting</u></b> - Trash containers are conveniently located and in sufficient quantity to handle the needs of the site. Dumpster drain holes are plugged to keep liquids from draining onto the site. Waste does not accumulate in trash containers to the point of overflowing. Refuse is stored in covered, waterproof receptacles which comply with all relevant construction standards (such as bear and wildlife proof), as specified by the National Park Service. All market available recyclable products are collected and recycled. Provided compost collection areas are clean and orderly. Central refuse collection sites are screened from public view.	A	RP
10	<b><u>Fences and Walls</u></b> - All fences and walls are cleared of overgrowth and are well-maintained.	C	CC
11	<b><u>Flags</u></b> - Any national, state, or park flag displayed at an exterior location near the main entrance is in good condition and adheres to the display guidelines of the United States Flag Code. Flags are a minimum size of 3'x 5'. Any lighted flag display adheres to NPS Night Sky requirements. Other flags of a maritime or nautical nature are displayed below the National Flag.	C	VS
12	<b><u>ADA Accessibility</u></b> - Buildings and areas meet the requirements of the Americans with Disabilities Act and all other applicable laws related to accessibility.	A	AL
13	<b><u>Ice/Vending</u></b> - Ice and vending machines are in good working order and well-maintained. Signage on the machine either relates to park interpretive themes or is generic in nature. Any machines temporarily out-of-service or out-of-service for the season has computer-generated signs directing visitors to the closest functioning unit. All machines that accept currency accept the Presidential \$1 coin. Any change machines which accept \$5 dollar bills or higher denominations are able to dispense \$1 coins in change. Each coin vending machine has signs and notices posted on the machines denoting the acceptance of the Presidential \$1 coin.	B	VS
	<b>B. In-Park Slip Rental Registration Facility – Interior</b>		
14	<b><u>Marina Registration/Waiting Area</u></b> - Marina registration entrance and waiting areas are clean and well-maintained. Flooring is mopped or swept and cobwebs removed from walls and ceilings. Any entrance benches, tables and other outdoor furnishings are clean and well-maintained.	B	CC

15	<p><b>Public Restrooms</b> - Restrooms are clean, free of litter, well-illuminated, ventilated, and maintained. Restrooms are equipped with hot and cold running water. Toilet bowls, sinks, and urinals are clean, free of stains and in proper operating condition. Toilet tissue, disposable towels, or air drying devices, if provided, are available at all times. Soap is provided, unless prohibited by park wildlife management plans. Walls, floors, ceilings, mirrors, waste receptacles, chairs and other furnishings are clean and well-maintained. Women's or unisex restrooms have a covered waste receptacle in every stall for the disposal of feminine hygiene products. The disposal containers are clean and emptied at least daily. Baby changing areas are provided in both men's and women's restrooms, unless a unisex restroom is available. Quality of decorative finishes is commensurate with the facility. A cleaning inspection log is maintained and posted on the back of the access door noting time of cleaning inspection and initialed by inspector.</p>	A	CC
16	<p><b>Public Signs</b> - Interior public signs for which concessioner is responsible are appropriately located, accurate, attractive, and well-maintained. Permanent signs are professionally designed and produced, consistent with NPS standards, and appropriate for the purpose they serve. The Superintendent has approved signs prior to installation. Temporary signs are computer-generated, framed or laminated, and professional in appearance. Permanent indoor signs are designed and maintained for the disabled and include applicable international graphical symbols. Handwritten signs within assigned areas are not used unless the Service approves exceptions. Signage is neat and tidy, and does not create a cluttered or untidy look.</p>	B	VS
17	<p><b>Illumination</b> - Sufficient energy-efficient lighting, including recessed, spot and flood lighting, are adequate and appropriate, and complementary to the décor of the facility. All light fixtures are clean, functional, and in working condition with no burned out bulbs.</p>	B	VS
18	<p><b>Ventilation/Climate Control/Temperature</b> - Public spaces are adequately ventilated with working climate control thermostats or other methods used to heat public spaces. Public spaces are maintained at a temperature consistent with guest comfort.</p>	B	VS
19	<p><b>Drinking Fountains</b> - Public drinking fountains are clean and in good working condition.</p>	B	CC

20	<b>Emergency Lighting/Exit Lights/Emergency Exits</b> - Exit lights on permanent structures are on emergency circuits and in operation at all times. Emergency exits in all areas of the facility are adequately marked and unblocked.	A	LS
21	<b>Fire Extinguishers</b> - Accessible fire extinguishers suitable for use on anticipated type of fires are located in each building, visibly displayed, and appropriately signed with proper, up-to-date operating instructions, and visible inspection certificates or tags.	A	LS
22	<b>Fire Alarms and Pull Boxes</b> - Fire alarms and pull boxes are visible and accessible to guests and employees.	A	LS
23	<b>First Aid Kit</b> - A standard 24-unit first aid kit is provided near the registration or front desk, adequately marked, and staff knows where to locate the unit quickly.	A	LS
24	<b>Automated External Defibrillator (AED)</b> - An automated external defibrillator (AED) is adequately marked, and in good working condition. The AED is accessible after hours if located away from the front desk area.	A	LS
	<b>C. In-Park Maintenance Area/Building</b>		
25	<b>Building Structure</b> – Maintenance building exteriors are maintained in good condition and in a good state of repair at all times. Exterior surfaces are painted or treated to protect against deterioration. Painted surfaces are free of peeling paint, soil, and obvious cracks in masonry, and present an attractive appearance. Roofs are maintained with no missing tiles or shingles. Gutters and downspouts are maintained and cleaned to prevent overflow, especially at building entrances. Rooftop ventilation and other systems are in good repair.	B	CC
26	<b>Landscaping/Grounds</b> – Maintenance area landscaping conforms to park standards. Noxious weeds and invasive plants are removed in coordination with the designated NPS integrated pest management coordinator and in accordance with an approved landscape plan. Grounds are continuously monitored to remove debris and trash from exterior structure areas and from shrubbery and planted areas. Appropriate drainage is maintained to keep water from collecting against buildings.	B	CC

27	<p><b><u>Garbage and Trash/Recycling/Composting</u></b> - Trash containers in maintenance areas are conveniently located and in sufficient quantity to handle the needs of the site. Dumpster drain holes are plugged to keep liquids from draining onto the site. Waste does not accumulate in trash containers to the point of overflowing. Refuse is stored in covered, waterproof receptacles which comply with all relevant construction standards (such as bear and wildlife proof), as specified by the National Park Service. All market available recyclable products are collected and recycled. Provided compost collection areas are clean and orderly. Central refuse collection sites are screened from public view.</p>	A	RP
28	<p><b><u>Site Utilities, Equipment and Delivery Area</u></b> - All service areas and equipment such as above ground storage tanks and HVAC systems are adequately marked and maintained in a clean manner. Fencing or screening is not required; however, all service areas not fenced or screened are well-kept and unsightly debris removed.</p>	B	CC
29	<p><b><u>Fences and Walls</u></b> - All fences and walls are cleared of vegetative overgrowth and are well-maintained.</p>	C	CC
30	<p><b><u>Housekeeping and Cleanliness</u></b> - The maintenance area is well organized and conveys a professional, well managed appearance. Equipment, supplies and parts are stored in orderly fashion.</p>	B	CC
31	<p><b><u>Hazardous/Flammable Material Storage</u></b> - Adequate collection, storage and disposal of hazardous waste and/or flammable material generated by or used in the operations are managed. Hazardous/flammable materials are stored in metal non-flammable cabinets or in containers that are UL approved and properly labeled with the name of the material they hold and the type of hazard they represent.</p>	A	LS
32	<p><b><u>Fire Extinguishers</u></b> - Accessible fire extinguishers suitable for use on anticipated type of fires are located in each building, visibly displayed, and appropriately signed with proper, up-to-date operating instructions, and visible inspection certificates or tags.</p>	A	LS
33	<p><b><u>Eye-Wash Stations</u></b> - Emergency eyewashes are placed in chemical work areas with instructions on use clearly posted.</p>	A	LS
34	<p><b><u>Floors</u></b> - The maintenance area floor is free of clutter and tripping hazards such as extension cords, power hoses, etc. The floor is reasonably free of grease stains, cracks and chips.</p>	B	LS
35	<p><b><u>Shop Lighting</u></b> - Lighting is adequate to perform marina maintenance activities while maintaining a high degree of safety. Fixed ceiling lighting as well as portable retractable lights are clean and maintained with no burned out bulbs. Any suspended fluorescent light bulbs are contained in a protective cover.</p>	B	CC
36	<p><b><u>Storage/Organization</u></b> - Parts and other supplies are stored in an organized, secure and uncluttered fashion. To the greatest degree possible, all parts are stored off the floor on industrial shelves suitable for the weight and physical environment in which they are</p>	B	CC

	used.		
37	<b>Safety Data Sheets</b> – Current safety data sheets are visible, legible and readily accessible to all concession staff.	A	LS
	<b>D. Dock/Launch Facilities</b>		
38	<b>Boat Ramp</b> - Boat launch ramps are constructed with ribbed concrete or other non-slip surface, adequately marked, well maintained. Launch preparation are conducted away from ramps to avoid congestion. Launch instructions and rules are clearly marked and adequately posted.	B	VS
39	<b>Identification</b> - Each mooring is clearly and uniformly marked by a permanently-installed number. Additionally, all electrical pedestals and dock/lock boxes are also numbered to coincide with the slip. Buoy markings conform to applicable uniform federal or state waterway marking systems.	B	VS
40	<b>Cleats</b> - Cleats are properly placed and secured for use at each slip area. No loose or missing cleats are evident. If painted, cleats are free of chipped paint. A sufficient number of cleats are properly sized to secure the vessel to the dock.	B	CC
41	<b>Boat Fenders</b> - Any required bumper materials are available and in good condition. Exposed tire bumpers are encased to the greatest degree possible to minimize rubber markings on hulls and improve marina aesthetics. Cover materials are free of tears and well-secured to the docking system. Rub rails are an acceptable form of bumper.	C	CC
42	<b>Flotation System</b> - Encapsulated foam is present in all areas of the docking system. Where not in place, unencapsulated foam is free of excessive wear and tear and deterioration to reduce park resource concerns. A corresponding plan for its retirement and encapsulated replacement is developed. Tank flotation technology is also an acceptable substitution for encapsulated foam. Systems are sturdy and free of broken or uneven sections.	B	CC
43	<b>Winch System</b> - Where an anchor stay marina system is in existence, adjusting winches are securely fastened to the marina decking, free of peeling paint and rust and well maintained and operational.	A	CC

44	<b>Decking</b> – Any concrete, fiberglass or composite surfaces or pressure treated wood present in all areas of the docking system are clean, free of unnecessary debris/obstructions, and well-maintained overall. Wood decking surfaces are secured with screws and are free of excessive wear, tear, and deterioration. Railings are in good repair and sturdy enough to support visitor use.	A	CC
45	<b>Breakwater</b> - Any provided breakwater is in good working condition. Exposed tire breakwaters and log jam design breakwaters are acceptable, are encased to the greatest degree possible with a material to maximize marina aesthetics and visibility. Cover materials are free of tears and well-secured to the docking system.	B	CC
46	<b>Covered Overhang</b> - Overhang structures are sturdy and well-reinforced with covered area appropriately sized to the slip(s). Bird nests, bird droppings and cobwebs are routinely removed. The structure is painted or treated to prevent rust and mildew. Covered overhang roofs are free of leaks and material is consistent throughout.	A	CC
47	<b>Gangways</b> - Gangways are constructed of pressure-treated wood, galvanized steel or aluminum surfaces that are free of excessive wear and tear and deterioration. All gangway surfaces clean, free of unnecessary debris/obstructions, and overall well-maintained and secured with screws. Railings, where required, are in good repair and sturdy enough to support visitor use. All infrastructure/utilities necessary to service slips are contained and out of sight.	A	CC
48	<b>Hoses</b> - Concessioner-provided hoses are adequate in size and condition for their intended use and free of leaks. Hose system set ups are consistent throughout the operation and free of unsightly patches and other deterioration. All concessioner provided hoses are appropriately coiled in keeping with maritime standards.	B	VS
49	<b>Courtesy Docks</b> - Courtesy docks are appropriately marked and conveniently located to the entire operation, including boat ramp and are equipped with adequate, well-maintained cleats and access ladders. Appropriate signage is evident to indicate maximum tie up time for boaters.	A	VS
50	<b>Fishing Dock</b> - Fishing docks are well signed and equipped with adequate seating for the identified area. Any pole holders are secured and fish cleaning station are clean and well maintained.	B	VS

51	<b>Dock Carts</b> - An adequate number and supply of dock carts are available in the rental dock area to allow guests to easily transport luggage, coolers, and supplies to their boat. Dock carts are clean, well-maintained and in sufficient number to accommodate demand. Carts are stored in an orderly manner in a convenient and dedicated area preferably at the head of dock.	C	VS
52	<b>Dock Boxes</b> - Dock boxes are clean, well-maintained, adequately ventilated, painted and be securely constructed. Dock boxes do not exceed more than one-half the width of the finger or are located in an area off the immediate finger area. A policy of not storing flammable materials including but not limited to paint, solvents, stains, etc. in any lock box is prominently displayed or outlined in the slip rental agreement.	B	VS
53	<b>Dry Boat Storage</b> - Dry boat storage areas are available and located away from guest service areas, secure and appropriately fenced or otherwise screened, adequately sized for its intended use, free of litter and debris, and orderly. A numbering system is in place to identify dry boat storage spaces.	C	VS
54	<b>Sewage Pump Out Facilities</b> - Sewage pump out stations are operable, clean, and well-maintained and emptied on a regular basis. Concessioner-supplied pump out hoses are stored in secure containers with disinfectant.	A	RP
55	<b>Hoists</b> - Only those Concessioner employees trained on standard operating procedures for hoists operations are permitted to work with this equipment. Boat hoists are functional and well maintained and sized to support the inventory and nature of boats it serves. Emergency cut off switch are prominently located and clearly visible. Cables and lines are in good condition and free of fraying and deterioration. The swing bar is well oiled and free of squeaks and rubbing. An adequate area on the dock is available to provide for unencumbered hoisting and launching of a vessel.	A	CC
56	<b>Winterization</b> - All de-icing systems used in covered slips, ramps, docks, utilities are well maintained and operable.	B	VS
<b>E. Fuel Docks</b>			
57	<b>Docks</b> - Fuel docks, particularly in areas with changing water levels are located in protected areas away from wave action. If specified, stable platforms are provided for personal watercraft fueling. Fuel docks are clean and clear of debris, and in good condition.	A	VS

58	<b><u>Fuel Dispensers</u></b> - Fuel dispensers have nozzles that shut off automatically. Each hose is equipped with a breakaway device. Each dispenser has working fire/shear valves. Fuel dispensers, including nozzles and hoses are in good working condition. Pumps are locked when attendant is not on duty.	A	CC
59	<b><u>Available Fuels</u></b> - At a minimum, unleaded gasoline, outboard motor oil, and other lubricants are available to the boating public.	C	VS
60	<b><u>Emergency Response and Spill Containment Equipment</u></b> - Fire response equipment is provided at the fuel dock in accordance with NFPA and other applicable regulations. Spill response equipment is in good condition, readily available and stored at the fuel dock. This equipment is specified in the Concessioner's SPCC and Emergency Response Plans and is adequate to respond to incidental and non-incidental fuel and oil spills at the fuel dock for the purpose of stopping the spill. The quantity of absorbent material equals a ratio of approximately three feet of boom to every foot of the largest boat within the marina, including those in boat storage. Equipment provided at the fuel dock also includes required personnel protective equipment for emergency response. Dispersants are permitted to clean up spilled fuel or oil.	A	RP
61	<b><u>Fuel Storage Tanks</u></b> - Secondary containment and automatic leak detection systems are provided for all aboveground, underground and dock tanks, piping and dispensers, if specified or required. If specified, breakaway devices are provided for dispenser hoses.	A	CC
62	<b><u>Fuel Lines</u></b> - Fuel lines are well-maintained, free of cracks and installed in a manner to prevent leaks from developing. Welded, screwed joints or approved connectors are used. Fuel lines passing through concrete or under paved roads, sidewalks, parking lots, are in pipe sleeves, mastic, or otherwise free to allow for settlement, frost action, vibration or traffic. When dispensing is from a floating structure, sufficient lengths of oil-resistant flexible hose is employed between the shore piping and the piping on the floating structure as necessary by change in water level. Fuel lines are located and protected from physical damage.	A	CC
63	<b><u>Emergency Fuel Shutoff</u></b> - A readily accessible and posted valve to shut off the fuel supply at the fueling pumps is provided near the fuel dock at or near the approach to the pier and at the shore end of each pipeline adjacent to the point where flexible hose is attached.	A	LS

64	<b>Hazardous Materials Storage</b> - All areas storing flammable or hazardous materials are clearly marked. Flammable liquids are not stored in battery charging or storage rooms. Hazardous materials storage adjacent or in over water locations have secondary containments.	A	LS
65	<b>Required Public Safety Notices</b> - All required NFPA public safety notices, including "no smoking" signs are conspicuously posted around refueling and hazardous storage areas. Signage concerning fueling operations as required in NFPA 303, Fire Protection Standards for Marinas and Boatyards, and maintained as required by Applicable Laws. Emergency telephone numbers are conspicuously posted around fuel dock areas.	A	AL
66	<b>Other Safety Equipment</b> -Other required safety equipment, including eye-wash, emergency ladders, are operable, and provided and located near the fueling dock.	A	LS
<b>F. Dock Area Safety</b>			
67	<b>Fire Suppression Systems and Extinguishers</b> - Accessible fire extinguishers suitable for use on anticipated type of fires are located in each building, visibly displayed, and appropriately signed with proper, up-to-date operating instructions, and visible inspection certificates or tags. Fire suppression systems are in place, operational with visible up to date inspection certificates or tags.	A	LS
68	<b>Fire Hoses</b> - Fire hose stations are well marked and visible to the slip renter. Fire hoses and supporting equipment are inspected monthly and have an inspection tag prominently displayed. Hoses are in good condition and free of wear and tear. Hose rollers are free of resistance and provide smooth release of hoses.	A	LS
69	<b>Emergency Lighting</b> - Any required emergency backup battery or generator lighting systems are operational and maintained.	A	LS
70	<b>Slip Utility Connections – Electrical</b> - Electrical outlets are marine-grade hard wire attached feeds with working covers and connected to a working ground fault interrupter.	A	LS
71	<b>Slip Utility Connections – Water</b> - All water lines are operational with working spigots and equipped with operational back flow preventers sized for the size of the line.	A	VS

72	<b>Security and Lighting</b> - Sufficient outside lighting is maintained on ramps, docks, slips and other public areas for night time operations. After scheduled hours, lighting is reduced to provide safe after hours egress to slip areas and minimal security in the marina complex. Access to the slip rental area is controlled by locked, controlled security and is only be accessible by from land by slip renters. In the absence of a locked controlled security system, provided security personnel are provided.	A	LS
73	<b>Lifesaving Devices</b> - At least one Coast Guard approved throw-type flotation device (with at least 50 feet of 1/2-inch diameter rope attached or a reach pole) is located in clear view on the gas dock and every 200 feet on other docks.	A	LS
74	<b>Access Ladders</b> – Well maintained and secure access ladders are located in sufficient numbers and locations on docking systems to provide convenient and quick egress in the event of an unexpected fall into the water.	A	LS
<b>OPERATIONAL STANDARDS</b>			
<b>A. Reservation Services</b>			
75	<b>Availability</b> - Reservation services are available, at a minimum, via telephone, mail, and fax. If reservation services are available via the internet, they are available on a 24-hour, real-time on-line availability. If telephone service is utilized, service is available during normal business operating hours.	B	VS
76	<b>Knowledge of Slip Rental Staff</b> - Reservation agents provide accurate information about rates, slip rental policies and marina services, local attractions, access, etc. The concessioner's website provides the same information.	A	VS
77	<b>Confirmation</b> - Each reservation call concludes with confirmation number. Sales are accurately and legibly recorded. Receipts are given for all slip, dry boat storage and moorings rentals. Additionally, an e-mail is automatically sent, or written confirmation is sent via mail to confirm the reservation and provide additional concessioner and park information.	B	VS
78	<b>Management Information Systems</b> - The reservation system integrates with the concessioner's Property Management Information System (PMIS) and provides comprehensive reporting capabilities.	C	VS

79	<b>Payment Methods</b> - The concessioner honors credit cards to include, but not limited to, MasterCard, Visa, American Express, and Discover. Debit cards and other types of payment methods including but not limited to travelers' checks, personal visitor checks and gift cards may be accepted at their discretion or at the direction of the Service.	B	VS
80	<b>Deposits</b> - Reservation deposits are equivalent to one month's dockage, unless an entire season or year of slip rental is paid in advance. For transient slips, a one night's stay required deposit is applied to last night of stay.	B	VS
81	<b>Rate Changes</b> - The advance rate is honored and customer is refunded the difference if the approved rate is lower than the anticipated rate. Provisions for additional charges are provided for any amenities.	B	VS
82	<b>Cancellations</b> - If slips are rented on a seasonal or annual basis, the slip holder may terminate a rental agreement by giving thirty days written notice prior to the end of the current annual term. If the rental agreement is terminated without thirty days' notice, the concessioner may retain the deposit. For shorter-term rentals, concessioners may establish their own refund/cancellation policy, based on comparable operations. Concessioners select a cancellation deadline from 1-30 days prior to the arrival date and communicate it to the guest at time of reservation. A refund for the full deposit is made if the guest cancellation complies with this policy. If a reservation is made within the established cancellation window, and the guest cancels the reservation, concessioners may require the guest to forfeit the entire advance deposit provided that the "no refund" policy was communicated to the guest at the time of the reservation. The concessioner's cancellation and refund policy is documented with the reservation confirmation. Concessioners must determine what adjustment must be made if a guest cancels after the deadline due to a personal emergency and demonstrated in written materials. The concessioner's rental cancellation and refund policy is clearly stated on the boat rental agreement. For transient slip renters, 24 hour cancellation window is appropriate.	B	VS
<b>B. Registration Check-In/Check-Out Services</b>			
83	<b>Hours of Operation</b> - All facilities and services are operated in accordance with the specified and posted hours of operation. Hours of operation are prominently displayed at each facility and posted in such a manner as to be easily visible to the public.	B	VS

84	<b>Check-In</b> - Check-in is completed promptly in a friendly and professional manner. Photo ID's are requested. At a minimum, the slip rental staff confirms slip type and length, duration of stay, departure date and check-out time and method of payment. Slip rental staff also identifies any extra charges (utility pass through, donations to friends groups and associations).	A	VS
85	<b>Park Orientation Material</b> - The concessioner offers park-specific material upon check-in, to include brochures, maps (marina and park maps), newsletters, and special notices. Upon request, additional information is provided about local businesses, places of interest by land and by boat, major highways, airports, restaurants, places of worship, etc.	B	VS
86	<b>Check-Out</b> - Guests are acknowledged as soon as possible with eye contact and a warm friendly greeting. Guests are presented with a copy of the statement with a method of payment shown. Guest comment cards are included in the check-out material, or guests are directed on how to fill-out an online comment card. Slip rental staff completes check-out promptly, asks the guest if the stay was satisfactory, and thanks departing guest for staying at the marina	A	VS
<b>C. Other Services</b>			
87	<b>Valet (Dock-Hand Services)</b> – Provided valet services are prompt and courteous.	C	VS
88	<b>Housekeeping</b> - Provided housekeeping services are prompt and courteous. No equipment, recreational gear, or other items are stored or used on board the docks without vessel occupant presence so as to not impede emergency access down the docking system.	B	VS
89	<b>Launching and Retrieve Services</b> – Provided launch and retrieve services are prompt and courteous.	C	VS
90	<b>Lost &amp; Found</b> - Any and all items found are logged and turned into a designated secure location. Lost and found articles are properly dated, secured and stored. Records are maintained and procedures established to ensure prompt, accurate response to guest inquiries concerning lost articles.	C	VS
91	<b>Winterization Notification</b> - Slip renters are provided with adequate and timely notices on winterization activities such as water shut-off and ramp and dock removal that may affect renter vessels.	C	VS
92	<b>Access</b> - Slip renters are provided 24-hour access to their slips.	C	VS

93	<b>Private Sales</b> - Private sales of boats in marina areas are not permitted. Boats do not display "For Sale" signs. No slips or moorings are rented that are used or reserved by any persons for purposes of promotional display or sale of boats or boat accessories.	B	VS
94	<b>Other Services</b> - Other services such as boat chase, towing, landside shuttle, boat launch, dive services, pump-out, and hydro hoist services are provided as required, and are prompt and courteous.	C	VS
	<b>D. Slip Management</b>		
95	<b>Slip &amp; Boat Management</b> - A master diagram of the marina, including the location of all slips and supporting facilities is prominently displayed, readable and accurate.	C	VS
96	<b>Maximum Boat Size</b> - Boats in the marina do not exceed assigned slip designed capacity. Total length and beam include all temporary and permanent appurtenances.	B	VS
97	<b>Occupant Management (Permanent)</b> - An accurate and current record is maintained for each slip containing: slip number and location, slip dimension, utilities at each slip, and details of slip occupant. Other details include boat owners name, address, and telephone numbers. Additional boat information includes boat name, hull identification number, model, year made, manufacturer, color, type, registration/documentation number, boat insurance information and a list of people authorized to use the boat. Files are maintained for each slip containing important documents and correspondence. Slips are checked and cleared of all lines and articles left by previous occupants.	B	VS
98	<b>Occupant Management (Transient)</b> - An accurate and current record is maintained for each slip containing: slip number and location, slip dimension, utilities at each slip, and details of slip occupant. Other details include boat owners name, address, and telephone numbers. Additional boat information include boat name, hull identification number, model, year made, manufacturer, color, type, registration/documentation number, boat insurance information and a list of people authorized to use the boat. Files are maintained for each slip containing important documents and correspondence. Concessioners distribute a welcome aboard package including rules and regulations. The transient guest is provided a head lock key or combination and the concessioner is available to assist transient guests with docking.	B	VS
99	<b>Quiet Hours</b> - Required quiet hours for all services are enforced by the Concessioner.	B	VS

100	<b><u>Dock Housekeeping</u></b> - Daily dock checks are provided to ensure that nails are not protruding, decking has not lifted, cleats are holding, boats are not bumping, hoses are hanging, utilities are in working order, bow pulpits and anchors are not overhanging the dock causing danger to people walking by.	B	VS
101	<b><u>Slip Transfers</u></b> - Concessioners shall accommodate slip transfers from requesting guests by placing them on the waitlist for the preferred slip.	C	VS
102	<b><u>Waitlist</u></b> - Waiting lists are maintained on a first-come, first-served basis for the rental of buoys, slips, and dry boat storage spaces. The waitlist is maintained until all interested parties are accommodated.	C	VS
103	<b><u>Courtesy Docks</u></b> - Unless otherwise provided for in the authorized rate schedule, space on courtesy docks is not rented. Use of courtesy docks does not exceed the specified time limits.	C	VS
104	<b><u>Slip Rental Agreements</u></b> - Written approved rental agreements, conforming to applicable legal requirements are executed for each slip rental.	C	VS
	<b>E. Fuel Dispensing</b>		
105	<b><u>Compliance</u></b> - All required inspection stickers are visible and current on pumps. Dispensers and hoses are clearly and appropriately labeled.	B	AL
106	<b><u>Sales Operations</u></b> - Only those Concessioner employees trained on standard operating procedures for fuel dock operations are permitted to work on the fuel docks. Concession employees inquires of boat captain what type of fuel is required and obtains the correct fuel line, and either fills the tank or allows the customer to fuel their own tank. The entire fueling process is monitored. All fueling hoses are neatly coiled when not in use and do not impede dock/finger passage.	A	VS
107	<b><u>Emergency Action/Response Plan</u></b> - A readily accessible and current emergency action/response plan outlining actions to be taken, personnel responsible, and other emergency resources is available.	A	VS
108	<b><u>Oil and Fuel Spills</u></b> - Maintenance and operating practices are in accordance with the Spill Prevention, Control and Countermeasure (SPCC) plan procedures to control leakage and prevent accidental escape of flammable or combustible liquids. Spills are cleaned up promptly.	A	RP

<b>F. Marine Radio Operations</b>			
109	<b>Operational Requirements</b> - All marinas are equipped with operating business band or VHF marine radios, with back up available. The radios are properly licensed, and all staffs are instructed in use of the radios. Additionally, all concessioner personnel authorized to use a VHF marine radio are trained in the appropriate communication protocol. This communication protocol is documented.	A	LS
110	<b>Emergency Frequency &amp; Protocol</b> - A port operations frequency that can be heard throughout the body of water that the marina serves is established. The concessioner authorizes a specific transmission channel and call sign.	A	LS
111	<b>Care &amp; Handling</b> - All authorized dockhands carry fully operational VHF marine radio units. When not in use, all radios are returned to the dock master or marine office for recharging and safe storage.	B	CC
<b>G. Outside Contractor Requirements</b>			
112	<b>Qualifications &amp; Credentials</b> - An approved list of qualified contractors is managed. Each-qualified contractor has a file on hand that includes current occupational license and city/state sales tax registration number. A developed contractor management program addresses how contractors will hold certificates of public liability insurance with companies reasonably acceptable to the NPS. The insurance policy names the NPS as an additional insured. In addition, a current workers compensation insurance certificate is available. Copies of MSDS sheets for all chemicals used by the contractor while in the marina are kept current as new products are used. Only qualified contract boat repair mechanics perform boat repair work. A qualified mechanic is one who has education and/or experience in the type of work performed sufficient to provide high quality customer service and address mechanical issues for boats allowed to be worked in the marina. Boat repair apprentices may perform work if a qualified mechanic oversees their work.	C	VS
113	<b>Allowable Activities</b> - Only-qualified contractors perform basic maintenance within slips. More significant maintenance activities must occur within a designated area away from the slips area or outside the Park appropriate for such work.	C	VS
<b>H. Security Procedures</b>			

114	<b><u>Hours of Coverage</u></b> - The dock area is secured (by locking gates, entrance gates, etc.) or through security patrols, 24 hours per day, 7 days per week during the operating season.	B	VS
115	<b><u>Marina Inspection</u></b> - Every slip is checked daily to ensure that no boat is in the marina that is not entitled to be there, no boat has been moved within the marina without the approval of the manager, and no boat is viewed from the dock as in danger of sinking, fire, breaking loose.	B	CC
116	<b><u>Incident Reporting</u></b> - Incident reports are available and completed in order to keep records of documented accidents, the times they occurred, persons involved, etc. All incidents reports for types of incidents required by the Park are immediately reported to the park.	B	VS
117	<b><u>After-Dark Procedures</u></b> -The concessioner security personnel completes comprehensive security rounds by walking all docks and support facilities. A "security log of events" is kept that notes any suspicious activities. Concession security personnel monitors all gates, storage areas, fuel dispensing areas, ensuring these areas are secure and/or locked.	B	LS
118	<b><u>Emergency Numbers Posted</u></b> - Current emergency telephone numbers are posted in numerous conspicuous locations.	B	LS
<b>F. Personnel</b>			
119	<b><u>Staffing Levels</u></b> - All facilities and services are properly staffed so as to prevent undue delays in service. In determining what constitutes undue delay, the consideration is given to the kinds and types of services being rendered and which situations or conditions are beyond the Concessioner's control (e.g. unanticipated influxes of guests, facility or equipment breakdowns, or sudden weather changes). The reasonableness of the delay, based on the above is the determining factor.	A	VS
120	<b><u>Employee Attitude</u></b> - Each employee projects a friendly, hospitable, helpful, positive attitude and is capable and willing to answer guests' questions (about both job and general park information). Additionally, employees are proactive in solving guest issues, ensuring guest satisfaction, and anticipating guests' needs.	A	VS

121	<b>Employee Appearance</b> - Each employee wears a uniform or name tag identifying them as a concession employee. The uniform is commensurate with the type of service provided. Employees present a neat, clean, and otherwise attractive professional appearance.	A	VS
122	<b>Employee Training Programs</b> - An active training program for all employees for the development of necessary skills and techniques is provided for all employees. These sessions stress work performance and, as appropriate to the position, also includes technical training for specific equipment, first aid, AED, fire and life safety (e.g. CPR and Heimlich maneuver), alcoholic beverages, product and service presentation, cleanliness, employee attitudes, NPS philosophy and policy and any other training requirements. Performance is indicative of good training.	A	VS
123	<b>Management Availability</b> - All marina facilities have a general manager or manager on duty at all times.	A	VS
124	<b>General Manager Credentials</b> -The marina general manager possesses a strong background in the marina industry. Other certifications, as required, including a Certified Marina Operator or Certified Marina Manager are maintained.	B	VS
	<b>G. Rates</b>		
125	<b>Approved Rates</b> - All rates charged do not exceed those approved by the Superintendent. These rates are verified against the specific approved, service, quality, price or other such criteria.	A	VS

## **Ranking Definitions**

### **A. Major**

First Priority (A) conditions or practices create or have the potential to exert a **significant** impairment to visitor or employee health and safety; park resources; visitor services or visitor enjoyment; Concession Facilities or associated personal property.

### **B. Moderate**

Second Priority (B) conditions or practices create or have the potential to exert a **moderate** impairment to visitor or employee health and safety; park resources; visitor services or visitor enjoyment; Concession Facilities or associated personal property.

### **C. Minor**

Third Priority (C) conditions or practices create or have a potential to exert a **minor** impairment to visitor or employee health and safety; park resources; visitor services or visitor enjoyment; Concession Facilities or associated personal property.

**Focus Area Acronyms**

Primary Focus Area Abbreviation	Primary Focus Area
LS	Life Safety/Health
RP	Resource Protection
VS	Visitor Satisfaction
CC	Cleanliness/Condition
AL	Accessibility/Legal Requirements

**EXHIBIT C****NONDISCRIMINATION****SEC. 1 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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) The Concessioner will comply with all provisions of Executive Order 13658- Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, which are incorporated by reference into this Contract as if fully set forth in this Contract. The applicable contract clause is available at <https://federalregister.gov/a/2014-23533>.

(8) 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.

(9) The Concessioner will include the provisions of paragraphs (1) through (8) 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, sexual orientation, gender identity, age, national origin, or disabling condition;
- (ii) discriminating by segregation or other means against any person.

### **SEC. 2 ACCESSIBILITY**

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

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

**(a) Discrimination Prohibited**

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

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

**(b) Existing Facilities**

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

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

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

**Real Property Improvements Assigned**

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

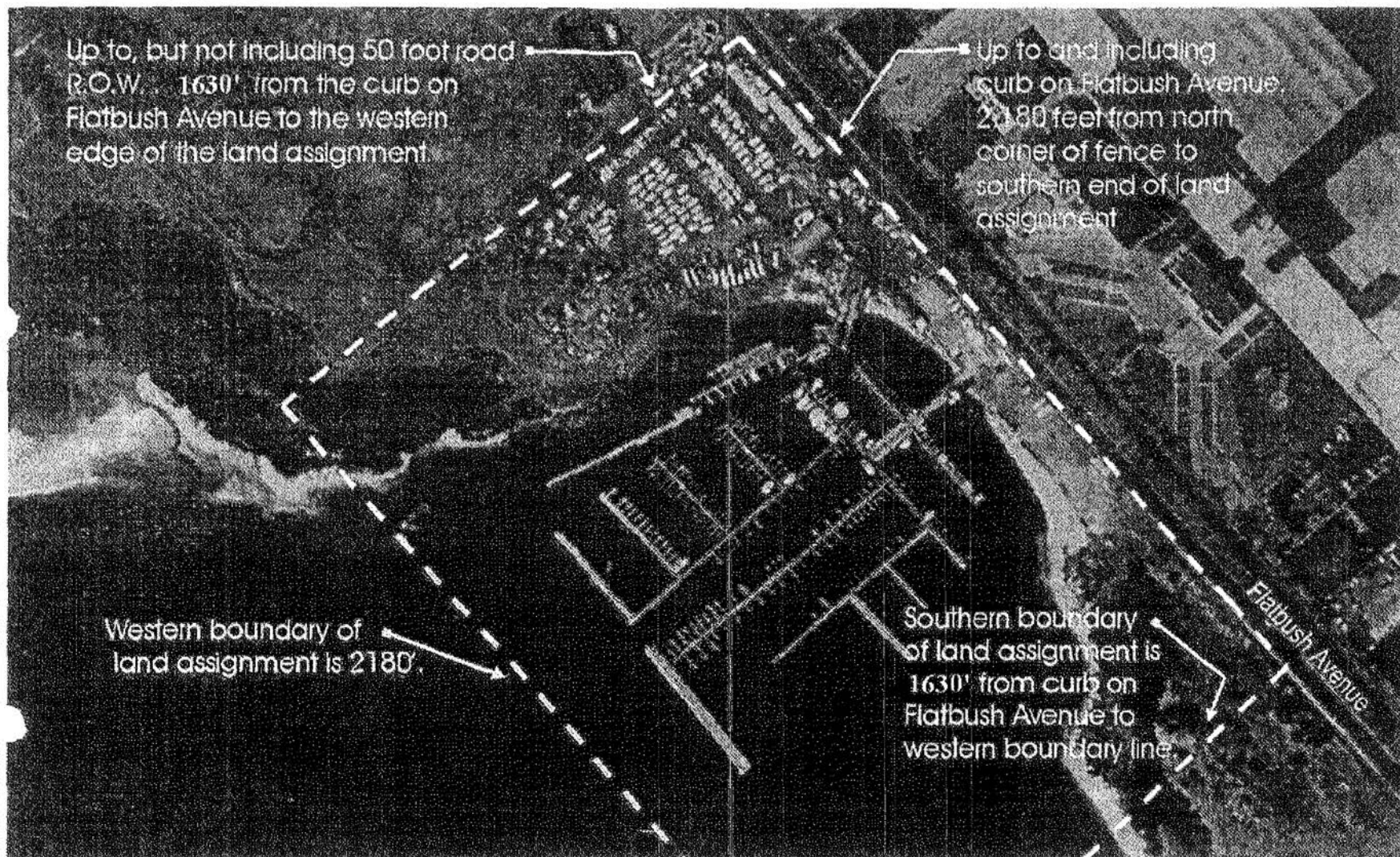
Asset Code	Asset Description	Asset Type	Unit of Measure	Date Built or Installed	Historic (Y or N)	Insurance Replacement Value
45684	JABA BU-NSFB-C Gateway Marina Office	4100	1618'sq		N	\$281,150
82550	JABA BU-NSFB-C Marina Gate House	4100	94'sq		N	\$8,156
82549	JABA BU-NSFB-C Marina Store	4100	1142'sq		N	\$113,352
88620	JABA UT-NSFB-C Marina Utility Chamber	4100	323'sq		N	\$11,069
88619	JABA BU-NSFB-C Marina Restrooms	4100	1601'sq		N	\$146,120
240535	Gateway Marina Services Building	4100	1668'sq		N	\$71,657
1189040	Service Dock				N	\$219,741
1189019	Travel Lift Well				N	\$151,775
225831	Public Docks				N	\$3,249,125
	<b>Totals</b>					<b>\$4,252,145</b>

\* 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 : May 1, 2016

By: 

Michael A Caldwell  
Regional Director, Northeast Region



**Land Assignment Map**  
**Gateway Marina at Barren Island**  
Gateway National Recreation Area

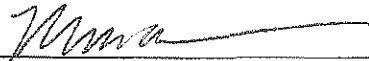
**EXHIBIT E**

**ASSIGNED GOVERNMENT PERSONAL PROPERTY**

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

NONE

Approved, effective May 1, 2016

By:   
Michael A. Caldwell  
Regional Director, Northeast Region

**EXHIBIT F****CONCESSIONER CONSTRUCTION, MAJOR REHABILITATION,  
AND REPAIR AND MAINTENANCE PROJECT PROCEDURES****SEC. 1. 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 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 National Park Service ("Service"). This exhibit applies to the building of new structures or facilities, major rehabilitations, and the repair and maintenance ("R&M projects") of existing Concession Facilities that change the nature, appearance or value of existing Concession Facilities. Rehabilitation projects that are not major rehabilitations as defined in the Contract are considered as R&M projects. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this Contract and Exhibit A, the main body of the Contract and Exhibit A will prevail.

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

In addition, these procedures will enable the appraisal of LSI to occur in an orderly way. The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the Area 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 the Director through an approved Project Statement (PS).

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

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

**SEC. 2. DEFINITIONS**

(a) "Annual Construction and Repair and Maintenance Management Plan" (CMP) means 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.

- (b) "Approved Project Documents" means project drawings and specifications approved by the Director and used by the Concessioner to direct a contractor in the type, size and quality of projects.
- (c) "Change Order" means 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.
- (d) "Construction" means 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.
- (e) "Construction Supervisor" means a Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and NPS and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.
- (f) "Conventional Design-Bid-Build Methods" means construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.
- (g) "Contact Person" means a Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.
- (h) "Facilitator" means a Concessioner employee designated to have the role of providing structure and agendas for meetings with the Service and who records meeting discussions and outcomes.
- (i) "Guaranteed Maximum Price Design-Build Construction Methods" means a 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).
- (j) "Licensed Contractor" means an entity performing construction certified or licensed by the State to perform construction services within that State.
- (k) "Major Rehabilitation" Defined in Exhibit A: Leasehold Surrender Interest.
- (l) "Project Coordinator" means a Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.
- (m) "Project Statement" (PS) means an agreement between the Service and the Concessioner approved by the Director that authorizes the development and implementation of individual projects identified in a CMP.
- (n) "Registered Technical Professionals" means 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.
- (o) "Substantially Complete": Defined in Exhibit A: Leasehold Surrender Interest.
- (p) "Total Project Cost" means the total of all actual project expenditures (invoiced and paid) for completion of a project.
- (q) "Total Project Price" means the total of all estimated project expenditures for completion of a project.

**SEC. 3. PROJECT PLANNING AND DESIGN****(a) Submit an Annual Construction and Repair and Maintenance Plan (CMP)**

Before approval to proceed with any project is granted by the Director, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP should include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with the Service.

**(b) Notify Service of Intent-to-Proceed**

The Concessioner shall formally notify the Director in writing of intent to proceed with any facility planning, design and/or projects. The project must be identified in the CMP the calendar year before to assist the 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 Director are included in the project scope before the project is funded.

**(c) Identify a Project Coordinator**

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

**(d) Prepare a Proposed Project Statement (PS)**

Arrange and facilitate a project planning conference with the Service and prepare a proposed PS to be submitted to the Director for review. The conference should be performed on the proposed project site, if needed.

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

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

(3) Leasehold Surrender Interest. If the Concessioner seeks leasehold surrender interest as a result of a construction project, the Concessioner must request and receive the written approval of the proposed construction project by the Director in accordance with the terms of this leasehold surrender interest concession contract. An estimate of the amount of leasehold surrender interest shall be identified in advance if the Concessioner requests leasehold surrender interest. The estimated leasehold surrender interest costs shall be separately identified as part of the Total Project Price and substantiated, if requested, with written and competitively acquired price proposals or construction contracts. Not all projects qualify for LSI. LSI is only granted under the terms of this Contract, including, without limitation, its Exhibit A.

(4) Methods of Establishing the Expected Value of Leasehold Surrender Interest. A number of methods are available to estimate the Concessioner's leasehold surrender interest as long as eligible direct and indirect costs are specified. The methods of identifying the expected value of leasehold surrender interest include

guaranteed maximum price design-build construction methods, conventional design-bid-build methods, and construction price estimates professionally prepared by subject area experts.

(5) Professional Services and Construction. The Concessioner must assure the Service 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 Director. 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 Director.

(6) 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.

#### **(e) Submit Project Statement for Service Review**

The proposed PS shall be submitted in written correspondence from the Concessioner to the Director requesting review. A PS signed by the Director constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Director. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the Service. 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 Service objectives are met.

(1) Project Statements Containing Claims for Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for LSI purposes. The eligibility of any expenditure for LSI will not be identified until all project planning is complete to the satisfaction of the Director, including NEPA and Section 106 compliance, if required. An approved PS serves only as a guide for further project development to the level specified in the PS. The Director shall only approve final LSI costs after project completion and written project close-out.

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

#### **(f) 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 Director acceptance. Each project shall be identified with a unique project number assigned by the Service. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

(1) Leasehold Surrender Interest Project File. The Project File will become an LSI project file when the Concessioner requests approval of LSI. It shall be established and maintained by the Concessioner and shall include all of the documents identified in item (2) below. This file shall be submitted at the time of Project Close-out to the Director as the basis for the leasehold surrender interest request. As part of this file, the Concessioner must maintain auditable records of all expenditures attributable to each project and have them available for review if requested by Service personnel. Invoices shall contain sufficient information to identify the tasks completed or products delivered as agreed upon in contracts presenting a full scope of work. The

file shall clearly provide a "paper trail" between expenditures eligible for LSI purposes and the payment of those expenses.

(2) 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 Director should be filed in this section.

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

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

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

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

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications should be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. This section must contain all correspondence supporting LSI with appropriate cross reference to other sections for clarity of the LSI "paper trail." (For example, cross reference tabs). Also contained in this section shall be a copy of the project acceptance and close-out letter from the Director that specifies the amount of leasehold surrender interest, if any, applicable to the project.

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

#### **(g) 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.

(1) 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.

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

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

(3) 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.

(4) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the NPS early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on Area 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 Area resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.

#### **(h) 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 Director. 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 Director.

**(i) Submit a Project Estimate and Schedule**

An estimate of the Total Project Price and completion schedule shall be submitted to the Director 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.

**SEC. 4. PROJECT MANAGEMENT PROCEDURES**

**(a) 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 should have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The Service should 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.

**(b) Submit a Total Project Price for Review**

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

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

**(c) Notice-to-Proceed with a Project**

A "Notice-to-Proceed" with a project will be issued when all submittals requested by the Director have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.

**(d) Hold a Pre-Project Conference with the Contractor**

The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the Director 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.

**(e) 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 Director approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.

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

Total Project Price where the project involves LSI. (See discussion below for review and approval of change orders and contract modifications.)

(2) 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 Director, 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 Director.

#### **(f) Submit Requests for Changes in Approved Project Documents**

The Director'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 Director 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 Director include the following:

- (1) Changes affecting natural, cultural and/or historic resources;
- (2) Changes in designated visual appearance;
- (3) Changes in the interface with Service utility and/or road facility maintenance operations;
- (4) Changes in project scope and/or the estimated leasehold surrender interest, as required for facility improvement projects.
- (5) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.

#### **(g) Submittal of Change Orders for Review and Approval (For Leasehold Surrender Interest Only)**

When one of the five factors listed above exists, the Concessioner shall submit, for the review and approval of the Director, documentation justifying the proposed changes. The Concessioner shall also submit a revised Total Project Price for each proposed change, as needed, indicating the proposed change in estimated LSI. All change orders or any other means of directing the Contractor that may have the effect of increasing the Total Project Price will require the Director's review and approval, if the project has LSI implications.

#### **(h) Service Project Inspection**

The project will be inspected periodically by a representative of the Service. 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.

#### **(i) 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 the Service.

**(j) 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 Director, 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 Director.

**(k) Requesting Approval of Leasehold Surrender Interest**

Upon substantial completion of a project, as determined by the Director, the Concessioner must provide the Director a written schedule of requested LSI eligible costs incurred, which becomes the Concessioner's request for LSI approval. The project file, containing actual invoices and the administrative record of project implementation, must support these expenditures and shall be submitted to the Director for review with the request. If requested by the Director, the Concessioner shall also provide written certification from a certified public accountant regarding the LSI costs. The certification must comply with the requirements of Exhibit A of this Contract.

**(l) Project Completion Report**

Upon completion of any project, the Concessioner shall submit a Project Completion Report to the Director. 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 (m) below). Projects where LSI is requested may require the submittal of any other similar documents deemed by the Service necessary to establish complete project documentation. The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

**(m) "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 Director. At least two half-size sets of drawings shall also be provided. The drawings establishing LSI shall provide a full and complete record of all "as-constructed" facilities including reproduction of approved submittals and manufacturer's literature documenting quality of materials, equipment and fixtures in addition to a record set of project specifications approved for construction.

**(n) Request Project Acceptance and Close-out by the Director**

The Concessioner shall request project acceptance by the Director 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 close-out from the Director, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work. For LSI projects, the project close-out letter issued by the Director will specify the granted amount of LSI value resulting from the project.

**EXHIBIT G****LEASEHOLD SURRENDER INTEREST  
AS OF THE EFFECTIVE DATE OF THIS CONTRACT**

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

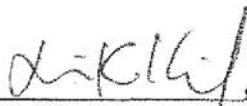
NONE


The parties intend that there be no Leasehold Surrender Interest incurred during the remaining portion of the Contract term.

Exhibit G Approved Effective: May 1, 2016

CONCESSIONER

NATIONAL PARK SERVICE  
United States of America

By:  AS  
Louis Kallif  
Title: MAWAGWC MEMBER

By:   
Michael A. Caldwell  
Regional Director, Northeast Region

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## EXHIBIT H MAINTENANCE PLAN

### INTRODUCTION

This Maintenance Plan between JEN Marine Development, LLC (hereinafter referred to as the "Concessioner") and the National Park Service (hereinafter referred to as the "Service") sets forth the maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area (hereinafter referred to as the "Area") that are assigned to the Concessioner for the purposes authorized by the Contract. In the event of any apparent conflict between the terms of the main body of the Contract and this Maintenance Plan, the terms of the Contract, including its amendments, will prevail. Full compliance with the requirements of this Maintenance Plan is required in order to satisfy the Concessioner's Maintenance obligations under the terms of the Contract.

This plan will remain in effect until superseded or amended. It will be revised as determined necessary by the Superintendent of the Area. Revisions may not be inconsistent with the terms and conditions of the main body of the Contract. Any revisions must be reasonable and in furtherance of the purposes of this Contract.

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### PART A – GENERAL STANDARDS

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#### 1) General Concession Facilities Standards

Pursuant to the Contract, the Concessioner is solely responsible for the maintenance of all Concession Facilities to the satisfaction of the Service. Compliance with the terms of this Maintenance Plan is required for this purpose.

The Concessioner must conduct all maintenance activities in compliance with Applicable Laws. Applicable Laws include, but are not limited to Service standards, DOI and NPS Asset Management Plans, NPS Management Policies, and manufacturer recommendations and specifications.

#### 2) Definitions

In addition to the defined terms contained or referenced in the Contract, the following definitions apply to this Maintenance Plan.

**Asset** – Real Property that the Service desires to track and manage as a distinct identifiable entity. It may be a physical structure or grouping of structures, land features, or other tangible property that has a specific service or function such as an office building, lodge, motel, cabin, residence, campground, marina, etc.

**Capital Improvement** - A Capital Improvement, as further defined in Exhibit A to the Contract, is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this Contract.

**Component** – A portion of an Asset or system.

**Component Renewal/Replacement (CR)** – The planned Replacement of a Component at the end of its Useful Life. Component Renewal/Replacement examples include the replacement of roofs; electrical distribution systems; heating and cooling systems; pavement replacement for roads, parking lots and walkways; and the rehabilitation of windows and/or replacement of windows and doors. Component Renewal/Replacement includes the deconstruction of the existing Component and Replacement with a new Component of equal capability and performance. These actions recur on a periodic cycle of greater than seven years.

**Concession Facilities** - Concession Facilities, as defined in the main body of the Contract, are all Area lands assigned to the Concessioner under the Contract and all real property improvements assigned to or constructed by the Concessioner under the Contract.

**Deferred Maintenance (DM)** – Maintenance that was not timely or properly conducted. Continued Deferred Maintenance will result in Deficiencies.

**Deficiencies** – Defects in an Asset or Component that result when Maintenance is not performed in a timely manner. Deficiencies may not have immediately observable physical consequences, but when allowed to accumulate uncorrected, lead to deterioration of performance, loss of Asset value, or both.

**Environmentally Preferable** - Products or services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, productions, manufacturing, packaging, distribution, reuse, operations, Maintenance, or disposal of a product or service. Product considerations include, but are not limited to, the environmental impacts of the product's manufacture, product toxicity, and product recycled content including postconsumer material, amount of product packaging, energy or water conserving features of the product, product recyclability and biodegradability. These include those products for which standards have been established for federal agency facilities and operations.

**Facility Operations** – Operational actions performed by the Concessioner on a recurring basis that meet daily operational needs of Concession Facilities. Typical work performed under Facility Operations includes janitorial and custodial services, snow removal, operation of utilities, and grounds keeping. Certain Facility Operations requirements may be included in Exhibit B (Operating Plan) to the Contract.

**Feasible** - The ability to provide the equipment, materials or procedures that are required because they are technically possible, economically reasonable, appropriate for the location and the use identified, and consistent with industry best management practices.

**Hazardous Substance** – Any Hazardous Waste, hazardous chemical or hazardous material as defined under Applicable Laws.

**Hazardous Waste** - Any waste defined as such under 40 CFR 261 – 265 or other Applicable Laws.

**Maintenance** – The maintenance of Concession Facilities as described in this Maintenance Plan. Maintenance includes, but is not limited to, actions taken under the following maintenance categories: Component Renewal/Replacement; Recurring Maintenance; Facility Operations; Preventive Maintenance; and Repair.

**Personal Property** – For purposes of this Maintenance Plan, manufactured items of independent form and utility including equipment and objects solely for use by the Concessioner to conduct business. Personal Property includes, without limitation, removable equipment, furniture and goods, necessary for Concessioner operations under the Contract. Personal Property may be Government assigned property.

**Preventive Maintenance (PM)** – Planned, scheduled periodic Maintenance activities that are performed weekly, monthly, quarterly, semi-annually, or annually on selected Assets or Components, typically including, but not limited to, inspection, lubrication, and adjustment.

**Recurring Maintenance (RM)** – Planned work activities that reoccur on a periodic cycle of greater than one year to sustain the useful life of an Asset or Component. Typical projects include, but are not limited to painting, pump and motor replacement, cleaning, repair and replacement of lighting, engine overhaul, replacement of carpeting, and refinishing hardwood floors.

**Repair** – Work undertaken to restore damaged or worn out Assets or Components to a fully functional operating condition.

**Repair and Maintenance Reserve** – A Concessioner reserve account that is established in the main body of this Contract. Repair and Maintenance Reserve funds may only be used to carry out Component Renewal on a project basis that is authorized in writing by the Service and that is non-recurring within a seven-year time frame. Repair and Maintenance Reserve funds may not be expended to construct or install Capital Improvements.

**Replacement** – Exchange or substitution of one Asset or Component for another that has the capacity to perform the same function at a level of utility and service equivalent to the original Asset or Component.

**Solid Waste** - Discarded household and business items such as product packaging, grass clippings and other green waste, furniture, clothing, bottles, food scraps, newspapers, white goods and other appliances. It is more commonly referred to as trash, garbage, litter, or rubbish. The term "Solid Waste," as used in this Maintenance Plan, does not include sewage, septic sludge, Hazardous Waste, Universal Waste and miscellaneous maintenance wastes such as used oil, tires and lead-acid batteries.

**Sustainable Design** – Design of physical objects, the built environment, and services to reduce the negative impacts on the environment throughout their life-cycle. The basic objectives are to reduce consumption of non-renewable resources, minimize waste, limit impact on the local and global ecosystem and create healthy, productive environments.

**Sustainable Practices/Principles** - Those choices/decisions, actions and ethics that will best achieve ecological/biological integrity; protect qualities and functions of air, water, soil, and other aspects of the natural environment; and preserve human cultures. Sustainable Practices allow for use and enjoyment by the current generation, while ensuring that future generations will have the same opportunities.

**Useful Life** – The serviceable life of an Asset or Component.

**Universal Waste** – Any waste as defined under Applicable Laws, including but not limited to, 40 CFR § 273. Such waste includes but is not limited to mercury-containing materials such as thermostats, mercury containing lamps such as fluorescent, high intensity discharge, sodium vapor, mercury vapor lamps, cathode ray tubes (CRTs) from computers and televisions, nickel-cadmium and sealed lead-acid batteries and waste pesticides.

**Waste Prevention** - Any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste Prevention also refers to the reuse of products or materials.

**Waste Reduction** - Preventing or decreasing the amount of waste being generated through Waste Prevention, recycling, or purchasing recycled and Environmentally Preferable products.

### 3) Concessioner Responsibilities

#### A) In General

- (1) The Concessioner must undertake Maintenance of Concession Facilities to the satisfaction of the Service, including, without limitation, compliance with the requirements of this Maintenance Plan.
- (2) All Maintenance must be undertaken in accordance with Applicable Laws, including without limitation, applicable building and safety codes. All personnel conducting Maintenance must have the appropriate skills, experience, licenses and certifications to conduct such work.
- (3) The Concessioner, where applicable, must submit project plans to the Service that are stamped by a Professional Engineer or Registered Architect licensed in the applicable State.

- (4) The Concessioner, where applicable, must obtain the appropriate permits required by State or local law, U.S. Environmental Protection Agency, and other regulatory agencies and provide copies of the permits to the Service.
- (5) The Concessioner must conduct Maintenance activities in a manner that, to the extent feasible, minimizes environmental impact and utilizes principles of Preventive Maintenance, Waste Prevention and Waste Reduction, Sustainable Design and Sustainable Practices/Principles and incorporates best management practices.
- (6) The Concessioner must follow those LEED (Leadership in Energy and Environmental Design) standards set for achieving a silver rating for applicable maintenance. However, the Concessioner is not required to apply for and receive third-party verification or certification of LEED compliance.
- (7) The Concessioner must comply with the Americans with Disabilities Act and the Architectural Barriers Act guidelines where applicable.
- (8) The Concessioner must not construct or install real property improvements as defined in the regulations (including, without limitation, Capital Improvements) as part of Maintenance or otherwise except in compliance with all terms and conditions of the Contract, including without limitation, the provisions of Exhibits A and F.
- (9) The Concessioner must comply with the Repair and Maintenance Reserve procedures and requirements set forth in Exhibit F to the Contract prior to and after expending Repair and Maintenance Reserve funds.
- (10) The Concessioner may perform emergency repairs without prior Service approval as long as appropriate documentation follows within one business day.

#### **B) Environmental, Historic, and Cultural Compliance**

- (1) Certain Maintenance actions may be subject to compliance procedures under the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and other Applicable Laws.
- (2) Any proposed Maintenance actions that require review under these procedures must be submitted to the Service by the Concessioner in the format required.
- (3) The Concessioner may be required to prepare an environmental assessment, environmental impact statement, or related documents at its expense for certain Maintenance actions. The Service will assist the Concessioner on proper process and procedure.

#### **4) Maintenance Tracking**

- (1) The Concessioner must schedule and track completion of all of the Concessioner's Maintenance actions and associated expenditures in an electronic format acceptable to the Service that is capable of effectively providing the Service the Maintenance information required by this Maintenance Plan.
- (2) The Concessioner must provide the Service with requested Maintenance information on a frequency determined by the Service in an electronic format defined by the Service. This information may include, but is not limited to: (1) outstanding Deferred, Recurring, Preventive, scheduled, and unscheduled Maintenance and Component Renewal by Asset; and (2) budgeted and actual expenditures by Asset for Deferred, Recurring, Preventive, scheduled, and unscheduled Maintenance and Component Renewal. The Service, in consultation with the Concessioner, will define the specific requirements for providing requested information, including data export formats, required fields, and data structure.
- (3) The Concessioner must track the condition and work associated with Concession Facilities in accordance with this Maintenance Plan and upon direction from the Service. The Concessioner must record all Maintenance and/or construction performed on Concession Facilities and must ensure that the Service has proper access to and use of all data during the Contract term and for a period of five (5) years thereafter.

#### **5) Concessioner Inspections**

The Concessioner must conduct annual inspections of Concession Facilities to determine compliance with this Maintenance Plan and to develop future Maintenance requirements.

#### **6) Annual Concessioner Maintenance Plan (ACMP)**

The Concessioner must provide the Service on an annual basis (for Service review and approval) a proposed Annual Concessioner Maintenance Plan for the next calendar year applicable to all Concession Facilities. The Concessioner must deliver the proposed revised ACMP to the Service on or before March 1st of each year. The ACMP must include the following information.

##### **A) Maintenance Action Information**

The ACMP must include the following Maintenance action information:

- (1) Preventive Maintenance. The proposed ACMP must include PM actions, procedures and schedules that ensure proper Preventive Maintenance of all Concession Facilities. At a minimum, the PM actions, procedures and schedules must include summary procedures for each Asset, including, but not limited to, roofs, building envelopes, and mechanical equipment.
- (2) Recurring Maintenance. The ACMP must include Recurring Maintenance actions, procedures and schedules for Recurring Maintenance to be performed.
- (3) Scheduled Repair. The proposed ACMP must include actions, plans and procedures for scheduled Repair of Concession Facilities.
- (4) Unscheduled Repair. The ACMP must include a service call procedure and method to prioritize service calls for unscheduled Repairs.
- (5) Component Renewal/Replacement. The proposed ACMP must include actions, plans and procedures for Component Renewal/Replacement.
- (6) A description of the Deferred Maintenance (and any resulting Deficiencies) that are to be cured under the terms of the proposed ACMP.
- (7) Inspection plans and procedures that demonstrate how the Concessioner will oversee the conduct of Maintenance during the next calendar year.

#### **7) Projected Maintenance Expenditures**

The ACMP must also include the Concessioner estimated expenditures associated with the proposed ACMP, including, without limitation, a breakout of labor, materials, contracted services, and indirect costs on an Asset basis applicable to each Maintenance category set forth above.

#### **8) Annual Concessioner Maintenance Reporting (ACMR)**

The Concessioner must provide the Service with an Annual Concessioner Maintenance Report that covers all Concession Facilities and presents the Maintenance accomplished during the previous calendar year. The Concessioner must deliver the report to the Service on or before March 1st of each year. The ACMR must include the following elements:

##### **A) Maintenance Actions**

The ACMR must include a summary of all Maintenance actions by applicable Asset and Maintenance category that were completed in the previous calendar year, including, without limitation, actions to cure Deferred Maintenance (and any resulting Deficiencies).

##### **B) Maintenance Expenditures**

The ACMR must include the Concessioner's expenditures associated with Maintenance by applicable Asset and Maintenance category for the previous calendar year, including, without limitation, expenditures to cure Deferred Maintenance (and any resulting Deficiencies).

#### **9) Personal Property Report**

The Concessioner must provide the Service with a planned Personal Property replacement, rehabilitation, and repair schedule for the next calendar year annually by March 1st for review and approval of the Service. The plan must include the specifications, item description, estimated date of replacement, estimated replacement

cost, expected life of replacement property, and expected salvage value of replaced Personal Property at time of replacement.

#### **10) Service Responsibilities**

Nothing in this Maintenance Plan will be construed as requiring the Service to conduct Maintenance of Concession Facilities of any kind except as otherwise expressly stated by the terms of this Maintenance Plan. Part B of this Maintenance Plan may describe certain Service responsibilities for particular elements of Maintenance of Concession Facilities. Any approval or consent given by the Service, whether of any plan, permit, report, inspection, or otherwise, under this Maintenance Plan does not relieve the Concessioner or the Concessioner's contractors of any responsibility for any errors or omissions or from the responsibility to comply with the requirements of this Maintenance Plan or the Contract.

##### **A) Inspections**

The Service from time to time (as determined necessary by the Service but no less than annually) will inspect the condition of Concession Facilities and the progress and quality of Maintenance activities. The Concessioner must provide qualified personnel to accompany the Service when a Concession Facilities inspection is performed.

##### **B) Evaluation of Concessioner Maintenance**

The Service will provide the Concessioner with an annual evaluation of Concession Facilities. The evaluation will be provided to the Concessioner as a record of Concession Facilities condition documenting the Concessioner's compliance with its obligation to perform all necessary Maintenance, including, without limitation, Annual Concessioner Maintenance Plan (ACMP) actions. The findings and results of the evaluation will become part of the basis of evaluating Concessioner performance under the "NPS Concessioner Annual Overall Rating" program.

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**PART B – PARK REQUIRED CONCESSIONER RESPONSIBILITIES**

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**1) Concessioner Responsibilities**

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

**A) Concession Facilities**

- (1) The Concessioner's maintenance responsibilities include, but are not limited to: docks, piers, slips, upland boat storage area, lands, landscaping, and drainage structures; all improvements resting on the lands (buildings, restrooms, storerooms, walkways, trails, parking areas, ramps, pavement markings, fences, curbing, culverts, etc.); underground storage tanks and associated mitigation if needed; intrusion and fire alarm systems; interior and exterior lighting systems; fire suppression systems; utility and utility distribution systems; structural elements and surfaces (roofing, flooring, windows, doors, porches, patio, etc. including hazard abatement); heating and cooling systems; and all installed fixtures and miscellaneous equipment.

**B) Cyclic and Preventative Maintenance**

- (1) The annual inspections shall identify interior/exterior or other painting/staining needs to be accomplished during the current year in accordance with a color scheme approved by the Service.
- (2) The Concessioner is responsible for surface repair to control erosion. The Concessioner is responsible for snow/ice removal from all buildings, structures and appurtenances, grounds, walkways, piers, docks, slips, boat storage areas and parking areas within the land assignment area. The Concessioner is required to undertake periodic inspections and conduct preventative maintenance.

**C) Garbage/Trash Removal**

- (1) The Concessioner is responsible for trash pickup and disposal for the facilities. The Concessioner must provide and maintain trash receptacles, including recycle containers, dumpsters and other disposal arrangements and must clean up all litter within the land assignment area as specified in Contract Exhibit D.
- (2) The Concessioner must dump and clean dumpsters and wet garbage containers at least once every week to ensure a high standard of appearance and sanitation. All materials stored in holding areas must be secured in containers or devices to prevent entry to vermin, and to enhance the overall appearance of the area. Storage areas must be contained within fenced compounds or other similar enclosures to prevent view by the public. The maintenance and upkeep of such enclosures is the responsibility of the Concessioner.
- (3) The Concessioner is responsible for adhering to all federal, state and local standards for processing recyclable materials.

**D) New Construction and Remodeling**

- (1) The Concessioner is prohibited from undertaking any new construction or remodeling during this Contract.

**E) Utility Responsibility**

- (1) Electrical System - The Concessioner is responsible for the marina electrical systems and for direct payment for electric service to Con Edison, the local utility company providing electric service to the meter. The Concessioner is responsible for maintenance and repair of electrical wiring of outlets and fixtures, including ventilating and exhaust systems and hot water heaters.

The Service may conduct an annual inspection of all electrical systems and other systems with the Concessioner prior to each season's opening and as otherwise scheduled. All worn, unsafe or inoperable items must be repaired or replaced by the Concessioner. All repairs, replacement materials and procedures must conform to applicable electrical codes and be subject to final

inspection and approval by the Service. The Concessioner must have the dock electrical systems inspected semi-annually by an electrician and make all necessary repairs resulting from the inspections.

- (2) Water Systems - The Service may conduct an annual inspection of all piping, valves and fixtures with the Concessioner prior to each season and as may be scheduled during the season. Water is provided by the City of New York and the Concessioner is responsible for the water system within area assigned under the Contract and must pay all water bills directly to the municipality. The Concessioner must check all vacuum breakers and back-flow preventers for proper operation. Worn, rusted, unapproved or faulty material must be replaced by the Concessioner in strict compliance with applicable plumbing codes and are subject to the final inspection and approval of the Service. The Concessioner is responsible for providing the Service with copies of plans, specifications or other information as may be necessary to properly identify the location and/or maintenance required for the facility's water system.

- (3) Sewer System - The Concessioner is responsible for maintenance of self-contained public toilet facilities, and bears expense for regularly scheduled pump out and removal from the site of effluent from the holding tanks of such facilities. The Concessioner is responsible for assuring that boat owners do not introduce effluent from their boat holding tanks into the sewer system. Introduction of any holding tank or portable tank effluent into the NPS sewage treatment facility is prohibited.

The Service may conduct an annual inspection of all sewer and drainage systems and fixtures with the Concessioner prior to each operating season and as may be scheduled during the season. The Concessioner is responsible for all sewer and drainage problems. Worn, rusted, unapproved or faulty material must be replaced by the Concessioner in strict compliance with applicable plumbing codes and any applicable state or local sewer regulations and is subject to the final inspection and approval of the Service.

The Concessioner is responsible for providing the Service with copies of Concessioner's plans, specifications or other information as may be necessary to properly identify the location and maintenance needs of associated systems or connections to the facility's sewer/drainage system.

#### **F) Signs**

- (1) The Concessioner is responsible for installation, maintenance and replacement of exterior/interior signs relating to Concession operation and services within assigned areas. Such signs shall conform to NPS standards and have prior approval of the Service before installation.
- (2) Upon written request written and with Service approval, the Service will order certain signs for Concessioner use at Concessioner expense.

#### **G) Emergency Equipment**

- (1) The Concessioner must provide and maintain the proper quantity, type and location of fire extinguishers, first aid kits and other emergency equipment.

#### **H) Marina Operations**

- (1) Identification of Vessel Facilities - Concessioner is responsible for identifying all boat slips via a system which uniformly numbers and clearly marks each slip by a number permanently installed, to include marking of rental buoys to conform to applicable uniform state waterway marking systems. Dry storage spaces must be numbered and appropriately identified. Signs and markings must be neatly lettered, freshly painted when necessary, and meet NPS standards for signs. Numbered slips and dry storage spaces must be recorded and available for review by the Service.
- (2) Repairs, Maintenance, Commercial Cleaning of Vessels - Maintenance and commercial cleaning of, and repairs to, vessels and other motorized watercraft which may pollute or contaminate the lands or waters administered by the Service within the Area, are prohibited.
  - (a) Depending on the complexity and extent of maintenance and repairs, and the risk those activities pose for pollution or contamination of Area lands and waters, Concessioner maintenance on visitor-owned, NPS-owned, or Concessioner-owned vessels and other

motorized watercraft, must be performed at Concession boat repair shops and associated lots, Concession service stations, customer-assigned slips and buoys, as applicable, and as authorized by the Service.

- (3) Disposal of waste lubricant oils and greases, filters, solvents, paints, batteries, or hazardous substances in park or Concession dumpsters or in or upon Area lands and waters is prohibited.
- (4) Interior Floors, Walls, Surfaces and Equipment - Concessioner is responsible for ensuring that floors are clean, free of litter and clear of obstacles. Coverings (tile, etc.) are free of objectionable deterioration and excessive wear. Walls and surfaces are finished in an acceptable manner, free of peeling, blistering, cracking, excessive wear, etc. Storage areas/rooms are free of dirt, trash and debris and supplies are neatly stored. All areas are free of insect and rodent infestation and the highest degree of sanitation is maintained. Equipment is clean and free of breaks, cracks, splintering, and all metal parts are free of rust and corrosion.

## **2) Service Responsibilities**

During the execution of any Service responsibilities indicated below, should the Service disrupt areas or lands within the Concessioner's assigned lands, the Service shall provide signage and barriers to the area affected, and revegetate the affected areas as needed.

The Service is responsible for the following:

### **A) Concession Facilities**

- (1) The Service will not physically maintain Concession facilities assigned to the Concessioner. The Service will review Concessioner plans and proposals, inspect and evaluate Concessioner processes and programs, and provide technical advice and assistance when requested and as resources allow.

### **B) Signs**

- (1) The Service will install, maintain, and replace all regulatory signs that serve the interest of the Government. The Service will provide direction and assistance to the Concessioner during the design and installation of all approved signing to be provided by the Concessioner.

### **C) Roads, Parking Areas, and Walkways**

- (1) The Service will maintain all roads, parking areas, curbing, sidewalks, and walkways in the Area, except those within the Concessioner's area of responsibility as shown in Contract Exhibit D. The Service will review the Concessioner's maintenance plans, provide standards as needed, review and approve proposed work where appropriate, and monitor Concessioner projects.

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**PART C – CONCESSIONER ENVIRONMENTAL RESPONSIBILITIES**

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The following Concessioner environmental responsibilities are specified for Maintenance. Park-required Concessioner responsibilities provided in Part B may provide more specific and/or additional environmental requirements. When in conflict, responsibilities described in Part B supersede those identified in this part.

**1) General****A) Air Quality**

- (1) The Concessioner must minimize impacts to air quality in Maintenance under this Contract through the use of appropriate control equipment and practices.
- (2) The Concessioner must use diesel fuel/heating oil containing no more than 500 parts per million (ppm) sulfur (i.e., low sulfur fuel).
- (3) The Concessioner must obtain Service approval to use halon fire suppression systems.

**B) Environmentally Preferable Products, Materials and Equipment**

- (1) The Concessioner must use products, materials and equipment that are Environmentally Preferable where feasible in maintenance. Environmentally Preferable maintenance related products, materials and equipment include but are not limited to re-refined oils, re-tread tires, bio-based lubricants, low-toxicity cleaners and chemical additives for toilets, low-toxicity and recycled antifreeze, safe alternatives to ozone-depleting substances for HVAC equipment, construction and building materials with recycled content, and alternative fuel vehicles.
- (2) The Concessioner must use polystyrene as little as possible and may not use polystyrene that contains chlorofluorocarbons.

**C) Hazardous Substances**

- (1) The Concessioner must minimize the use of Hazardous Substances for Maintenance purposes under this Contract where feasible.
- (2) The Concessioner must provide secondary containment for Hazardous Substances storage where there is a reasonable potential for discharge to the environment. At a minimum, the Concessioner must provide secondary containment for Hazardous Substances located in outside storage areas, in interior storage areas in the proximity of exterior doorways or floor drains, on docks and on vessels.
- (3) All flammable Hazardous Substances materials must be stored in UL approved flammable storage cabinets, rooms or buildings as defined by the National Fire Prevention Association.
- (4) The Concessioner must provide an inventory of Hazardous Substances to the Service annually in accordance with Section 6(d) (1) of the Contract. The inventory must identify each substance, location and amounts stored.

**D) Hazardous, Universal and Other Miscellaneous Maintenance Wastes**

- (1) The Concessioner must minimize the generation of Hazardous Waste, Universal Waste and miscellaneous maintenance waste where feasible.
- (2) The Concessioner must recycle Hazardous Waste, Universal Waste, and miscellaneous maintenance wastes, where feasible, including but not limited to, used oil, used oil contaminated with refrigerant, used solvents, used antifreeze, paints, used batteries, and used fluorescent lamps (including CFLs).
- (3) Concessioner must obtain approval from the Service for Hazardous Waste, Universal Waste, and miscellaneous maintenance waste storage area siting and designs.
- (4) The Concessioner must address Hazardous Waste, Universal Waste and other maintenance wastes in its inventory of waste streams which is required annually in accordance with Section 6(d)(1) of the Contract. The inventory must identify each waste type, locations stored, amount generated annually, amount typically generated per month and amount typically stored on site at any one time.

- (5) The Concessioner must follow small quantity generator (CESQG) requirements as defined in federal regulations, related to container labeling, storage, accumulation times, use of designated disposal facilities, contingency planning, training, and recordkeeping.
- (6) The Concessioner must manage Universal Waste (i.e., storage, labeling, employee training, and disposal) in accordance with federal universal waste regulations irrespective of hazardous waste generator status.

**E) Pest Management**

- (1) The Concessioner must eradicate any pest infestation in personal or other property and in all Concession Facilities, including infestation that requires fumigation/tenting for termites or other pests.
- (2) The Concessioner must conduct pesticide management activities in accordance with NPS Integrated Pest Management (IPM) procedures contained in NPS 77 and the Park IPM Plan.
- (3) The Concessioner must obtain Service approval to control pests utilizing chemicals or by other means. The Concessioner must submit by January 15 of each calendar year a pesticide request form requesting approval of anticipated pesticide use and a Pesticide Use Log which tracks the pesticide use for the current year.
- (4) The Concessioner must obtain Service approval for pesticide storage area siting and design.
- (5) The Concessioner must obtain Service approval to use contracted pesticide applicators.

**F) Solid Waste**

- (1) Litter Abatement
  - (a) The Concessioner must develop, promote and implement a litter abatement program.
  - (b) The Concessioner must keep all Concession Facilities free of litter, debris, and abandoned equipment, vehicles, furniture, and fixtures.

**G) Solid Waste Storage and Collection and Disposal**

- (1) The Concessioner must provide, at its own expense, an effective system for the collection, storage and disposal of Solid Waste generated by its facilities and services as well as the Solid Waste generated by the visiting public at its facilities.
- (2) To prevent pest attraction and breeding, all Solid Waste from the Concessioner's operations must be adequately bagged, tied and stored in sealed containers.
- (3) Solid Waste collection and disposal must be conducted on a schedule approved by the Service, on a frequency as necessary to prevent the accumulation of waste.
- (4) Solid Waste that is not recycled must be properly transported and disposed of at an authorized sanitary landfill or transfer station.
- (5) The Concessioner must obtain Service approval for any contracted Solid Waste services.
- (6) Solid Waste Receptacles
  - (a) The Concessioner must locate its Solid Waste containers (i.e., cans, "roll-off" containers/dumpsters, etc.) conveniently and in sufficient quantity to handle the needs of its operations. The Concessioner must not allow waste to accumulate in containers to the point of overflowing.
  - (b) Outdoor receptacles must be waterproof, vermin-proof, and covered with working lids. Indoor receptacles should be similarly constructed based on use (i.e., food waste versus office trash).
  - (c) The Concessioner must keep its receptacles clean, well maintained, painted in Service-approved colors, and serviceable; containers must be clearly signed; sites must be free of spills, waste, and odors. All Solid Waste containers must remain closed when containers are not in use.
  - (d) Concessioner bulk Solid Waste storage/accumulation facilities must be screened from the public.

**H) Solid Waste Source Reduction and Recycling**

- (1) The Concessioner must implement a source reduction program designed to minimize its use of disposable products in its operations. Purchase and reuse of materials is encouraged where feasible as the first choice in source reduction.
- (2) The Concessioner must reuse materials where allowable under Applicable Laws where the collection of the materials will not present public health, safety or environmental concerns. Opportunities include the reuse of retail product packaging.
- (3) The Concessioner must develop, promote and implement a recycling program that fully supports the efforts of the Service for all Park specified materials. These include but may not be limited to paper, newsprint, cardboard, bimetals, plastics, aluminum and glass. The plan must address large items such as computers and other electronics, white goods and other bulky items.
- (4) The Concessioner must make recycling receptacles available to the public and Concession employees.
- (5) Recycling containers must be waterproof, vermin-proof and covered with working lids as necessary to maintain the quality of the recyclables for market and to prevent vermin from being attracted to the recycling containers. Containers must be clearly signed; sites must be free of spills, waste, and odors. Lids must be provided with openings or holes sized to limit the types of materials deposited and to minimize contamination in recycling containers.
- (6) The Concessioner must remove all recyclables from the Area and transport them to an authorized recycling center. The Service must approve any recycling services contracted with an independent vendor.
- (7) Solid Waste Inventory. The Concessioner must address Solid Waste in its inventory of waste streams, which is required annually in accordance with Section 6(d) (1) of the Contract. The inventory must identify waste types including trash, each category of recyclables, green waste, construction debris, and other Solid Waste streams. The inventory must specify amount generated by weight, annually.

**I) Water and Energy Efficiency**

- (1) The Concessioner must consider water and energy efficiency in all facility management practices and integrate water-conserving and energy conserving measures whenever feasible.
- (2) In addition to meeting standards established in accordance with Applicable Laws, Concession Facilities equipment and practices must be consistent with water and energy efficiency standards established for federal facilities and operations where feasible. All new equipment must meet Energy Star standards where feasible.
- (3) Where feasible, the Concessioner must replace incandescent light fixtures with energy conserving fixtures.
- (4) As new technologies are developed, the Concessioner must assess these opportunities and integrate them into existing operations where feasible and when there is the potential for increased efficiency, reduced water or energy consumption, or reduced impacts on the environment.

**J) Wastewater**

- (1) The Concessioner must minimize impacts to water quality in maintenance under this Contract through the use of appropriate control equipment and practices.
- (2) The Concessioner must prevent discharges to the sanitary sewer system that could result in pass through of contaminate or that could interfere with the operation of the sanitary wastewater treatment system.
- (3) The Concessioner must maintain assigned wastewater treatment systems on a frequency adequate to ensure proper operation to maintain wastewater quality. The Concessioner must maintain maintenance log for this wastewater treatment equipment which must be made available to the Service upon request.
- (4) The Concessioner must minimize the storage of equipment and materials in the Concession Facilities in a manner that would cause storm water contamination (i.e., storage outside without weather protection).

**K) Fuel Storage Tanks**

- (1) The Concessioner must maintain leak detection methods and/or systems for all Concessioner-assigned fuel tanks, associated equipment such as underground and aboveground piping, hoses, and dispensing systems. Methods and systems must be approved by the Service.
- (2) The Concessioner must provide Stage II dispensing systems for all landside gasoline fuel dispensing systems.
- (3) The Concessioner must provide breakaway devices for all fuel dispensing system hoses.
- (4) The Concessioner must provide secondary containment for any new fuel tank systems and equipment replacement where feasible and appropriate unless otherwise required by Applicable Laws. (Propane and natural gas systems are excluded).
- (5) The Concessioner must submit all plans for Service approval prior to starting any work involving fuel systems, tank, soil or ground water remediation.

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**PART D – CONCESSIONER REPORTING RESPONSIBILITIES**


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**1) General**

The following chart summarizes the plan and reporting dates established by Parts A, B and C of this Maintenance Plan.

<b>Report or Plan</b>	<b>Schedule</b>	<b>Due Date</b>
Part A – Annual Concessioner Maintenance Plan (ACMP)	Annual	March 1
Part A – Annual Concessioner Maintenance Reporting (ACMR)	Annual	March 1
Personal Property Report	Annual	March 1
Monthly Reporting	Monthly	By 15th of following the end of the prior month
Part C – Pesticide Use Report	Annual	January 15
Part C – Pesticide Use Approval(s)	Annual	January 15
Part C – Inventory of Hazardous Substances	Annual	March 1
Part C - Inventory of Waste Streams	Annual	March 1

**EXHIBIT I****INSURANCE REQUIREMENTS****SEC. 1. 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. No act of the Concessioner, its agents, servants, or employees may impair any and all insurance coverage provided for the benefit of, or evidenced to the Service. The Concessioner must ensure that its insurance carriers provide the Service, solely for the benefit of the Service, **an unconditional 30 days advance notice** of cancellation of coverage or policy terms for all property insurance. The Concessioner must provide the Service with an unconditional 30-day advance notice of cancellation of coverage or policy terms on all liability and workers' compensation insurance policies.

The amounts of insurance, limits of liability, and coverage terms included are not intended as a limitation of the Concessioner's responsibility or liability under the Contract, but rather an indication as to the minimum types, amounts, and scope of insurance that the Service considers necessary to allow the operation of the concession at the Area. Nevertheless, if the Concessioner purchases insurance in addition to the limits set forth herein, the Service will receive the benefit of the additional amounts of insurance without cost to the Service.

**SEC. 2. LIABILITY INSURANCE**

The Concessioner must maintain the following minimum liability coverages, all of which, unless noted herein, are to be written on an occurrence form of coverage. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with excess or umbrella liability as explained below.

**(a) Commercial General Liability**

- (1) The Concessioner must obtain coverage for bodily injury, property damage, contractual liability, personal and advertising injury liability, and products and completed operations liability. The Concessioner must provide the following minimum limits of liability:

Per Occurrence	\$2,000,000
Personal and Advertising Injury Liability	\$2,000,000
General Aggregate	\$3,000,000
Products and Completed Operations Aggregate	\$3,000,000
Security Guard Liability	\$1,000,000
Medical Payments	\$1,000
Damage to Premises Rented to You	\$1,000

- (2) The liability coverages may not contain the following exclusions/limitations:

Athletic or Sports Participants  
Contractual Liability  
Personal and Advertising Injury exclusion or limitation  
Products and Completed Operations  
Explosion, Collapse and Underground Property Damage exclusion  
Total Pollution exclusion

- (3) Pollution liability insurance coverage must be included for injuries resulting from smoke, fumes, vapor, or soot, or other contaminants arising from equipment used to heat the building or from a hostile fire.
- (4) If the policy insures more than one location, the general aggregate limit must be amended to apply separately to each location.

**(b) Automobile Liability**

The Concessioner must provide coverage for bodily injury and property damage arising out of the ownership, maintenance or use of "any auto," Symbol 1, including garage operations for products and completed operations. Where there are no owned autos, coverage will be provided for "hired" and "non-owned" autos, "Symbols 8 & 9." Garagekeepers' liability is to be included on a "direct" basis for all Concessioner operations handling, parking or storing automobiles owned by others for a fee.

Combined Single Limit Each Accident

\$1,000,000

**(c) Excess Liability or Umbrella Liability**

The Concessioner may use an Excess or Umbrella Liability policy to achieve the commercial general liability and automobile liability limits set forth above. The limit of liability under the excess policy must be in an amount that together with the subordinate policy limit meets the minimum limit of liability required.

The Concessioner is not required to provide excess liability or umbrella liability coverage, but may use it to supplement any insurance policies obtained to meet the minimum requirements of the Contract. If maintained, the Concessioner will provide coverage for bodily injury, property damage, personal injury, or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage must be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Umbrella Liability policy.

**(d) Liquor Liability**

The Concessioner must provide coverage for bodily injury and property damage including damages for care, loss of services, or loss of support arising out of the selling, serving, or furnishing of any alcoholic beverage.

Each Common Cause Limit  
Aggregate Limit

\$2,000,000  
\$3,000,000

**(e) Watercraft Liability (or Protection and Indemnity) (not applicable)**

The Concessioner must provide coverage for bodily injury and property damage arising out of the use of any watercraft.

Each Occurrence Limit

\$

Marina liability shall be maintained at the same each occurrence limit if the Concessioner operates a marina.

Tower's liability shall be maintained at the same each occurrence limit if the Concessioner tows or transports non-owned vessels by water.

**(f) Marina Operator's Legal Liability**

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

Any One Loss	\$2,000,000
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**(g) Environmental Impairment Liability (or Pollution Liability)**

The Concessioner will provide coverage for bodily injury and property damage arising out of pollutants or contaminants on-site and off-site and for cleanup.

Each Occurrence or Each Claim Limit	\$1,000,000
Aggregate Limit	\$1,000,000

**(h) Aircraft Liability (not applicable)**

The Concessioner must provide coverage for bodily injury (including passengers) and property damage arising out of the use of any aircraft.

Each Person Limit	\$
Property Damage Limit	\$
Each Accident Limit	\$

The Concessioner must maintain airport liability insurance at a limit of at least \$ \_\_\_\_\_ if the Concessioner maintains landing facilities for use by third parties. Hangerkeeper's liability shall be maintained at a limit sufficient to cover the maximum estimated value of non-owned aircraft in the Concessioner's care, custody or control if the Concessioner provides aircraft storage to third parties.

**(i) Garage Liability (not applicable)**

This coverage is required for any operations in which the Concessioner services, handles or repairs automobiles owned by third parties. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability arising out of garage operations (including products/completed operations and contractual liability) as well as bodily injury and property damage arising out of the use of automobiles.

Each Accident Limit - Garage Operations (Other than Covered Autos)	\$
Aggregate Limit-Garage Operations	\$
Covered Auto Limit (each accident)	\$
Garagekeepers' Liability	\$
Personal Injury Protection (or equivalent no-fault coverage)	\$
Uninsured Motorists	\$
Personal & Advertising Injury Limit	\$
Fire Legal Liability "per fire"	\$

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

**(j) Care, Custody and Control – Legal Liability, i.e. Innkeeper's Liability (not applicable)**

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

Any one Guest	\$
Any One Loss	\$

**(k) Professional Liability, e.g. dive instructor, massage therapist (not applicable)**

The Concessioner must maintain, or cause professionals working on its behalf to maintain, professional liability insurance for all professional services provided by or on behalf of the Concessioner.

Each Occurrence Limit	\$
Aggregate Limit	\$

**(l) Special Provisions for Use of Aggregate Policies**

The general aggregate under the Commercial General Liability policy must apply on a "per location" basis. The Certificate of Insurance required herein will note compliance with this aggregate provision.

**(m) Deductibles/Self-Insured Retentions**

The Concessioner's self-insured retentions or deductibles on any of the above described liability insurance policies (other than umbrella liability, environmental impairment liability or professional liability, if maintained) may not exceed \$5,000 without the prior written approval of the Director. Deductibles or retentions on umbrella liability, environmental impairment liability and professional liability may be up to \$25,000.

**(n) Workers' Compensation and Employers' Liability**

The Concessioner must obtain coverage that complies with the statutory requirements of the state(s) in which the Concessioner operates. The employer's liability limit will not be less than \$1,000,000.

If the Concessioner's operations include use of watercraft on navigable waters and employ persons in applicable positions, a Maritime Coverage Endorsement must be added to the Workers' Compensation policy, unless coverage for captain and crew is provided in a Protection and Indemnity policy.

If the Concessioner conducts its operations in proximity to navigable waters and employ persons in applicable positions, United States Longshore and Harbor Workers' Compensation Act coverage must be endorsed onto the Workers' Compensation policy.

**SEC. 3. PROPERTY INSURANCE****(a) Building(s) and Contents Coverage**

Amount of insurance (buildings): Full replacement value as listed in Exhibit D without deduction.

Amount of insurance (contents): Full replacement value without deduction.

Amount of insurance (inventory): Full replacement value without deduction.

- (1) Insurance shall cover buildings, structures, improvements & betterments, and 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 and shall include earthquake coverage if the Concession Facilities are located within Seismic Zones 3 or 4.
- (3) The policy shall provide for loss recovery on a replacement value basis without deduction.
- (4) The amount of insurance must represent no less than 100% of the replacement cost value of the insured property. The Concessioner must insure inventory for 100% of the replacement cost of the products held for sale.

- (5) The vacancy restriction and unoccupied restriction, if any, must be eliminated for all property that will be vacant beyond any vacancy or unoccupied time period specified in the policy.
- (6) The Concessioner must maintain flood coverage at least at the maximum limit available in the National Flood Insurance Program (NFIP) or the total replacement cost of the property, whichever is less, if the Concession Facilities are partially or fully within a Special Flood Hazard Area (Flood Zones A or V as identified by the Federal Emergency Management Agency).
- (7) The Concessioner must maintain earthquake coverage (if applicable) at the maximum limit available not to exceed 100% replacement value, without a deductible greater than 5% of the property value, or its equivalent in whole dollars.
- (8) The coinsurance provision, if any, shall be waived or suspended by an agreed amount clause.
- (9) The Concessioner must provide coverage on a blanket basis for real and personal property.
- (10) Ordinance or law, demolition, and increased cost of construction. Coverage shall be maintained with a limit of not less than 20% of the building replacement costs listed in Exhibit D, each for the increased cost of construction and for the cost to replace the undamaged portion of a building ordered torn down by the appropriate authorities.

**(b) Boiler & Machinery/Equipment Breakdown Coverage**

- (1) Insurance shall apply on the comprehensive basis of coverage including all objects within the Concession Facilities.
- (2) The policy shall provide a limit at least equal to the full replacement cost for all covered objects in the highest valued Concession Facilities location, plus 20% on a replacement cost basis.
- (3) No coinsurance clause shall apply.
- (4) The Concessioner must provide coverage on a blanket basis.
- (5) 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.
- (6) The Concessioner must maintain ordinance or law, demolition, and increased cost of construction coverage.

**(c) Inland Marine Coverage**

- (1) Insurance shall apply to all boats, office trailers, equipment, storage racks and docks owned or rented by the insured, unless otherwise covered by building and contents coverage or provided for as part of a Watercraft Liability (or Protection and Indemnity) policy.
- (2) Coverage shall apply to direct damage to covered property.
- (3) The Concessioner must maintain flood coverage and earthquake coverage as described above.
- (4) The Concessioner must maintain coverage while covered property is in transit or away from the insured's premises.
- (5) No coinsurance clause shall apply.

**(d) Builders Risk Coverage**

- (1) Insurance shall cover buildings or structures under construction pursuant to the terms of the Contract 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 also must 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 value of the property in the process of construction.
- (5) No coinsurance clause shall apply.
- (6) Any occupancy restriction must be eliminated.
- (7) Any collapse exclusion must be eliminated.

**(e) Business Interruption and/or Expense**

Business interruption insurance is required on all property policies, and Boiler and Machinery policies. Business interruption insurance and extra expense insurance covers the loss of income and continuation of fixed expenses in the event of damage to or loss of any or all of the Concession Facilities. Extra expense insurance covers the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property. The Concessioner must calculate the minimum coverage provided as follows:

Anticipated annual gross revenue from operations	\$ _____
Less non-continuing expenses	(\$ _____)
Annual Total	\$ _____
Divided by 12	\$ _____
Times the number of months estimated to rebuild or repair the Concession Facilities	\$ _____
Minimum Coverage	\$ _____

**(f) Deductibles**

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

- (1) Direct damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$50,000 (except flood coverage and earthquake coverage may be subject to deductibles not exceeding 5% of the property value for flood, windstorm and earthquake).
- (2) Extra expense deductibles (when coverage is not combined with business interruption) shall not exceed \$50,000.

**(g) Required Clauses**

- (1) Loss Payable Clause: A loss payable clause, similar to the following, must be added to Buildings and Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. \_\_\_\_ dated \_\_\_\_, between the United States of America and [the Concessioner] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America, unless the damage exceeds \$1,000,000."

#### **SEC. 4. CONSTRUCTION PROJECT INSURANCE**

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new structures must 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 in the Contract including this Exhibit (for commercial general liability, automobile liability, Workers' Compensation and, if professional services are involved, professional liability). Except for Workers' Compensation insurance, 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 and limits of the required coverages shall be determined in consultation with the Director taking into consideration the scope and size of the project.

#### **SEC. 5. INSURANCE COMPANY MINIMUM STANDARDS**

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

- (1) All insurers for all coverages must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.
- (2) All insurers for all coverages must have a Best's Financial Size Category of at least VII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the Service.

#### **SEC. 6. THIRD PARTY INSURANCE**

Concessioners entering into contracts with third parties for various services or activities that the Concessioner is not capable of providing or conducting, must ensure that each third party retained for such work maintain an insurance program that adequately covers the activity and comply with all the requirements applicable to that party's own insurance.

#### **SEC. 7. CERTIFICATES OF INSURANCE**

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

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

In addition to providing certificates of insurance, the Concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (and all endorsements thereto) required herein to be maintained by the Contract including this Exhibit.

The certificate of insurance shall contain a notation by the Concessioner's insurance representative that the insurance coverage represented therein complies with the provisions of the Contract, including this Exhibit.

**SEC. 8. STATUTORY LIMITS**

In the event that a statutorily required limit exceeds a limit required herein, the Concessioner must maintain the higher statutorily required limit, which shall be considered as the minimum to be maintained. In the event that the statutorily required limit is less than the limits required herein, the limits required herein apply.

## **EXHIBIT J TRANSITION TO A NEW OPERATOR**

### **SEC 1. 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 Operator selected by the Director to continue such operations ("Operator" for purposes of this exhibit), to achieve an orderly transition of operations in order to avoid disruption of services and minimize transition expenses.

### **SEC. 2. COOPERATION PRIOR TO THE TERMINATION DATE**

At such time as the Director may notify the Concessioner that it will not continue its operations upon the Termination of this Contract, the Concessioner, notwithstanding such notification, shall undertake the following tasks.

#### **(a) Continue Operations**

The Concessioner shall 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 with a view to maintaining customer satisfaction.

#### **(b) Continue Bookings**

(1) The Concessioner shall continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken. The Concessioner shall not divert any bookings to other facilities managed or owned by the Concessioner or any affiliate of the Concessioner. The Concessioner shall notify all guests with bookings for any period after the Termination Date that the New Operator will operate the facilities.

(2) Promptly following notification to the Concessioner by the Director of the selection of the New Operator, the Concessioner shall provide the New Operator 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 Operator. The Concessioner thereafter shall update such log on a periodic basis (but no less frequently than 30 days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's address, contact information, dates of stay, rate quoted, amount of advance deposit received, and confirmation number, if applicable.

#### **(c) Designating a Point of Contact and Other Actions**

(1) The Concessioner shall designate one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Operator.

(2) The Concessioner shall provide the New Operator with access to all Concession Facilities, including "back-of-house areas". The Concessioner also shall provide the New Operator copies of the keys to all Facilities.

(3) The Concessioner shall provide the Director and the New Operator full access to the books and records, licenses, and all other materials pertaining to all Concession Facilities and the Concessioner's operations in general.

(4) The Concessioner shall provide the Director and the New Operator 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) The Concessioner shall allow the New Operator 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.

(6) The Concessioner shall not enter into any contracts or agreements that would be binding on any Concession Facilities or concession operations in general after the Termination Date without the prior written agreement of the Director.

**(d) Financial Reports**

Within 30 days after receipt of the notification of the selection of the New Operator, The Concessioner shall provide the Director with a financial report with respect to the operation of the Concession Facilities and the Concessioner's operations in general as of the last day of the month prior to receipt of such notification. The Concessioner, thereafter, shall update such financial report on a periodic basis (but no less frequently than 30 days) until the Termination Date. Such financial report shall include, at a minimum: a balance sheet for the Concession Facilities, if any; a schedule of pending accounts payable; and a schedule of pending accounts receivable.

**(e) Personal Property List**

The Concessioner shall provide the New Operator 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 Concessioner must provide the list to the New Concessioner within 30 days following receipt of the notification of the selection of the New Concessioner. The Concessioner, thereafter, shall update the list on a monthly basis. The Concessioner shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of the concession operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

**(f) Other Information and Reports**

The Concessioner shall provide the New Operator 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. The Concessioner must also provide complete information on the following to the New Concessioner: utilities, including gas and electric; telephone service; water service; and specific opening and closing procedures. The Concessioner must provide all such information within 30 days after receipt of notification of the selection of the New Operator and update the information periodically (but no less frequently than 30 days) until the Termination Date.

**(g) Other Cooperation**

The Concessioner shall provide the Director and the New Operator with such other cooperation as reasonably may be requested.

**SEC. 3. COOPERATION UPON THE TERMINATION DATE**

Upon the Termination Date, the Concessioner shall undertake the following activities.

**(a) Transfer of Contracts and Licenses**

The Concessioner shall cooperate with the transfer or assignment of all contracts and licenses entered into by the Concessioner that the New Operator elects to assume.

**(b) Reservation Systems**

The Concessioner shall cooperate with the transfer of reservation information by:

- (i) Providing the New Operator with an update of the reservation log through the Termination Date;
- (ii) Disconnecting its operations from the Concessioner's centralized reservation system, if any; and
- (iii) Assisting the New Operator in transitioning to the New Operator's reservation system.

**(c) Fees and Payments**

No later than 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, within 10 days of its delivery to the Director of this itemized statement, shall 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**

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, notwithstanding any other provision of this Contract to the contrary.

**(e) Removal of Marks**

The Concessioner shall 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 within 30 days after Termination.

**(f) Other Cooperation**

The Concessioner shall provide the Director and the New Operator with such other cooperation as reasonably may be requested.

**EXHIBIT K**  
**INTELLECTUAL PROPERTY LICENSED MARKS**

NONE